



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

**Round 1 - Questions and Answers**

**August 30, 2023**

**Applicant Instructions**

**Q.1:** Please clarify the format criteria for submission, and address whether a combination of 8.5 x 11 and 11 x 17 page sizes are acceptable?

**A.1:** The preferred size for narrative responses is 8.5 x 11 inches. Data tables may be submitted utilizing 11 x 17 inch paper, when the size of the table necessitates such page size. Drawings may be submitted in a larger format, as a supplemental attachment, if detail requires such larger size. Landscape positioning may be utilized, as content necessitates.

**Q.2:** How and when will an applicant be provided access to the file transfer system?

**A.2:** Entities that intend to apply must request access, no earlier than 30 days prior to the RFA Return Date but no later than 14 days prior to the RFA Return Date, to the file transfer system through the N.Y.S. Gaming Commission's (Commission's) designated point of contact. Once the system is open, potential applicants will be provided instructions for submission.

**Q.3:** May applicants assume that unless otherwise specified, data should be provided by calendar year?

**A.3:** Unless otherwise specified, data must be submitted on a calendar year basis.

**Q.4:** If the Return Date or Supplement Return Date are days on which New York State observes Eastern Standard Time, are the deadlines 4 p.m. Eastern Standard Time?

**A.4: Submissions will be due by either 4 P.M. Eastern Standard Time or Eastern Daylight Time, dependent on which is being observed on the scheduled RFA Return Date. The final schedule, once established, will specify either EST or EDT.**

**Q.5:** How do Applicants access the Commission's FTP server as referenced on page 11?

**A.5: See answer to Question 2.**

**Q.6:** Are there maximum size/format requirements for the required hard copy submittal required on page 11 as some drawings/documents are better presented larger than 8.5x11.

**A.6: See answer to Question 1.**

### **Background Investigations**

**Q.7:** If an applicant and its associated personnel hold current Commission-issued video lottery gaming licenses, will they be required to submit Commission commercial casino applications and associated materials?

**A.7: Yes. The application processes for video lottery and commercial casinos are separate and distinct. Accordingly, historic video lottery application materials cannot be accepted in place of a commercial casino license application. Each applicant and its associated personnel will be required to submit new commercial casino applications and associated materials, including new fingerprint submissions.**

**Q.8:** For current employees and others who have filed a Multi Jurisdictional Personal History Disclosure Form and New York Supplemental Form and are currently licensed in connection with an operating VLT facility, may such individuals rely on the prior submissions or do a new set of forms need to be filed?

**A.8: No. They may not rely upon prior submissions. See answer to Question 7.**

**Q.9:** If an applicant and its associated personnel hold current Commission-issued commercial gaming licenses, will they be required to submit new applications?

**A.9: An applicant holding a valid Commission-issued commercial casino license may be permitted to submit an affidavit confirming no substantial change from time of original application, dependent upon the specifics of the license held. The Commission reserves the right to request additional information when necessary. Associated personnel holding a valid Commission-issued commercial casino license will not be required to obtain an additional license so long as such current license is for the same or higher level as the work to be performed.**

**Q.10: At what point may requests for waiver or exemption from licensing be submitted to the Commission?**

**A.10: The Commission will commence the process of reviewing waiver and exemption requests immediately following the RFA Return Date and notifying applicants upon determination.**

**Q.11: At what point will a decision regarding waiver and exemption requests be made?**

**A.11: See answer to Question 10.**

**Q.12: How should a request to waive disclosure requirements for certain qualified institutional and other passive investors be submitted?**

**A.12: The form may be accessed at this [link](#).**

**Q.13: The RFA indicates that the Commission may, in its discretion, waive disclosure requirements for certain qualified institutional and other passive investors (as those terms are defined in the regulations) “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, an Operator or any affiliated companies thereof.”**

**A.13: No question appears to have been stated.**

**Q.14: With respect to (i) lenders that are banks making loans that satisfy the conditions set forth in 9 NYCRR § 5301.4(a)(3)(i)-(iii), and (2) qualified institutional investors (including qualified institutional buyers as defined in regulations of the United States Securities and Exchange Commission) as defined in 9 NYCRR § 5300.1(t) acquiring debt securities of the Applicant, will the Commission require a formal waiver request, or will the Gaming Facility Location Board (GFLB) clarify**

through answers to questions or regulations that such lenders are exempt from the background investigation requirements and that no application for waiver will be required?

**A.14: See answer to Question 10.**

**Q.15:** With respect to Question 63 of the Multi Jurisdictional Personal History Disclosure Form, what is a “contingent interest” in real estate?

**A.15: The customary and general use of this term applies.**

**Q.16:** With respect to Question 67 of the Multi Jurisdictional Personal History Disclosure Form, what is meant by an “indirect” interest in an asset?

**A.16: The customary and general use of this term applies.**

**Q.17:** With respect to Question 67 of the Multi Jurisdictional Personal History Disclosure Form, what is meant by a “contingent” interest in an asset?

**A.17: The customary and general use of this term applies.**

**Q.18:** Are individuals who are required to submit a Multi-Jurisdictional Personal History Disclosure Form and a New York Supplemental Form required to submit fingerprints by the Return Date?

**A.18: Yes.**

**Q.19:** Must Multi-Jurisdictional Personal History Disclosure Forms and a New York Supplemental Forms be submitted with the RFA response?

**A.19: Yes.**

**Q.20:** If fingerprints are required to be submitted at the same time as the background investigation forms (i.e., the Personal History Disclosure Form and New York Supplemental Form), will the GFLB and/or Commission issue guidance on how fingerprints should be submitted?

**A.20: Instructions on the submission of fingerprints will be provided.**

**Q.21:** Will applications and related disclosure forms be required for Native American tribal council members, officers or administrators of a Tribe that is a 25+ percent indirect owner of an Applicant?

**A.21: Yes, unless an exemption is granted pursuant to 9 NYCRR § 5301(4). An applicant may submit response materials accompanied by a request for filing exemption.**

**Q.22:** Will applications and related disclosure forms be required for Native American tribal council members, officers or administrators of a Tribe that is a 100 percent indirect owner of an Operator?

**A.22: Yes.**

**Q.23:** Must hard copies of Multi-Jurisdictional Personal History Disclosure Forms and a New York Supplemental Forms be submitted?

**A.23: Yes, as the Applicant Instructions on page 11 requires.**

**Q.24:** How are key employees determined?

**A.24: See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law (PML) §§ 1301(8) and 1323.**

**Q.25:** Are ground lessors and its officers, directors and owners required to complete and submit Background Investigation Forms?

**A.25: Any determination on the requirements of a specific vendor to be licensed or register with the Commission is dependent upon the specific facts and circumstances of the relationship between the vendor and the Applicant.**

**Q.26:** Are Background Investigation Forms required to be submitted by the initial Return Date?

**A.26: Applicants should refer to the instructions concerning the submission of background information, which may be found on page 18 of the RFA.**

**Q.27:** Does the requirement that an authorized signatory for each Applicant or Operator, and direct or indirect owner of an Applicant or Operator on the waiver,

release, covenant not to sue and indemnification and waiver of § 1311 rights apply to passive investors (e.g., public companies or private equity portfolio companies) or only to those which directly or indirectly own 5 percent or more of the Applicant?

**A.27: The requirement applies to passive investors.**

**Q.28:** When will the GFLB or Commission begin review of the Background Investigation Forms?

**A.28: The Commission will commence the process of reviewing individual and entity Multi-Jurisdictional and New York Supplemental Forms immediately following the RFA Return Date and identifying deficiencies and additional information requirements. This process will be limited to a procedural review to allow for evaluation upon completion of the Community Advisory Committee (CAC) approval. The GFLB will not evaluate licensing materials.**

**Q.29:** Please advise as to the timing of when the Background Investigation Forms will be reviewed by the GFLB and/or Commission.

**A.29: See answer to Question 28.**

**Q.30:** Will the GFLB consider extending the date for filing of Background Investigation Forms to the Supplement Return Date to ensure information provided is not “stale” when reviewed?

**A.30: No. Background Investigation Forms must be submitted at time of RFA Return Date. Applicants shall continue to update any changes to submissions as required in the Continuing Duty to Update Application section on page 8 of the RFA.**

**Q.31:** May the Applicant include a statement of facts in its Application as to why it believes any particular qualified institutional and other passive investors will not influence or affect the affairs of an Applicant, an Operator or any affiliated companies thereof?

**A.31: Yes, an Applicant may provide a statement of facts in support of an Application for Waiver.**

**Q.32:** For entities (which are not publicly held companies) that are required to be disclosed in the ownership chart and identified by name and business address as 5

percent or more owners, and that have diffused ownership by many passive investors (e.g., pension funds and private equity funds), may disclosure be limited to owners owning 5 percent or more of such entities similar to the disclosure required for publicly held companies?

**A.32: Generally, the disclosure of ownership for entities owning a five percent or greater interest in a licensee will also be limited to those having a five percent or greater interest in that entity. However, specific determinations on disclosure are fact specific and will be determined based on the circumstance.**

**Q.33:** For the required disclosure of organizational documents and other information, is the term “Applicant’s owners” limited to any person or entity that has a direct or indirect ownership interest in the Applicant equal to or greater than 5 percent, so that the term “Applicant’s owner” is consistent with the term "Applicant Parties"?

**A.33: The use of the term “Applicant's owners” is incorrect. That sentence should read “Submit the following documents that apply to the Applicant Party, excluding Casino Key Employees:”**

**Q.34:** For Financing Sources which an Applicant anticipates will seek a waiver from background investigation requirements as institutional investors or lenders, may an Applicant omit the detailed submissions?

**A.34: The inquiry misunderstands the purpose of the document requirement. The purpose of these inquiries is to ensure the financial stability of the financing entities for the project; therefore, the information must be provided.**

**Q.35:** If the GFLB or Commission disagrees with the self-identified ownership or affiliates required to submit an Application form, how will such determination be communicated?

**A.35: Commission staff will notify Applicants on a rolling basis as deficiencies are discovered and determinations are made.**

**Q.36:** If additional Application forms are demanded, how long will an applicant have to collect and/or submit the required documentation?

**A.36: Reasonable time will be provided to the Applicant, based on the specifics of the additional requested documentation, provided the submission of original information appears to have been made in good faith.**

**Q.37:** When will the GFLB or Commission make a determination of persons and entities qualifying as the Applicant and or Related Parties?

**A.37: Commission staff will notify Applicants on a rolling basis as deficiencies are discovered and determinations are made; provided that the Applicant has made a good-faith effort in its original submission in determining and identifying related parties who must submit background investigation forms.**

**Q.38:** How should present communications regarding scope of background investigations be related to the GFLB or Commission?

**A.38: All questions must be submitted through the Permissible Contacts.**

**Q.39:** Is the information contained on Gaming Facility License Application Forms, Multi-Jurisdictional Personal History Disclosure Forms and New York Supplemental Forms kept confidential?

**A.39: Gaming Facility License Application Forms, Multi-Jurisdictional Personal History Disclosure Forms and New York Supplemental Forms will be kept confidential to the extent permitted by New York State's Freedom of Information Law.**

### **Benefits of the Site Location**

**Q.40:** If ownership or acquisition of land is required 60 days after a "license has been awarded", how can an applicant illustrate it has satisfied all minimum license thresholds as a pre-requisite to being licensed?

**A.40: Applicant must submit a binding commitment from the landowner to sell or lease the property to the Applicant that will close within 60 days of the license award.**

**Q.41:** For purposes of providing "A description of all ownership interests in the land for the past 20 years, including all easements, options, encumbrances, and other



interests in the property”, will the GFLB accept a title report in satisfaction of the Applicant’s production obligation regarding the Applicant’s interest in the land?

**A.41: Yes, provided that the title report is accompanied by a certification that the land is not optioned for the future.**

**Q.42:** May a master plan with multiple adjacent properties to the Application site be acceptable for the purposes of illustrating site development?

**A.42: Yes, to the extent that the plan clearly distinguishes between activity occurring on the Applicant's site and that on adjacent properties.**

**Q.43:** If a proposed gaming facility is contemplated as part of a larger phase development or entertainment district, should the master plan depict the entirety of the contemplated development?

**A.43: Yes. Also, see answer to Question 42.**

**Q.44:** If an Applicant intends to lease the location site land under a triple net lease arrangement, will the landowner require a license?

**A.44: Generally, no, unless the landowner's compensation is contingent on the performance of the facility. But see PML § 1341(1) for statutory restrictions on compensation.**

**Q.45:** If an Applicant leases the location site land, when would the landowner be required to file its Application documentation?

**A.45: Unless the landowner also has an ownership interest in the Applicant, a vendor registration, if determined applicable, would not be required until an award of a license.**

**Q.46:** For purposes of the requirements of Location Details and Environment, are Applicants expected to study the existing underground subway and provide engineering recommendations?

**A.46: No.**

**Q.47:** What level of detail is expected to be provided in the Supplement Return Date submission regarding the master plan, phasing, analysis of the suitability of the proposed Project Site, etc.?

**A.47: Applicants are encouraged to submit the most detailed information possible. Failure to provide substantial detail may not provide the GFLB with a full and complete understanding of a proposal.**

**Q.48:** What level of detail is expected to be provided in the Supplement Return Date submission regarding “the electricity, sewer, water, and other utility improvements needed to adequately serve the Gaming Facility Site”?

**A.48: Applicants are encouraged to submit the most detailed information possible. Failure to provide substantial detail may not provide the GFLB with a full and complete understanding of a proposal.**

**Q.49:** Has the GFLB established a method to reasonably compare projects involving publicly owned land versus those projects involving privately held land?

**A.49: In its deliberation and review, the GFLB will take into account all aspects of an application.**

**Q.50:** Given the expected length of the New York City (NYC) zoning process, will projects requiring local land use approvals be prejudiced compared to projects that do not require a similar process?

**A.50: No.**

**Q.51:** Can the GFLB further define “recapture rate” and the methodology that the Applicant should follow in making calculations related to “recapture rate”?

**A.51: Although the methodology of providing this information is at the Applicant's discretion, the recapture rate should detail the level of New York residents leaving the State to gamble, as well as the amount the Applicant believes its project will counter such activity.**

**Q.52:** Would the GFLB consider ease of commute or median commute as a factor when evaluating Market Access?

**A.52: In its deliberation and review, the GFLB will take into account all aspects of an application.**

**Q.53:** If a planned community development is proposed, must it be on the same site as the proposed gaming facility?

**A.53: No. However, to remain relevant to the casino application, ancillary development must be reasonably proximate to a proposed gaming facility.**

**Q.54:** Page 39 requires data related to infrastructure, are all of these to be included by the return date or supplement return date?

**A.54: The information referenced on page 39 must be submitted by the Return Date.**

**Q.55:** Should all topics for the Site Location and Recapture Rate be included in Location Details, or should each be a separate exhibit?

