



**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**Round 1 - Questions and Answers**

**April 23, 2014**

**Any term or phrase used within this Question and Answer document shall have the means ascribed under Request For Applications Article II**

**DEFINITIONS**

**Q.1:** How do you define a "manager" included in the term "Applicant Party"?

**A.1:** See RFA Article II.

**Q.2:** Page 29 of the RFA deals with required Organizational Documents. Throughout the document, there are items that pertain to the Applicant and Applicant Party, but in this section there is the undefined term "Applicant's owners."

a. What is meant by "owner?"

b. Is this more, less, or the same standard as the definition of Applicant Party?

**A.2:**

**a. "Applicant's owners" means any person or entity that has a direct or indirect ownership interest in the Applicant or the Manager equal to or greater than five (5) percent.**

**b. This is a subset of the RFA definition of "Applicant Party".**

**Q.3:** a. How is "host municipality" defined?

b. Is it a municipal entity that provides services to the Project?

**A.3: See RFA Article II.**

**Q.4:** With respect to the RFA, the definitions of Applicant, Applicant Party, and Financial Source, can a New York State Off-Track Betting Corporation participate in the RFA process under any of those three definitions?

**A.4: The Board encourages any interested Off Track Betting Corporation to conduct a legal review of the applicable provisions of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law and its own bylaws or operating agreement to determine the scope of business it may lawfully undertake.**

**Q.5:** Confirm that the term "other non-gaming structures related to the gaming area", within the definition of "Gaming Facility", would not include existing amenities that pre-date the proposed gaming facility and are ancillary to the gaming project (e.g., existing golf course).

**A.5: An Applicant need not include pre-existing amenities, but should note that excluded amenities will not be considered as prior capital investments for purposes of calculating the project's overall capital investment.**

**Q.6:** Confirm for the purposes of the definition of "Financing Source," if a Manager is not providing any equity, debt, credit support or credit enhancement for the proposed Gaming Facility, it is not a "Financing Source".

**A.6: Confirmed.**

## **OVERVIEW**

### **Term of License**

**Q.7:** According to the RFA, the initial licenses are going to be limited to 10 years. Based on our discussions with lending institutions, it may be impossible to finance a \$400-500 million casino development based on a 10 year term because of the difficulty in being able to fully amortize the loan.

a. Can the Gaming Facility Board shed some light on its intentions regarding renewals, the criteria for renewals and the terms of any such renewals that will make financing a casino a more realistic possibility?

b. Is the 10 year license limitation based upon the time a gaming facility opens to the public or from when the license is first awarded/issued?

**A.7.**

**a. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1311.1 provides that the “duration of such initial license shall be ten years. The term of renewal shall be determined by the commission.” The Commission has not yet established terms of renewal.**

**b. The formal award of a license and commencement of the two year period for construction will be at a date subsequent to the announcement of final Commission suitability determination. The effective date of the license is likely to be concurrent with the opening of the gaming facility.**

**Q.8:** When will the Commission determine the term of any renewal of a License? The length of the initial license term and any renewals thereafter will have a material impact on the terms of project financing.

**A.8: See Answer to Question 7.a.**

**Q.9:** The term of an initial License granted by the Commission after selection for recommendation by the Board will be ten (10) years, as set forth in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311.1. When does the license term begin (e.g., upon selection or when the Gaming Facility opens)?

**A.9: See answer to Question 7.b.**

**Q.10:** Initial license term will be 10 years.

a. Will there be any renewal fee?

b. How long will the renewal term be?

**A.10: The statute contemplates three different payments: 1. an application fee of \$1 million to defray the costs of backgrounding; 2. a license fee; and 3. a renewal fee, which is currently limited to defraying the costs of renewal backgrounding. See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §§ 1311.1 and 1315.4**

a. Present law does not authorize a renewal fee for other than backgrounding.

b. A renewal term would be set by regulation.

## Questions and Inquiries

**Q.11:** A preliminary question is whether in seeking answers to questions, the identity of my client must be made public. For example when a question is posed and answered must the identity of my client be publically disclosed?

**A.11:** **The Question & Answer summary will reiterate the question, without identifying the party that posed the question. However, subsequent to the selection of applicants for licensing, these submitted written questions and the parties that posed these questions will be part of the public record, subject to disclosure.**

**Q.12:** The application indicates that there will be a second opportunity for applicants to submit questions on May 7th. Since inevitably additional questions will come up closer to the June 30 submission date as applicants refine their applications, will there be additional opportunities to ask questions or request clarification on an ad hoc or scheduled basis after the May 7th date?

**A.12:** **The schedule has been designed to allow for a period in advance of submission of the Application wherein Applicants can uniformly rely upon the information provided. The Board reserves the discretion to allow additional question periods and will do so to the extent that further clarification is necessary.**

## Procurement Lobbying Restrictions, Permissible Contacts

**Q.13:** Please confirm that all contact with you by us or, if we elect to retain a lobbyist, our lobbyist, must be in writing and that we may not communicate with you in person or by telephone concerning the RFA.

**A.13:** **Confirmed. The only points of contact with regard to matters relating to the RFA, unless otherwise designated by the Board, are Gail P. Thorpe and Stacey Relation. See RFA Article III § E.**

**Q.14:** Is an Applicant permitted to discuss directly with the Commission, the Board, or their respective staffs the persons and entities qualifying as the Applicant and any Related Parties (including discussions to assist in determining whether to grant temporary or permanent exemptions for particular persons or entities such as certain institutional investors, passive investors, stockholders of publicly held corporations or other circumstances)?

**A.14:** **No. Discussions are permitted to take place only as directed in RFA Article § III. E.**

**Q.15:** During the background investigation into the suitability of an Applicant, the Applicant will necessarily have direct contact with the Commission staff. Is such contact during the Restricted Period an exception to the communication restrictions described in the RFA?

**A.15: Yes.**

**Q.16:** Does the communication bar between the Commission/Board and Applicants as described in the RFA apply to an Applicant's provision of comments to proposed regulations of the Commission/Board or other responses by Applicants in reply to solicitations for public comment made by the Commission/Board?

**A.16: No.**

**Q.17:** The RFA provides that "[a]s required by the Procurement Lobbying Law (Sections 139-j and 139-k of the New York State Finance Law), this RFA includes and imposes certain restrictions on communications between the Commission/Board and an Applicant during the Application process. An Applicant is restricted from making contacts during the Restricted Period with anyone at the Commission or the Board other than designees of the Commission's staff, unless the contact is permitted by the statutory exceptions set forth in Section 139-j.3.a. of the New York State Finance Law." RFA, Section III.C. As written, this requirement implies that an Applicant is restricted from making contacts during the Restricted Period with anyone at the Commission or the Board for all purposes – not solely contacts concerning the RFA. Section 139-j.3.a., however, states that "[e]ach offerer that contacts a governmental entity about a governmental procurement shall only make permissible contacts with respect to the governmental procurement, which shall mean that the offerer: a. shall contact only the person or persons who may be contacted by offerers as designated by the governmental entity pursuant to paragraph a of subdivision two of this section relative to the governmental procurement, except that the following contacts are exempted . . ." This implies that the restrictions on an Applicant's contacts with the Commission or the Board are limited to contacts concerning the RFA. As Applicants may conceivably have communications with the Commission concerning matters unrelated to the RFA, such as those concerning horse racing or the lottery, please clarify which specific communications are restricted under the RFA and the Procurement Lobbying Law. Further, please specify if an Applicant's communications with the Commission that are unrelated to the RFA are permissible.

**A.17: Communications made with the Commission unrelated to the RFA (such as those made in the course of fulfilling statutory or regulatory reporting requirements) are not restricted by the RFA. Those communications deemed restricted are those attempts that are to solicit**

information, etc. from the Commission and Board that are germane to the RFA.

**Q.18:** Is submitting a question considered "lobbying" under the RFA?

**A.18: No.**

### **Registration of Lobbyists**

**Q.19:** Does a person submitting a question need to be registered as a lobbyist with the Commission if they are not engaged in lobbying on the RFA at the time the question is submitted?

**A.19: No.**

**Q.20:** Under § 1329.2, lobbyists seeking to engage in lobbying activity before the Commission are required to register with the Secretary of the Commission. Legislative Law, Article 1, provides that the definition of lobbying shall not include certain activities related to procurements. Are Applicants and those appearing on behalf of an Applicant required to register as a lobbyist with the Commission or are they exempt?

**A.20: Yes. Pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1329.2, each lobbyist seeking to engage in lobbying activity on behalf of a client or a client's interest before the Commission or the Gaming Facility Location Board shall first register with the secretary of the Commission. Section 1329 does not change the Legislative Law definition of "lobbyist".**

### **Mandatory Applicants Conference**

**Q.21:** What is the agenda and estimated end time for the Applicant Conference on April 30?

**A.21: The intent of the Applicant Conference is to clarify written responses to the initial round of questions and provide an open forum for Applicants to ask additional questions. The schedule for the Conference is posted on the Commission's website.**

**Q.22:** Will the Location Board limit the number of attendees on behalf of the Applicant at the April 23, 2014 Applicant's Conference?

**A.22: The Applicant Conference is scheduled for April 30, 2014, not April 23, 2014.**

**No. There will not be a limit of attendees; however, subsequent to payment of the Application fee, the Applicant will be asked to provide an estimated number of attendees so that sufficient accommodation is provided.**

**Q.23:** Can the Applicant's consultants (architect, engineer, attorneys, etc.) attend the Applicant Conference on April 23, 2014 with or on behalf of the Applicant?

**A.23: The Applicant Conference is scheduled for April 30, 2014, not April 23, 2014.**

**Yes, the Applicant's Consultants may attend the Applicant Conference on April 30, 2014 with or on behalf of the Applicant, but upon payment of an Application fee, the Applicant must be identified.**

**Q.24:** a. Who must attend the Applicant Conference?

b. Must the ultimate applicant attend? May a representative attend?

c. Must the applicant identify site/region at the conference?

**A.24:**

**a. All Applicants or representatives of identified Applicants must attend.**

**b. We are uncertain as to what is meant by "ultimate applicant" and note that the RFA contains a process by which Applicant parties and principals may change.**

**c. No.**

**Q.25:** Who is permitted to represent the Applicant in the Applicant Meeting, Presentation and Hearing?

**A.25: See answer to Question 23.**

### **Background Investigations**

**Q.26:** The RFA provides that "the Commission or the Board, in their sole discretion and as applicable to their respective duties under the Act, shall determine the persons and entities qualifying as the Applicant and any Related Parties including determining whether to grant temporary or permanent exemptions for particular persons or entities such as certain institutional investors, passive investors, stockholders of publicly held corporations or other circumstances." RFA, Section

III.H. What is the process for seeking such determinations? For example, in other competitive bid jurisdictions (e.g., Massachusetts and Maryland most recently), an applicant has been permitted to submit to the regulatory agency or its consultants detailed information as to the applicant's management and ownership structure for the purposes of determining the natural persons and entities who must submit to qualification. The applicant was then notified sufficiently in advance of the application due date to cause the completion and filing of the requisite disclosure forms in a timely manner. Will such a process be available to Applicants intending to file an application in response to the pending RFA? If so, are such communications an exception from the communication restrictions described in the RFA?

**A.26: Applicants shall make a good faith effort to determine whether they and their respective related parties must submit background investigation forms as set forth in RFA Article III § H. If the Board determines that an Applicant has failed to provide background forms for a person or entity required to disclose, the Board will afford the Applicant the opportunity to submit promptly the necessary background forms for such person or entity.**

**The Board may, in its discretion, waive disclosure requirements for institutional and other passive investors that can demonstrate they obtained an interest in a relevant party for investment purposes only and do not have any intention to influence or affect the affairs of an Applicant, a manager or any affiliated companies thereof. It is anticipated that the Commission will promulgate regulations in regard to this concern.**

**Q.27:** Will the background investigation into the suitability of an Applicant be conducted by the Commission staff or outsourced?

**A.27: The New York State Police will conduct the background investigations.**

**Q.28:** a. Under Section III.H of the RFA, where is the bright line for owners of hedge funds and private equity investors of Applicants, and for variations in a capital stack that range from equity to preferred to debt?

Specifically, a background check is required for a person/entity who has a 5percent direct or indirect ownership interest in the Applicant.

Would 5percent ownership through one of the following ownership structures trigger a background check:

b. Preferred equity



- c. Redeemable preferred equity
- d. Debt at a corporate entity that owns the operating entity
- e. Is the 5percent ownership threshold triggered by warrants (before they are exercised)?
- f. Does it apply to penny warrants (warrants that have no strike price)?
- g. If a person/entity has a 5percent debt interest (*i.e.*, has loaned 5percent of the project cost to the Applicant), but has no ownership interest, does that trigger a background check?

**A.28: Pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1317.1(f), the Commission shall investigate the suitability of an Applicant, including the suitability of all parties in interest to the License, including Affiliates and Close Associates and Financing Sources of the Applicant. With its initial Application pursuant to the RFA, each Applicant is required to submit Background Investigation Forms for, among others, persons having a beneficial or proprietary interest of five (5) percent or more in an Applicant or Manager. The five (5) percent beneficial or proprietary interest threshold is only an initial request, and the Commission and Board reserve the right to require submission of Background Investigation Forms for and investigate the suitability of any other Affiliate, Close Associate or Financing Source of the Applicant as the Commission and Board may in their discretion determine. Applicants shall make a good faith effort to determine whether they and their respective related parties must submit background investigation forms as set forth in RFA Article III § H. The Board may, in its discretion, waive disclosure requirements for institutional and other passive investors that can demonstrate they obtained an interest in a relevant party for investment purposes only and do not have any intention to influence or affect the affairs of an applicant, a manager or any affiliated companies thereof. It is anticipated that the Commission will promulgate regulations in regard to this issue. If the Board determines that an applicant failed to provide background forms for a person or entity for which disclosure is required under RFA Article III § H, the Board will afford the applicant the opportunity to submit the necessary background forms for such person or entity.**

**Q.29:** Will the background investigation process also include investigations of lenders, investment bankers, bonding companies, limited partners, managers, etc or is it limited to the applicant and related parties?

**A.29: The scope of background investigations required will depend upon the structure of the Applicant described in the Application.**

**Q.30:** The RFA states that the “Commission or the Board, in their sole discretion ... shall determine the persons and entities qualifying as the Applicant and any Related Parties including determining whether to grant temporary or permanent exemptions for particular persons or entities such as certain institutional investors, passive investors, stockholders of publicly held corporations or other circumstances.”

a. Are there any guidelines or preliminary indications of what an Applicant might expect in terms of exceptions for institutional investors of publicly-traded corporation Applicants (e.g., in some states that have passed gaming legislation, this would apply to institutional investors who hold more than 5percent but less than 10percent of the outstanding shares of such publicly held Applicant)?

b. Similarly, with respect to an Applicant who is a wholly- or partially-owned subsidiary of a publicly held corporation, are there any guidelines or preliminary indications of what an Applicant might expect in terms of exceptions for certain directors of the publicly held corporation (e.g., would investigations be limited to a subset of directors such as the Executive Committee and/or Lead Independent Director or Audit Committee Chairman)?

c. In calculating what it means to be “a person having beneficial or proprietary interest of five (5) percent or more in an Applicant or Manager” in the case of an Applicant that is a joint venture between two or more companies, would the percentage ownership of one of the joint venture partners in the Applicant be multiplied by the ownership of an individual in one of the joint venture partners to determine whether or not the five percent threshold has been met (e.g., in a 50/50 JV, would a person have to have a 10percent ownership in one of the partners in order to meet the 5percent threshold with respect to the Applicant)?

**A.30:**

a. See answer to Question 26.

b. See answer to Question 26.

c. Yes.

**Q.31:** The RFA requires that all Related Parties of the Applicant complete and submit Background Investigation Forms. This includes “any entity having a

beneficial or proprietary interest of five (5) percent or more in an Applicant or a Manager”.

Will the Board or Commission provide any guidance regarding disclosure levels, particularly related to private equity or hedge funds with an interest of greater than 5percent in the Applicant?

**A.31: See answer to Question 26.**

**Q.32:** The RFA defines “Applicant Party” as each of: (i) the Applicant; (ii) the Manager; (iii) any person or entity that has a direct or indirect ownership interest in the Applicant or the Manager equal to or greater than five (5) percent; and (iv) any Casino Key Employee.

**A.32: This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

**Q.33:** The background investigation is required for all “Related Parties” including the Applicant, Affiliates, Close Associates, and financial resources of the Applicant.

- a. Must the Casino Manager be named in the Application?
- b. What if all relevant parties have not yet been identified?
- c. A background check is required for a person/entity who has a direct or indirect ownership interest in the Applicant, but what if a person/entity has a 5percent debt interest (i.e., has loaned 5percent of the project cost to the Applicant) without any ownership interest?
- d. Will this trigger a background investigation?