**A.55: All relevant information shall be submitted within .LocationDetails and .MarketAnalysis, respectively.**

### **Capital Investment**

**Q.56:** What detail of design information must be provided in the initial Application?

**A.56: The use of the word "initial" in this question is misleading. An Applicant shall submit a complete, detailed application by the RFA Return Date.**

**Q.57:** What will be allowed to be submitted after the RFA deadline?

**A.57: In addition to an Applicant's continuing duty to update its application per page 8 of the RFA, submission material related to tax rate, identified good-faith errors and/or omissions that have been rectified, and all materials required at the Supplement Return Date, per page 57 of the RFA, should be submitted.**

**Q.58:** What methodology will be used in determining a discount percentage for private investments made prior to April 9, 2022?

**A.58: In its deliberation and review, the GFLB will take into account all aspects of an application.**

**Q.59:** Will the total investment be required to be the same for all successful Applicants?

**A.59: No. Beyond the minimum requirement, an Applicant has the discretion to propose the investment appropriate for its project.**

### **Community Advisory Committees**

**Q.60:** When will the CAC be formed?

**A.60: No earlier than the RFA Return Date.**

**Q.61:** At what point will the CAC be appointed?

**A.61: See answer to Question 60.**

**Q.62:** Is there an expectation that the CAC process should be underway with appointment members within a pre-determined amount of time following the RFA submission?

**A.62: Further guidance concerning the CAC process will be issued.**

**Q.63:** If a quorum of CAC members has been qualified, can the CACs commence or need they wait until all members are named?

**A.63: See N.Y. General Construction Law § 41.**

**Q.64:** Page 63 of the RFA says that “[f]or each application submitted, a CAC will be created to review the application” (emphasis added). If there are issues or delays with the nomination or qualification of one or more of the CAC members, will the CAC process nevertheless proceed?

**A.64: Further guidance concerning the CAC process will be issued.**

**Q.65:** Page 63 of the RFA says that “[f]or each application submitted, a CAC will be created to review the application.” What is the anticipated timeline for the solicitation from public officials of nominees to serve on the CAC for each Application?

**A.65: Further guidance concerning the CAC process will be issued.**

**Q.66:** Will the CAC be subject to time limitations to undertake their work or will it be open-ended?

**A.66: Further guidance concerning the CAC process will be issued.**

**Q.67:** How will the CAC process be communicated?

**A.67: All CAC information will be accessible through a link on the GFLB website.**

**Q.68:** Will a record of CAC proceedings become part of an Applicant's Application?

**A.68: Only the determination of a CAC to approve or disapprove of an application will be part of the Applicant record.**

**Q.69:** How will appointments be made to the CACs?

**A.69: Appointments to the CAC will be made pursuant to PML § 1321-d.**

**Q.70:** Is there any prohibition of a CAC member serving on multiple CACs?

**A.70: No.**

**Q.71:** For stakeholders with appointments to multiple CACs within their jurisdiction, will the appointing stakeholder be required to appoint one individual to all CACs, or will they have the ability to appoint multiple individuals, one for each?

**A.71: See answer to Question 70.**

**Q.72:** May a CAC recommend more than one applicant?

**A.72: Yes.**

**Q.73:** When is the CAC consultant expected to be named?

**A.73: The CAC consultant is expected to be named prior to the RFA Return Date.**

**Q.74:** What is the scope and manner of application changes that can be submitted following the CAC process?

**A.74: Amendments to mitigate the concerns raised through the CAC process but do not materially change the Applicant's RFA submission will be permitted.**

**Q.75:** An Applicant has a continuing duty to update its Application to reflect any changes (p. 8), but the GFLB reserves discretion to accept the update as an amendment. If an Applicant makes changes in its Application as a result of consideration by, communications with and approvals by the CAC, will those updates which result from the CAC be accepted?

**A.75:** Provided that the Applicant has demonstrated a good-faith effort to submit a full and complete Application, the GFLB will exercise discretion to accept any update as an amendment.

**Q.76:** What is the process for submitting material changes after receiving guidance from the CAC?

**A.76:** See answer to Question 75.

**Q.77:** Are there any restrictions to specific exhibits or materials that can or cannot be modified after CAC meetings?

**A.77:** See answer to Question 75.

**Q.78:** Is an Applicant expected to provide multiple hard copies to their respective CAC?

**A.78:** No. Applicant materials will be distributed by the GFLB to the respective CACs.

**Q.79:** How many votes may a CAC conduct?

**A.79:** Per PML § 1321-d(3)(f), a two-thirds vote of a CAC shall conclude a CAC's role in the selection process.

**Q.80:** Given that PML §§ 1321-d(2)(a) and 1321-d(3)(f) require all applicants to “present evidence of compliance and approval with all required State and local zoning requirements” following CAC approval, but prior to GFLB review of a CAC approved application, does it follow that the GFLB will not consider, “score,” or take any official action on any application approved by a CAC until all applicants whose applications have been approved by a CAC demonstrate achievement of this prerequisite to GFLB review?

**A.80:** Please see the June 13, 2023 update on the GFLB website.

**Q.81:** Please identify specifically what is required to be presented by the CAC Stage 2 “zoning completion deadline” in light of Requirements Before Board Review; Evidence of Compliance with Zoning Requirements, at p. 26, which expressly provides for zoning compliance following submission of the Supplement, in that the Supplement is only required to include descriptions of:

- a. The applicable zoning designation for the Project Site;
- b. Any current local zoning approvals;
- c. Any required (i.e., yet to be obtained) rezonings or variances;
- d. Any (current or required future) land-use approvals;
- e. A detailed explanation of the status of any pending request for any of the foregoing;
- f. A detailed explanation of the status of any pending request for any of the foregoing;
- g. A specific schedule of applications for zoning approvals and anticipated dates for approvals not yet obtained; e.g., A statement indicating whether “commencement of zoning approvals is anticipated only after the Supplement Return Date”; and
- h. A description of any required State and/or local permits or special use permits, and of “the estimated dates by which the Applicant will obtain the permits.”

**A.81: A vote approving the Application.**

**Q.82:** The RFA requires that “by the supplement return date” both Evidence of Public Support and Evidence of Compliance with Zoning Requirements “must take place for the Board to commence an official review.” The timeline provided in the RFA contemplates that the CAC approval process takes place before an applicant submits its proposal to local zoning authorities: How much time does the GFLB contemplate the CAC approval process taking?

**A.82: See answer to Question 66.**

**Q.83:** The RFA requires that “by the supplement return date” both Evidence of Public Support and Evidence of Compliance with Zoning Requirements “must take place for the GFLB to commence an official review.” The timeline provided in the RFA contemplates that the CAC approval process takes place before an applicant submits its proposal to local zoning authorities: How much time does the GFLB contemplate between the CAC vote and the applicant’s submission demonstrating evidence of compliance with zoning requirements?

**A.83: This question misunderstands the timeline of the RFA. Applicants are encouraged to seek local zoning approval and CAC approval concurrently, rather than the CAC process awaiting zoning approval.**

**Q.84:** What is the deadline for an Applicant to provide evidence of public support and compliance with zoning requirements?

**A.84:** Assuming that "providing evidence of public support" references the CAC process, please see our answer to Question 66 above. Zoning requirements must be completed prior to review by the GFLB, the timeline of which has not yet been established.

**Q.85:** What materials can be presented to the CAC independent of the application submitted to the GFLB?

**A.85:** Each CAC will decide what materials are allowed to be submitted. However, the GFLB will grade only Applications as submitted to the GFLB, not additional materials submitted through the CAC process.

**Q.86:** Will the restricted communications period apply to the CACs?

**A.86:** Yes. See RFA page 11.

**Q.87:** What happens in scenarios where an Applicant must interact with a member of the CAC in the due course of being an existing operator and/or business entity in New York?

**A.87:** No CAC has yet been appointed. The GFLB will not entertain hypothetical scenarios. The GFLB will address this concern if the issue happens to arise.

**Q.88:** After the CAC for an Application is empaneled, does the restriction on contact with a person in a Governmental Entity (and the all-caps paragraph on p. 11), other than the designated contact person, restrict an Applicant from communicating with the members of the CAC, the CAC consultant or any other advisors or consultants to the CAC regarding the Applicant's application and the CAC's consideration thereof?

**A.88:** See answer to Question 86.

**Q.89:** If the restrictions on contact apply to members of the CAC, the CAC consultant or any other advisors or consultants to the CAC, what process will exist for an Applicant to discuss with the members of the CAC their questions and any potential concerns regarding the Application?



**A.89: See answer to Question 86.**

**Q.90:** Will there be an opportunity for confidential and off-the-record dialogue between an Applicant and the CAC?

**A.90: See answer to Question 86.**

**Q.91:** Will the Applicant be required to designate a point-of-contact for the CAC?

**A.91: Establishing a point-of-contact for an Applicant is at the discretion of each CAC.**

**Q.92:** Will the CAC receive the Applicant's RFA Submission?

**A.92: See answer to Question 93.**

**Q.93:** Will the CAC receive the Applicant's unredacted RFA Submission?

**A.93: Yes, however all personally identifiable information will be redacted.**

**Q.94:** The RFA states that "the Commission will issue separate guidance regarding the CAC process" Will CAC members be given full, unredacted copies of the application?

**A.94: See answer to Question 93.**

**Q.95:** On page 4, the RFA states, "The CAC will promptly receive a complete copy of the associated Application materials." a. Will the Community Advisory Committee (CAC) be provided all information including identified as confidential and exempt from disclosure under FOIL?

**A.95: See answer to Question 93.**

**Q.96:** How will the GFLB or Commission ensure a received application is complete?

**A.96: Upon submission, Commission staff will examine the materials to verify that each component part is reflected. The GFLB will not begin reviewing an Application submission in total until the CAC and zoning process has concluded with respect to such Application.**

**Q.97:** Is there a process for supplementing a deficient initial Application filing?

**A.97: Provided that the Applicant has demonstrated a good-faith effort to submit a full and complete Application, staff will notify Applicants on a rolling basis as deficiencies are discovered and determinations are made. Responses to such deficiencies shall be promptly made to the permissible contact on page 7 of the RFA.**

**Q.98: Will Application material be held confidential?**

**A.98: Applications, supplements, and associated materials will be treated as public records in accordance with New York State Freedom of Information Law.**

**Q.99: What material will be provided to a CAC by the GFLB or Commission?**

**A.99: All materials included in the Application related to the proposed project will be provided by the GFLB to the respective CAC.**

**Q.100: On page 4, the RFA states, “The CAC will promptly receive a complete copy of the associated Application materials.” d. Community Advisory Community Confidentiality (pg. 4).**

**A.100: The GFLB does not understand this inquiry and requests resubmission for Round 2.**

**Q.101: Will the CACs for each Application be convened at the same time and proceed to review their respective Applications on the same or substantially similar timeline?**

**A.101: See answer to Question 66.**

**Q.102: Will the GFLB be issuing guidance on how long the formation and commencement of the CAC process should take?**

**A.102: See answer to Question 66.**

**Q.103: How long will a CAC have to undertake its evaluation?**

**A.103: See answer to Question 66.**

**Q.104: Will this timeline be identified by the GFLB or by each CAC?**

**A.104: See answer to Question 66.**

**Q.105:** What factors will the Board consider in setting the Stage 1 Community Advisory Committee (“CAC”) vote deadline, and when will the deadline be announced?

**A.105: See answer to Question 66.**

**Q.106:** Will the GFLB set a deadline by which each CAC must: (i) hold its first meeting; (ii) solicit comments; (iii) hold a public hearing on the Application, and/or (iv) request changes? If so, when will the deadline(s) be announced?

**A.106: A guidance concerning the CAC process will be issued.**

**Q.107:** How much time is anticipated from the formation of the CAC to the vote by the CAC?

**A.107: See answer to Question 66.**

**Q.108:** Page 26 of the RFA states “The Commission will issue separate guidance regarding the CAC process.” When will this guidance be issued?

**A.108: The timing of the CAC guidance issuance has not yet been determined.**

**Q.109:** Pg. 63 of the RFA states that “The Board will issue separate guidance regarding the CAC process.” With respect to such guidance, when does the GFLB expect to issue such guidance?

**A.109: See answer to Question 108.**

**Q.110:** Pg. 63 of the RFA states that “The Board will issue separate guidance regarding the CAC process.” With respect to such guidance: Will the guidance include uniform standards and specific findings for the CAC to satisfy in order to ensure fairness to applicants and more important to ensure that the intent of the statute is carried out?

**A.110: See answer to Question 135.**

**Q.111:** Pg. 63 of the RFA states that “The Board will issue separate guidance regarding the CAC process.” With respect to such guidance: Is such guidance

expected to direct Applicants to provide additional summaries or studies for the CAC's review (e.g., analyses of local economic/environmental impacts)? And if so: If the CAC guidance is expected to be issued before the Return Date, is it anticipated that the GFLB would update the RFA to require such additional information/studies in the initial Application?

**A.111: See answer to Question 108.**

**Q.112:** Pg. 63 of the RFA states that “The Board will issue separate guidance regarding the CAC process.” With respect to such guidance: If the CAC guidance is expected to be issued after the Return Date, will Applicants be required or permitted to update their Application if necessary?

**A.112: See answer to Question 108.**

**Q.113:** The RFA states that “the Commission will issue separate guidance regarding the CAC process” (P.26, 63) When will this guidance be available?

**A.113: See answer to Question 108.**

**Q.114:** The RFA states that “the Commission will issue separate guidance regarding the CAC process” Will it be made available to the public?

**A.114: Yes.**

**Q.115:** The RFA states that the Commission will issue separate guidance regarding the CAC process. When will this be provided?

**A.115: See answer to Question 108.**

**Q.116:** When does the Commission expect to issue separate guidance regarding the CAC process as indicated on page 26 of the RFA? (A) If there are multiple Applicants in the same area, covered by the same CAC, will that CAC serve to hear all Applicants?

**A.116: See answers to Question 108 and Question 70, respectively.**

**Q.117:** When does the Commission expect to issue separate guidance regarding the CAC process as indicated on page 26 of the RFA? If so, can the CAC issue a finding establishing support for multiple applications so that more than one may proceed to the GFLB, if they wish to do so?

**A.117: See answer to Question 72.**

**Q.118:** Will the GFLB, after CAC approval, separately conduct evaluation of an Applicant's community mitigation plan?

**A.118: Yes.**

**Q.119:** Will videos be allowed at either the CAC or public presentations?

**A.119: Each CAC will determine the manner in which materials are presented.**

**Q.120:** Please define the term "local community board" if not considered a CAC.

**A.120: The term "local community board" means the 59 community boards as established by the N.Y.C. Charter.**

**Q.121:** Are there circumstances in which a single CAC might consider multiple applications?

**A.121: Yes.**

**Q.122:** Page 63 of the RFA says that "[f]or each application submitted, a CAC will be created to review the application" (emphasis added). If the project site for multiple Applications are represented by one or more of the same public officials, will the same individual be appointed to each CAC?