**A.33: All Related Parties known to the Applicant at the time of filing shall be disclosed in the Application. Any person or entity that has a five (5) percent debt interest may be subject to a background check.**

**Q.34:** Must Casino Key Employees be identified in the RFA response?

**A.34: Yes, to the extent possible.**

**Q.35:** Can Applicant Members be changed after the RFA response is submitted?

**A.35: Yes. Each Applicant has a continuing duty to disclose promptly to the Board, in writing and electronically, any changes or updates to the information submitted in its Application or any related materials.**

**Q.36:** Section III H. of the RFA states: the Commission or the Board, in their sole discretion and as applicable to their respective duties under the Act, shall determine the persons and entities qualifying as the Applicant and any Related Parties including determining whether to grant temporary or permanent exemptions for particular persons or entities such as certain institutional investors, passive investors, stockholders of publicly held corporations or other circumstances:

- a. What are the standards for such temporary or permanent exemptions?
- b. What is the process for requesting such temporary or permanent exemptions?
- c. Are there set forms that should be used?
- d. What is the timing of decisions on temporary or permanent exemptions? Will decisions be made sufficiently far in advance of the June 30, 2014 filing deadline so that an Applicant can decide whether or not to file a response?
- e. Is a passive investor who has no ability to control the Applicant eligible for an exemption? Are there limits on the amount of the ownership interest a passive investor may hold and be eligible for an exemption?
- f. Are Applicant's permitted to communicate directly with the Commission and its staff on matters such as these or must all communications of this type be with the persons designated in section III E?

**A.36: For parts a., b., and c., please see the answer to Question 26.**

**d. Decisions on requests for exemptions will not be made until after an Application is submitted.**

**f. Applicants are not permitted to communicate directly with the Commission and its staff on matters related to the application or the RFA process. The only contact relating to the RFA, unless the Board designates otherwise, are Gail P. Thorpe and Stacey Relation. See RFA Article III § E.**

**Q.37:** With regard to the Background Investigation section (article III, §H), please provide further guidance as to:

- a. Which (1) entities and (2) natural persons would be required to submit the Background Investigation Forms where an Applicant and/or Applicant Party is (A) a Delaware LLC, partially owned by (B) a New York LLC, which in turn is wholly owned by (C) a gaming enterprise of a federally recognized Indian tribe?

b. Specifically, where a tribal council has assigned responsibility for the management of gaming operations to a tribal gaming enterprise, please confirm that the elected members of the tribal council are not required to submit the Background Investigation Forms?

c. Where an Applicant and/or Applicant Party is a New York LLC that is wholly owned by a tribal gaming enterprise, and the New York LLC has been given irrevocable authority by the tribal council to oversee the tribe's participation in the gaming project, please advise whether (in addition to the New York LLC, and its individual Board of Managers) the gaming enterprise and/or its decision making officers must also submit the Background Investigation Forms?

**A.37: In general, please refer to the answer to Question 26.**

**a. Each entity with a direct or indirect ownership interest would be required to submit background investigation forms.**

**b. Whether members of the tribal council would be required to submit background investigation forms would depend on the ownership interests and management roles of each such council member.**

**c. The gaming enterprise and its officers would be required to submit background investigation forms.**

**Q.38:** Under Article III, §H of the RFA a "Related Party" is defined as "all related parties in interest to the Applicant, including Affiliates, Close Associates and financial resources of the Applicant." Please provide further guidance on the meaning of "financial resources" under this definition. Does "financial resources" have the same meaning as the defined term "Financing Source" under the RFA? Also, please provide specific instructions for when and under what circumstances a provider of financing (and which natural persons thereof) is a "related part[y] in interest" and must submit Background Investigation Forms?

**A.38: Financial resources of an Applicant means "any person or entity that will provide, or is expected to provide, any equity, debt, credit support or credit enhancement for the proposed Gaming Facility." Entities qualifying shall submit Background Investigation Forms required by RFA Article II §§ H. 1. - 2. and Commission regulation §§ 5301.2 (a)(1) - (a)(2).**

**Q.39:** a. In the case of applicants with existing facilities, how will their current background investigations and licensing with NYS Lottery be considered in the scope of this application process?

b. Will applicants that have current NYS Lottery licenses need to submit new applications and disclosure forms?

**A.39:**

**a. No, a new background investigation will be needed.**

**b. Yes.**

**Q.40:** Will any current or future investors that own less than 5 percent of an entity be required to go through the licensing and investigation process?

**A.40: If the Commission determines that a current or future investor that owns less than five (5) percent of an entity must submit information as part of the licensing and investigative process, the Applicant will be notified and will have time to submit such additional information requested.**

**Q.41:** a. What does "timely" mean in the sentence that reads "If payment of the additional amount is not made timely..."

b. Along those same lines, is there any opportunity to contest request for additional fees?

**A.41:**

**a. If payment of an additional amount is required, the Commission will provide a deadline for submitting the additional amount.**

**b. No. If an Applicant does not pay the additional fees, the Application may be rejected in the discretion of the Commission.**

**Q.42:** There are requests for Business Entity and Individual forms to be submitted with the RFA. Part of the request includes the submission of forms from anyone who is "designated by the Commission" to submit a form. How can we comply with this requirement to submit forms at the time of the RFA if we have not received requests from the Commission to submit forms?

**A.42: If the Commission determines that there are additional individuals who need to submit information as part of the Commission's suitability investigation, the Applicant will receive notification and will have time to submit such additional information requested.**

### **Continuing Duty to Update Application**

**Q.43:** Under the RFA, an Applicant has a continuing “duty to disclose to the Board promptly, in writing (and electronically), any changes or updates to the information submitted in its Application or any related materials submitted in connection therewith.” RFA, Section III.I. (Emphasis added.) Will the Board or Commission provide guidance as to its view on what changes or updates are sufficiently material to require disclosure?

**A.43:** **As a general rule, it is better to err on the side of over-reporting changes than to fail to report a change. Reporting a change will not, in and of itself, prejudice an Application, but information provided will be evaluated against prior submissions and could affect the Board’s evaluation positively or negatively, depending on the information provided.**

**Q.44:** What, if any, ongoing compliance and/or reporting requirements will be required of applicant project investors and/or lenders?

**A.44:** **See answer to Question 43.**

**Q.45:** If an Applicant modifies its ownership or capital structure after the deadline for the submission of Applications (June 30, 2014), may the Applicant provide a supplemental submission to the Commission/Board without prejudice to the Application to ensure the Commission/Board has the most recent information?

**A.45:** **See answer to Question 43.**

### **Public Notification/News Releases**

**Q.46:** On page 16 regarding Public Notification/News Releases; Do we need approvals for press releases for submitting the \$1 million application fee and submitting the Application?

**A.46:** **No.**

### **APPLICATION INSTRUCTIONS**

#### **General, Submission, Application Format**

**Q.47:** The RFA calls for the submission of 20 hard copies of the application with each application set consisting of a minimum of 4 binders and two redacted copies of each application. This will require the submission of at least 88 individual binders and probably more. Is there any way the Commission can reduce the number of

hard copies of the application that it needs especially in light of the fact that it will have electronic copies of the application?

**A.47: No. The number was determined by necessity based on the number of Board members, expert consultants and Commission staff that will need to review the materials.**

**Q.48:** Article IV, §B(3) of the RFA requires Applicants to submit proprietary models from third-party consultants for review (and manipulation) by Board consultants, some of whom are direct competitors with these third-party consultants (outside of this RFA process) within a highly proscribed marketplace. Assuming it is not the Board's intention to require third-party consultants to reveal their proprietary modeling techniques and methodologies to direct competitors as part of an application process, please advise what alternative(s) to fully functioning proprietary models the Board will accept in order to protect these proprietary trade secrets?

**A.48: The Board may have a need to review in more detail a model that is deemed to be proprietary. In such a circumstance, the Board will take appropriate measures to evaluate the alleged proprietary nature of the model and, if necessary, shield disclosure of a model deemed to be proprietary from any consultant shown to be a competitor of the Applicant's consultants.**

**The Board expects an Applicant to supply a sufficient explanation of assumptions and data to enable a thorough professional review of the Application. The Board must be able to verify data, methodology and outputs an Applicant supplies in order to assess the construction of models or projections. The Board is not responsible for independently collecting or reconstructing the data and other informational inputs used to complete those analyses. Hence, RFA Article IV § B. 3. requires that Applicants submit electronic copies of data, non-proprietary models and outputs in Excel or similar widely used spreadsheet software. Applicants are encouraged for this reason to use publicly accessible sources for all data presented in the market/revenue study to be provided pursuant to RFA Article VIII § A. 3., including data-driven assumptions about present and future market conditions (competition). To the extent the study relies on "proprietary" data or information that is not freely and publicly available, applicants must provide copies of that proprietary data or information to facilitate the Board's review.**

**The results of the market/revenue study submitted pursuant to RFA Article VIII § A. 3. must be replicable. To ensure that the results of the market/revenue study are replicable, the independent expert must supply**



**to the Board and the Commission a clear description of all assumptions made in the market/revenue study.**

**To facilitate the Board's and the Commission's evaluation of the market/revenue study submitted pursuant to RFA Article VIII § A. 3., the study outputs (dollars spent at the proposed gaming facility) must be presented by discrete geographic region.**

**The market/revenue study included as Exhibit VIII.A.3. must include a clear, simple, and easily understood statement of the methodology employed in constructing the market/revenue models and arriving at projections. The Board anticipates that market/revenue studies may present the sources of gaming revenue projections by discrete geographic region, (e.g., concentric circle or drive time ranges within regions defined by the independent expert, provided that the borders of these regions are clearly defined by the independent expert) as well as projections of what percentage of gaming revenue is projected to come from outside the defined local market area (i.e., gaming spend by tourists).**

**Q.49:** After submission of the application:

- a. If an applicant would like to add a new financing source to the project, is that permissible?
- b. Is the applicant permitted to submit additional information, drawings, renderings, relating to the proposed project?

**A.49:**

- a. Yes. See, RFA, Article III § I.**
- b. Only as requested by the Gaming Facility Location Board.**

**Q.50:** Document formatting:

- a. Are there any specific font requirements related to a License application. (Font Face, Font Size, etc.)
- b. Are there any other line spacing requirements. (Single, Normal, 1.5, double, etc.)
- c. Are pages to be printed on a single side or double sided format.
- d. Are there any specific paper requirements, weight, color, etc.?

- e. Are there any specific tab requirements or restrictions?
- f. Can tabs be colored?
- g. Is face copy on tabs required, restricted or permissible?
- h. Is it permissible to add additional tabs (sub exhibits) for additional ease of reference or ease of readability/evaluation.
- i. Are there any restrictions on the ring size of the binders?

**A.50: There are no specific requirements or restrictions.**

- Q.51:** a. Can video be submitted as additional documentation of support?
- b. If so, Please confirm it's placement in the response.
  - c. Please confirm the acceptable file format(s).
  - d. Is a written transcript required?
  - e. If not, May a written transcript be submitted?

**A.51: No, video is not permitted. Video will be allowable during the Applicant public presentation.**

**Q.52:** Inclusion of Forms. The three basic application forms (Facility License, New York and Multijurisdictional Disclosures)

- a. Are these forms available in Microsoft Word format? If not,
- b. May the applicant create and submit a comparable document in Word version so that responsive data may be entered electronically rather than in handwriting?
- c. Gaming Facility License Application form – How is this to be submitted?
- d. Is it part of the RFP as a specific section/exhibit and then included as copies both in the binders and on the USB drives?
- e. What is to be specifically done with the notarized copy?

i.

**A.52:**

**a. Yes. Please refer to the Commission website to download the relevant forms in Microsoft Word.**

**b. See answer to Question 52.a.**

**c. The Gaming Facility Location Application shall be submitted as an individual document within the overall response to the RFA.**

**d. Yes.**

**e. The notarized copy is to be submitted to the Commission.**

**Q.53:** Page 21, Section C Application Format specifies that hard copies be submitted in three ring binders. Please note that our reduced drawings will be on 11" x 17" format which will be folded to fit within a standard 8 ½" x 11" binder. We are assuming this is acceptable.

**A.53: Yes.**

**Q.54:** Page 20 section 4: Please define specifications for large format and medium quality files.

**A.54: Applicant should use best judgment.**

### **Public Presentations, Public Hearing**

**Q.55:** What will be the formal process for oral presentations?

**A.55: Detailed guidelines for the public presentation will be forthcoming.**

**Q.56:** Will local stakeholders be permitted to testify at local hearings conducted by the Commission/Board in each Region?

**A.56: Yes.**

**Q.57:** Will the public hearings be held before or after the June 30th bid submission deadline?

**A.57: After.**

**Q.58:** a. What types of Presentation aids are acceptable?

b. Will the Committee accept presentation boards or digital (PowerPoint) presentations only?

c. If so, is there a size/format requirement for the boards?

d. Is there a limit as to the quantity of presentation aids?

**A.58: See Answer to Question 55.**

**Q.59:** a. When will the Board set the presentation dates?

b. How much advance notice will the applicants be provided?

**A.59: A specific date or dates for the public presentation will be issued by July 2, 2014.**

**Q.60:** When does the Board anticipate announcing the schedules for the public hearings?

**A.60: A specific date or dates for the public hearing will be issued by July 2, 2014.**

**Q.61:** Does "Others" include opposing applicants? i.e. will other applicants be given an opportunity to challenge the veracity of another project?

**A.61: No. Each Applicant will make a presentation to the Board. Clarifying questions, if any, may be asked by or on behalf of the Board. Applicants will not be given an opportunity to opine about other Applications.**

#### **Public Disclosure of Application Materials (FOIL)**

**Q.62:** When a question is posed and answered must the identity of my client be publically disclosed?

**A.62: See answer to Question 11.**

**Q.63:** Will the people submitting questions be publicly disclosed?

**A.63: See answer to Question 11.**

**Q.64:** Will all shareholders, investors and lenders involved with applicant be publically disclosed during the RFA process?

**A.64: Yes. The Board intends to treat all information in the applications as public records and will make them available to the public, subject to applicable exemptions under the Freedom of Information Law. If an applicant believes that the identities of shareholders, investors and/or lenders involved with the applicant should be classified as confidential, the applicant must follow the procedures outlined in RFA Article IV § F., when submitting a response.**

**Q.65:** When will all the applications be posted on the Gaming Commission website?

**A.65: Applications will be posted on the Commission website after the Commission has completed its review required under N.Y. Public Officers Law § 87.2.**

**Q.66:** Please define “trade secrets” in the context of page 23 of the RFA?

**A.66: Generally speaking, a trade secret is information or a proprietary process the disclosure of which would compromise a competitive advantage.**

**Q.67:** Public Disclosure of Application Materials. The RFA at Section IV.F (p. 22) and the Racing, Pari-Mutuel Wagering and Breeding Law § 1313(2) provide an exemption from public disclosure under the New York State Freedom of Information Law (FOIL) for any records containing “trade secrets, competitively sensitive or other proprietary information provided in the course of an applicant for a gaming license, the disclosure of which would place the applicant at a competitive disadvantage.” In Massachusetts—a state with similar exemptions to public disclosure in its Public Records Law—the Massachusetts Gaming Commission produced specimens of Background Investigation Forms with certain data fields highlighted to indicate fields that would be protected from public disclosure.

Will the Commission/Board be issuing any specimens or other guidance concerning what specific information requested by the Commission/Board will be protected from public disclosure?

**A.67: No.**

**Q.68:** Protection of Propriety Consultant Information. RFA Section IV.B.3. requires submission of functional “models” used in forecasting or projecting revenues and other economic calculations. Some of the models utilized contain proprietary data and analytical methods.

The RFA also provides in Section VI.K. Conflicts of Interest, specific provisions to avoid real or perceived conflicts of interest affecting any “member, employee or consultant or agent of the Board.” (emphasis added)

While the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.2 and Section 87 of the New York Public Officers Law can protect such information from public disclosure, the consultants who utilize such financial models are relatively few in number and are competitors of the consultants retained by the Gaming Commission and Board.

Can these proprietary models be shielded from the State’s consultants during the Board and Commission application review? Alternatively, can the functioning models be presented to the Board in a meeting review session attended in person by both the Applicant’s consultants and the State’s consultants?

**A.68: The Board or the Commission will determine whether a model alleged to be proprietary is a trade secret that is permitted to be withheld from public disclosure under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.2 and N.Y. Public Officers Law § 87. The applicant has the burden of demonstrating the proprietary nature of the model asserted to be a trade secret and the burden of demonstrating that its consultants are competitors of the Board or Commission’s consultants.**

**If the Board or the Commission determines that the consultants of an applicant are competitors of consultants retained by the Board or the Commission, models deemed to be trade secrets will not be disclosed to such consultants shown to be competitors of the applicant’s consultants.**

**Q.69:** The RFA on page 20 stipulates that revenue models are to be delivered on flash drive to the New York Gaming Facility Location Board. We assume that the Commission is not asking for the actual propriety amount in some cases patented analytical models themselves. Could you confirm?

**A.69: See answer to Question 48.**

**Q.70:** Under section IV.F (p.23) of the RFA, will the Board be issuing further guidance prior to the deadline for the submission of applications concerning what information or fields of the Gaming Facility Application Form, Multi-Jurisdictional Personal History Disclosure Form, or New York Supplemental Form will be protected from public disclosure (such as specimens identifying protected information as issued by the Massachusetts Gaming Commission, available at: <http://massgaming.com/licensing-regulations/phase-1-applications-for-regions-a-b/>).

**A.70: The Board does not currently intend to withhold from public disclosure of such information or fields, but reserves the right to do so if deemed appropriate.**

### **Gaming Regulations**

**Q.71:** The casino industry is a highly regulated sector of the economy. In other states where casino gaming is either mature or emerging, the regulations have a direct impact on casino operations, expenses, and thus profit margins. Therefore, regulations have a direct bearing on the models that will be submitted by Applicants as part of the siting process.

Other than the promulgation of the Minimum Capital Investment, does the Commission and/or Board expect to promulgate any regulations (emergency or otherwise) prior to the submission deadline for applications? If so, when can the Applicants expect to review the regulations to ensure that the impact of the state regulatory scheme is incorporated into the various components of the Application?

**A.71: RFA Article IV § G. provides that “For the benefit of Applicants, the Commission anticipates releasing, prior to the submission deadline for Applications in response to this RFA, an outline of the approach the Commission plans to follow in establishing regulations governing commercial gaming in the State.”**

**Q.72:** The Commission plans to release an outline of its regulatory approach – do we have an approximate date for such release?

**A.72: See answer to Question 71.**

**Q.73:** Will the Commission or Board be issuing any regulations prior to June 30th?

**A.73: See answer to Question 71.**

**Q.74:** When are the Gaming Regulations going to be made public? Are they likely to include additional expenses to be paid by the Licensee? (Reference page 23)

**A.74: See answer to Question 71.**

**Q.75:** Will the gaming regulations be released giving ample time for us to create the internal controls for submittal?

**A.75: See answer to Question 71.**

## **EXECUTIVE SUMMARY**

**Q.76:** The RFA requires an executive summary, not to exceed four (4) pages in length, highlighting the principal terms of an Application. RFA, Section V. Will the Board define “principal terms”?

**A.76: Principal terms would be those most material to the Applicant’s proposal.**

**Q.77:** In Exhibit V.

- a. Is four pages defined as four pages single-sided or double-sided?
- b. What is the definition or what is desired as “principal terms”?

**A.77:**

**a. Single sided.**

**b. See answer to Question 76.**

**Q.78:** Does the Board have specifications regarding layout, font, etc. governing the four page executive summary?

**A.78: No, the Board leaves to the Applicant formatting preference for the Executive Summary.**

## **APPLICANT INFORMATION**

### **General Applicant and Business Information**

**Q.79:** What constitutes a “beneficial or proprietary interest” as such term is used in the RFA?

**A.79: A “beneficial or proprietary interest” is any financial interest (equity, debt, credit support or credit enhancement) of five (5) percent or more in an Applicant or a Manager.**

**Q.80:** Disclosure of Public Officials Owning a Financial Interest in the Applicant or its Affiliates. Is there any exception for publicly held corporations (e.g., as there is for names/addresses of owners of the Applicant)?

**A.80: An applicant that is a public corporation, or that has a public corporation with a financial interest in the applicant, should make a good**



**faith effort to determine whether any public official owns a financial interest in the applicant or the related parties of an applicant. It is anticipated that the Commission will promulgate regulations on this issue.**

**Q.81:** Please confirm that the RFA requires a Multi Jurisdictional Personal History Disclosure Form and New York Supplemental Form be filed only for a Casino Key Employee who is either presently employed or whose employment by the Applicant is reasonably certain if the Applicant is awarded a License.

**A.81: A complete and accurate Multi Jurisdictional Personal History Disclosure Form and New York Supplemental Form for each natural person who is (i) a director, manager, general partner or person holding an equivalent position with the Applicant, a Manager or any direct or indirect parent entity of the Applicant; (ii) a Casino Key Employee; (iii) a person having beneficial or proprietary interest of five (5) percent or more of an Applicant or a Manager; or (iv) designated by the Commission.**

#### **Table of Ownership, Organizational Chart**

**Q.82:** Section VI – E. “Table of Ownership.”

a. If the Manager is a NY limited liability company, and it is wholly owned by a parent corporation, which is ultimately owned by an Indian tribal government, how would one satisfactorily disclose the “owners”?

b. In other words, is there mechanism for determining a cut-off point for the ownership chart in this tribal context, comparable to the published standard for a publically held company?

c. If there is no definitive guidance, how could an applicant seek an advance ruling?

**A.82: The name and business address of each person or entity that has a direct or indirect ownership or proprietary interest must be disclosed, including the identity of the Indian tribal government. In the example given, there would be no further indirect owners of an Indian tribal government.**

**Q.83:** Section VI – F. “Organizational Chart.”

a. Are there categories of Applicant's personnel that will presumptively be defined as Casino Key Employees (i.e., certain back of house functions)?

b. If no such itemization of title or function exists, is there a mechanism for seeking a preliminary ruling on the issue, prior to submission of the application, so as to avoid unintended errors and consequences during the application process?

There is very little mention/guidance in terms of Surveillance's role:

c. Are these employees considered Key Employees?

d. Are there minimum specs for equipment, etc.?

There is very little mention/guidance in terms of Internal Audit's role:

e. Are these employees considered Key Employees?

f. May the function be outsourced, and if so, how is that addressed within the current Application?

Outsourcing of other functions:

g. May other functions be outsourced, such as payroll, certain IT functions, etc.

h. If so, how is this issue to be addressed within the current Application, if at all?

**A.83: N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1301.8 defines "Casino key employee" as any natural person employed by a gaming facility licensee, or holding or intermediary company of a gaming facility licensee, and involved in the operation of a licensed gaming facility in a supervisory capacity and empowered to make discretionary decisions which regulate gaming facility operations. Applicants shall make a good faith effort to determine whether an individual is a Casino Key Employee. If the Board determines that an applicant failed to provide background forms for a Casino Key Employee, the Board will afford the applicant the opportunity to submit the necessary background forms for such person or entity.**

### **Region and Host Municipalities**

**Q.84:** May an Applicant file two or more competing applications for separate and distinct Gaming Facilities to be located in the same Region?

**A.84: Yes.**

**Q.85:** May an Applicant file two or more competing applications for separate and distinct Gaming Facilities, each of which is to be located in a different Region?

**A.85: Yes.**

**Q.86:** Is Region Two guaranteed to be issued a gaming license, or is it possible that each of Regions of One and Five are awarded two licenses, and Region Two does not get any. Next, is it possible for Region Two to be awarded more than one gaming license?

**A.86: Per N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311, at least one Applicant in each of regions one, two and five will receive a license, so long as the Board selects an Applicant for such region and the Commission determines that such Applicant is suitable. A second license may be recommended to a qualified Applicant in a single region.**

**Q.87:** Can an Applicant Party submit an RFA for two different projects in different Regions? And can an Applicant Party win in two different Regions?

**A.87: Yes.**

**Q.88:** This provision suggests that an applicant can designate multiple sites in a single application – is this interpretation correct?

**A.88: No.**

**Q.89:** Are there any prohibitions against partnering in a traditional Joint Venture?

**A.89: No.**

**Q.90:** a. Are there any prohibitions on multiple bids in the same region?

b. Could multiple bids prejudice the applicant?

**A.90:**

**a. No.**

**b. No.**

**Q.91:** Are there any prohibitions on bidding in more than one region? Could multiple bids prejudice the applicant?

**A.91: See answer to Question 90.**

**Q.92:** Are separate \$1,000,000 Application fees, as described in Section III.A of the RFA, required for multiple applications by the same ownership group, even if the Applicant entities are different?

**A.92:** The purpose of the Application Fee is to defray the costs of the Applicant's investigation. Thus, a single fee may govern multiple Applications, provided the financing, organizational structure, and principals and officers of the Applicant are identical within each Application. If there is any material disparity between the submitted Applications, each will require an independent Application Fee.

It is important to note that the ultimate charge for the Application process is determined by the actual costs of the investigation. Thus, if the costs of investigating Applications exceed the Application Fee, the Applicant will be charged that excess amount. Conversely, if the costs of the investigation are less than Application Fee, the unexpended funds will be returned to the Applicant.

**In short, regardless of the cost of the initial Application Fee, Applicants are charged for the actual cost of the investigation.**

**Q.93:** If there are bids for multiple sites by one applicant, will more than one application fee be required?

**A.93: No.**

**Q.94:** Are there any prohibitions on owning a license in more than one region?

**A.94: No.**

**Q.95:** Is there any restriction on the number of locations within one or more Regions for which one can apply?

**A.95: No.**

**Q.96:** If one applied for multiple locations, must each Application for a location be filed by a separate entity even if the ultimate ownership of the Applicant(s) is identical?

**A.96: See answer to Question 92.**

**Q.97:** Is any paperwork required to be submitted with the payment of the \$1 million application fee?

**A.97: No.**

### **Conflicts of Interest, Public Officials**

**Q.98:** Under § 5300.1. (b)(2), Applicants are required to identify all conflicts of interest. The scope of the regulation is very broad and includes any relationship or affiliation of the applicant, manager or any of their respective affiliates that currently exist with any member, employee, consultant or agent of the Board or the Commission, any public officials or officers or employees of any governmental entity, and immediate family members of said public officials, officers or employees, who directly or indirectly own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instruments issued by, or hold or have an interest, direct or indirect, in any contractual or service relationship with the applicant, the manager, or their affiliates. Similarly, the RFA requires an Applicant to “[s]ubmit as Exhibit VI.K. a description of any relationship or affiliation of the Applicant, the Manager or any of their respective Affiliates that currently exists or existed in the past five (5) years with any member, employee, consultant or agent of the Board or the Commission that is a conflict of interest or may be perceived as a conflict of interest during the RFA process.” For purposes of assisting Applicants in their compliance with such requirements, will the Board or Commission:

- a. Publish a list of names of all employees, consultants (and their employees) and agents of the Board or the Commission;
- b. Either (i) provide guidance to public traded companies with an interest in an Applicant as to an acceptable methodology for confirming that no member, employee, consultant or agent of the Board or the Commission, any public officials or officers or employees of any governmental entity, and immediate family members of said public officials, officers or employees, directly or indirectly own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instruments issued by, or hold or have an interest, direct or indirect, in an affected public traded company or (ii) confirm that interests of less than 5percent in a publicly traded company are not deemed to be a conflict of interest; and
- c. Provide guidance or clarification as to what types of relationship(s) or affiliation(s) constitute a conflict of interest, e.g., those of strictly a financial, beneficial or contractual relationship or affiliation, or does such bar extend to casual social relationships?

**A.98:**

**a. No. An applicant should survey its organization and affiliates for known conflicts.**

**b. A company, publicly traded or not, should survey its employees, officers, directors, affiliates and agents for known conflicts. If a publicly traded company has a direct or indirect interest of less than five (5) percent of the applicant, such public company is not required to conduct such a survey.**

**c. The types of relationships that may constitute a conflict of interest include those that could be reasonably interpreted to compromise the integrity of the applicant selection process. Applicants must disclose any relationships (financial, contractual, ownership, professional, social or otherwise) that could be a direct or indirect conflict of interest or a perceived conflict of interest.**

**Q.99:** There is a request that Applicants, Managers and Affiliates submit a description of any relationship or affiliation "that currently exists or existed in the past five (5) years with any member, employee, consultant or agent of the Board or the Commission that is a conflict of interest or may be perceived as a conflict of interest..."

a. Is the Board/Commission going to provide a list?

b. How is an applicant supposed to know who could be (or was in the last 5 years) considered a consultant and/or agent of the Board or Commission?

**A.99:**

**a. No lists will be provided.**

**b. Applicants are responsible for performing appropriate due diligence to determine and disclose all actual or perceived conflicts of interest.**

### **Public Officials**

**Q.100:** This provision is impossible for a public company to comply with. Can there be some clarification that the list is only required to the extent such individuals are known to the Applicant, Manager and the Affiliates?

**A.100:** See answer to Question 80.

### **Application Fee**

**Q.101:** If we apply for two Licenses, will we be required to pay two Application Fees of \$1,000,000 each? If we apply for two Licenses, each in the name of a newly formed limited liability company, with each entity having the identical indirect owners, will we be required to pay an Application Fee for each limited liability

company. For example, if we form LLC A, which is owned by newly formed Corp A, which is a wholly owned subsidiary of our Parent Company, and we form LLC B, which is wholly owned by newly formed Corp B, which is also a wholly owned subsidiary of our Parent Company, and LLC A plans on filing an Application for Region 1 and LLC B plans on filing an Application for Region 2, must LLC A and LLC B, each file a \$1,000,000 Application Fee?

**A.101: See answer to Question 92.**

**Q.102:** If the same applicant wishes to bid on multiple sites will they be required to pay multiple application fees?

**A.102: See answer to Question 92.**

**Q.103:** If an Applicant intends to file more than one application, is there a \$1 million fee payable on or before April 23, 2014 for each such application, if the Applicant entity is different but the ownership of the Applicant is the same?

**A.103: See answer to Question 92.**

**Q.104:** If a single Applicant or multiple Applicants with identical ownership are seeking multiple locations in more than one Region, must it or they pay a \$1 million Application Fee for each location for which an Application is made?

**A.104: See answer to Question 92.**

**Q.105:** With respect to the \$1 million application fee, the RFA indicates that if "an Applicant pays the \$1 million fee and does not complete and submit its Application on or before June 30, 2014, the Commission will return the fee less any reasonable costs the Commission will have already incurred related to processing, including overhead and administrative expenses"

Can you provide more details on the makeup of the costs that the Commission could incur prior to June 30th? Specifically, are the costs referenced above costs specific to the Applicant, or are they pooled costs that the Commission will have incurred across all applicants to that date? Further, if the costs are specific to the Applicant, what could those costs be related to if the Applicant has not yet submitted an Application?

**A.105: If an interested party submits the Application Fee, but chooses to withdraw within five (5) business days following the Board's release of minimum capital investment requirements, the entire Application Fee will be refunded. However, after that five (5) business day period, Applicants will be charged for actual costs related to any investigation related to such**

**Applicant, even if the Applicant ultimately decides not to submit an Application.**

**Q.106:** Can the Board elaborate on its “overhead and administrative expenses” and how much it intends to allocate towards the Applicant’s fees?

**A.106:** See answer to Question 92.

**Q.107:** Would the amount of a refund be based upon apportioned expenses among all applicants or on expenses associated with the applicant requesting the refund?

**A.107:** See answer to Question 92.

**Q.108:** Does a person submitting a question, if a potential bidder, need to submit the \$1 million fee in order to submit a question?

**A.108: No, however entities intending to submit an Application are required to remit the Application Fee no later than April 23, 2014.**

**Q.109:** Refund of Application Fee: the RFA states “If an Applicant pays the \$1 million fee and does not complete and submit its Application on or before June 30, 2014, the Commission will return the fee *less* any reasonable costs the Commission will have already incurred related to processing, including overhead and administrative expenses.” The notice of the April 30 Applicant Conference states, in part “The purpose of the Application fee is to defray the costs of Applicant’s investigation. Unexpended funds will be returned to the Applicant. Full reimbursement will be made to any party declining to file an Application.”

a. If an Applicant does not file an Application by June 30, will it receive a refund of the “full” amount (i.e., the entire \$1 million application fee) or will a portion of that fee be retained by the New York State Gaming Commission?

b. If a portion will be retained, is there an estimated amount that Applicants should expect the Commission will retain?

c. If the costs of investigating the Applicant do not exceed \$1 million, will the unexpended amount of the initial fee be reimbursed to the Applicant?

**A.109:** See answers to Question 92 and 105.

**Q.110:** Would the amount of a refund be based upon apportioned expenses among all applicants or on expenses associated with the applicant requesting the refund?

**A.110:** See answer to Question 105.



**Q.111:** What application fees are due for each individual qualifier (key person) who is required to submit the Multi-Jurisdictional Personal History Disclosure Form and NY Supplement?

**A.111: None. The purpose of the Application Fee is to defray the costs of an Applicant's investigation, which includes review of individual Applicant qualifiers.**

**Q.112:** Can the application fee be applied to a different site if the site in the application becomes less desirable?

Clarification to Question: If we change the location of the proposed casino site after we submit our application would we have to pay additional fees?

Reasons for such a change could include things such as unforeseen environmental, historical or geological problems with a site that are discovered after the application has been submitted.

**A.112: No. Once an Application has been submitted, the location of a project site cannot be changed.**

**Q.113:** Application fee (p. 11-12) "individual, entity, consortium or other party evincing interest"

- a. Must the ultimate applicant make the \$1 million payment?
- b. May a representative make the payment?
- c. Must a site and/or region be identified with the \$1 million payment?
- d. Is the application fee "per applicant" as stated or "per application?"
- e. Please define "reasonable costs the Commission will have already incurred related to "processing including overhead and administrative expenses."
- f. Will State employee payroll be included in "overhead and administrative expenses?"
- g. When will the application fee be returned if no application is filed?