**A.122: See answer to Question 70.**

**Q.123:** Pg. 4 of the RFA states that "After the Return Date of this RFA, a Community Advisory Committee ["CAC"] for each Applicant received may be formed pursuant to PML § 1321-d(3)(a) and(b)." Where multiple Applicants are in the same political subdivision, are we correct in assuming that each elected official will appoint the same individuals in each CAC for the overlapping Applicants to ensure consistency of review from the State's perspective?

**A.123: See answer to Question 70.**

**Q.124:** The RFA states that "the Commission will issue separate guidance regarding the CAC process." Where two applications are made for sites within the

same Borough, City Council District, State Assembly District or State Senate District, will the same individuals serve on multiple CACs?"

**A.124: See answer to Question 70.**

**Q.125:** If two projects fall in the same geographical area, can one CAC be formed for them? If so, can it approve more than one project?

**A.125: See answer to Question 70.**

**Q.126:** Page 63 of the RFA says that “[f]or each application submitted, a CAC will be created to review the application” (emphasis added). Will the process for nomination and qualification of CAC members commence before zoning applications have been submitted for the respective Application? Will the CAC process continue on its own timeline while zoning approval is proceeding on its timeline?

**A.126: See answer to Question 83.**

**Q.127:** Will the CAC members be subject to vetting or background investigation?

**A.127: No, unless the appointing authority requires.**

**Q.128:** Are the CACs limited in evaluating the Application filed, or may they request supplemental information?

**A.128: Per PML § 1321-d(3)(e)(ix), the charge of each CAC is to “review, solicit public comments and written submissions of such comments, and hold public hearings.” The CAC may then evaluate the Application it is charged with evaluating in light of all such information received.**

**Q.129:** May the CAC request changes to responsive Application material?

**A.129: Amendments to mitigate the concerns raised through the CAC process but that do not materially change the Applicant's RFA submission will be permitted.**

**Q.130:** If so, how much time will an Applicant be provided to prepare the requested materials and design any requested changes?

**A.130: See answer to Question 75.**

**Q.131:** Are CAC members subject to Non-Disclosure Agreements?

**A.131:** No, but they are subject to the State Code of Ethics that provides “No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests.”

**Q.132:** Are the appointees to the CAC subject to the Public Officers Law?

**A.132:** Yes.

**Q.133:** Will Non-Disclosure Agreements be required of the CAC members and applicable staff?

**A.133:** See answer to Question 131.

**Q.134:** The RFA states that “the Commission will issue separate guidance regarding the CAC process” What measures will the GFLB take to ensure that confidential information shared with the CAC is not disseminated?

**A.134:** See answers to Questions 106 and 131.

**Q.135:** Will each CAC use the same criteria to evaluate and consider an application?

**A.135:** No, as there are no objective criteria set forth in the statute for CAC evaluation.

**Q.136:** The RFA states that “the Commission will issue separate guidance regarding the CAC process” Will the CAC members be advised on the handling of confidential information (i.e., will that be included in the guidance)?

**A.136:** See answer to Question 106.

**Q.137:** Who can CAC members provide confidential materials to or have communications with regarding confidential applicant information?

**A.137:** See answer to Question 106.

**Q.138:** If the Commission has not a set process, can applicants work with their respective CAC to set reasonable restrictions?

**A.138:** See answer to Question 106.

**Q.139:** What restrictions, if any, will be placed on disclosure by CAC members?

**A.139:** See answer to Question 106.

**Q.140:** Will criteria be developed by the CAC to base its decision to vote for an applicant's project? If so, when will these criteria be made available?

**A.140:** See answer to Question 135.

**Q.141:** What happens if an applicant receives a favorable vote through the CAC, but encounters public opposition causing undue delays in the zoning and land use application?

**A.141:** Zoning and CAC approvals are prerequisites to GFLB evaluation.

**Q.142:** For materials submitted regarding zoning, should an Applicant provide descriptions of proposed mitigation commitments that are descriptive and qualitative, or seek to quantify the extent to which any proposed measures would reduce any anticipated impacts?

**A.142:** Zoning and CAC approvals are prerequisites to GFLB evaluation. The GFLB will not be reevaluating either of the processes. Therefore, Applicants should provide whatever materials are responsive to the specific request in the RFA.

**Q.143:** The "Return Date" requires submittal to Zoning Authorities at its conclusion. Zoning documents are usually not very detailed in terms of floor plans and internal operational information. Will Zoning material required to be provided to the CAC have to contain detail in terms of floor plans and internal operational information by the return date, or will those details only be required by the Supplement Return Date"?

**A.143:** An applicant should consult with the zoning authority that has jurisdiction over the project site to determine what materials should be provided in its Application.



**Q.144:** How long will an applicant have to make CAC suggested modifications?

**A.144:** A separate guidance document concerning the CAC process is forthcoming.

### Conflicts of Interest

**Q.145:** For purposes of conflicts of interest, who at the GFLB and Commission comprise “members, employees, consultants or agents”?

**A.145:** Applicants may refer to publicly available databases, including the Office of the State Comptroller, private maintained websites, etc. to identify any such parties and determine if there is a reasonable basis of any real or perceived conflicts of interest

**Q.146:** Does the GFLB intend to post or provide a list of members, employees, consultants, and agents of the GFLB and Commission so that applicants may submit an accurate description of any relationship or affiliation of the Applicant, the Operator or any of their respective Affiliates that exists or existed in the past 5 years? If so, when will such list be made available?

**A.146:** See answer to Question 145.

**Q.147:** Will the GFLB provide a list of members, employees, consultants or agents so that a conflict check can be made by applicants?

**A.147:** See answer to Question 145.

**Q.148:** Would prior engagements with a former GFLB consultant constitute a conflict of interest?

**A.148:** There are no impediments to engaging a consultant that worked with the prior iteration of the GFLB. There are currently no consultants to the present constitution of the GFLB.

### Construction Schedule and Budget

**Q.149:** What level of detail is expected to be provided regarding (.Construction Timeline), (.PostLicenseConstruction), (.Opening), and (.Construction Budget) in the Supplemental submission?

**A.149: The RFA contains specific deliverables for each of these components. It is up to the Applicant to ensure that the response provides the appropriate level of detail for the GFLB to understand and evaluate the proposal.**

**Q.150:** What contingency is allowed for the (.ConstructionBudget) estimate?

**A.150: Applicants should establish an appropriate contingency budget for the scope of the project.**

**Q.151:** Will an Applicant be required to submit a project construction financial analysis during the construction?

**A.151: This is not a requirement in the RFA. Financial updates may be required post license award.**

**Q.152:** Will an Applicant that quickly creates positive economic impacts be given credit for accelerated spending, job creation and revenue production over an Applicant with a phased, longer approach?

**A.152: In its deliberation and review, the GFLB will take into account all aspects of an application.**

### **Contracts with the State of New York**

**Q.153:** For Applicants with video lottery gaming facilities, will the State serve as the building permit issuing authority for any improvements to a facility until a casino license is awarded?

**A.153: Yes.**

### **Current and Planned Diversity Efforts**

**Q.154:** Will the 30 percent utilization goal of Minority and Women-Owned Business Enterprise be applied separately or in the aggregate to construction and operations?

**A.154: The goal is applied separately: pre-opening (during construction) and for post-opening capital projects. The goal does not apply to daily operations.**

**Q.155:** What specific MWBE/V certifications will be accepted?

**A.155: Entities must be certified via the Division of Minority and Women’s Business Development (DMWBD) at Empire State Development.**

**Q.156:** For purposes of describing “the anticipated gender, racial and service-disabled-veteran composition of the proposed gaming facility in New York”, what body or group of people (e.g., customers, employees, suppliers, owners, etc.) is the anticipated composition to be described?

**A.156: This language is applicable to the Workforce Diversity component of the RFA, and therefore, applies to the facility workforce of the Applicant.**

**Q.157:** How will the GFLB and Commission measure MWBE/V compliance?

**A.157: Pursuant to a recommendation of the Office of the State Inspector General concerning other Commission matters, the Commission will require each facility licensee to procure at its expense and subject to Commission approval a Certified Public Accounting firm to verify the commercially useful functions on all engaged MWBE firms, or of a sampling of such entities, as approved by the Commission.**

### Definitions

**Q.158:** In the context of ‘.DiversityBusinessModel’, please define or describe what is meant by the term “plan of action”?

**A.158: The “plan of action” is the affirmative steps the Applicant will undertake to promote diversity.**

**Q.159:** In the context of ‘.DiversityBusinessModel’, please define or describe what is meant by the term “social and economic equity roles in the gaming industry”?

**A.159: “Social and economic equity roles in the gaming industry” include but are not limited to, establishing fair, just and equitable management; development of policies; provision of services; and other functions that promote fairness, justice and equity for the facility's workforce.**

**Q.160:** In the context of Current and Planned Diversity Efforts, please define "historically marginalized communities".

**A.160: “Historically marginalized communities” refers to social groups that have endured a longstanding history of being systematically marginalized, oppressed, and excluded from access to equitable opportunities.**

**Q.161:** In the context of Current and Planned Diversity Efforts, please define "diverse communities and diverse individuals".

**A.161:** “Diverse communities and diverse individuals” consist of groups and populations of diverse dimensions including, but not limited to, race/ethnicity, gender, sexual orientation/identity, socio-economic status, age, religion, physical and/or mental/neurological abilities, language, geographical location (e.g., urban/rural), veteran, and/or other pertinent characteristics.

**Q.162:** What is meant by "relevant financial interest" in the definition of “Close Associate”?

**A.162:** A relevant financial interest includes any entity that possesses ownership of 5 percent or more of the Applicant.

**Q.163:** In the context of the definition of “Close Associate”, what is meant by “significant influence over the management or operation of a Gaming Facility or business licensed under PML Article 13.”?

**A.163:** “Close associate” has the meaning set forth in PML § 1301(10).

**Q.164:** Will the GFLB make a distinction between existing structures and new construction within the definition of gaming facility?

**A.164:** In its deliberation and review, the GFLB will take into account all aspects of an application.

**Q.165:** Please define "host community".

**A.165:** The most localized political subdivision encompassing the project location.

**Q.166:** Please define "nearby municipalities".

**A.166:** Political subdivisions immediately adjacent to the host community.

**Q.167:** Please define "in proximity to".

**A.167:** The area in which the Applicant reasonably believes may be impacted by the new development. The Applicant should provide the parameters used to identify such.

**Q.168:** Please define "area" in, for example, "area hotels".

**A.168:** Please see the answer to Question 360.

**Q.169:** Please define "Minority and Women-Owned Business Enterprise".

**A.169:** The term is defined in article 15-a of the Executive Law. Such enterprises must be certified by the Division of Minority and Women's Business Development of Empire State Development.

**Q.170:** Does the GFLB expect each casino key employee to respond to questions that refer to "Applicant Party"?

**A.170:** No, except where such information is required on the Multi-Jurisdictional Personal History Disclosure Form.

**Q.171:** Given the breadth of the term Affiliate, may an Applicant begin by submitting a Gaming Facility License Application Form and Multi-Jurisdictional Personal History Disclosure Forms for upstream entities that control the Applicant and submit other parties as directed by the GFLB or Commission staff?

**A.171:** Yes.

### **Demonstrating Ability to Finance the Project**

**Q.172:** Is this section an addendum to section "Financing Source Details" (page 42)? "Financing Source Details" is a description, and this section asks to see the numbers / analysis.

**A.172:** The GFLB cannot discern the meaning of the question posed.

**Q.173:** Would the Commission prefer to have a specific scenario's set of projections/programming assumed as the "expected case" for answering relevant sections of the RFA (aside from those sections that specifically request each scenario be considered, including low, average, and high)?

**A.173:** No.

**Q.174:** Please confirm that only the Applicant for the gaming facility is subject to the Independent Audit submission?

**A.174:** Confirmed.

**Q.175:** Are financial references required for banks serving as Financing Sources?

**A.175: No.**

**Q.176:** Will the GFLB set requirements for amounts paid in cash vs. financed (i.e., maximum leverage limit)?

**A.176: The GFLB is unlikely to set a requirement. However, the ratio of the Applicant's debt to equity may be considered in the evaluation of a project.**

**Q.177:** To account for Applicant's differing speed to market and facilitate a like-for-like comparison of proposals, should financial data specify the corresponding calendar year in addition to the number of years after opening?

**A.177: Yes.**

**Q.178:** Will independent consultants be required to participate in in-person discussions / clarifications regarding their reports?

**A.178: No.**

**Q.179:** Can you provide clarity on the intention of the wording "all financial activities and interests" versus the specific listing of the items the request is not limited to?

**A.179: Applicants are encouraged to submit the most detailed information as possible.**

**Q.180:** Is there a materiality threshold (dollar amount or otherwise) related to the various questions regarding legal actions?

**A.180: Yes. Only litigation where damages would reasonably be expected to exceed \$100,000, unless such damages involved or involve, claims against the entity that were, or are, fully and completely covered under an insurance policy.**

**Q.181:** Is there a materiality threshold (dollar amount or otherwise) related to the question regarding contract breach?

**A.181: No.**

**Q.182:** Is there a materiality threshold (dollar amount or otherwise) related to the question regarding tax delinquencies? For example, if the taxing authority did not assess or ultimately waived a penalty, should that item be included in this response?

**A.182: No.**

**Q.183:** Should adjustments agreed to as part of an audit or examination be described in response to this item?

**A.183: Yes.**

**Q.184:** Does the request apply to delinquencies or disputes of each subsidiary or affiliate of Applicant Party (vs. Applicant Party itself)?

**A.184: Yes.**

**Q.185:** Please clarify if the intention is that each arranger/bookrunner (i.e., Investment bank) that participates in a syndicated or underwritten offering would be considered a Financing Source, and therefore would need to provide all of the requested information?

**A.185: Only the lead syndicate or underwriter will be considered a financing source for purposes of this reporting.**

**Q.186:** So any provider of a highly confident letter would be required to provide all of the information relating to Financing Sources?

**A.186: Yes.**

**Q.187:** Is the intention that where a tenderer is a Joint Venture, that each Joint Venture partner is considered a Financing Source and therefore needs to provide all of the requested information?

**A.187: Yes.**

**Q.188:** Since committed financing with potential new structures in place would not be sought until after the license is awarded, would the current capital structures of each of the joint-venture partners suffice?

**A.188: The Applicant must provide evidence that it has secured sufficient capital commitments to fully finance the proposed project.**

**Q.189:** Please clarify how "Financing Source" cash flow statements differ from those provided in the "Financial Model"?

**A.189: .ProFormaFinancing is intended to show a greater level of detail as to the financing of operations and operational losses in the initial years of the facility's gaming operations.**

**Q.190:** Please clarify how "Financing Source" requirements differ from sections "Costs, Investments, Fees" and "ProForma Financing Sources"?

**A.190: .CostsInvestmentFees requires information concerning financing through the project construction phase whereas .ProFormaFinancing requires information on financing after the commencement of gaming.**

**Q.191:** Is it expected that a highly confident letter would contain details of likely covenants?

**A.191: The financing source is required to provide the anticipated terms of the Applicant's financing.**

**Q.192:** How do the provisions of the requirement for the Confident Letters differ from what it outlined in the last portion of ".Financial" on RFA page 41?

**A.192: Applicant shall include any highly confident or other similar letters or representations from financial advisors describing the likely availability of debt and equity financing for the application fee, Application and suitability investigation expenses, license fee, capital investment deposit, construction and first 3 years of operation of the proposed Gaming Facility in its submission under (.ConfidentLetters). This information does not need to be submitted for any other section.**

**Q.193:** If financing is provided through a syndicate, what levels of membership are required to disclosed as Financing Sources?

**A.193: All known participants in a financing syndicate must be disclosed as Financing Sources.**



**Q.194:** How do we deal with normal course debt maturities over the required period of projection?

**A.194:** The Applicant shall include schedules that show the debt obligations of the Applicant and the principal and interest repayments required over the term of the loan.

**Q.195:** Will an audit opinion in a publicly filed annual report suffice?

**A.195:** The GFLB does not understand this inquiry and requests resubmission for Round 2.

**Q.196:** How does the requirement in this section differ from “Financial References”?

**A.196:** The Applicant shall include least 3 financial references from banks or other financial institutions attesting to each Financing Source’s creditworthiness in its submission under (.FinancialReferences). This information does not need to be submitted for any other section.

**Q.197:** How does the requirement in this section differ “Financial Stability”?

**A.197:** The Applicant shall submit any bank references, business and personal income and disbursement schedules, tax returns and other reports filed with government agencies and business and personal accounting check records and ledgers that, pursuant to PML Section 1313(1)(e) (as incorporated into PML § 1321-c), present clear and convincing evidence of financial stability in its submission under (.FinancialStability). This information does not need to be submitted for any other section.

**Q.198:** If the Applicant’s parent company is funding the project with “cash-on-hand” given its liquidity, must the parent company, the “Finance Source”, and all schedules demonstrate the parent company’s ability by demonstrating projections on a pro forma basis?

**A.198:** Yes.

**Q.198:** With respect to the forecasted *pro formas*, is the intent of the question to provide a statement of financing sources and uses solely for the Applicant’s project and not for the Financing Source, if such is the parent company?

**A.198: If the Applicant is indirectly receiving financing from a parent corporation, the Applicant must provide the financing source for such parent.**

**Q.200:** In the context of the question concerning Financial References, what is intended by “creditworthiness”?

**A.200: The customary and general use of this term applies.**

**Q.201:** For financing plans, highly confident letters, financing commitments and financing arrangements or agreements in the form of any syndicated debt facility or underwritten offering, are there any related minimum requirements?

**A.201: Please see the following sections of the RFA: .DebtFinancing through .FinancingSourceSchedule**

**Q.202:** In context of enumerated disclosures required of Financing Sources for third-party financings and offerings that are syndicated or underwritten, what is meant by the terms “syndicated” and “underwritten”?

**A.202: The customary and general use of these terms applies.**

**Q.203:** Are banks and other qualified institutional investors that comprise a syndicate that makes loans in compliance with 9 NYCRR § 5301.4(a)(3)(i)-(iii), and qualified institutional buyers and other qualified institutional investors as defined in 9 NYCRR § 5300.1(u) that purchase debt securities issued by an Applicant pursuant to an offering underwritten by one or more licensed securities dealers exempt from providing requested disclosures?

**A.203: No. The Rules cited apply to licensure of funding sources, not to information a gaming facility license applicant is required to provide concerning the gaming facility license application.**

**Q.204:** Does the requirement to submit “an independent audit report of all financial activities and interests...for the past 5 years” apply to the Applicant?

**A.204: Yes.**

**Q.205:** Would an Applicant's audited financial statements satisfy the requirement to submit “an independent audit report of all financial activities and interests...for the past 5 years”?

**A.205: No, unless the audited financial statements contain sufficient detail to clearly identify all financial activities and interests.**

**Q.206:** In the RFA there is a request for a 5-year plan. Is that plan intended to be 5 years from the date of submission, 5 years from the commencement of construction, 5 years from the commencement of operations, or some other agreed upon start date for the 5-year plan for the purposes of the projections?

**A.206: The 5-year plan shall commence from the award of a Commission license.**

**Q.207:** The RFA requests a description of an entity's current capital structure and appears to include the capital structure of all financial sources. Are federally registered banks and large financial institutions excluded from these capital structure disclosures requirements?

**A.207: No.**

**Q.208:** When a legal entity providing disclosure produces its financials on a consolidated basis, will providing such consolidated financials satisfy the disclosure requirements?

**A.208: Yes.**

**Q.209:** If an Applicant intends to utilize widely known large commercial or investment banking firms, should the Applicant provide all of the substantial financial disclosure requests detailed in the RFA or are those only intended for private financing sources?

**A.209: The Applicant shall provide all of the substantial financial disclosures.**

**Q.210:** For whom does the requirement to provide an independent audit report for "all financial activities and interests including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past 5 years" apply?

**A.210: The Applicant.**

**Q.211:** If the Financing Source is a gaming entity or operator, must it still provide an independent audit report that is listed as required for "all financial activities and

interests including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past 5 years”?

**A.211: Yes.**

**Q.212:** Will the independent audit report included in the (AuditedAnnualFinancialStatement) satisfy the requirement to submit an independent audit report for “all financial activities and interests including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past 5 years”?

**A.212: See answer to Question 205.**

**Q.213:** The RFA requires “Securities analysts’ and credit rating agencies’ reports for the past 3 years, if any.” Given a Financing Source may not be aware of other firms’ reports, may this be interpreted as only those reports which a Financing Source is aware?

**A.213: Yes.**

### **Deposit Amount**

**Q.214:** Please confirm that the escrow deposit amount of total investment is required only following award of license.

**A.214: Confirmed.**

**Q.215:** Will the tax rate be established before the development deposit must be escrowed?

**A.215: Yes.**

**Q.216:** On page 59, Applicants must deposit no less than 5 percent and no more than 10 percent of the total investment proposed in the Application into an interest-bearing escrow account... “upon award of a gaming facility license by the Commission”. Could the GFLB please define the timing of such deposit?

**A.216: The timing of the deposit is yet to be determined.**

**Q.217:** Will the deposit be required immediately upon award or within a pre-determined amount of time?

**A.217:** See answer to Question 216.

**Q.218:** Will a successful Applicant have sufficient notice of the award so as to prepare the deposit in compliance with the defined timeline?

**A.218:** See answer to Question 216.

**Q.219:** For purposes of the required deposit, how is “total investment” defined?

**A.219:** For the purposes of the required deposit, total investment is defined as the proposed capital investment for the project.

**Q.220:** What are the criteria that the Commission will use to determine the amount of the required deposit?

**A.220:** The Commission anticipates making this determination during the licensure evaluation process, after the GFLB makes its selections of applicants to advance to licensure consideration. Specific criteria are yet to be determined.

**Q.221:** What factors will determine if the License Deposit will be 5 percent vs 10 percent?

**A.221:** See answer to Question 220.

**Q.222:** Will the deposit amount be able to be placed in time deposits, money market accounts, or Treasuries?

**A.222:** The deposit shall be placed in an interest-bearing account, approved by the Commission. Generally, there is no preference as to the type of interest-bearing account utilized.

**Q.223:** How is “the final stage of construction” defined, which triggers the point at which the deposit is to be returned?

**A.223:** Please see 9 NYCRR § 5301.10(d)(3).

**Q.224:** When will the License Deposit be required to be deposited (i.e., 30 / 60 /90+ days after award of the license)?

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

**Q.225:** Can a Letter of Credit be provided in lieu of a deposit?

**A.225:** No.

**Q.226:** Upon what criteria will the Commission base its determination of what percentage of the total investment the Applicant must deposit upon award of a gaming facility license?

**A.226:** See answer to Question 220.

### Diversity

**Q.227:** Do consultants working on the planning side of a project count towards the utilization goal of MWBE percentage?

**A.227:** Yes. Please see 9 NYCRR § 5311.3.

**Q.228:** How will MWBE ownership be considered and evaluated?

**A.228:** Please see 9 NYCRR § 5311.

**Q.229:** Will an Applicant's minority-owned equity ownership be considered in the evaluation?

**A.229:** The RFA includes language requesting composition of ownership and leadership with respect to diversity. In the context of the section on diversity framework and overall ownership evaluation, an application reflecting increased diversity will comparatively be given greater weight.

**Q.230:** No specific scoring points will be awarded for an applicant including a minority owned company in its equity ownership group. Why?

**A.230:** See answer to Question 229.

**Q.231:** Please define “upper-management”?

**A.231: The customary and general use of this term applies.**

**Q.232:** Should an Applicant include service-disabled-veterans within “.MWBE”, “.Demographics”, “.OwnershipLeadership”, and “.AnticipatedComposition” or cumulatively as a separate listing?

**A.232: Service-disabled veteran information shall be separately outlined within MWBE, .Demographics, .OwnershipLeadership, and .AnticipatedComposition.**

### **Duties of the Board**

**Q.233:** Which agency is responsible for confirming post-licensure permitting?

**A.233: A permit is issued by the host municipality. If a proposed project resides on State land, a permit will be issued by the N.Y.S. Office of General Services.**

**Q.234:** If an agency responsible for issuing permits pre-licensure differs from the one responsible post-licensure, at what time would responsibility transition?

**A.234: Any non-permitted work at the time of license issuance would need to be permitted by the new responsible governmental entity.**

**Q.235:** Will the State serve as the lead agency for environmental review, or will a local municipality determine the lead agency?

**A.235: Determination of lead agency will be made on a case-by-case basis, and in accordance with SEQRA.**

**Q.236:** Would the GFLB accept documentation confirming an Applicant’s sole right to extend a lease through options as satisfaction of the land requirement in PML § 1316 as incorporated by PML § 1321-f?

**A.236: If the extension conforms to the requirements of law, yes.**

**Q.237:** PML § 1316 as incorporated by PML § 1321-f requires Applicants to comply with State codes, notably building and fire inspection. For improvements to existing buildings currently housing VLG facilities, will the local municipality or the State Office of General Services be responsible for the verification of compliance?

**A.237: The entity issuing the permit will be responsible for compliance.**

**Q.238:** To the extent that existing VLG operators are to comply with state requirements during pre-licensure, what agency is responsible for confirming compliance?

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

**Q.239:** Are ground lessors in a long-term ground lease required to be licensed?

**A.239: Any determination on the requirements of a specific vendor to be licensed or registered with the Commission will depend upon the specific facts and circumstances of the relationship between the vendor and the Applicant.**

**Q.240:** Does refund of any unexpended portion of an application fee apply to an Applicant's initial \$1 million application fee?

**A.240: Yes.**

**Q.241:** Will the RFA process continue to the Question Phase if the full GFLB is not yet selected?

**A.241: Yes.**

**Q.242:** On pages 2-3 of the RFA, it is stated, "ownership of the land shall include a tenancy for a term of years under a lease that extends not less than sixty years beyond the term of the gaming license issued under this article." On page 59 the initial license term is required to be "no less than 10 years but no more than 30 years based on the proposed total investment of the Applicant's project." Will a binding long-term lease with multiple unilateral options in favor of the Applicant satisfy this requirement?

**A.242: If the options to extend conform to the requirements of law, yes.**

**Q.243:** Will an applicant illustrating unconditional financing commitments, as opposed to conditional financing commitments, receive greater weight in scoring?

**A.243: The GFLB will consider all Applicants' financing commitments.**



**Q.244:** The RFA indicates that the GFLB is authorized to develop additional criteria. Can you provide a list of these criteria and their associated weighted value?

**A.244:** At this time, there are no additional criteria.

### **Economic Activity and Business Development**

**Q.245:** In addition to FTE construction jobs created, can an applicant provide an estimate for the number of temporary construction jobs that would be created?

**A.245:** Applicants are encouraged to submit the most detailed information possible.

**Q.246:** Should financial data specify the corresponding calendar year, in addition to the number of years after opening?

**A.246:** Responses shall be identified as “Year 1”, “Year 2”, etc.

### **Evaluation Criteria and Required Submissions**

**Q.247:** What factors will the GFLB use to evaluate different applications proposing a conversion of an existing video lottery gaming facility or proposing new facility construction?

**A.247:** The statute details the factors and weight to be used for consideration. The same factors will be applied to both proposed conversions and new facilities.

**Q.248:** Will any videos submitted by an applicant impact the grading of the proposal?

**A.248:** To the extent that the video addresses weighted factors for scoring, yes.

**Q.249:** Will the GFLB further break down of the scoring criteria that comprises the 70 percent weighting within the “Economic Activity and Business Development” section?

**A.249:** A further breakdown of the scoring criteria is not presently contemplated.

**Q.250:** When will the GFLB establish the taxation rate?

**A.250:** The Commission will set the final tax rate, as set forth in PML § 1351(1-a) following a recommendation from the GFLB after review of Supplement Return Date materials.

**Q.251:** Will the GFLB impose tax rates for each individual successful Applicant or will one tax rate be established?

**A.251:** The Commission will set the final tax rate, as set forth in PML § 1351(1-a). The statute contemplates the possibility of different tax rates for different gaming facility licenses.

**Q.252:** May Applicants submit proposed findings of facts and conclusions to be considered in the GFLB's issuance of its findings of facts and conclusions demonstrating the reasons supporting its decisions to select Applicants for Commission licensure?

**A.252:** No.

**Q.253:** Will the GLFB provide detail with respect to how each of the four graded sections will be scored or ranked?

**A.253:** A further breakdown of the scoring criteria is not presently contemplated.

**Q.254:** As an Applicant conducts its competitive analysis, should it account for pari-mutuel licenses in the market and competing with the casino commercial licensees?

**A.254:** If the question refers to racetrack operations, no. If the question refers to video lottery gaming facilities that may be located at a racetrack, yes.

**Q.255:** Will the GFLB recommend award of three commercial casinos licenses or three commercial casino licenses in addition to the two pari-mutuel licenses in the market?