**A.113:**

- a. **The Board is uncertain as to what is meant by “ultimate applicant,” as the RFA contemplates the possibility of altering the ownership of the Applicant.**
- b. **Yes, but an Applicant must be disclosed in order to participate in the Mandatory Applicant Conference.**
- c. **No, it is not necessary to disclose the intended site at the time of Application Fee payment.**
- d. **See generally the answer to Question 92.**
- e. **See the answer to Question 105.**
- f. **See the answer to Question 105.**
- g. **The Application Fee will be refunded as soon as practicable.**

#### **EVALUATION CRITERIA AND SELECTION PROCESS**

**Q.114:** If an Applicant fails to include any one of the elements listed in Sections VIII – X, such as a hotel under Section VIII.C.7, or proposes phases without demonstrating financial backing to build future phases, how will the Commission/Board treat these situations as it relates to the scoring of an Application?

**A.114:** See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1315.

**Q.115:** What is the burden of proof for an Applicant to demonstrate prior work or capital costs to qualify for scoring as part of the Minimum Capital Investment purposes under the RFA?

**A.115:** Per RFA Article VIII § A. 1. a., “Within ten (10) business days after the Applicants’ conference, the Board will promulgate the Minimum Capital Investment required.” Included within this document will be a provision addressing the circumstances under which prior capital investment can be credited toward Minimum Capital Investment.

**Q.116:** If an Applicant places competitive restrictions or other conditions to accepting a License in its RFA bid (i.e. no other license is awarded in X county or within X miles of Applicant’s site) would the Board consider such bid non-conforming?

**A.116:** Yes.

**Q.117:** Will there be an opportunity for potential competitors to respond to and/or challenge other competitors' applications and claims?

**A.117: No.**

**Q.118:** a. To what degree will locating a casino in a distressed community be viewed in weighing an applicant's bid?

b. The Upstate New York Gaming Economic Development Act of 2013 outlined the process and criteria for siting no more than four gaming resorts to create jobs and reduce employment in "disadvantaged areas" of the State. What is the definition of "disadvantaged areas"?

c. Are all of the Regions and counties located within those Regions automatically covered under this definition?

**A.118:**

**a. The issue of locating a casino in a distressed or disadvantaged community will be considered as a part of the evaluation of economic activity and business development factors pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1320.1.**

**b. Disadvantaged or distressed areas will be evaluated on the basis of objective criteria, including poverty rates, numbers of persons receiving public assistance, unemployment rates, rate of employment decline, population loss, rate of per capita income change, decline in economic activity and private investment, and such other indicators as the Board deems appropriate.**

**c. No**

**Q.119:** The RFA, at sections VIII, IX, and X, lists a number of different components to be taken into consideration by the Board in reviewing an application for a Gaming Facility License.

Are the specifically named components, including but not limited to a hotel, convention space, and on-site child day-care program, required to be included in a proposal for a gaming facility license, or are they elements that the Board will take into consideration when evaluating a proposal, but not necessarily required?

**A.119: Applicants should refer to the appropriate sections of N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 13 to determine statutorily required versus permissive elements.**

**Q.120:** Should we expect any more guidance on the weighing of the factors for selection?

**A.120: The Board may issue clarifications, as necessary, in response to specific Applicant questions.**

**Q.121:** Under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320 and section X (p.62-65) of the RFA

a. are the criteria listed in this section elements that must be included in any application submitted to the Board, or issues for the Board to take into consideration in evaluating Workforce Enhancement Factors?

b. If issues for the Board to take into consideration, will the Board be quantifying each element for purposes of evaluation?

**A.121:**

**a. See answer to Question 119.**

**b. No.**

**Q.122:** Under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320(3)(d)(3) and RFA Sections VII.C.5.c and X.B.1.c., is the establishment of an “on-site child day care program” an element that must be included in any application submitted to the Board, or an issue for the Board to take into consideration in evaluating Workforce Enhancement Factors?

**A.122: See answer to Question 119.**

**Q.123:** Will plans to eliminate VLTs in favor of Class 3 machines at an existing location have a negative impact on scoring?

**A.123: No.**

**Q.124:** Has the Board created standards by which to evaluate Applicant experience?

**A.124: No.**

**Q.125:** Has the Board developed standards by which to identify localities experiencing economic hardship?

**A.125:** See answer to Question 118.b.

**Q.126:** Has the Board established standards by which to evaluate an Applicant's participation in a "regional economic development plan"?

**A.126:** No.

## **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

### **A. FINANCE AND CAPITAL STRUCTURE**

#### **Capital Investment**

**Q.127:** Section VIII – Economic Activity and Business Development of the RFA indicates that the Board will promulgate the Minimum Capital Investment required in each Region. When will the Board make that information available since applications are due within 90 days?

**A.127:** See answer to Question 115.

**Q.128:** Pursuant to section VIII.A.1 of the RFA, will the Commission/Board select different Minimum Capital Investment thresholds within certain counties in a Region, similar to the different minimum licensing fee thresholds that exist in the RFA?

**A.128:** See answer to Question 115.

**Q.129:** When the Minimum Capital Investment is defined, is it anticipated there will be differential minimums between the Regions and Counties?

**A.129:** See answer to Question 115.

**Q.130:** Since the minimum capital investment has not been determined by the Location Board and there will not be regulations issued until after the applications required by the RFA are submitted, what factors/determinants/criteria will the Location Board use for determining the amount of the Minimum Capital Investment?

**A.130:** See answer to Question 115.

**Q.131:** The listed inclusions/exclusions do not specifically list the license fee – is it correct that the license fee is considered an element of the Minimum Capital Investment requirement?

**A.131: The license fee is not considered as part of the minimum capital investment requirement.**

**Q.132:** Section VIII (A) 1(c) provides that payments to the Commission may not be included within the Minimum Capital Investment. Does this include the License Fee?

**A.132: See answer to Question 131.**

**Q.133:** The announcement of the Minimum Capital Investment will be promulgated within ten business days after the Applicants' conference on April 30, 2014. In the initial RFA the Commission identified different minimum licensing thresholds within both Region 1 and 5.

a. Will the Commission or Board identify different Minimum Capital Investment thresholds for certain counties within a region, similar to the licensing minimums?

b. If so, what is the basis for different minimum thresholds within a region?

**A.133: See answer to Question 115.**

**Q.134:** In calculating the Minimum Capital Investment, can an Applicant include the costs of developing non-gaming amenities which will not be owned or operated by the Applicant or the Manager but (a) are to be located on real property that is a part of the Project Site, (b) are integral to the development scheme for the proposed project as a whole, and (c) the third party operator is contractually obligated to develop and operate such non-gaming amenities if a License is awarded to the Applicant?

**A.134: Yes.**

**Q.135:** The RFA provides that there are certain exclusions from the Minimum Capital Investment Calculation. One such exclusion is "the pre-opening bankroll." RFA, Section VIII. Does such term mean (a) unrestricted cash maintained in the cage or in cash and cash equivalent bank accounts that is readily available to meet prize payment obligations or (b) something broader?

**A.135:**

a. Yes

**b. No.**

**Q.136:** The RFA lists specific items that may be included in the calculation of Minimum Capital Investment and specific items that shall be excluded. However, there are items that are not listed in either the included or excluded categories. Will the Board provide clarification on, for example, which types of pre-opening expenses other than those which are specifically excluded count as part of the Minimum Capital Investment?

**A.136: See answer to Question 120.**

**Q.137:** Will the Minimum Capital Investment be set by the Commission/Board on a county by county or Region basis?

**A.137: See answer to Question 115.**

**Q.138:** Will the amount of the minimum capital investment be based on region or county of the proposed gaming facility?

**A.138: See answer to Question 115.**

**Q.139:** Maximizing revenues received by the State and localities. The RFA sets forth that there will be minimum capital investment requirements for each respective zone, and requires the Applicant to exclude certain investment and items:

a. For purposes of calculating whether the Applicant has met the minimum, how will the Board treat certain state and local incentives, such as economic development and/or tax incentives?

b. Will IDA benefits be factored in when determining these elements of the RFA?

**A.139:**

**a. State and local incentives cannot be used to calculate Minimum Capital Investment.**

**b. While nothing in statute or RFA directly prevents use of applicable state and local economic development programs, a factor for the graded RFA evaluation is economic impact and a subsidized application will likely illustrate diminished economic impacts when competitively evaluated.**

**Q.140:** a. What methodology and data inputs will be utilized to determine the minimum capital investment for each region?

b. Could the Board disclose such information in a manner similar to that as described on page 36 Section 3 Market/Revenue Study?

**A.140:** See answer to Question 115.

### **Applicant Minimum Capital Investment**

**Q.141:** Section VIII also indicates that costs incurred by an Applicant prior to the Effective Date of the Act are not eligible, however the applicant may submit a request to include such costs.

a. Are costs incurred previously for casino approvals, site remediation, and initial construction of the casino project be considered eligible?

b. When will the Board make that determination?

**A.141:** See answer to Question 115.

### **Market/Revenue Study**

**Q.142:** What is the distinction, if any, between the independent “market/revenue” study to be submitted as Exhibit VIII.A.3 (described at page 36 of the RFA) and the “market analysis” that is to be submitted as Exhibit VIII.B.1 (described at pages 41-42 of the RFA)?

**A.142:** Exhibit VIII.A.3. requires, in part, the Applicant to show credible projections related to gaming revenue and to use comparable gaming facilities in comparable markets as means of substantiating such projects. Exhibit VII.B.1. requires, in part, an Applicant to address how location of and marketing efforts on behalf of the gaming facility will secure a customer base, enable the gaming facility to compete successfully against other facilities and promote the State, region and Host Municipality.

**Q.143:** Section VIII – 3. “A study by an independent expert.” Please clarify that a third party hired by an Applicant would constitute an independent expert?

**A.143:** To be considered an “independent expert,” a third party should maintain appropriate credentialing and be so experienced as to make credible, independent findings and determinations. A third-party is not considered to be an independent expert merely by having been retained by an Applicant.



## Pro-forma Financial Information

**Q.144:** How will the Board/Commission treat “free play” as part of the detailed financial forecast to be submitted in the form of a pro-forma, as required in Section VIII.A.4 (taxed, not taxed, partially taxed)?

**A.144:** N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1301.25 provides that promotional credits or free play shall not be taxable for purposes of determining “gross gaming revenue.” Other provisions of statute governing competing gaming facilities strictly limit the amount of the deductible promotions. The Commission may, in its discretion, by regulation determine to level equitably amounts of deductible promotions available that a casino gaming facility may issue.

**Q.145:** a. If the Applicant does not forecast an operating loss during the projection period, must the Applicant maintain any minimum amount to be held against any unforeseen loss?

b. Must the minimum amount be covered by a single financing source?

**A.145:** These issues are not addressed in statute, but the Applicant should present its financial capabilities.

**Q.146:** For purposes of preparing financial projections, are there any limits on the amount of complimentary and “free play” an Applicant may offer in connection with its operations?

**A.146:** For purposes of “free play”, please see answer to Question 144. There are no limitations as to the amounts of complimentary benefits that may be offered.

**Q.147:** Article VIII, §A(4) of the RFA requires a detailed financial forecast in the form of a pro-forma showing financial projections for a period of at least ten (10) years after opening on a high-, average-, and low-case basis. Please explain:

a. How an Applicant is to prepare such pro-forma projections without knowing whether the Applicant’s Region is to have one or two Gaming Facilities?

b. Are Applicants expected to submit multiple pro-forma forecasts, each based on a different set of contingencies relating to (1) whether there is a competing facility within the same Region and (2) within the same or a different county within such Region?

c. Will a Licensee be permitted to revise its pro-forma forecast if a second casino license is granted within the Licensee's Region? (For example, if an Applicant proposing a Gaming Facility in Sullivan County is granted a license and a second Facility is licensed in Orange County, the pro-forma projections for the Facility in Sullivan County would need to be adjusted.

d. Under this scenario, would the Licensee in Sullivan County be permitted to revise, amend, and re-state its pro-forma projections?)

e. Similarly, in the event a competing facility is licensed within the Licensee's Region, will the Licensee be permitted to revise its Gaming Facility proposal (size of facilities, amount of capital investment) and be permitted additional time (beyond the 24 month deadline to commence gaming) to revise its construction drawings, amend permits, and, if necessary, re-negotiate financing?

**A.147: In evaluating Applications, the Board will be sensitive to regional competition. Therefore, an Applicant may choose to submit an additional market/revenue study (Exhibit VIII.A.3.) and pro-forma financial information (Exhibit VIII.A.4.) that reflects the effect a second casino in the region would have upon the Applicant's projections.**

### **Capital and Financing Structure**

**Q.148:** For purposes of preparing Exhibit VIII.A.6.a., is there a threshold percentage which triggers the informational requirements for a Financial Source?

**A.148: No.**

**Q.149:** What is the difference between the terms "financing source" and "funding source" as such terms are used in the RFA?

**A.149: There is no difference.**

**Q.150:** What constitutes a "highly confident" letter" as such term is used in the RFA?

**A.150: An investment banking firm's letter indicating that the firm is highly confident it will be able to arrange financing.**

**Q.151:** What constitutes a "financial commitment" as such term is used in the RFA?

**A.151: The phrase "financial commitment" is intended to have its customary meaning. Generally, a financial commitment is an undertaking to provide financing or capital to another or to bear expenses of another.**

**Q.152:** What constitutes a “guarantee” as such term is used in the RFA?

**A.152:** The term “guarantee” is intended to have its customary meaning. Generally, a “guarantee” is an agreement by which one person promises to perform the obligations (whether financial or otherwise) of another.

**Q.153:** VIII.A.6a, d-e,7a, 8b-c, 9. The likely pool of Applicants will include various sized Gaming companies, many of which are likely publicly traded. It is also likely that some, it not most, maintain existing credit facilities on an ongoing basis and would likely be used to fund the Gaming Facility development. Financial participants in such credit facilities can and do number in the hundreds of institutions. These participants typically include large regulated financial institutions such as Wells Fargo or Bank of America as well public employee retirement funds, insurance companies, investment funds and other similar entities. Financing Source is defined to include such institutions and the RFA requests significant information related to such. A number of these requests are as a practical matter likely impossible to collect from such institutions. As it relates, are Applicants required to submit the information requested in VIII.A.6a,d-e,7a,8b-c,9 for each of Applicant’s third-party financial institutions?

**A.153:** Neither the statute nor the RFA contemplates exclusion of Institutional Investors. Such subject matter will likely be considered in the context of Commission rulemaking.

The Commission has, however, made Institutional Investor exceptions in other gaming contexts. Should the Commission choose to craft such an exception, it is likely the exception would be consistent with other uses.

Historically, an “Institutional Investor” has been defined along the following lines:

1. A “qualified institutional buyer” as defined in Rule 144A under the Securities Act of 1933 that is:
  - a. A bank as defined in Section 3(a)(6) of the Securities Exchange Act of 1934, as amended.
  - b. An insurance company as defined in Section 2(a)(17) of the Investment Company Act of 1940, as amended.
  - c. An investment company registered under Section 8 of the Investment Company Act of 1940, as amended.
  - d. An investment advisor registered under Section 203 of the Investment Advisors Act of 1940, as amended.

- e. **Collective trust funds as defined in Section 3(c)(11) of the Investment Company Act of 1940, as amended.**
  - f. **An employee benefit plan or pension fund subject to the Employee Retirement Income Security Act of 1974, as amended, excluding an employee benefit plan or pension fund sponsored by an Applicant, Manager or any Person having a beneficial or proprietary interest of five (5) percent or more in an Applicant or Manager.**
2. **A pension plan sponsored by a state or federal government.**
  3. **A group comprised entirely of the types of persons specified in Items 1 and 2, above.**
  4. **Such other persons as the Commission may determine for reasons consistent with the policies under applicable statutes or compacts.**

**For financing plans, highly confident letters, financing commitments and financing arrangements or agreements in the form of any syndicated debt facility or underwritten offering, the arrangers, agents, book runners and underwriters are Financing Sources for which the Application should include the disclosures to be made as to Financing Sources. For third-party financings and offerings that are not syndicated or underwritten, the individual participants are each a Financing Source for which the Application should include the disclosures to be made.**

**Q.154:** Is it feasible to include/allow Investors to our project who may have a complex background by having them fund through a trust and/or company not directly held by them. Are there any specified degrees of separation (minimum or maximum) between them and our project.

**A.154: All direct and indirect investors must be disclosed. See answer to Question 28 for an explanation of which investors/owners are subject to a background investigation.**

### **Economic Development**

**Q.155:** By its very name and nature, the purpose of the Act is to spur economic development “in disadvantaged areas of the state” (RFA p. 6). The scoring criterion is heavily weighted toward economic activity and business development factors (RFA at p. 30-31). The state’s robust economic development programs are wide and varied and include other tools and programs to spur economic development beyond those contained in the Act.

a. Will an Applicant be eligible for state and local economic development programs, such as brownfield tax credits, etc.?

b. If so, should the use of such programs be incorporated into the Application to the Board?

**A.155:**

**a. Nothing in statute or RFA directly prevents use of applicable state and local economic development programs. See also the answer to Question 139.**

**b. Yes.**

**Q.156:** Will proposed gaming facilities be eligible for brownfield credits or other state or local economic development funding?

**A.156:** See answers to Question 139 and 155.

### **Financial Statements and Audit Report**

**Q.157:**

a. Section VIII - Financial Statements – is the Board requesting audited financials from lending sources as well as the Applicant?

b. If the applicant is an SPE (single purpose entity) created specifically for a casino project, will it be requesting audited statements from the SPE?