**A.255:** Pari-mutuel licenses concern wagering only on horse racing. If the question intends to refer to the conversion of video lottery gaming facilities to casinos licensed pursuant to Article 13, a VLG facility proposing to covert to an Article 13 casino may apply and compete with

**other applicants for one the three available commercial casino licenses. The GFLB may recommend up to three applicants for licensure as an Article 13 gaming facility, without regard to whether any of those selected are currently VLG facilities.**

**Q.256:** Which submissions and what “associated materials” are required to be submitted on the RFA Return Date?

**A.256:** Please refer to the General section of Applicant Instructions located on page 11 of the RFA.

**Q.257:** Per PML § 1321-j the GFLB shall give consideration to the differences between a project that is a conversion of an existing video lottery gaming facility or a new facility construction. What are the criteria which the GFLB will consider to evaluate such difference?

**A.257:** No criteria have been established at this time.

**Q.258:** Will an Applicant finding of suitability be made prior to the Supplement Return Date?

**A.258:** A finding of suitability by the Commission will not be made prior to the Supplement Return Date.

**Q.259:** If the Applicant was recently formed, may it respond “Does Not Apply” to questions that are unable to be answered due to the newness of the entity, or should reference be made to persons or parties that formed the Applicant?

**A.259:** Reference should be made to persons or parties that form the Applicant.

**Q.260:** May an Applicant submit the Economic Activity and Business Development, Local Impact Siting, Workforce Enhancement, and Diversity Framework materials by the Return Date if available?

**A.260:** Applicants shall follow the timeline as outlined in the RFA.

**Q.261:** Are the Economic Activity and Business Development, Local Impact Siting, Workforce Enhancement, and Diversity Framework materials due no later than the Supplement Return Date, with the exception of (.StateLocalRevenue), which appears must be submitted by the Return Date?

**A.261: No. Economic Activity and Business Development, Local Impact Siting, Workforce Enhancement, and Diversity Framework materials are due no later than the Return Date.**

**Q.262:** Is there an area within the RFA where the time value of the money invested is considered?

**A.262: Not explicitly. The RFA is worded to allow, however, for explanations describing a perceived advantage.**

**Q.263:** The decision by the GFLB to select an Applicant shall be weighted by 70 percent based on economic activity and business development factors. Is it possible to get a detailed breakdown of 70 percent by subcategory of Economic Activity and Business Development?

**A.263: See answer to Question 264.**

### **Maximizing State and Local Revenues**

**Q.264:** Of the 70 percent that Economic Activity and Business Development represents, how much weight is given to the up-front license fee and the tax rate?

**A.264: A further breakdown of the scoring criteria is not presently contemplated.**

**Q.265:** With regard to the economic activity weighting, how will the components be rated?

**A.265: See answer to Question 264.**

### **Evidence of Compliance with Zoning Requirements**

**Q.266:** For NYC, what does it mean for an Applicant to “submit [a] proposal to applicable zoning authorities”? Is this simply a Pre-Application Meeting or something different?

**A.266: For all Applicants this requirement is intended to illustrate engagement of the applicable zoning entity has occurred. Accordingly, evidence of such engagement must be submitted.**

**Q.267:** NYC zoning changes can take in excess of two years. How will the GFLB commence review of City-based applications if local zoning cannot be complied with prior to the Supplement Return Date?

**A.267:** The GFLB will establish a timeline providing all Applicants a reasonable amount of time to obtain zoning approval for their proposed projects. The GFLB will provide an appropriate amount of time to navigate NYC zoning that will allow for the ability to meet the Supplement Return Date deadline. It is the Commission's current understanding that the City of New York is considering citywide zoning code changes that would deem casinos licensed by the State as compliant with zoning.

**Q.268:** Does a State or City action that facilitates the development of a casino project, such as demapping of streets or alienating park land, violate PML § 1321-k(2)(b)?

**A.268:** The examples illustrated in the question are not zoning actions and therefore would not violate PML § 1321-k (2)(b).

**Q.269:** Will the State override local zoning to permit a casino use?

**A.269:** No.

**Q.270** The GFLB website states the following: For any proposed gaming facility in NYC, all applicable zoning provisions must be subject to the Uniform Land Use Review Procedure (ULURP) of the NYC Charter, if such provisions would otherwise be applicable. The determination on whether gaming is a permissible use or activity pursuant to ULURP cannot be overridden by mayoral zoning override, special permit process, or any other action or decision that preempts, circumvents, or supersedes the usual and customary local zoning process. In NYC, a zoning text amendment is a non-ULURP action per NYC Charter § 200(a)(2). Therefore, what does the bolded statement above mean by “must be subject to ULURP?”

**A.270:** It means that if otherwise applicable, a zoning change allowing gaming facilities or a proposed gaming facility within the City of New York is subject to the requirements of the NYC Uniform Land Use Review Procedure.

**Q.271:** How does the GFLB envision the NYC Department of City Planning process to occur assuming there are multiple CAC approvals and therefore multiple land use and environmental applications?

**A.271: The GFLB cannot comment on the processes of the NYC Department of City Planning and respectfully suggest contacting such agency with questions and concerns.**

**Q.272:** Will there be coordination between NYC Department of City Planning and the GFLB?

**A.272. It is unclear what is meant by “coordination” in this question, but communication between staff of both agencies has been undertaken.**

**Q.273:** The RFA requires “each potential license Applicant must prove compliance with all State and local zoning requirements.” If such zoning approvals are not yet granted, will it be acceptable to illustrate a roadmap and timeline toward such zoning approvals?

**A.273: The GFLB will establish a timeline providing all Applicants a reasonable amount of time to obtain zoning approval for their proposed projects. The GFLB will provide an appropriate amount of time to navigate zoning. The failure to timely navigate zoning will be viewed as a constructive denial of zoning approval.**

**Q.274:** Please provide guidance on the expected sequence of obtaining NYC zoning approval and specifically (1) if an applicant should pursue zoning approval in parallel with the RFA and CAC processes and (2) if an applicant must provide Evidence of Compliance with Zoning Requirements prior to being considered by the GFLB for a gaming license by having all final approvals or instead demonstrate a path to gaining such approvals.

**A.274: Applicants should pursue zoning approval in parallel with the RFA and CAC processes and provide evidence of compliance with zoning and CAC requirements prior to GFLB consideration.**

**Q.275:** Will the entity acting as lead agency determine what environmental studies are prerequisites to zoning?

**A.275: Applicants should refer to SEQRA and local zoning laws to determine their requirements. For projects in NYC, the Mayor's Office of Environmental Coordination, whose mission is to be a resource for city agencies and private applicants in completing the environmental review process, may be a useful resource.**

**Q.276:** If changes to the project proposal are required as an outcome of zoning approvals, how should those changes be incorporated into the Application?

**A.276: Refer to the Continuing Duty to Update Application on page 8 of the RFA.**

**Q.277:** Will the State and City officials authorize relevant agencies such as a Department of City Planning to begin discussions on the process with Applicants?

**A.277: It is our understanding that City Planning has and continues to have process discussions with interested parties.**

**Q.278:** Are we correct that the approval of an Applicant's plan by the GFLB will not affect or preempt local land use, environmental or other required approvals?

**A.278: Correct.**

**Q.279:** What constitutes evidence of compliance with zoning requirements?

**A.279: Evidence of compliance with zoning requirements is a local determination. Please consult with the applicable zoning agency to determine how such agency evinces zoning compliance concerning a parcel.**

**Q. 280:** If an applicant does not receive approvals for zoning or land use, can an applicant re-apply for approval and still have a viable pending gaming license application?

**A.280: Yes, provided that any secondary review is completed within the initially provided timeframe.**

**Q.281:** How does the NYC Planning Commission intend on addressing zoning?

**A.281: The GFLB cannot comment on the processes of the NYC Department of City Planning and respectfully suggests contacting such agency with questions and concerns.**

### **Zoning Schedule**

**Q.282:** Our read indicates post-Supplement receipt of zoning approvals. Is it sufficient that by the Stage 2 "zoning completion deadline" that any required

application or petition for rezoning of the Project Site has been submitted to the local legislature?

**A.282: No, zoning approval must have been secured for an Application to progress to GFLB evaluation.**

**Q.283:** Our read indicates post-Supplement receipt of zoning approvals. If application for approvals other than rezoning must be submitted, please identify the particular type(s) of application (e.g., for site-plan approval; subdivision approval; special permit/exception use approval; and/or use or area variances)?

**A.283: See answer to Question 287.**

**Q.284:** Please identify the date by which any and all related procedures under the State Environmental Quality Review Act must be completed.

**A.284: SEQRA and applicable zoning laws may require procedures to be completed before zoning approval is given. The GFLB will require that zoning requirements be completed before the GFLB evaluates an Application. For projects in NYC, the Mayor's Office of Environmental Coordination, whose mission is to be a resource for city agencies and private applicants in completing the environmental review process, may be a useful resource.**

**Q.285:** What factors will the GFLB consider in setting the Stage 2 zoning completion deadline?

**A.285: After consultation with local zoning authorities, the GFLB will establish a deadline that enables completion of zoning requirements.**

**Q.286:** Can the zoning compliance report (.ZoningCompliance) be submitted in conjunction with the Applicant's submission of a proposal to applicable zoning authorities, rather than on the Return Date?

**A.286: As provided at the top of "Requirements Before Board Review" section on page 26 of the RFA, ".ZoningCompliance" shall be submitted by the Supplement Return Date.**

**Q.287:** With respect to zoning approvals, page 26 of the RFA states "If commencement of zoning approvals is anticipated only after the Supplement Return Date, please so state." The Schedule on page 5 of the RFA states that the



Supplement Return Date will not be set until after the zoning completion deadline. Please reconcile this apparent inconsistency.

**A.287: The RFA is hereby amended to replace “EVIDENCE OF COMPLIANCE WITH ZONING REQUIREMENTS”, on page 26 of the RFA, with the following:**

**EVIDENCE OF COMPLIANCE WITH ZONING REQUIREMENTS:**

Prior to official review by the Board, each potential license Applicant must prove compliance with all State and local zoning requirements, as set forth in PML § 1321-k.

On the Return Date:

Submit (.ZoningCompliance):

A description of:

- The current zoning designation for the Project Site
- Any required rezoning or variances
- If none, provide evidence of compliance with all State and local zoning requirements
- A description of what will be required for entitlement to construct pursuant to applicable zoning law, including, without limitation, a realistic timeline and milestones for achievement of entitlement to construct
- A specific schedule of applications for zoning approvals and anticipated approval dates
- A detailed explanation of the status of any request for any of the foregoing with copies of all filings
- If commencement of zoning approvals is anticipated only after the Return Date, please so state
- Any State and/or local permits or special use permits that the Applicant must obtain for the Project Site, and for such permits describe:
  - the procedure by which the Applicant shall obtain the permits; and
  - the estimated dates by which the Applicant will obtain the permits.

By the Supplement Return Date:

Submit an updated (.ZoningCompliance):

- Evidence of compliance with all State and local zoning requirements

- A description and timeline of any local zoning approvals received after the Return Date
- A description and timeline of any land-use approvals received after the Return Date
- An update to any other information provided on the Return date regarding .ZoningCompliance

**Q.288:** Will the GFLB consider an application more favorably if the commencement of zoning approvals began before the Supplement Return Date?

**A.288: The Applicant is required to have zoning approvals prior to the Supplement Return Date.**

**Q.289:** What level of detail is expected in the (.ZoningCompliance) schedule if commencement of zoning approvals is not required until after the Supplement Return Date?

**A.289: See answer to question 287.**

**Q.290:** What level of detail is expected in the schedule if commencement of zoning approvals is not required until after the Supplement Return Date?

**A.290: See answer to question 287.**

**Q.291:** The RFA indicates that the GFLB cannot commence evaluation of an Application until the Applicant “has presented evidence of compliance and approval with all required State and local zoning requirements” and indicates that “if commencement of zoning approvals is anticipated only after the Supplement Return Date, please so state.” Can the GFLB provide clarity around whether the zoning approvals must be received by the Supplement Return Date and the impact of failing to receive any such approvals by that date?

**A.291: See answer to question 287.**

**Q.292:** Has the GFLB established a process to avoid the scenario in which the long zoning horizon of one Applicant could delay the GFLB’s consideration of all Applicants?

**A.292: The GFLB will establish a reasonable deadline by which local zoning must be obtained.**

**Q.293:** If it is expected that the local municipality will review the environmental consequences of having a gaming facility in its jurisdiction (e.g., through an Environmental Assessment Statement or an Environmental Impact Statement), should the Application summarize the likely framework for such analysis with respect to each potential impact category – i.e., traffic, construction, neighborhood character, socioeconomic conditions, historic and cultural facilities – including the expected results, or should the Application filed at the Return Date contain the same detailed material, including backup data, that would need to be provided in an Environmental Assessment Statement or an Environmental Impact Statement?

**A.293:** The Application filed at the Return Date should include as much detail as possible, in order to inform the CAC of anticipated impacts as fully as possible. An Applicant may, however, request the GFLB to accept updated information after the Return Date, as such updated information becomes available.

**Q.294:** Will the GFLB require that all zoning applications for zoning entitlements are submitted to the City by a specific date?

**A.294:** No, however Applicants must ensure that they have submitted all zoning materials in a manner timely enough to have navigated the local zoning process by the Supplement Return Date.

**Q.295:** How much time does the GFLB anticipate allowing for an applicant to demonstrate compliance with Zoning Requirements?

**A.295:** The GFLB will establish a reasonable deadline by which local zoning must be obtained.

### **Executive Summary**

**Q.296:** If an Applicant includes a drawing or rendering of its Gaming Facility in its Executive Summary, will that count against the four-page limitation?

**A.296:** Drawings and renderings an Applicant wishes to reference in its Executive Summary should be submitted as a supplement.

**Q.297:** How will the GFLB recognize an Applicant's economic impact to the surrounding area, i.e., incremental jobs and tax revenue generated by the presence of the gaming facility?

**A.297: It is up to the Applicant to determine the best manner in assisting the GFLB to recognize its impact to the surrounding area.**

### **Experience**

**Q.298:** Does the response to disciplinary actions brought by a gaming authority need to include each subsidiary or affiliate of Applicant Party versus the Applicant Party itself?

**A.298: Yes.**

### **File and Naming Parameters**

**Q.299:** There appears to be a spelling error in name of file (.LimitedPartnershipAgreement). Should Applicants keep as, or correct the spelling in the submission?

**A.299: This is a spelling error in the RFA. On page 23 of the RFA, the bullet-point that begins "Limited partnership agreement..." is hereby amended to change the file reference to: .LimitedPartnershipAgreement.**

**Q.300:** How will the GFLB detail the format and process of the electronic file transfer?

**A.300: Entities that intend to apply must request access, no earlier than 30 days prior to the RFA Return Date but no later than 14 days prior to the RFA Return Date, to the file transfer system through the Commission's designated point of contact. Once the system is open, potential applicants will be provided instructions for submission.**

**Q.301:** Please provide clarification as to how files are uploaded?

**A.301: See answer to Question 2.**

**Q.302:** Please provide clarification as to what format files need to be uploaded in?

**A.302: See answer to Question 304.**

**Q.303:** How many electronic, USB flash drive and hard copies of an application must be submitted by each Return Date?

**A.303: Please refer to paragraphs 6 and 7 of page 11 of the RFA.**

**For purposes of clarity, by 4 p.m. Eastern Daylight Time on the Return Date and by 4 p.m. Eastern Time (whether Standard or Daylight, as the case may be) on the Supplement Return Date, an Applicant is required to submit to the Commission's offices:**

- a physical copy of the Application or Supplement, as the case may be; and**
- two flash drives containing the electronic version of the Application or Supplement, as the case may be.**

**Additionally, an Applicant must upload the electronic version of the Application or Supplement via the FTP server designated by the Commission.**

**Q.304: We understand the preference for responsive files to be in .pdf or .jpg format, but may spreadsheets (e.g., models, forecasts, projections, etc.) remain in native format to ensure that any supplied models, forecasts, projections, etc., are functional?**

**A.304: Yes, so long as the formats are compatible with Microsoft Excel. For the purposes of the redacted copy, any such spreadsheets must be in .pdf format.**

**Q.305: Are redacted copies of Applications, Supplements and associated materials submitted upon either Return Date required to be submitted in hard copy format (i.e., in addition to an electronic version)?**

**A.305: No. See answer to Question 303.**

**Q.306: Should an applicant restate the RFA question at the top of a response within the RFA file itself?**

**A.306: The GFLB has no preference, but Applicants are certainly welcome to restate the question at the beginning of each responsive component.**

**Q.307: Will the YouTube channel be public?**

**A.307: Yes. Generally, any video file submitted by an Applicant is intended to be a public overview/synopsis of the proposed project. The GFLB will "turn off comments" for any posted video.**

**Q.308:** How long will the YouTube link remain “live”?

**A.308:** The GFLB does not intend to put limitations on the duration of any video link.

**Q.309:** With the hard copy, does the GFLB have a preference concerning how an Applicant labels tabs between sections?

**A.309:** The hard copy submission should follow the order of the RFA and label files accordingly. The intention of the file response naming convention is to provide ease of navigation and understanding of Application materials.

**Q.310:** After the initial Application or Supplement is submitted on the Return Dates, in what manner should an Applicant submit updates or additional information? May an Applicant just submit such information electronically?

**A.310:** All responses and updates must be sent to the Permissible Contact detailed on page 7 of the RFA.

**Q.311:** May an Applicant upload materials prior to the submission deadline?

**A.311:** See answer to Question 2.

**Q.312:** Is the GFLB aware that electronic files on USB drives and the file transfer system will be automatically organized alphabetically and no longer match the sequence of the RFA or the written submission?

**A.312:** The GFLB agrees. Please see Appendix 1 to this Q&A for an updated list of file names. The RFA is hereby amended to reflect such file name changes.

**Q.313:** Would the GFLB prefer for responses to be saved in a numbered file system?

**A.313:** See answer to Question 312.

**Q.314:** Are diagrams and drawings considered “images” that must be submitted in .jpg format?

**A.314: All Application materials must be in commonly used file formats such as those accessible via Microsoft Office suite and Adobe suite of products.**

**Q.315: May an Applicant submit hyperlinks to documents within a response for items greater than 5 MB?**

**A.315: No, unless an Applicant is linking to U.S. Securities and Exchange Commission filings, presently available audited financial statements or other regulatory postings, in which case hyperlinks are acceptable.**

**Q.316: What is the size limitation for file transfer?**

**A.316: Generally, there is no file size limitation for the transfer program. See answer to Question 2.**

**Q.317: With signed instruments and agreements, is it acceptable to submit such as scanned copies, which might not be keyword searchable or machine readable and which may exceed the 5 MB file size limitation?**

**A.317: All contents of the hard copy of Application material must be included in the electronic version. Applicants are encouraged to keep electronic file sizes within reason (as close to 5MB as possible) to enable ease of transfer.**

**Q.318: The instructions provide that generally responsive files should be searchable .pdf files but suggest that spreadsheets, models, and forecasts will be provided. We assume that these spreadsheets, models and forecasts can be provided in Excel format. Please confirm.**

**A.318: See the answer to Question 304.**

**Q.319: Is there a paper-size limitation for the design portions of the Application?**

**A.319: There is no limitation on paper size for the hard copy submission. However, Applicants are reminded that they must provide an accessible electronic version of every document submitted in response to the RFA.**

**Q.320: May an Applicant integrate short videos or animations into the design portion of the Application, or must all videos be linked via YouTube?**

**A.320: Only YouTube videos may be embedded into Application materials.**

**Q.321:** Is there a preferred scale or level of detail for floor plan and other architectural drawings?

**A.321: Drawings should be submitted in sufficient detail for the GFLB 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.322:** Are the Building Elevations and Perspectives expected to be rendered or white model massing?

**A.322: Rendered.**

**Q.323:** What naming convention should Applicants follow for videos uploaded to YouTube?

**A.323: See answer to Question 312.**

**Q.324:** May an applicant implement a numbering system to facilitate ease of navigation or organization for various application sections? e.g., IV. Economic Activity and Business Development; IV.F. Benefits of the Site Location and Recapture Rate; IV.F.1. Location Details; IV.F.1.a. Description.

**A.324: See answer to Question 312.**

**Q.325:** If allowed to implement a numbering system, may an Applicant include a brand identifier in the naming convention? e.g., IV.F.1.a. BRAND.Description

**A.325: See answer to Question 312.**

**Q.326:** Are submissions titled .Description through .TotalAmount supposed to be named following the .LocationDetails.XXX naming convention (e.g., 4CasinoX.LocationDetails.Description) or as standalone sections (e.g., CasinoX.Description)?

**A.326: See answer to Question 312.**



**Q.327:** Should Applicants submit a separate hard copy application with redactions or just a USB of the application with redactions?

**A.327:** See answer to Question 303.

**Q.328:** Must the Applicant provide a physical copy of each redacted file or of its entire redacted Application?

**A.328:** See answer to Question 303.

### **Gaming Facility of the Highest Caliber**

**Q.329:** With respect to (.GamingCaliber), please define what is meant by “sub-area.”

**A.329:** The various areas that comprise the gaming floor. For instance: poker room, high-limit table/slot area, VIP tables, etc.

**Q.330:** Could the GFLB provide a list of the types of gaming equipment for which proposed vendors must be identified?

**A.330:** No.

**Q.331:** With respect to the “layout of any players-club areas, include number of stations, location, etc.”, would self-service enrollment areas and promotions kiosks fall under “players-club areas”?

**A.331:** The players-club area does not include standalone promotional kiosks that may be located throughout a gaming facility.

**Q.332:** With respect to “a description of the attributes of the slot accounting system that is planned for”, should an Applicant provide the same level of detail for the proposed table games accounting system?

**A.332:** Yes.

**Q.333:** Should the phrase “A summary narrative a description of” be read as “a summary narrative describing...”?

**A.333:** Yes.

**Q.334:** Would it be proper to use Casino Regulations Parts 5313 through 5316 and 5325 through 5329 as a guiding principle for “risk management/ controls” mentioned in the questions about Internal Controls and Organization?

**A.334:** Yes.

**Q.335:** The RFA requires Applicants to include, “The number of ‘active’ (those who have played within the past 12 months) and ‘inactive’ (those who have played over 12 months ago) members in the Database.” What date should Applicants be using as the starting point for “the past twelve months”?

**A.335:** Applicants should use a date as close as possible to the Return Date.

**Q.336:** To the extent an outdoor gaming area can be developed, would smoking be allowed?

**A.336:** The ability to allow smoking within an outdoor gaming space is subject to the review and approval of the local health department with jurisdiction at the location of the proposed gaming facility.

**Q.337:** The RFA calls for site plans and renderings relating to the design and layout of the proposed facility. May an Applicant submit videos, such as virtual fly overs as part of their response?

**A.337:** Yes. Video submissions may be embedded in Application materials in formats compatible with YouTube.

**Q.338:** Should proposed hardscape and landscape treatments be represented as diagrammatic plans or rendered plans?

**A.338:** The GFLB has no preference.

**Q.339:** How should the Exterior Lighting Design be illustrated?

**A.339:** The GFLB has no preference.

**Q.340:** Are diagrammatic plans and elevations acceptable with a rendered perspective of the exterior at night?

**A.340:** The GFLB has no preference.

**Q.341:** What is the expected quantity of high-quality exterior renderings?

**A.341: A single hard copy is expected.**

**Q.342:** What is the expected quantity of high-quality interior renderings?

**A.342: A single hard copy is expected.**

**Q.343:** What is the expected size and scale of Project Site access plan drawings?

**A.343: The GFLB has no preference.**

**Q.344:** Should the drawings be full scale, Arch D plans?

**A.344: The GFLB has no preference.**

**Q.345:** Are visual diagrams acceptable to be included in the project narrative description?

**A.345: Visuals are acceptable to the extent that they further the understanding of the narrative description but are not acceptable as a substitute to a full narrative.**

**Q.346:** Is it expected to have the design materials (plans, elevations, renderings, narratives, etc.) combine in a PDF design document to describe the design as comprehensively as possible? Or is it expected that all of the listed elements are separately submitted in their sections?

**A.346: The GFLB has no preference, however, Applicants are encouraged to submit the most detailed information possible. Failure to provide substantial detail may not provide the GFLB with a full and complete understanding of a proposal.**

**Q.347:** What metrics will the CACs use to validate and review the Back of House Loading criteria?

**A.347: A CAC is charged only with determining whether to approve a proposed project as a whole. No such "validation" of particular components is contemplated.**

**Q.348:** Are diagrams expected to help describe the planned dock and loading facilities or should only text be used?

**A.348:** The GFLB has no preference.

**Q.349:** What is the difference between the “Site Plan” included in (.Layout) to the “Master Plan” included within (.MasterPlan)?

**A.349:** A “Site Plan” shall include the design aspects of a gaming facility and its related amenities. A “Master Plan” shall include how such gaming facility integrates with surrounding neighborhoods and infrastructure.

**Q.350:** Will the GFLB consider allowing inclusion of rated players beyond the 200-mile radius limitation?

**A.350:** The limitation provided is an industry-standard radius from which casinos expect their core customers. If an Applicant wishes to provide its marketing plan for potential customers beyond a 200-mile radius, the Applicant is encouraged to provide details on how those customers will be incentivized to visit the facility.

**Q.351:** Will the GFLB’s scoring criteria enable additional points for projects that mitigate traffic from the gaming facility and reduced existing traffic as a result of proposed infrastructure improvements?

**A.351:** Yes. Traffic mitigation will be a portion of the evaluation as it relates to transportation and infrastructure improvements. If such traffic mitigation is superior to other projects, it will receive additional consideration.

**Q.352:** Are detailed architectural plans and images required for the return date? If so, please describe the level of detail desired. For example, Concept design or Schematic Design or Design Development as described by the American Institute of Architects (AIA).

**A.352:** Yes. Applicants are encouraged to submit the most detailed information possible. Failure to provide substantial detail may not provide the GFLB with a full and complete understanding of a proposal.

**Q.353:** Beginning on page 31 continuing to page 33, gaming facility of Highest Caliber with a Variety of Quality Amenities lists a number of required submittal

data and drawings. Will this be required by the return date or supplement return date?

**A.353: See answer to Question 352.**

**Q.354:** Page 35 to Page 37 requires many architectural drawings. Are these required to be complete and submitted by the return date or supplement return date?

**A.354: See answer to Question 352.**

**Q.355:** Will the operation of a temporary casino be permitted while the permanent casino project is being constructed?

**A.355: No. PML § 1321-e(2) states “The commission shall not approve a gaming facility to open before the completion of the permanent casino area.”**

**Q.356:** Is there a minimum square footage that should be dedicated to the gaming facility?

**A.356: No.**

**Q.357:** Is having a known flag required for the hotel?

**A.357: No.**

**Q.358:** Are there specific amenities required in the hotel?

**A.358: No.**

**Q.359:** “Information related to the proposed gaming area (or areas, if more than one is being considered) including, square footage of each sub-area and a total for all gaming space....” In presenting detailed plans of the proposed facility, what scale size should be used for the drawings?

**A.359: The GFLB has no preference.**

**Q.360:** With respect to "A summary of how the hotel, hotel rooms, restaurants and other amenities that are part of the proposed Gaming Facility will compare in quality and price to other area hotels, restaurants and amenities as well as those

included and offered in other competitive gaming facilities.” What is meant by “area”?

**A.360: We defer to the discretion of the Applicant to reasonably define the term “area”.**

**Q.361:** Would a temporary facility be permitted while a permanent facility is under construction?

**A.361: See answer to Question 355.**

**Q.362:** The RFA provides that any changes to “size...” of a facility will not be permitted. As architectural design progresses move through advanced phases, it is common for plan dimensions to change from initial design and, in many cases, become more efficient as further detail is developed. Is there a definition of what would constitute a change in size that would not be permitted?

**A.362: The intention of the restriction was to prevent an Applicant from undertaking a bait-and-switch, wherein the proposal is resized to the benefit of the Applicant. Accordingly, the burden would be on an Applicant to defend any proposed changes to the initial submission as not material to the Application.**

**Q.363:** Will the awarded casino license(s) include the ability to conduct retail, in-person sports betting?

**A.363: Yes.**

**Q.364:** Will gaming be permitted in the hotel or other areas of the property outside of the designated casino floor?

**A.364: Gaming will be permitted only in areas that are designated as gaming floor areas.**

**Q.365:** What metrics will the CACs use to validate and review the Project Site traffic plans?

**A.365: A CAC is charged only with determining whether to approve a proposed project as a whole. No such "validation" of particular components is contemplated.**

**Q.366:** Must submitted plans be at a level that permits their ULURP use?

**A.366:** The requirements of submissions to the RFA are to advance the review processes under the RFA. Requirements for local zoning should be directed to the entity with zoning jurisdiction.

**Q.367:** Will the Project Site traffic plans need to be developed to a detailed level for ULURP review?

**A.367:** See answer to Question 366.

### **Gaming Regulations**

**Q.368:** Are there any games being conducted at in-state casinos that are not included in the New York State Gaming Commission regulations?

**A.368:** No. The Commission's regulations define the scope and operation of game activities within a gaming facility.

**Q.369:** Does the Commission permit the use of facial recognition?

**A.369:** Yes.

**Q.370:** Do all cameras utilized have to have sufficient magnification to allow reading of slot machine reel systems?

**A.370:** Please see 9 NYCRR § 5314.4.

**Q.371:** Are pan/tilt/zoom cameras required for each slot machine or per bank of machines?

**A.371:** Please see 9 NYCRR § 5314.4.

**Q.372:** If an Applicant intends to contract with a third party to operate a retail sports book within the gaming facility, when must such third party be identified?