**A.157: As to the Applicant and Manager, see RFA Article IV. A., second paragraph. As to Financing Sources, each Application should include the disclosures to be made as to Financing Sources. Presuming an Institutional Investor exception is authorized by the Commission pursuant to regulation, a Financing Source that reflects the standards discussed within the answer to Question 153 would likely be excluded from disclosure filing.**

**Q.158:** Item 7 in RFA Section VIII requires submission of five years of audited financial statements. We note and appreciate the ability as indicated in Item 9 of Section VIII to provide a link to access company SEC filings instead of producing hard copies. As a publicly traded company our audited financial statements are included in our SEC filings. We request permission to be allowed to provide a link (or alternately an electronic copy) for audited financial statements instead of providing hard copies as these are also typically large documents.

**A.158: As indicated in RFA Article VIII § A. 9., a link to the location of all responsive material is sufficient to fulfill this requirement.**

### **Documentation of Financial Suitability and Responsibility**

**Q.159:** The RFA requires certain information for documentation of “financial suitability and responsibility.” RFA, Section VIII.A.8.

- a. Is this requirement applicable to business entities, natural persons, or both?
- b. For what time period should the requisite documentation be produced?
- c. For what time period should this information be produced?

**A.159:**

**a. RFA Article VIII § A. 8. a. applies to the Applicant and requires submission as Exhibit VIII.A.8.a. clear and convincing evidence of financial stability. See also N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.1(e)**

**RFA Articles VIII § A. 8. b. and VIII § A. 8. c. apply to Financing Sources.**

**b. Applicants should submit as Exhibit VIII.A.8.b. references as of a reasonably current date. Applicants should submit as Exhibit VIII.A.8.c. securities analysts’ and credit rating agencies’ reports for the past three (3) years.**

**c. The past three (3) years.**

**Q.160:** For purposes of satisfying the requirements of Exhibit VIII.A.8.a., what constitutes “business and personal income and disbursement schedules” and “business and personal accounting check records and ledgers”?

**A.160: Applicants may take the position that Exhibit VIII.A.7.a. addresses this request. See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.1(e)**

**Q.161:** An Applicant is required to submit as Exhibit VIII.A.8.b. at least three (3) financial references from banks or other financial institutions attesting to each Financing Source’s creditworthiness. Please clarify this requirement in that banks and other financial institutions no longer issue such references in the ordinary course of business.

**A.161: See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.1(e) Applicants may take the position that other documents specified in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.1(e) satisfy the request under RFA Article VIII § A. 8. b.**

**Q.162:** The reference to *N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.1.(e)* in Item 8 of RFA section VIII appears to be incorrect.

a. Should the correct reference be to *Section 1313.1.(e)*?

b. Also Item 8 of the RFA asks for tax returns but does not say for what period. Since for a large publicly traded company these are very large documents, we would ask that this be limited to the most recent year or the most recent three years of tax returns.

c. Additionally, we ask the Commission to consider allowing applicants the option to submit tax returns in an electronic format without also requiring hard copies which would likely take up several binders.

**A.162: RFA Article VIII § 8. a. should cite N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.1(e).**

**Q.163:** Section VIII (A) 8(a) of the RFA references N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.1(e). We do not see the connection between the requirements of this portion of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law and the “bank references, business and personal income and disbursement schedules, tax returns and other reports filed with government agencies” referenced in this section of the RFA. Is the cite to the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law correct?

**A.163: See answer to Question 162.**

**Q.164:** a. Please clarify whether the requirement for “...documentation of financial suitability and responsibility” is applicable to business entities, individuals, or both?

b. For what time period should this information be provided?

**A.164: See answer to Question 159.**

**Q.165:** Article VIII, §A(8)(a) of the RFA asks for documentation of financial suitability and responsibility, but does not state from whom they are to be received. Please advise precisely which entities are required to provide the requested documentation?

**A.165: See answer to Question 159.**

**Q.166:** Subsection “a” does not clarify who must submit the requested information.

- a. Is it just for Applicant?
- b. Applicant and Manager and Affiliates?

**A.166: See answer to Question 159.**

### **Legal Actions**

**Q.167:** If an applicant is facing litigation regarding its rights to build a casino, how does that affect the applicant’s ability to be awarded a license?

**A.167: The Board may consider pending or threatened litigation in its siting evaluation. Once the Board selects an applicant to present to the Commission for licensure, the Commission may consider pending or threatened litigation in its suitability determination.**

## **B. ECONOMICS**

### **Projected Tax Revenue to the State**

**Q.168:** How will IDA and other tax and/or economic development benefits be factors?

**A.168: See answer to Question 155.**

**Q.169:** How should free play, comps and incentives be treated for purposes of calculating net win and projected tax revenue to the State?

**A.169: See answer to Question 144 for treatment of free play in calculating net win.**

**Comps and incentives are not to be deducted from net win and should be recorded in conformity with Generally Accepted Accounting Principles (GAAP).**

### **Employees**

**Q.170:** The RFA requires, as Exhibit VIII.B.7.a, employee tables, that include “the number of such positions that are anticipated to be filled by residents of the State,



residents of the Region and residents of the Host Municipality or nearby municipalities in which the Gaming Facility is to be located.” Is a single table required showing overall employment or three separate tables, i.e., (a) a table showing employment of residents of the State, (b) a table showing employment of residents of the Region and (c) a table showing employment of residents of the Host Municipality or nearby municipalities?

**A.170: Presentation in a single table would be preferred, but is not required.**

**Q.171:** If an applicant or its [sic] principals or primary shareholders of an applicant that already has a gaming license for a racino in the approved region where an applicant will be applying for a new license, will that applicant be allowed to count the preservation of existing jobs toward its projected job counts?

**A.171: No.**

**Q.172:** Will employees who work in the Casino Operations be required to be 21?

**A.172: Age restriction would be set by regulation. State practice for other elements of the gaming industry is to allow employment of individuals under the age of 21.**

### **Competitive Environment**

**Q.173: Effect on Surrounding Casinos.** The RFA requires the Applicant to describe how it “plans to succeed . . . while limiting the impact on revenues at other New York gaming establishments (e.g. VLT facilities, tribal casinos, race tracks) . . .” (RFA at p. 44). In the legislative findings and purpose section of the Act, it states “[f]our upstate casinos can boost economic development, create thousands of well-paying jobs and provide added revenue to the state.” (N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1300 [5]).

a. Does the Applicant have an affirmative responsibility to limit its potential growth, and thus impact on surrounding gaming facilities, including VLT facilities, tribal casinos, and race tracks?

b. Additionally, does this responsibility exist, remain the same, or change depending upon whether the surrounding gaming facility is located within the same region as the Licensee or outside of the region?

**A.173: The language that is quoted from the RFA is clear that what is required of the Applicant is to describe how it intends to expand the**

**relevant market by bringing in new visitors, as opposed to merely shifting visitors from existing gaming venues in the region.**

**Q.174:** What exactly is the applicant's responsibility to limit the impact on revenues at other gaming establishments"?

**A.174:** See answer to Question 173.

### **Licensing Fee**

**Q.175:** Article VIII, §B(11) provides for differing minimum license fees for certain regions, depending upon whether another Gaming Facility license is awarded within the same region. Please explain (for example): if Applicant A is awarded a license to build a Gaming Facility in Sullivan County, and at some subsequent date Applicant B is awarded a license to build a Gaming Facility in Orange County, does Applicant A receive a refund for the difference between the license fee paid versus the license fee Licensee A would have paid had Licensee B been awarded a license first?

**A.175:** The Commission anticipates that licenses will be awarded concurrently.

**Q.176:** The amount of the minimum license fee for a Gaming Facility located in Columbia, Delaware, Greene, Sullivan or Ulster Counties (collectively, "Region 1 Impacted Counties") depends on whether a License is awarded for a Gaming Facility located in Dutchess or Orange Counties (collectively, "Region 1 Dominant Counties"). Similarly, the amount of the minimum license fee for a Gaming Facility located in Broome, Chemung, Schuylers, Tioga and Tompkins Counties (collectively, "Region 5 Impacted Counties") depends on whether a License is awarded for a Gaming Facility located in Wayne or Seneca Counties (collectively, "Region 5 Dominant Counties"). A lesser minimum licensing fee is due for a Gaming Facility located in the Region 1 Impacted Counties or Region 5 Impacted Counties if a License is awarded for a Gaming Facility located in the corresponding Region 1 Dominant Counties or Region 5 Dominant Counties, respectively. Accordingly, may an Applicant who proposes to develop a Gaming Facility to be located in the Region 1 Impacted Counties or Region 5 Impacted Counties make an application in the alternative whereby two scenarios would be presented as to the scope, scale and Minimum Capital Investment of the proposed Gaming Facility dependent on whether a License is awarded for a Gaming Facility located in the corresponding Region 1 Dominant Counties or Region 5 Dominant Counties?

**A.176:** An Applicant who proposes to develop a gaming facility to be located in the Region 1 Impacted Counties or Region 5 Impacted Counties is permitted to make an Application in the alternative whereby two

**scenarios would be presented as to the scope, scale and Minimum Capital Investment of the proposed gaming facility dependent on whether a License is awarded for a gaming facility located in the corresponding Region 1 Dominant Counties or Region 5 Dominant Counties.**

**Q.177:** Pg.46(B) says the Commission may select an alternative licensing for a given Region at the Mandatory Conference, if requested, in the event that the Commission selects two applicants from such region to proceed for consideration of licensure.

a. Does this mean that the Commission will make a determination at the Mandatory Conference on April 30 who among the applicants that will be permitted to proceed to licensure?

b. Or, is some other Mandatory Conference contemplated to address this possibility?

**A.177: By way of this response, the last paragraph of RFA Article VII § B. 11. is deleted.**

**Q.178:** The RFA requires a "Description of any special purpose rooms that are being considered (e.g., poker rooms, high-limit gaming areas, etc.)".

a. May separate casino properties be included on the same license?

b. For example, a major gaming facility and a separate high-limit facility?

c. If multiple gaming facilities are included on the same license, must the facilities be located on a single parcel?

d. What is the minimum number of hotel rooms for the hotel component of the project?

**A.178:**

**a. No.**

**b. No. Multiple gaming facilities cannot be included in one license.**

**c. See answer to Question 178.b.**

**d. No minimum number of rooms has been established.**

**Q.179:** Will the Board consider a revision to the “minimum licensing fee” schedule to adjust the minimum licensing fee calculable on a sliding scale based on population size within a certain radius of an Applicant’s proposed gaming facility?

**A.179: No.**

**Q.180:** a. What was the methodology and data input used to create the licensing fee structure?

b. Could the Board disclose such information in a manner similar to that as described on page 36 Section 3 Market/Revenue Study?

**A.180:**

**a. This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

**b. This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

## **C. LAND, CONSTRUCTION AND DESIGN OF PHYSICAL PLANT**

### **Description of Land, Ownership of Land**

**Q.181:** If the applicant’s site is comprised of two, non-contiguous parcels, will gaming be allowed at both locations?

**A.181: No.**

**Q.182:** a. If the applicant’s site is comprised of two, non-contiguous parcels, how will the property(s) be considered in the event that the primary gaming facilities are on one parcel and some complimentary, non-gaming amenities are located the second parcel?

b. Will both be viewed as a single property relative to the Board’s land use governances?

**A.182:**

**a. Both will be viewed as a single property. The distance between the two parcels may have an impact on the evaluation of the feasibility of the project site.**

**b. Yes.**

**Q.183:** a. If the applicant's site is comprised of two, non-contiguous parcels, how will the property(s) be considered in the event that the primary gaming facilities are on proposed on one parcel and a non-gaming amenity with smaller, complimentary gaming facility located the second parcel?

b. Will this be interpreted as a single property relative to the Board's land use governances?

**A.183:**

**a. An application is for one gaming facility. If an applicant's property comprises two non-contiguous parcels, gaming will only be allowed on one parcel. A "smaller...gaming facility located on the second parcel" would be a second gaming facility that would require a second application.**

**b. No.**

### Zoning

**Q.184:** The N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1309.2 provides, "If any provision of this article is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this article shall prevail over such other provision and such other provision shall be deemed to be superseded to the extent of such inconsistency or conflict. Notwithstanding the provisions of any other law to the contrary, no local government unit of this state may enact or enforce any ordinance or resolution conflicting with any provision of this article or with any policy of this state expressed or implied herein, whether by exclusion or inclusion. The commission shall have exclusive jurisdiction over all matters delegated to it or within the scope of its powers under the provisions of this article.

In addition, N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1366 further provides, "Zoning. Notwithstanding any inconsistent provision of law, gaming authorized at a location pursuant to this article shall be deemed an approved activity for such location under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations.

The RFA requires, inter alia, submission of detailed plans regarding development and operation of a gaming facility including site plans, building design, drainage and stormwater, utilities, traffic circulation etc., --all consistent with typical local municipal land use approvals.

However, the RFA also requires submission of information regarding "required" rezoning, variances, land use approvals, local permits or special use permits and a

schedule pertaining to their acquisition (Section VIII. C. 3), which would appear in conflict with N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §§ 1309.2 and 1366 noted above.

a. Are the requirements of RFA Section VIII.C.3. consistent with the supersession provisions of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law?

b. If so, are there any specific forms of local approvals that the Board or Commission believe are superseded?

**A.184: N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1366 operates as a complete preemption of local zoning only with respect to the conduct of gaming, which is defined in §1301.20 as “dealing, operating, carrying on, conducting, maintaining or exposing for pay of any game.” §1309.2 does not preempt local zoning or land-use laws, other than as set forth in § 1366. The applicant is required to identify any required rezoning, variances, land use approvals, local permits, or special use permits and a schedule pertaining to their acquisition for any use or activity that does not constitute gaming, e.g. drainage and storm water, traffic circulation, etc.**

**Q.185:** Section 1366 of the Upstate New York Gaming Economic Development Act sets forth the same land use and zoning State exclusivity and preemption language contained in Article 34 of the Tax Law (for the establishment of video lottery gaming). In light of the State’s previous action is using such preemption for approved gaming facilities:

a .What is the purpose of requesting zoning information and permits as provided at page 47 Section 3?

b. Will an approved gaming facility be required by the Location Board (or the Commission) to comply with local zoning, land use ordinances and permit processes?

c. If local zoning and land use is required to be complied with, what is the effect of the statutory preemption in connection with the approved gaming facility?

**A.185: See answer to Question 184.**

**Q.186:** N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § §1366 provides: “Zoning. Notwithstanding any inconsistent provision of law, gaming authorized at a location pursuant to this article shall be deemed an approved activity for such location under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations.” Meanwhile, Article VIII, §C(3)(a) of the RFA

requests copies of "current local zoning approvals and any rezoning or variances that are required and any land use approvals."

Please explain the distinction between the language in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1366 and RFA VIII §(C)(3)(a)?

**A.186: See answer to Question 184.**

**Q.187:** Will the State's Office of General Services issue building permits for approved gaming facilities similar to the existing practice for existing (Article 34) casinos in the State?

**A.187: No. The State's Office of General Services is involved with video lottery facilities because gaming activity at such facilities is conducted by the Division of Lottery at the Gaming Commission. Gaming activity at commercial casinos will be conducted by private entities.**

**Q.188:** Does the gaming law supersede local zoning decisions?

**A.188: No, except that no local zoning may prohibit authorized gaming activity pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1366. Further, see the answer to Question 184.**

**Q.189:** Article VIII, §C (3)(c) of the RFA requires "a list of any State and/or local permits or special use permits that the Applicant must obtain for the Project Site," however, the State Environmental Quality Review Act (SEQR), is not specifically identified. Please explain:

a. Are the Gaming Facility projects contemplated under the RFA subject to the provisions of the State Environmental Quality Review Act (SEQR)?

If yes:

b. The SEQR process typically takes nine (9) months or longer to complete. Will the Board accept Applications as complete and will the Commission issue licenses for projects prior to the completion of the SEQR process?

If yes:

c. Once a license is issued by the Commission, the licensee has 24 months to commence gaming at an approved facility. Failure to commence gaming within 24 months shall subject the licensee to fines and penalties. Will the Commission toll the 24 month time limit until such time as the SEQR process for a licensed project is completed?

d. Will the Board and the Commission allow a local municipal agency to serve as the Lead Agency for SEQR purposes?

If no:

e. If the Board, Commission, or other designee is to be substituted for a local municipal agency as Lead Agency, will the work product and approvals from the SEQR process that began with a local municipal agency serving as the Lead Agency be honored, or will the SEQR review process need to start over?

**A.189:**

a. Yes.

**b. The Board will accept applications as complete without completion of the SEQRA process. However, Applicants must disclose in their applications the status of the SEQRA review, the anticipated timeframe for completion of the SEQRA review, and any obstacles that may prevent the gaming facility from opening within 24 months of licensure.**

**c. The Commission has not considered whether it will toll the 24-month time limit pending completion of the SEQRA process.**

d. Yes.

**e. The Board and the Commission will not serve as Lead Agency for SEQRA purposes and therefore cannot provide an answer.**

**Q.190:** The RFA states that the Applicant has to submit as Exhibit VIII.C.3.a. copies of current local zoning approvals and any rezoning or variances that are required and any land use approvals, a detailed explanation of the status of any request for any of the foregoing with copies of all filings, including a specific schedule of applications for zoning approvals and anticipated approval dates. It also requires the applicant to submit as Exhibit VIII.C.3.c. a list of any State and/or local permits or special use permits that the Applicant must obtain for the Project Site, and for such permits describe: (i) the procedure by which the Applicant shall obtain the permits; (ii) what conditions, if any, are likely to be placed on the permits; and (iii) the estimated dates by which the Applicant will obtain the permits. Can you clarify the relationship between Local Zoning Regulations and language from N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1366 which appears to exempt the selected site from local zoning?

**A.190: See answer to Question 184.**



## Designs and Layout

**Q.191:** a. Are the designs in Exhibit VIII.C.5.a. best described as “concept” or “schematic” designs for the proposed Gaming Facility?

b. Given that further refinement of the design would be expected as the design evolves through construction documentation, is there a process to modify (not materially change) the design after the submission of the application or after license award?

**A.191:**

**a. The designs submitted should reflect the flow and style of the gaming facility, but will be considered conceptual.**

**b. We recognize modifications are likely as the construction progresses and licensee shall provide regular updates to the Commission to document improvements to the facility design during construction.**

**Since an application will be evaluated and approved based on the initial design, changes that reduce the size, quality, or fit and finish of a facility will not be permitted.**

**Q.192:** a. Will the Board/Commission be providing any guidance concerning gaming facility design to address issues such as underage guests’ access to or through a gaming floor in advance of the Application deadline?

b. If so, will they be in the form of regulations, emergency or otherwise?

c. Will they be provided to Applicants sufficiently in advance to incorporate into gaming facility design before the June 30, 2014 deadline for submission of Applications?

**A.192:**

**a. An Applicant’s design should minimize the need for minors to cross a gaming floor for any purpose.**

**Present State-based video lottery and Indian gaming facilities afford access when needed, but generally require well-marked paths observed by surveillance. It is unlikely that a new policy would be created for commercial gaming.**

**b. The issue of underage access to a gaming floor will likely be addressed in regulation.**

**c. Existing Commission video lottery regulations restrict access by minors and video facilities require an escort by licensed gaming staff any time a minor must cross the gaming floor.**

**Q.193:** May an underage guest access hotel and non-gaming areas through the gaming floor if reasonable and specified controls are in place?

**A.193:** See answer to Question 192.

**Q.194:** Is there a required drawing scale or sheet size for the site plan(s), floor plan(s), elevations and sections and other visual materials required for submission under RFA Article VIII § C. 5.?

**A.194:** There is no specific requirement. The Commission has accepted a scale of 1/32" to 1.0' for other gaming submissions.

**Q.195:** RFA Article VIII § C. requires submission of plans, etc. for the building program, designs and layout, etc. What level of detail is expected in the architectural drawings?

**A.195:** Drawings should be submitted in sufficient detail for the Board to understand the Applicant's vision for the facility.

**Plans should be to scale.**

**To the extent feasible, specific locations of buildings and features should be identified. Planned amenities should be identified in detail and back-of-house functions should be presented. Representations of finish details should be included.**

**Q.196:** Are video presentations showing the exterior and interior views of the project buildings and grounds permissible?

**A.196:** Video presentations are not allowed as part of the Application submission. They may be used at subsequent presentations or hearings.

**Q.197:** Please clarify if there is a required drawing scale or sheet size for the site plan(s), floor plan(s), elevations and sections and other visual materials required for submission under RFA Article VIII § C. 5., at p.48.

**A.197:** See answer to Question 194.

**Casino, Hotel, Meeting and Convention Facilities,  
Entertainment Venues, Non-Gaming Amenities**

**Q.198:** Exhibit VIII.C.6.A.2: Is it necessary to break the table game type down by specific game, i.e. Three Card Poker, Blackjack, Let It Ride, etc. or are you looking for the number of blackjack sized tables, poker, craps, roulette, etc.?

**A.198: An Applicant should provide a breakdown of the specific games anticipated, along with the Applicant's rationale for the selections. The Board acknowledges that the counts may be modified prior to opening.**

**Q.199:** Must all contracts, agreements, MOUs or other understandings (hereinafter "Partnerships") with live entertainment venues be in writing?

**A.199: Yes.**

**Q.200:** Is there a geographical limitation on the requirement that an Applicant must obtain Partnerships with live entertainment venues that may be impacted by the proposed gaming facility (such as a geographical limitation of "venues already existing in the Host Municipality and nearby municipalities" as this phrase is used in section VIII.C.9.c [p.52])?

**A.200: Yes. The area considered is the host county, those counties adjoining the host county and any county within 25 miles of the proposed casino location.**

**Q.201:**

a. What are the Commission's criteria for evaluating agreements with regional entertainment venues?

b. What is the Commission definition of an entertainment venue?

c. Does it include local bars and clubs with live music?

**A.201:**

**a. The existence of a full-executed agreement(s) is sufficient.**

**b. A live entertainment venue is a not-for-profit or government-owned performance venue designed in whole or in part for the presentation of live concerts, comedy or theatrical performances.**

c. No.

**Q.202:** Regarding Entertainment Venues on page 52; are the venue descriptions for just new construction or are existing venue descriptions required as well?

**A.202: Existing venues.**

**Parking and Transportation Infrastructures, Dock and Loading,  
Physical Plant and Mechanical Systems, Infrastructure Requirements**

**Q.203:** RFA Article VIII § C. 17. (Infrastructure Requirements) requires a description of the storm water management system.

- a. Does the State have a preference for the type of system to be deployed?
- b. Does the State require that 100 percent of storm water be kept on site and reused?

**A.203:**

- a. **The Board indicates no preference and leaves to the Applicant's discretion how storm water is managed.**
- b. **The Board does not seek to establish a percentage of storm water to be kept on site and reused.**

**Project Firms, Construction Budget, Timeline for  
Construction, Construction Jobs**

**Q.204:** Will Construction Trade Agreements need to be in place prior to the Applicant's submission?

**A.204: An evaluated factor is the Applicant's demonstration of an agreement, inter alia, with organized labor and support of organized labor for its Application. The form of the demonstration is left to the Applicant's discretion.**

**Q.205:** Will the construction permitting agency allow for multiple packages as opposed to a singular submission?

**A.205: The Board declines to respond, since the Board will not be the construction permitting agency.**

## **B. INTERNAL CONTROLS AND SECURITY SYSTEMS**

**Q.206:** The regulations for gaming oversight have not yet been promulgated. Applicants are, however, required to submit a full description of internal controls and security systems. Is it acceptable for an Applicant to utilize the regulations of a state in which the Applicant is currently conducting gaming operations (such as New Jersey or Nevada) or will the Board suggest a jurisdiction that the Applicant should follow as a guidepost in preparing its internal controls and security systems submission?

**A.206:** **The Applicant is encouraged to consider the regulations from another jurisdiction in which it does business in developing internal controls and security systems. An Applicant should identify the jurisdiction selected, if it has modeled its internal controls on the regulations of another jurisdiction.**

**Q.207:** Please clarify upon what the applicant is to base its description of internal controls and security, given that the gaming oversight regulations have not been published?

**A.207:** See answer to Question 206.

## **LOCAL IMPACTS AND SITING FACTORS**

### **ASSESSMENT OF LOCAL SUPPORT/ MITIGATION OF LOCAL IMPACT**

#### **Assessment of Local Support**

**Q.208:** According to the RFA for a casino siting application, the local legislative body has to vote in support of the application. If there isn't a favorable vote by the local legislative body, would the Gaming Commission's siting board accept the application, or is the application not allowed to move forward and automatically denied?

**A.208:** **The Board would decline to accept the application. As a condition of filing an application, each applicant must submit to the Board a post-November 5, 2013 resolution passed by the local legislative body of the Host Municipality supporting the location of a gaming facility in such Host Municipality.**

**Q.209:** In the local support section, what if any weight will be given to the popular vote for or against in a given county or host community (city, town, etc.)?

**A.209: None.**

**The Board will, however, pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1320.2, consider factors such as whether the applicant has demonstrated public support in the host and nearby municipalities, which may be shown by passage of local laws and public comments.**

**Q.210:** On page 7, can you please define “nearby” regarding support from nearby municipalities and local governments?

**A.210: “Nearby” includes any county or municipality that is adjacent to the municipality in which the proposed gaming facility site is located or any county or municipality where a proposed gaming facility would likely have social, environmental, traffic, infrastructure or any other impact on the local and regional economy, including impact on cultural institutions and on small businesses.**

**Q.211:** Is a Host Municipality required to complete the SEQRA process for a proposed gaming facility before passing a resolution in support of the Application, as required under Section I of the RFA?

**A.211: No.**

**Q.212:** Will the Gaming Facility Location Board and/or the NYS Gaming Commission assume the authority to approve site plans for Gaming Facilities, or will that authority reside with the Host Municipality?

**A.212: Neither the Board nor the Commission will assume authority to approve site plans beyond the Board’s evaluation of site plans as part of the RFA evaluation process.**

**Q.213:** If the GFLB/Gaming Commission will be the site permitting authority, to what extent, if any, will the Host Municipality’s local land use law and site plan approval process be applicable to the approval of site plans for Gaming Facilities?

**A.213: See answer to Question 212.**

**Q.214:** Does the GFLB/Gaming Commission intend to seek Lead Agency status for the purposes the SEQR review associated with the approval of site plans for Gaming Facilities?

**A.214: No.**

**Q.215:** Is the award of a Gaming Facility License subject to SEQRA, and if so, will that SEQR review and determination encompass the eventual approval of site plans for the Gaming Facility?

**A.215:** See answer to Question 189.a. The award of a gaming facility license is independent of the SEQRA process.

**Q.216:** Does the host municipality resolution need to accompany the Application Fee on the 23rd of April?

**A.216: No. The Host Municipality resolution of support must be submitted by June 30, 2014 at 4:00 p.m. EDT, the due date for applications.**

**Q.217:** Initial Requirement of Local Support. The RFA states that "each Applicant must submit to the Board a [post-November 5, 2013] resolution passed by the local legislative body of its Host Municipality supporting the Application." If a Host Municipality has passed a resolution after November 5, 2013 that endorses the location of a casino in the Host Municipality, would an Applicant need such Host Community to pass a subsequent resolution that endorses the specific plans proposed by the Applicant and/or the specific identity of the Applicant?

**A.217: No, so long as the resolution passed clearly indicates the Host Municipality supports any gaming facility within such Host Municipality.**

**Q.218:** Is there any specific provision which will be required by the Location Board and which should be included in the Host Municipality resolution referenced in Section IX.A.1.a ?

**A.218: No. Such a resolution must clearly indicate that the Host Municipality supports the location of *either* the applicant's proposed gaming facility *or* any gaming facility within such Host Municipality.**

**Q.219:** If the Host Municipality is a Town or City, what level or kind support is required or expected by the Location Board from the Host County?

**A.219: Local support means a post-November 5, 2013 resolution passed by the local legislative body of the Host Municipality supporting the location of either the applicant's proposed gaming facility or any gaming facility in such Host Municipality.**

**There is no requirement of action at the county level, however county support would be positively viewed the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.2 evaluation.**

**Q.220:** Legislative Form of Action Demonstrating Host Community Support of Gaming Application. The RFA Section I, Initial Requirement of Local Support, states "local support means a post-November 5, 2013 resolution passed by the local legislative body of the Host Community." N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320. (b), and RFA Section VII.B.2 require evidence of local support by: "gaining public support in the host and nearby municipalities which may be demonstrated through the passage of local laws...." The New York Municipal Home Rule Law defines and authorizes the adoption of local laws by NY municipalities but does not appear to provide for the adoption of local laws in support of an application (See MHRL Sections 2 & 10).

Will the adoption of a resolution by the local legislative body of a Host Community in support of an Application for Casino Gaming be sufficient to satisfy the requirements of the RFA?

**A.220: Yes, so long as such resolution of support is for *either* the applicant's proposed facility in such Host Municipality *or* any casino in such Host Municipality and such resolution is approved after November 5, 2013.**

**Q.221:** a. How do we determine host community if a subject parcel lies within three (3) separate municipalities?

b. Would the host community be the municipality with the greatest land area?

**A.221:**

**a. Each of the three municipalities would need to adopt a post-November 5, 2013 resolution of support for the Applicant's proposed gaming facility or for any gaming facility.**

**b. No.**

**Q.222:** a. How do we determine host community if a subject parcel lies within a Village that is located within a Town that has no land use regulations nor land use jurisdiction?

b. The land use decisions can only be made by the Village. In this unique case, would the Village be the host community?

**A.222: The village and the town would each be considered Host Municipalities.**



**Q.223:** In establishing local support from the host community, is there a minimum standard requirement, i.e., a Resolution of the municipal board in support or is a letter from the host municipality sufficient?

**A.223: A resolution is required. A letter is insufficient.**

**For the Board to deem a Host Municipality resolution to be sufficient, such resolution should state *either* support for the location of a gaming facility at a specific location within the jurisdiction of the Host Municipality *or* support for any gaming facility within the jurisdiction of the Host Municipality. If a Host Municipality's resolution states support for any gaming facility within the jurisdiction of the Host Municipality, the Board will interpret such resolution to support the location of either one or two gaming facilities within the jurisdiction of such Host Municipality, unless such resolution of support states otherwise explicitly. A resolution from a Host Municipality that states support for a gaming facility within a county, but does not state support for the location of a facility within the jurisdiction of the Host Municipality, will not be a sufficient demonstration of local support.**

**Q.224:** When is the host community municipal resolution due to be submitted to the Board?

**A.224: See answer to Question 216.**

**Q.225:** Section IX-A-1-b (RFA, p.58): "Submit a list of any other evidence"

- a. Please clarify that it is a "list" that is requested.
- b. Is it permissible to submit hardcopy letter, resolutions and other support documentation in this or another section?

**A.225:**

- a. A list is requested.
- b. An applicant is permitted to submit letters, resolutions and other support documentation.

**Q.226:** As a final, binding commitment of the Host Community, is the resolution supporting a project subject to SEQ?R?

**A.226: No.**

**Q.227:** Applicability of the NYS Environmental Quality Review Act, "SEQRA", ECL Article 8: The New York State Environmental Quality Review Act, ECL article 8 and implementing regulations at 6 NYCRR Part 617 ("SEQRA") require that all discretionary actions undertaken, approved or funded by a State or local agency comply with the requirements of SEQRA prior to authorizing the action. For Type I actions (6 NYCRR §617.4), which are likely to include a casino facility, SEQRA requires a coordinated review among State and local agencies with discretionary actions (involved agencies). The N.Y. Racing, Pari-Mutuel Wagering and Breeding Law contains no reference to the provisions of the New York State Environmental Quality Review Act, ECL article 8 and implementing regulations at 6 NYCRR Part 617. Similarly, the RFA makes no reference to SEQRA.

- a. At what stage of the gaming license process will the New York Gaming Facility Location Board or Gaming Commission invoke the SEQRA process?
- b. If the SEQRA process has already been initiated at a local level, should the Board and/or Commission be added as involved or interested agencies?
- c. Does the Board or Commission intend to seek lead agency status?

**A.227:**

- a. Neither the Board nor the Commission will invoke the SEQRA process.**
- b. Yes.**
- c. No.**

**Local Impact and Costs, Mitigation of Impact to  
Host Municipality and Nearby Municipalities, Housing, Schools**

**Q.228:** Can an environmental impact statement be used to comply with the requirement for studies completed by independent experts?

**A.228: The RFA requires the submission of a number of studies. It is incumbent upon the Applicant to determine if a completed environmental impact statement satisfies each requirement.**

**Q.229:** Local Impacts and Costs- Effect of Maximum Usage Analysis on Presentation of Low, Average & High Build Scenarios. The RFA Section IX. A.2.b. outlines the requirements for studies of local and regional impacts and provides:

"The build scenario and assumptions should reasonably correspond to the description of the proposed Gaming Facility, revenue and visitation projections, and

expense and employment estimates included in the Application. That is, the Applicant and the various independent studies should present comparable assumptions and build scenarios.

Where independent studies depend on visitation or revenue assumptions, they should include analysis of the low-average- and high-cases analogous to the same used for the gaming market and tax studies.”

**A.229: Please see answer to Question 230.**

**Q.230:** Environmental impact analysis typically requires consideration of maximum build out and utilization of project facilities in forecasting project impacts on environmental and community resources.

If required local and regional impact studies present impact analysis and mitigation of the maximum utilization of casino and related facilities, is it also necessary to provide comparable impact assessment of low and average scenarios developed for gaming market and tax studies?

**A.230: Yes, please address all three scenarios.**

**Q.231:** Is a Licensee responsible for limiting the impact of its gaming facility on other gaming facilities in the surrounding area, whether located within the Licensee’s region or not?

**A.231: See answer to Question 173.**

**Q.232:** If so, should a project incorporate into its model financial and economic impact data that demonstrates net increases in state tax revenue and economic development to off-set any negative impact to existing gaming facilities?