**A.372:** The only requirement is to identify the third party with enough timing to successfully navigate the licensing process.

**Q.373:** Does the description of proposed internal controls and security systems pertain to building security systems, IT security systems, or both?

**A.373: Both.**

### **General Applicant Information**

**Q.374:** Do the licensing applications have to be included in the greater RFA response as one document, or can they be submitted at the same time within a separate document?

**A.374: See answer to Question 26.**

**Q.375:** Are Applicants required to submit their applications via both FTP server and USB flash drive?

**A.375: See answer to Question 303.**

**Q.376:** Will the GFLB provide specific requirements for the format of the hard copy submission?

**A.376: See answer to Question 2.**

**Q.377:** The RFA says “On the Return Date, each Applicant and its respective Related Parties shall submit the following...”, which includes the Gaming Facility License Application Form. “Related Parties” includes “Affiliates,” which is defined as all entities that directly or indirectly control, are controlled by or are under common control with the subject entity. This definition appears to include all subsidiaries of an Applicant’s parent company, whether or not those subsidiaries will be involved in ownership / operation of the New York Gaming Facility. For a large multinational corporate, this may number hundreds of entities. Please clarify if the GFLB is requiring Gaming Facility License Application Forms from each of these numerous entities or if the scope should be read more narrowly?

**A.377: See answer to Question 37.**

**Q.378:** With respect to litigation, must an Applicant list all litigation involving all subsidiaries even where parent company has a large organizational chart and has subsidiaries operating worldwide?

**A.378: Yes.**

**Q.379:** Does the requirement to list all litigation apply to entities that have ceased operations?



**A.379: Yes.**

**Q.380:** Besides the five years of taxation returns, are other supporting documentation required from individual applicants?

**A.380: Please see PML § 1323 and 9 NYRCC Part 5304.**

**Q.381:** Do applicants need to provide references in the New York Supplement separate from those listed in Multi-Jurisdictional Personal History Disclosure Form?

**A.381: The New York Supplemental does not require references.**

**Q.382:** For Schedule C – Securities or similar type questions, may an Applicant provide a brokerage statement attached to the Multi-Jurisdictional Personal History Disclosure Form?

**A.382: Yes.**

**Q.383:** As of what date must individual applicants provide information for the application (e.g., financial data, such as banking or security holdings)?

**A.383: Information should be provided as or as close to the Return Date as possible.**

**Q.384:** Are there any date requirements regarding the certified copies? E.g., dated no earlier than a specified number of days prior to submission?

**A.384: Certified certificates of ownership structure must be current as of the date of submission.**

**Q.385:** For the purpose of facilitating comparison and ensuring comparability of the scope of response across Applicants, will the GFLB provide templates to be used for providing financial information such as pro forma projections, tax revenue projection or any other RFA sections?

**A.385: The GFLB has not considered establishing a template.**

**Q.386:** May the Applicant change the identified point of contact during the process?

**A.386: Yes, by providing name and contact information to the permissible contact provided in the RFA.**

**Q.387:** What is intended to be included in the phrase “executive management duties”?

**A.387: The customary and general use of this term applies.**

**Q.388:** Who is intended to be included in executive management?

**A.388: The customary and general use of this term applies.**

**Q.389:** Does “aiding or assisting the Applicant’s efforts to obtain a License pursuant to this RFA” include professionals whose sole responsibility is to assist an Applicant in preparing its Application?

**A.389: Yes.**

**Q.390:** Must all consultants and project firms remain on the project once the Application is submitted?

**A.390: No.**

### **General Information**

**Q.391:** Can the Applicant provide more than one person to receive notices of an Applicant’s status?

**A.391: The Commission will make any notifications through the designated point of contact. It is the responsibility of the point of contact to distribute such information.**

### **Introduction**

**Q.392:** When does the Commission expect to select the final two members of the GFLB?

**A.392: No timeframe has been established.**

**Q.393:** When does the Commission expect to name the Chair of the GFLB?

**A.393: No timeframe has been established.**

### **Issuance of Licenses**

**Q.394: At what milestone will a license be issued?**

**A.394: Following the award, the Commission will work with each successful applicant to establish an effective date for each license to align the terms with the start of gaming operations.**

### **Licensing Fee and Term**

**Q.395: Will the GFLB allow for discrete license fees by successful Applicants?**

**A.395: Yes, an applicant may bid a higher licensing fee above the \$500 million minimum.**

**Q.396: When is the licensing fee due following the award of the license?**

**A.396: Payment of the licensing fee must be made within 60 days from notice of license award.**

**Q.397: If an Applicant proposes paying a higher license fee, where should the proposed amount be reflected?**

**A.397: Reference should be included ExecutiveSummary.Supplement and .StateLocalRevenue.Supplement) wherein a description of, among other things, the license fee, is required.**

**Q.398: If an Applicant proposes paying a higher license fee, should the amount be proposed on the Return Date or on the Supplement Return Date?**

**A.398: Proposed license fee amounts in excess of the minimum are due by the Supplement Return Date.**

**Q.399: Given that large-scale investment in the gaming facility may be feasible only if the Applicant has a sufficiently long license term, should an Applicant propose a specific license term that supports its level of total investment?**

**A.399: If the proposed capital investment requires a specific term to be a viable project, the applicant must propose a corresponding licensing term.**

**Q.400:** When will the license term be determined?

**A.400:** The length of term will be finalized with the award of each license.

**Q.401:** If multiple licenses are awarded, will license term be the same for each gaming facility or differ depending on level of investment of each Applicant?

**A.401:** The length of term may differ between the licensees based on the capital investment and financial return to the State provided by each Applicant.

**Q.402:** When will the Initial License Period commence (e.g., upon granting of license or granting of operation certificate)?

**A.402:** The Initial License period will commence with the effective date of the license. See answer to Question 394.

**Q.403:** For an Applicant proposing a phased development to accelerate the timing of tax generation and economic impact to the State, would the Initial License Period commence upon completion of full phase build out such that the Applicant is still able to operate the full gaming facility for an entire Initial License Term rather than being penalized by opening phase one on an accelerated basis?

**A.403:** The commencement of the Initial License Period will be aligned to the beginning of gaming operations.

**Q.404:** Can the GFLB provide clarification on how an investment level will impact the licensing term?

**A. 404:** The Commission will consider the proposed licensing term in relation to the total financial and economic value of the Applicant's proposal in relation to other Applicants' proposals.

**Q.405:** At what point will the GFLB determine whether an Applicant has a qualifying lease duration?

**A.405:** While the obligation to illustrate a qualifying ownership or lease is a post-licensing requirement, an Applicant must provide indicia of capability of satisfying this post-licensing requirement so that the GFLB has confidence that an applicant is qualified to receive a favorable recommendation from the GFLB.

**Q.406:** How will the licensing renewal process work?

**A.406: The Commission has not yet established parameters concerning license renewal.**

**Q.407:** What considerations will be given for licensees on different license durations?

**A.407: See answer to Question 404.**

**Q.408:** As the length of a license could have a significant impact on the financing of the project and capital investment proposed, does the GFLB anticipate indicating a more definitive license term than what is set forth in PML § 1321-a, or does the GFLB expect RFA submissions to propose alternatives for different license terms (e.g., 10, 15, 20, 25, or 30 years)?

**A.408: See answer to Question 401.**

**Q.409:** In the license requirement set forth in PML § 1316(2), the statute provides that “ownership of the land shall include a tenancy for a term of years under a lease that extends not less than sixty years beyond the term of the gaming license issued under this article.” For such a lease to qualify, is the minimum term 70 years, which would be 60 years after the minimum initial 10-year term of a gaming facility license?

**A.409: The minimum tenancy is 60 years plus the proposed term of license, for a total tenancy between 70 and 90 years.**

**Q.410:** In the license requirement set forth in PML § 1316(2), the statute provides that “ownership of the land shall include a tenancy for a term of years under a lease that extends not less than sixty years beyond the term of the gaming license issued under this article.” Does the possibility of a longer initial term (based on proposed total investment) or the possibility of renewal term for a gaming facility license affect the minimum term of such a lease?

**A.410: The statute requires a lease of not less than 60 years beyond the initial term of license. A failure to illustrate a tenancy beyond 70 years will restrict the Commission's ability to extend a license past that lease hold interest.**

**Q.411:** PML § 1321-a(1), provides that the initial license term shall be no less than 10 years but no more than 30 years, to be determined by the Commission based on the “proposed total investment of the applicant’s project.” What thresholds / amounts of proposed total investment will result in an initial gaming facility license term longer than 10 years?

**A.411:** See answer to Question 404.

**Q.412:** PML § 1321-a, paragraph 1, provides that the initial license term shall be no less than 10 years but no more than 30 years, to be determined by the Commission based on the “proposed total investment of the applicant’s project”. What will be the extended length of such term?

**A.412:** See answer to Question 404.

**Q.413:** At the conclusion of the initial term of license, will another license fee be due?

**A.413:** PML § 1321-e(3) provides: "The commission shall set any renewal fee for such license based on the cost of fees associated with the evaluation of a licensee under this article which shall be deposited into the commercial gaming fund." The Commission has not yet considered any aspects of renewal.

**Q.414:** Will any guidance on the renewal process be issued?

**A.414:** The Commission has not yet considered any aspects of renewal.

**Q.415:** Can you confirm that the ten-year license term will begin when the facility opens and takes its first wager?

**A.415:** See answer to Question 394.

**Q.416:** Does the \$500 million licensing fee get included in “total investment” for the purpose of determining the required escrow amount?

**A.416:** No.

**Q.417:** Does the GFLB anticipate that initial term of licenses will be different for each of the three successful applicants?

**A.417: PML § 1321-a(1) states "The duration of such initial license and the term of renewal shall be determined by the commission; provided however, that such initial license term shall be no less than ten years but no more than thirty years based on the proposed total investment of the applicant's project." Accordingly, the length of licenses will be determined by the investment made.**

**Q.418: Page 59 of the RFA outlines the Licensing Fee and Term. By the time that the Applicants are required to submit a firm bid, will the Initial Term of the License and the renewal process and fees be known to the Applicants, given that the economics of any bid are inextricably linked to the duration of the licenses and terms of renewal?**

**A.418: See answer to Question 417.**

**Q.419: Page 59 of the RFA outlines the Licensing Fee and Term. When will the initial term of the license begin – upon issuance, upon commencement of operations or upon some other agreed upon date?**

**A.419: See answer to Question 394**

**Q.420: What is the license term?**

**A.420: See answer to Question 400.**

**Q.421: Is the license fee for a license term of 10 years fixed at \$500 million?**

**A.421: The minimum license fee is \$500 million. The minimum term is 10 years. Additionally, please see the answer to Question 395.**

**Q.422: What is the license term?**

**A.422: See answer to Questions 400 and 401.**

**Q.423: Is the license fee tied to the license term?**

**A.423: See answer to Question 399.**

**Q.424: If the Commission will permit a license term greater than 10 years, what will the process be for determining the license term? For example, is there a**

formula or set of specific criteria regarding capital expenditure or the license fee that the Commission will look to in considering a term longer than 10 years?

**A.424: See answer to Question 404.**

**Q.425:** Will applicants know the license term prior to the second round of Q&A?

**A.425: No.**

**Q.426:** Does the gaming license term start on the day of award or on the first day Class III operations commence?

**A.426: See answer to Question 394.**

**Q.427:** What license term should an Applicant assume for purposes of its bid? Note that page 59 of the RFA references a range of 10-30 years.

**A.427: See answer to Question 401.**

### **Lobbying Restrictions**

**Q.428:** For the purposes of disclosure of certain “officers or employees of any governmental entity,” please define “governmental entity.”

**A.428: The purpose of this section is to ensure integrity of the RFA process. The term “governmental entity” applies to the members of the GFLB and Commission members. The term will also apply to the members of the CACs and their appointing authorities, neither of which will be known until after the initial submission. Accordingly, each Applicant shall review the relevant CAC and appointing authorities and update, as necessary, their Application under the Continuing Duty to Update Application section of the RFA.**

**Q.429:** Does a law firm representing an Applicant as regulatory counsel need to file as a lobbyist?

**A.429: If the law firm will engage in lobbying activity on behalf of a client or a client's interest before the Commission, it shall first register with the secretary of the Commission. We caution that any law firm may have an independent requirement to register as a lobbyist with the N.Y.S. Commission on Ethics and Lobbying in Government.**



**Q.430:** Does a law firm representing an Applicant as its regulatory counsel before the CACs and GFLB need to file as a lobbyist?

**A.430:** Please see answer to Question 429.

**Q.431:** Does the impermissible contact restriction apply only to communications between an Applicant, the Commission or the GFLB if they are for the purpose of influencing the award?

**A.431:** Yes.

**Q.432:** Does the impermissible contact restriction apply to communications between an Applicant and other governmental entities for the purpose of developing plans to build a gaming facility and not for the purpose of influencing the award?

**A.432:** Please see answer to Question 431.

### **Local Impact Siting**

**Q.433:** With respect to the description of the estimated incremental or diminished revenue impact on existing restaurants in proximity to the proposed location that patrons would frequent, how is “proximity” defined?

**A.433:** Please see the answer to Question 167.

**Q.434:** For the assessment of the likely impact on nearby entertainment venues, restaurants, and hotels, what is considered “nearby” (e.g., is there a mileage radius)?

**A.434:** Please see the answer to Question 166.

### **Maximizing State and Local Revenues**

**Q.435:** Why does the average case assume only one similar casino project within 50-miles and another outside of the 50-mile range, given that all three are most likely to be within 50-miles of each other?

**A.435:** The information provided with the Return Date filing is intended to provide a uniform baseline assumption for initial consideration.

**Q.436:** Regarding the required summary of independent analysis of “high-, average- and low-case” parameters, how will the GFLB address, review and evaluate the 50-mile threshold if three licenses are awarded within a 50-mile radius?

**A.436:** Please see the answer to Question 435.

**Q.437:** For the high / mid / low cases described in item “.StateLocalRevenue,” what should be assumed with respect to the existing video lottery gaming facilities?

**A.437:** The Applicant needs to make assumptions of the license availability and the impacts that multiple licenses may have on their fiscal projections.

**Q.438:** For the high / average / low cases described in item “.StateLocalRevenue”, are there any parameters that should be assumed for the “comparable casino project” (e.g., size, amenities, distance from the Applicant’s proposed gaming facility, etc.)?

**A.438:** The Applicant needs to make assumptions of the likely size and impacts of other potential licensees.

**Q.439:** Is the GFLB requesting a special purpose or agreed-upon procedures audit report be produced as it does not appear a Report of Independent Registered Public Accountant Firm customarily included with annual financial statements would accomplish the specific request?