**A.232: Applicants should include information that is responsive to the specified requests of the RFA.**

**Q.233:** Given limited offerings of existing Racinos/Casinos will mitigation include superior offerings to the public to enhance customer experience and regional development, such as tourism?

**A.233: See answer to Question 173.**

**Q.234:** What is the Applicant’s responsibility to limit impact on revenue of other gaming facilities (both Indian and non-Indian)?

**A.234: See answer to Question 173.**

**Q.235:** What are some examples of commitments to mitigate impacts of the proposed Gaming Facility on Host Municipality and nearby municipalities for traffic, infrastructure costs, costs of increased emergency services and other impacts identified in the studies of the RFA?

**A.235:** The Board cannot specify examples of mitigation, which would necessarily differ depending upon the circumstances of the Application. The Applicant is encouraged to work with a Host Municipality to reach what each considers appropriate mitigation.

**Q.236:** Can tax and fee payments be considered as part of the mitigation measures for the host municipality and nearby municipalities?

**A.236:** No.

**Q.237:** Should the report for local and regional impacts of the Gaming Facility for traffic and roadway infrastructure, water demand, waste water production and discharge, protected habitats and species and light pollution include build scenarios for casinos in the region?

**A.237:** The Board has requested the inquirer to clarify this question. Since no response has been timely received, the answer will remain pending for the Applicant Conference or the Second Round of questions.

## **REGIONAL TOURISM AND ATTRACTIONS**

### **Local Business Owners, Local Agreements, Cross Marketing**

**Q.238:** Will NYS government agencies with existing tourism/economic development marketing strategies be authorized to cross-market with individual Applicants?

**A.238:** There is neither a prohibition nor a requirement for cross-marketing.

## **WORKFORCE ENHANCEMENT FACTORS**

### **A. MEASURES TO ADDRESS PROBLEM GAMBLING**

**No questions were received for this category.**

## B. WORKFORCE DEVELOPMENT

**Q.239:** Does the reference to an “agreement” with organized labor representing the hospitality and casino industry employees in NY, including detailed information on pay rate and benefits contemplate that an Applicant would have/should have a collective bargaining agreement in place prior to having employees? (Question applies to VII.C(8) and X.B.(5)(6)).

**A.239:** See answer to Question 204.

## C. SUSTAINABILITY AND RESOURCE MANAGEMENT

**Q.240:** If a proposal contains some, but not all, of the Sustainability and Resource Management criteria itemized in Article X, §C of the RFA, will the Application be eligible to receive partial credit for those criteria that are satisfied?

**A.240:** See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.3(c)(1-6)

**Q.241:** Must the facility be LEED Certified or LEED qualified?

**A.241:** See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.3(c)(1).

**Q.242:** The language in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1320(3)(c)(1) indicates that LEED certification is a factor the Board will consider in weighing the 10 percent score allocated to Workforce Enhancement Factors, while the language in Article X, §C(2) of the RFA indicates that LEED Certification a requirement for Gaming Facility projects. Please explain:

- a. Is LEED certification a requirement or merely a consideration when allocating a score for Workforce Enhancement Factors?
- b. What is the level of LEED Certification is required / preferred?
- c. Will a project with a higher LEED rating be viewed more favorably under the Evaluation Criteria?

**A.242:**

**a. Per N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.3, “workforce enhancement factors” constitute ten percent of the weighted criteria. Section 1320.3(c). indicates that “utilizing sustainable development factors” is a constituent element of “workforce enhancement**

factors". Section 1320.3(c) continues that "sustainable development factors" contemplated as part of the weighted criteria for "workforce enhancement factors" includes, but is not limited to, the subsequent enumerated elements indicated in § 1320.3(c)(1-6).

b. A facility is required to be LEED certified only.

c. If an Applicant chooses to seek a level of LEED certification or qualification in excess of statutory requirement, the Board will take that investment into consideration in conjuncture with the other constitute elements that comprise the totality of Workforce Enhancement Factors.

## **POST-LICENSURE RESPONSIBILITIES**

### **Deposit of Ten Percent of Total Investment**

**Q.243:** The RFA requires that upon award of a License by the Commission an Applicant must deposit ten (10) percent of the total investment proposed in the Application into an interest bearing escrow account approved by the Commission:

a. how are the funds required to be deposited upon the award of a license to be calculated;

b. does the ten (10) percent deposit apply solely to construction costs; and

c. at what point in the construction will these funds be returned to the applicant to pay down the construction costs to which they were associated?

**A.243: The Applicant will be required to deposit ten (10) percent of all costs qualifying for the Minimum Capital Investment as defined in RFA Article VIII § A. 1. b. As stated in RFA Article XI § A., these funds will be held in escrow until the final stage of construction, as detailed in the timeline of construction submitted with the Application and approved by the Commission.**

**Q.244:** Requires the posting of an escrow of 10percent of the total investment proposed in the Application to ensure completion to be returned to Applicant at "the final stage of construction".

a. What is the definition of "total investment" is it the same as Minimum Capital investment or something else?

b. What is the definition of "final stage of construction?"

c. What if the Project was intended to be phased?

**A.244: See answer to Question 243.**

**Q.245:** a. Upon license award, is there a deadline by which the 10percent construction cost estimate must be escrowed?

b. Has the Board identified the Escrow Agent?

c. Upon establishing the Escrow Account, has the Board identified a formal procedure to timely review and approve plans?

**A.245:**

**a. The statute is silent as when the ten (10) percent construction cost estimate shall be deposited with the Commission. Such timing will be developed in regulation.**

**b. No. The Applicant should engage an Escrow Agent of its own choosing.**

**c. No.**

**Q.246:** Section XI – A. “Upon award of License by the Commission, an Applicant must deposit ten (10) percent of the total investment proposed in the Application into an interest-bearing escrow account approved by the Commission.”

a. When will this deposit be due?

b. What constitutes “total investment”?

c. Please clarify how the funds required to be deposited upon the award of a license are to be calculated?

d. Is it ten percent of project construction costs?

e. At what point in the construction will these funds be returned to the applicant to pay down the construction costs to which they are associated?

**A.246: See answers to Question 243 and 245.**

**Q.247:** When will the 10percent escrow be released?

**A.247: See answer to Question 243.**

## Begin Gaming Operations Within Two Years

**Q.248:** The RFA specifies that “gaming operations” must begin within 24 months following the License award or the licensee shall be subject to license suspension or revocation and may be subject to a fine.

- a. What specifically is required to begin in order to meet the 24-month timeframe?
- b. For example, can there be a phased opening of the casino first and then later non-gaming amenities and various other components of the project?

**A.248:**

**a. It is anticipated that the Commission will promulgate regulations on this topic.**

**b. Yes. An Application may contemplate a phased opening, in which the gaming area and ancillary entertainment services and non-gaming amenities open first, with remaining elements of the initial fully operational phase of the proposed Gaming Facility to open at a later date.**

**Applicants proposing a phased opening must provide a construction timeline as Exhibit VIII.C.20.a. and proposed date for the proposed Gaming Facility to open for gaming as Exhibit VIII.C.20.e. that specify that the proposed Gaming Facility will open for gaming before substantial completion of the initial fully operational phase. As specified in RFA Article VIII § C. 20. e., the Applicant must also provide a detailed description of what will open in each phase and the proposed opening date for each phase and/or what conditions each such opening date will be contingent upon.**

**To facilitate the Board’s consideration and determination, Applicants proposing a phased opening should present reasonable, detailed phasing plans that describe, along with the gaming area, which ancillary entertainment services and non-gaming amenities of the proposed Gaming Facility program the Applicant proposes to open simultaneously with the gaming area and within twenty-four (24) months after award of a License. The proposed construction timeline and phasing plan to open for gaming within twenty-four (24) months after award of a License should include reasonable contingencies for the major risks to the proposed date to open for gaming and the range of probable delays associated therewith that are identified in Exhibit VIII.C.20.e. of the Application.**



**Lastly, in addition to the proposed date to open for gaming, each Application must include in Exhibit VIII.C.20.e. the Applicant's commitment for a proposed outside date, notwithstanding any delays, for substantial completion of the initial fully operational phase of the proposed Gaming Facility.**

**Establish Qualifications for Certain Persons, Obtain and Maintain Casino Key Employee Licenses, Register Gaming Employees**

**Q.249:** a. Is the requirement to begin gaming operations within twenty-four (24) months an absolute/strict requirement or is it subject to force majeure?

b. What happens if the applicant is unable to open to comply within that twenty four (24) month period?

c. Does the ten-year license get extended for force majeure?

**A.249:**

**a. The Commission will interpret the 24-month timeline reasonably to provide for force majeure.**

**b. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1315.3 sets forth the consequences of failing to begin gaming operations within twenty-four (24) months following license award.**

**c. No.**

**Q.250:** Gaming operations are required by the Act and the RFA to be commenced within 24 months of award.

a. Does this require an Applicant to have each part of the proposed project in operation within such time frame?

b. Can the project have a phased opening provided that the gaming floor and support facilities are operational within 24 months of award?

**A.250:**

**a. No**

**b. Yes**

**Q.251:** Imposes an absolute deadline of 24 months to open.

a. does this reference opening the casino portion of the Project or the entirety of the Project?

b. What about a phased project?

c. Does the Commission anticipate the promulgation of standards for determining the good faith efforts of an Applicant to exclude circumstances beyond an Applicant's control?

**A.251: See answers to Question 249 and 250.**

**Q.252:** Can or will there be given any extension of the 24 months within which a location must commence gaming operations due to delays caused by the design, permitting and construction of required off-site infrastructure, such as those found in the referenced section?

**A.252: No.**

**Q.253:** Section XI (C) requires that the Licensee begin gaming operations within twenty-four months following license award.

a. Is License award the time of the announcement of the award, or is there a more formal event at a later date that will constitute "License Award"?

b. Is it sufficient that gaming operations actually begin within the 24 month period, even though other improvements related to the project may not be completed?

c. For example, would a hotel associated with the project also have to be open within that 24 month time frame?

**A.253:**

**a. See answer to Question 7.b.**

**b. Yes. See answers to Question 248 and 250.b.**

**c. No. See answers to Question 248 and 250.b.**

**Q.254:** a. When does the clock start on the two-year time limit to open after the receipt of the license?

b. When all licenses have been awarded or when each individual license is awarded?

**A.254:**

**a. See answer to Question 253.a.**

**b. The Commission anticipates award of all licenses at the same time.**

**Q.255:** Can minor amenities related to the project, but not integral to expanded gaming operations, be completed after the 2 year time period?

**A.255:** Yes. See answers to Question 248 and 250.b.

**Establish Qualifications for Certain Persons, Obtain and Maintain  
Casino Key Employee Licenses, Register Gaming Employees**

**Q.256:** "Each gaming employee of a Licensee must have a valid registration on file with the Commission." How will the employees register?

**A.256:** The employee registration process will be established pursuant to regulation.

**License Vendor Enterprises, License and Report on Junket Operators,  
Obtain Operation Certificate, Maintain Record of Agreements**

**Q.257:** a. Are new gaming product vendors able to submit for approval to provide goods in services in New York?

b. How long does this process take?

**A.257:**

**a. Yes, vendors are encouraged to offer new products for the gaming facilities.**

**b. The licensing process should be anticipated to last not more than three to six months.**

**Q.258:** "A Licensee must obtain an operation certificate in order to open or remain open to the public." How will the Licensee obtain the operation certificate?

**A.258:** The Commission will issue a Certificate of Operation once the facility has exhibited full readiness to open and operate.

## Enter Labor Peace Agreement

**Q.259:** Is there any standard for what it means to “attempt to represent gaming and hospitality industry workers in the State”?

**A.259: Yes. Applicants should review the various State-based gaming facilities and identify labor organizations that have engaged in organizing activity at such locations.**

**Q.260:** a. Does this section give the right to an Applicant to propose terms or to decline unreasonable terms in LPAs?

b. If an Applicant and a labor organization sign an LPA, is the Applicant permitted to apply (offer only an identical LPA) to all labor organizations?

c. Is Applicant required to sign disparate LPAs presented by different labor organizations?

**A.260:**

a. **Yes. A labor peace agreement is intended to be a negotiated document.**

b. **The applicable statute does not require uniformity.**

c. **The answer would be driven by the number of unions seeking to represent workers. All unions are not, by law, bound by the agreement of one.**

## Pay Annual Machine Table Fees, Pay Regulatory Investigatory Fee, Pay Additional Regulatory Costs, Pay Tax on Gaming Revenues Based on Zone and Region

**Q.261:** Will the Board establish standards from which to demonstrate need prior to assessing the Licensee for additional regulatory expenses? (Reference page 68)

**A.261: The Commission, not the Board, will provide an annual budget of commercial gaming expenditures as the basis for regulatory assessment. Licensees should anticipate direct billing for staffing levels adequate to assure twenty four-hour, 365 days-per-year coverage of the gaming operation, estimated to be not less than nine (9) full time employees at each gaming facility and their direct supervisors. The Commission receives no allocation of gaming revenues for administrative costs, so all administrative costs allocated to the commercial gaming program will be**

assessed annually on gaming licensees in proportion to the number of gaming positions at each gaming facility, per N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350. All Commission expenses are subject to review a part of the State's annual budget cycle.

**Retain Unclaimed Funds and Deposit in the  
Commercial Gaming Revenue Fund**

**Q.262:** Unclaimed cash is currently turned over to the police. Will this change?

**A.262:** Lost personal property, including cash, is required to be turned over to local law enforcement in accordance with the N.Y. Personal Property Law.

Unclaimed funds are addressed by N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1352, where funds, cash, or prizes forfeited from gambling activity must be transferred to the Commission for deposit into the Commercial Gaming Revenue Fund.

**Pay Racing Industry Support Payments**

**Q.263:** a. With respect to the payments outlined in Section XI Q – RACING INDUSTRY SUPPORT PAYMENTS, can you provide an example of how these payments will be calculated?

b. Specifically, will the amounts for purse support and amounts to breeders be calculated on a pooled basis across the state, or will the amounts be specific to each of Regions One, Two and Five?

**A.263:**

**a. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1355 sets forth the obligations to make racing support payments.**

**b. For gaming facility licensees that do not possess a pari-mutuel wagering license or franchise awarded pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Articles Two or Three, the obligations to make payments as required by § 1355.2 will be calculated by region.**

**Q.264:** In calculating any reduction in payments made by a VLT operator who is not awarded a gaming license, will there be any thought given to circumstances at the VLT facility that otherwise impact its revenues and related racing industry support payments (e.g., what if a building is damaged or destroyed or the facility decides to

reduce the number of VLTs or not replace older VLTs as would be generally done over time consistently with industry practice)?

**A.264: The Commission will consider all relevant factors in making its determination. It is not appropriate to specifically address this hypothetical situation.**

**Q.265:** a. Please identify by Region the “licensed racetracks” and the “video lottery gaming facilities” in Region One and Region Two.

b. What are the realized “purse support” payments made in 2013 by each video lottery gaming in such Regions?

c. What are the payments realized in 2013 from each video lottery gaming facilities in each region to the breeding and development funds?

d. If two licenses are awarded in a region, how will these payments be shared between the two licensees?

e. Under such a circumstance, will a licensee only be responsible for the payment of its share in the event the other licensee fails to pay its share?

f. Will the licensee(s) be relieved of this obligation if the licensed racetracks and/or video lottery gaming facilities in its region close or cease operating for any reason, including as a result of damage by casualty, a regulatory closure, or a voluntary closure?

g. How will gaming competition in surrounding states and regions be factored into a reduction in purse support of payments to the breeding and development funds generated by a video lottery gaming facilities in a region?

**A.265:**

**a. There is a licensed racetrack and video lottery gaming facility in Region One of Zone Two (Monticello Casino & Raceway). There is also one relevant licensed racetrack and a video gaming facility in Region Two of Zone Two (Saratoga Casino & Raceway).**

**b-c. The table below illustrates Calendar Year 2013 purse and breeding fund support payments by relevant video lottery gaming facility.**

Location	Facility	Purses	Breeding Fund
Zone 2, Region 1	Monticello Casino & Raceway	\$5,453,972	\$785,267
Zone 2, Region 2	Saratoga Casino & Raceway	\$13,257,060	\$1,994,935
Zone 2, Region 5	Tioga Downs Casino	\$4,558,752	\$744,897

d. It is anticipated that Commission regulations will address the issue of how payments required by N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1355 will be made in the event two gaming facility licenses are awarded in a region.

e. See answer to Question 265.d.

f. See answer to Question 265.d.

g. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1355 contains no provisions for consideration of gaming competition in surrounding states and regions.

**Q.266:** The Act essentially maintained payments to horsemen and breeder organizations at the “same dollar levels realized in 2013” as adjusted by the consumer price index. This level of financial support to racing and breeding does not appear to be tied to the ebbs and flow of the industry, particularly as it relates to the good faith obligations of race tracks to maintain 2013 levels of racing operations. This issue has a direct impact on the RFA process and individual Applications as the Act and the RFA require contributions from the racinos and/or the new casinos within a region to maintain the 2013 levels plus CPI. As a stark illustration, suppose a race track unilaterally decreased racing by 50percent in year 3 of a gaming facility's 10-year License and ceased racing operations in year 6 of the gaming facility License.

Will the Commission require racetracks within Regions 1, 2, and 5 to maintain 2013 levels of racing operations as a prerequisite to payment of racing support payments?

**A.266: No. Racetrack obligations to maintain racing are set forth in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 3.**

**Q.267:** a. If more than one Gaming Facility License is awarded in a Region, what methodology will be used to determine the pro rata contribution payable by each Licensee to satisfy the racing industry support payments described in RFA, Section XI.Q and § 1355?

In responding to this question, please take into account each of the following scenarios:

1. a racetrack location is awarded a Gaming Facility License and an applicant that does not possess either a pari-mutuel wagering license or franchise awarded pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article Two or Three is issued a Gaming Facility License;

2. a racetrack location is not awarded a Gaming Facility License but an applicant that does not possess either a pari-mutuel wagering license or franchise awarded pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article Two or Three is issued a Gaming Facility License; and

3. a racetrack location is not awarded a Gaming Facility License but two applicants that do not possess either a pari-mutuel wagering license or franchise awarded pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article Two or Three are issued Gaming Facility Licenses.

**A.267: See answer to Question 265.d. – f.**

**Q.268:** Will horse racing tracks have clear obligations to maintain existing levels of racing operations to support 2013 + CPI funding levels?

**A.268: The obligations of racetracks to maintain racing operations are set forth in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 3.**

**Q.269:** What level of maintenance of effort by the racino is required before support payments are due?

**A.269: The obligations of video lottery facilities to maintain operations are set forth in N.Y. Tax Law Article 34. As agents of the Commission's Division of the Lottery, video lottery gaming facilities cannot unilaterally make any changes to the gaming floor (e.g., the number of and types of machines) nor alter hours of gaming operation.**

**Q.270:** What is the time period for a licensee to pay Racing Support Payments?

**A.270: The statute does not sunset the time period for racing support payments. It is anticipated that Commission regulations will define the timing of payments.**

**Q.271:** If casino licenses are awarded in the same region to an Applicant with a VLT license and an Applicant that does not hold a VLT license, what is the non-VLT license holder's responsibility to the horsemen at the VLT licensed facility?

**A.271: It is anticipated that Commission regulations will address this issue.**



**Q.272:** a. Regarding Racing Industry Support Payments in the second paragraphs numbered 1 and 2, does the term "region", found in both paragraphs, used in the phrase, "in the region" refer to the term Region as defined at II of the RFA materials?

b. If not, how is "region" defined?

**A.272:**

a. Yes.

b. Not applicable.

### **Confirmatory Affidavit, Issuance of Licenses**

**Q.273:** Section XI.R, requires a confirmatory certification by the Applicant in a form approved by the Commission – Would the Commission consider a statement of recognition that the characteristics of a project change during planning and construction, and impose a standard of materiality within the spirit of the Application as the basis for the confirmatory affidavit?

**A.273: No.**

**Q.274:** Will the Board consider issuing an Applicant a Temporary License during the pendency of the background check review period?

**A.274: No.**

**Q.275:** When do you anticipate that licenses will be awarded?

**A.275: The Commission anticipates awards to be made in fall of 2014.**

**Q.276:** Will the licenses for all three regions be awarded together?

**A.276: See answer to Question 175.**

**Q.277:** How soon after selection will the winning bidders receive their licenses?

**A.277: The timing and award of a license is dependent upon an applicant meeting each of the licensure requirements set forth in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 13, including, without limitation, a more in-depth screening and background investigation into the suitability of the Applicant.**

**Q.278:** a. Does the selection of an Applicant by the Facility Location Board assure that Applicant will be granted a gaming facility license by the New York State Gaming Commission?

b. If not, please advise as to the expected process and timeline for review and decision by the New York State Gaming Commission.

**A.278:**

**a. No, an Applicant is required to be licensed by the Commission.**

**b. It is anticipated that the Commission will make its licensing decisions as soon as practicable following receipt of all necessary background information and supporting documentation.**

**Q.279:** Will all licenses be awarded at the same time?

**A.279:** See answer to Question 175.

### **LICENSE APPLICATION FORM**

**Q.280:** Article I, § C of the Gaming Facility License Application Form states: "All entries on this application, except signatures, must be typed or printed in block lettering using dark ink. The Commission will not review your application if it is illegible *or if you have modified any of the questions or preprinted information in this application.*" (Emphasis added.) Will the Board provide versions of the Application (and Background Investigation Forms) in a PDF "form filler" format?

**A.280: No, however please see answer to Question 52.a.**

### **MISCELLANEOUS**

**Q.281:** How does an applicant seek an advance determination that a Management Agreement between an Applicant and Manager satisfies the requirements of the Upstate New York Gaming Economic Development Act of 2013 and Section 1341.1(d) of the Destination Resort and Gaming Law?

**A.281: An Applicant may not seek an advance determination.**

**Q.282:** Can an applicant or the principals or primary shareholders of an applicant be awarded a Class III gaming license if they already hold significant interests in multiple other NYS gaming facilities? In Pennsylvania, individuals and companies are strictly limited in the interest they can hold across multiple gaming facilities

(capped at 133percent of one facility) so as to prevent said individuals or companies from possessing too much statewide control in the industry.

**A.282: Yes.**

**Q.283:** If an Applicant's proposed casino is proximate to a non-casino related development, can the Applicant incorporate the economic development benefits anticipated from the non-casino development into its application, particularly if a non-casino related developer intends to proceed regardless of the Applicant's licensing outcome?

**A.283: No.**

**Q.284:** If an applicant has no prior experience as a company in operating Class III gaming facilities, is an applicant still eligible to receive a NYS class III license?

**A.284: Yes.**

**Q.285:** a. Would an existing NYS racino that applies for a Class III casino license on another site be allowed to keep their existing horse racing track while removing the slot machines from the site?

b. If so, does the loss of revenue at the racino in any way count against the revenue generated at the new Class III facility?

**A.285:**

**a. Yes. The racing facility license is not predicated upon the holding of a video lottery gaming facility license.**

**b. No.**

**Q.286:** Are there any plans, or discussions underway, to split future casino revenues with the Racing industry and/or any other sources other than funding for education and property tax relief?

**A.286: This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

**Q.287:** If the site has access to the water, will the Commission allow gaming on a docked ship, owned by the applicant?

**A.287: An Applicant could submit such a proposal in its site plan. A single gaming facility on a docked ship would be permissible. If the Applicant**

**plans a land-based gaming facility, a second facility at the location would not be permitted on a docked ship.**

### **Reciprocal Exclusivity / Buffer Zones**

**Q.288:** A stable gaming landscape and market would appear to be a common goal of state government and those participating as Applicants in this RFA process. The state has granted exclusivity to certain Native American tribes in Regions 3, 4 and 6. Regions 1, 2 and 5 have no similar exclusivity provisions from expanded tribal gaming. Economic models are most reliable when they can accurately forecast future gaming development. As such, will the Commission consider as a component of a gaming facility License, granting an area of exclusivity within the defined Regions in the statute and outside of the defined Regions, including counties with tribal exclusivity (Regions 3, 4 and 6), in an effort to stabilize casino gaming in the state once the Gaming Facility Location Board has selected and recommended sites to the Commission. For example, would the Commission grant a license in Regions 1, 2 or 5 and agree to not issue any necessary approvals for the siting of future casinos in "County X" in Regions 3, 4 or 6 in an effort to maintain a stable gaming market (*i.e.* a buffer zone) from future tribal casino expansion in close proximity to a non-tribal casino?

**A.288: No.**

### **Exclusivity**

**Q.289:** Under the Act, the Mohawk, Oneida and Seneca tribes were granted certain multi-county exclusivity regions within Zone 2. While private sector commercial casinos are prohibited from operating gaming facilities in Regions 3, 4, and 6 due to exclusivity granted by the State, it does not appear that the law reciprocates and limits tribes from competing for a License in Regions 1, 2 or 5. Moreover, State law would not appear to prevent tribes from pursuing casino opportunities through the Bureau of Indian Affairs and the Department of the Interior. Finally, while the legal landscape as it relates to quantity and limitation on the number of New York state issued licenses appears predictable, there is no current protection from new Indian casino facilities in Regions 1, 2, and 5.

Will the Commission issue a Gaming Facility License that includes exclusive rights to gaming within the region, specifically including exclusivity for the License holder with protection against expansion of Indian gaming in the region?

**A.289: See answer to Question 288.**

**Q.290:** Will the Board and Commission consider granting a casino license accompanied by an exclusivity agreement within the region related to future Indian gaming?

**A.290:** See answer to Question 288.

### **VLT Facilities**

**Q.291:** Will Applicants that possess a video lottery gaming license under Tax Law § 1617-a be scored on accretive revenues or total revenues?

**A.291:** Total revenues.

**Q.292:** May an Applicant that possesses a video lottery gaming license under Tax Law § 1617-a also possess a gaming facility license under Article 13 of the Racing Law?

**A.292:** Yes, at a location separate from the video lottery gaming facility.

**Q.293:** May a Licensee that possesses a video lottery gaming license under Tax Law § 1617-a and a gaming facility license under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 13 operate VLTs, slot machines and table games within a Gaming Facility, as defined by § 1301(23) and Section II of the RFA?

**A.293:** See answer to Question 292.

**Q.294:** What limits will the Board/Commission place upon racing industry support payments made by a Licensee to horsemen and the applicable breeding and development funds, as required under Section XI.Q of the RFA?

**A.294:** The Commission will be guided by N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1355.

**Q.295:** Will the Board/Commission implement any maintenance requirements for VLT licensees before the racing industry support payments are due?

**A.295:** See generally the answer to Question 263.

**Q.296:** If a Racino is awarded the license:

a. How would the transition to Class III gaming affect the day to day operations as it relates to MGAM and the existing VLTs?

b. How quickly would the State expect the transition to occur?

c. Would the tax structure remain in place until the transition?

**A.296.**

**a. If a video lottery gaming facility is awarded a commercial casino gaming license, video lottery gaming will be required to cease prior to conversion. All video lottery equipment, which is owned by the Commission's Division of the Lottery, would be removed by the Lottery's vendors, unless the new licensee directly arranged to purchase the equipment.**

**b. Applicants should propose the timing for an anticipated transition.**

c. Yes.

### **Slot Machines & Video Lottery Terminals**

**Q.297:** Currently, the State and licensed operators maintain thousands of VLT machines in facilities throughout upstate New York—specifically within Regions 1, 2 and 5. Published reports indicate that certain existing VLT facilities will seek a Gaming Facility License under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 13.

a. May a VLT license currently allowing for operations at a site/location also qualify as an Applicant to obtain a License to operate slot machines within a gaming facility authorized under Article 13 of the Racing Law?

b. If so, may a facility operate both VLT and slot machines within the same site/location?

**A.297:**

**a. See answer to Question 292.**

**b. No.**

**Q.298:** Will a single gaming facility be permitted to host both VLTs and Class 3 slot machines?

**A.298: See answer to Question 292.**

**Q.299:** The March 31, 2014 RFA at page 12 and page 71, does not reference an Exhibit VI.M. Is an Exhibit M intentionally omitted?

**A.299: Yes, omission of RFA Article VI § M. was intentional.**

**Q.300:** The RFA provides that the Board reserves the right to answer or refrain from answering questions in its discretion:

- a. will all questions and answers be published for public review; and
- b. will all questions, even if the Board refrains from answering, be published for public

**A.300:**

**a. Yes.**

**b. Yes.**

**Q.301:** Does the term "Gaming Facility" include non-gaming amenities which will not be owned or operated by the Applicant or the Manager but (a) are to be located on real property that is a part of the Project Site, (b) are integral to the development scheme for the proposed project as a whole, and (c) the third party operator is contractually obligated to develop and operate such non-gaming amenities if a License is awarded to the Applicant?

**A.301: Yes, the Gaming Facility includes elements of the proposed building program that are to be built or operated on the project site but are to be developed, operated or managed by an entity other than the Applicant or Manager and are primarily intended for the use and enjoyment of gaming patrons. See RFA Article VIII.C.7.c. and VIII.C.10.a.**

**Q.302:** Will the Board provide recommendations or forms that specify the formatting for the requisite:

- 1. Business Plan;
- 2. Marketing Plan; and
- 3. Financial Forecast?

**A.302: Applicants have discretion as to the formatting of the qualitative five (5) year business plan to be provided pursuant to RFA Article VIII § A. 5. the marketing plans to be provided pursuant to RFA Article VIII § B. 9.**

**The Board anticipates Exhibit VIII.A.5. will be a narrative discussion supplemented by appropriate quantitative references and/or tabular**

disclosure of relevant market/revenue projections, pro-forma financial statements, and financing arrangements. The narrative discussion should substantiate the bases of projections and estimates, including, for example, by reference to comparable projects or standards in the gaming or hospitality industry. Material assumptions should be identified and their reasonableness substantiated. RFA Article VIII § A. 5. outlines the specific minimum required contents of the business plan.

The Board anticipates that Exhibits VIII.B.9.a., VIII.B.9.b. and VIII.B.9.c. will be a narrative discussion of the Applicant's marketing plans. RFA Article VIII § B. 9. a., VIII § B. 9. b. and VIII § B. 9. c. outline the specific contents required in the respective Exhibits.

Applicants must provide the detailed financial forecasts requested in RFA Article VIII § A. 4. in a tabular format that facilitates comparison across the periods and scenarios requested by, for example, using consistent revenue lines, expense categories and asset and liability classes across all periods and scenarios. Applicants have discretion what particular revenue lines, expense categories and asset and liability classes are material, but the Board expects Applicants to provide sufficient detail as to allow a reasonably comprehensive understanding of the projected results of operations and financial condition of the proposed Gaming Facility. On the pro-forma statements of results of operations, for example, the Board typically would expect Applicants to include, as applicable and among other potential items, slot, table and card room gaming revenues; free play or promotions; food & beverage revenue; hotel (room) revenue; convention & catering revenue; entertainment venue revenues; compensation and benefits expense; capital investment, interest and financing expense; and gaming and other taxes.

**Q.303:** If a current licensee intends to make improvements to its existing facility that are unrelated to full scale gaming (VGM and/or track related), should that be included in the Application?

**A.303:** Yes.

**Q.304:** Are there standards and procedures for obtaining a waiver of any applicable licensing or qualification requirements for institutional investors and other institutional financing sources?

**A.304:** See answer to Question 26.

**Q.305:** Can a party act as both a gaming equipment supplier and an operator?



**A.305: Yes.**

**Q.306:** Is there any limit on the number of gaming positions allowed per facility?

**A.306: No.**

**Q.307:** Will the Commission have a licensing waiver process for institutional investors beneficially owning more than 5percent of a publicly traded company?

**A.307: See answer to Question 26.**

**Q.308:** Will the horse racing purse subsidy obligation be net of any impacts from out-of-state competition and general market conditions?

**A.308: No.**

**Q.309:** If a racetrack is closed for whatever reason, thus no longer providing a venue to race, what happens to the subsidy obligations (both purse enhancement and breeding funds)?

**A.309: This scenario poses a question that would require a legislative answer.**

**Q.310:** Certain application exhibits, such as VIII-A-3, VIII-A-4, VIII-B-4 and VIII-B-7-a ask for financial, tax, employment and other projections. In order to allow the Commission to make apples to apples comparisons between applicants, we ask that the Commission consider providing standardized templates that applicants would complete for some or all of these requested projections. Our recent experience has shown that other jurisdictions have asked for additional information in a standardized format from all applicants after original applications had been submitted.

**A.310: The Board anticipates RFA Addenda in the form of templates to be populated by Applicants. Anticipated are:**

**1. In Exhibit VIII.A.3., Applicants will be required to submit a populated template of gaming revenues and visitation for the first ten (10) years after opening for gaming on a high-, average- and low-case basis.**

**2. In Exhibit VIII.A.4., Applicants will be required to submit populated templates for financial forecasts in the form of pro-forma statements of EBITDA and net income, balance sheets and calculations of debt-to-equity ratio and cash flows for the first ten (10) years after opening for gaming on a high-, average- and low-case basis.**

**3. In Exhibit VIII.B.4., Applicants will be required to submit populated templates for estimated State, county and local tax revenue (e.g., gaming, sales, income, real estate, hotel, entertainment and other taxes) for the first five (5) years of operations on a high-, average- and low-case basis.**

**These Addenda will be timely released. Applicants are encouraged to begin developing responsive materials to RFA Articles VIII § A. 3., VIII § A. 4. and VIII § B. 4. promptly, as the Board does not anticipate extension of the Application submission deadline.**

**Notwithstanding the expected provision of the aforementioned templates, Applicants are permitted to include materials otherwise responsive to RFA Articles VIII § A. 3., VIII § A. 4. and VIII § B. 4. For example, Applicants are permitted to present the requested information in an alternative form, to explain how the information requested in the templates may not be representative of the proposed Gaming Facility or to present additional responsive information that would assist the Board in reviewing the Applicant's proposal for a Gaming Facility.**

**Q.311:** Saratoga Springs does not seem likely to grant a local support resolution, yet is home to two important horse racing tracks. Is the Commission concerned that a full casino elsewhere in the region will have a negative impact on horse racing, which it also regulates?

**A.311:** This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.

**# # #**