**A.439:** It is incumbent upon the Applicant to engage an independent auditor to meet such requirement.

**Q.440:** Will the GFLB provide a specific format of the disclosure report required here to initiate discussion with an independent registered public accounting firm?

**A.440:** No.

**Q.441:** Will a gaming facility licensee have the flexibility to adjust table and slot unit counts upwards or downwards based on actual operating conditions versus the unit counts included in the Application?

**A.441:** The gaming facility licensee will not have the flexibility to unilaterally decrease its table and slot count. However, the Commission

**has entertained formal applications from licensees to adjust their minimum requirements based on operating experiences.**

**Q.442:** The RFA implies the three scenarios (high, low and avg) are required only for the cash flow statement. Do Applicants need to present the scenarios for the income statement and the balance sheet?

**A.442: Yes.**

**Q.443:** On page 30 of the RFA, the different cases for the independent analysis require the proposed facility to be assessed against comparable casino projects within 50 miles. What is the rationale behind the requirement to use an assumption of 50-miles when every declared site is within +/-30 miles of one another?

**A.443: See answer to Question 458.**

**Q.444:** Are the market study scenarios (as referenced on page 30 of the RFA) to take into consideration the presence of existing VLG facilities (Jakes 58, Resorts World New York and Empire City Casino)?

**A.444: See answer to Question 445.**

**Q.445:** Is the market study expected to take into consideration the possibility of expanded gaming in Northern New Jersey?

**A.445: The Applicant needs to make assumptions of the likely size and impacts of other potential competition.**

**Q.446:** What is the definition of “comparable casino projects” (page 30 of the RFA)?

**A.446: See answer to Question 438.**

**Q.447:** The RFA states “In addition, for existing video lottery gaming facilities, the assumption should be that education revenues (80 percent of the total) cannot be less than the total education aid deposits into the State Lottery Fund from the video lottery gaming operations of such entity in FY 2022.” Please explain what the RFA is referencing by “80 percent of the total” and how the remaining 20 percent is being treated.

**A.447: See N.Y. State Finance Law § 97-nnnn(3).**

**Q.448.** With respect to the summary narrative illustrating revenues that the State and localities will receive from the proposed gaming facility (.StateLocalRevenue): What constitutes a “comparable casino project”?

**A.448: See answer to Question 438.**

**Q.449:** Does “within 50 miles” apply to driving distance or a straight line?

**A.449: Driving distance.**

**Q.450:** Why does the average case assume a comparable casino project outside the 50-mile range, but the high-case and low-case scenarios do not include a comparable casino project outside the 50-mile range?

**A.450: The RFA speaks for itself in this regard.**

**Q.451:** If the reference to comparable casino outside the 50-mile range does not regard existing casinos (e.g., the two Connecticut casinos, existing Atlantic City casinos, etc.) please provide additional guidance on location.

**A.451: The Applicant needs to make assumptions of the likely size and impacts of other potential competition.**

**Q.452:** Does the average case imply a scenario where the GFLB issues two casino licenses, rather than up to three?

**A.452: The RFA speaks for itself in this regard.**

**Q.453:** Does the low-case basis imply a scenario where the GFLB issues all three casino licenses?

**A.453: The RFA speaks for itself in this regard.**

**Q.454:** The RFA requires applicants to prepare and provide an independent analysis of certain financial and tax revenue projections “over the existing use of land at the gaming facility site.” For purpose of such analysis, does “existing use” mean the actual current use of the facility site in its current state of improvement and development, or the tax revenue which the facility site would be expected to generate if improved and developed to the extent permitted by current zoning?

**A.454: The use of the property in its current state.**

**Q.455:** Page 30 of the RFA outlines the high-case, average case and low-case basis, which are defined by the projects within certain geographical radii. More specifically, the high-case assumes that “there are no comparable casino projects within 50 miles of the proposed facility.” Can the GFLB confirm that the RFA is asking the Applicants to ignore existing VLg Facilities that may be already located within those radii?

**A.455: See answer to Question 438.**

**Q.456:** Given the population density downstate and the fact that distance is more accurately calculated by time rather than mileage, will the GFLB consider travel time, borough boundaries and overall traffic impacts, rather than just geographical distance, as the basis for distinguishing between the high-case, average-case and low-case projections?

**A.456: No.**

**Q.457:** The RFA states the high-case would assume that there are no comparable casino projects within 50 miles of the proposed facility.

(a) Does this mean drive miles or “as the crow flies” miles?

(b) Does this mean N.Y.S. casinos only?

(c) Does this apply to proposed casinos only?

**A.457: See the answers to Questions 438, 445 and 449, respectively.**

**Q.458:** Why was the 50-mile radius determined to be the metric?

**A.458: 50 miles is the radius that the GLFB determined appropriate.**

**Q.459:** Based on public announcements, it appears the majority of proposed casino project sites will be roughly 25 or less “as the crow flies” miles from each other. Given the request on page 30 of the RFA to show high-, average- and low-case impacts from comparable casino projects, will the GFLB accept an analysis that uses a smaller radius than 50 miles if the applicant can demonstrate that a smaller radius is more appropriate to capture the market dynamics and publicly announced site locations?

**A.459: See answer to Question 438.**

**Q.460:** Why is the assumption that education revenues are 80 percent of the total?

**A.460: See N.Y. State Finance Law § 97-nnnn(3)(a).**

**Q.461.** Will a net present value of tax revenues be utilized?

**A.461: The valuation methodology has not been determined yet.**

**Q.462:** Under the requested “High Case Scenario,” which suggests the Applicant assume “there are no comparable casino projects within 50 miles of the proposed facility,” please confirm this scenario should assume that the existing facilities in Yonkers and Flushing remain as VLG only for purposes of this scenario.

**A.462: See answer to Question 437, and note that there is no VLG facility in Flushing.**

**Q.463:** What assumptions should the market studies make regarding online gaming in the state of New York?

**A.463: When preparing its response, the Applicant should assume the current landscape of legalized gambling in New York.**

**Q.464:** Should applicants include the annual machine and table fees imposed under PML § 1348 in the summary of State revenues to be disclosed on the Return Date and the Supplement Return Date?

**A.464: Yes.**

### **Minimum Capital Investment**

**Q.465:** Will the GFLB consider pre-capital investment amounts to be included in the minimum \$500 million balance?

**A.465: The GFLB has not advised as to whether pre-capital investment will be included.**

**Q.466:** In connection with the submission of a detailed summary of capital investments that will be made prospectively if the Applicant receives a gaming facility license, what evidence or back-up is required to be submitted to determine the projected costs of: pre-opening purchase of furniture, fixtures, equipment, gaming equipment, information technology equipment and personal property to be used within the gaming facility?

**A.466: Please see answer to Question 465.**

**Q.467:** In connection with the submission of a detailed summary of capital investments that will be made prospectively if the Applicant receives a gaming facility license, does the summary of percentage of each investment made towards firms in the host community pertain only to donations and community improvements?

**A.467: Refer to the description of the Capital Investment outlined on page 29 of the RFA.**

**Q.468:** Is it appropriate to assume that the request for the percentage of each investment “that will be to firms located in the host community, the host municipality and the state” refers to each of the categories of capital spending specified in the preceding bullets (actual construction, site prep, environmental remediation, professional services, FFE etc.)?

**A.468: Yes.**

**Q.469:** Could the GFLB clarify if “.CapitalInvestmentDetails” is seeking a summary of infrastructure improvement and construction associated with the Application or only those elements eligible in calculating the Minimum Capital Investment, as defined?

**A.469: .CapitalInvestmentDetails should include only those elements eligible in calculating the Minimum Capital Investment.**

**Q.470:** Please clarify if there is a difference between the various uses of the term "host" in relation to community and municipality.

**A.470: Yes. The term Host Municipality is defined. The term host community should encompass areas surrounding and adjacent to the proposed facility. By way of illustration, if this process were for siting in another jurisdiction and an applicant used Washington, D.C. as a Host Municipality, the host community would incorporate Alexandria and Arlington, Va., and Silver Spring, Md.**

**Q.471:** For purposes of calculating the “Minimum Capital Investment,” the Applicant is allowed to include certain professional fees. Do these professional fees include fees paid to accountants and consultants engaged by the Applicant to assist in preparing the Application?

**A.471: No, to the extent that such costs do not represent indirect and overhead costs related to the development of the gaming facility.**

**Q.472:** The RFA states that the GFLB may consider private investments made by the Applicant prior to April 9, 2022. Will the GFLB consider any such private investment made by an affiliate of an applicant?

**A.472: The RFA states that the GFLB would consider whether capital investment made prior to April 9, 2022 would count towards the calculation of minimum capital investment. The GFLB encourages Applicant's to include the reasons why such amounts should be considered in their submissions.**

**Q.473:** For purposes of determining the length of the initial term of a gaming facility license, how is the “total investment” in an applicant’s project defined?

**A.473: Total investment is defined as all elements of Minimum Capital Investment. An Applicant may also include other items that it wishes the GFLB to consider as investment and the reason supporting such consideration.**

**Q.474:** Is total investment determined in the same manner as “minimum capital investment”?

**A.474: See answer to Question 473.**

**Q.475:** How will the GFLB normalize applications that involve adaptive reuse of existing structures as against applications that require ground-up construction?

**A.475: PML § 1321-e(1) allows for the GFLB to evaluate Applications that include adaptive reuse of existing structures. At this time, the GFLB has not established criteria for such evaluation. An Applicant is encouraged to include the value of its requested credit for adaptive reuse and justification for why such amount should be considered.**

**Q.476:** How will the GFLB evaluate the value of existing structures as opposed to ground-up construction of a new gaming facility and the cost associated with obtaining vacant possession of those structures, when considering an Applicant’s Minimum Capital Investment?



**A.476: At this time, the GFLB has not established criteria for such evaluation as it relates to Minimum Capital Investment.**

**Q.477:** The RFA does not appear to exclude from the calculation of an Applicant's Minimum Capital Investment, the costs and investments required to be made for a site that is subject to a general project plan which already obligates the owner to invest and build on the location. Are we correct that in such instances, only the incremental investment over and above commitments under an existing general project plan will be considered for purposes of the Minimum Capital Investment calculations?

**A.477: Yes.**

**Q.478:** Should the Minimum Capital Investment exclude government or State funding or subsidies?

**A.478: 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.479:** Please confirm that ALL soft cost including consultant fees, pre-opening fees, marketing fees, FFE, OS&E, cost to prepare RFA, etc. should be included in the capital investment submission.

**A.479: Please see answer to Question 471.**

**Q.480:** In the event that one of the existing video lottery gaming facilities is selected as one of the licensees, would such facility be required to spend and/or complete the minimum of \$500M prior to being granted the opportunity to offer table games?

**A.480: An Application submitted by a video lottery gaming facility is required to meet all aspects of RFA requirements that are applicable to greenfield development.**

### **Mitigating Potential Impacts on Municipalities**

**Q.481:** With respect to "revenue and visitation projections," should the independent expert's local economic impact study utilize the Applicant's own revenue and

visitation projections or those forecasted within the “full independent market study”?

**A.481: Applicants should use the full independent market study.**

**Q.482:** Please confirm that the portions of the Local Economic Impact Study (.LocalEconImpactStudy) that correspond to impact analyses conducted pursuant to SEQRA/CEQR may be submitted on the Supplement Return Date, following completion of SEQRA/CEQR environmental review, and do not need to be submitted on the Return Date. If at the time of the initial return date an Applicant is undertaking impact analysis pursuant to SEQRA/CEQR, can Applicant submit a list of the technical areas that will be studied, a description of the methodology that will be used to study them, and, if an EAS and Positive Declaration have been issued as of the Initial Return Date, the areas where potential impacts have been identified by the lead agency for purposes of further study in an EIS?

**A.482. An Applicant should submit as complete a response as possible by the Return Date for the exhibit to be labelled .LocalEconImpactStudy, as such information will be relevant to CAC consideration. To the extent that such submission requires modification during the progress of statutory environmental reviews, the Applicant may request that the GFLB accept an updated submission for this exhibit.**

**Q.483:** If at the time of the initial return date an Applicant is undertaking impact analysis pursuant to SEQRA/CEQR, can Applicant submit a list of the technical areas that will be studied, a description of the methodology that will be used to study them, and, if an EAS and Positive Declaration have been issued as of the Initial Return Date, the areas where potential impacts have been identified by the lead agency for purposes of further study in an EIS?

**A.483: See answer to Question 482.**

**Q.484:** Is the establishment of an on-site child day care program a requirement?

**A.484: The statute states that an on-site day care program is not a requirement but is a component of evaluation. The Workforce Enhancement section of the RFA that concerns on-site day care should be read in a light reflective of PML § 1321-j(3)(d)(3).**

**Q.485:** Are the three areas of geographic study for the Economic Impact Analysis the Host Municipality, Region, and State?

**A.485: Yes.**

**Q.486:** For the Local Economic Impact Analysis, is the geography of affected governments/communities the same as for the Economic Impact Analysis (e.g., Host Municipality, Region and State)?

**A.486: Yes.**

**Q.487:** For the Local Economic Impact Analysis, reference is made to impact on nearby localities and/or municipalities. Is this a different geography than as defined by the Region?

**A.487: The terminology in this section is imprecise. The terms "surrounding localities" and "nearby municipalities" should be considered interchangeable.**

**Q.488:** Should potential impact categories be analyzed in comparison to the assumed no-build background condition in the comparable year, and not in comparison to existing conditions?

**A.488: We do not understand how the existing condition differs from the no-build condition.**

**Q.489:** Is there an agreed-upon methodology that the GFLB will use to give value to the positive environmental impact, the minimal displacement, and the overall reduced carbon footprint resulting from using an existing structure?

**A.489: The Applicant should submit its estimation of positive environmental impact and its methodology for determining such.**

**Q.490:** What is the definition of economic plan?

**A.490: The customary and general use of this term applies.**

**Q.491:** Please explain the differences and definitions of "local" versus "regional" for economic studies?

**A.491: Local should include the host community where the facility is located, while regional should include surrounding municipalities.**

**Q.492:** Will the GFLB accept bids that partner with local childcare providers (to further support and not disrupt such local providers) in lieu of constructing a new and potentially duplicative “on-site” childcare center?

**A.492:** PML § 1321-j(3)(d)(3) provides that on-site day care is not a requirement but is a component of evaluation. An Applicant partnering with a local childcare program will be affirmatively evaluated concerning that component of its Application.

**Q.493:** If an Applicant proposes a residential component integrated within its project, will such component be considered part of the gaming facility?

**A.493:** It is incumbent upon the Applicant to define what it believes to be the gaming facility it proposes.

**Q.494:** Please define "underserved communities."

**A.494:** Underserved communities shall be defined as populations sharing a particular characteristic, as well as geographic communities, who have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.

**Q.495:** Please define "small business."

**A.495:** A small business shall be deemed to be one that is resident in this State, independently owned and operated, not dominant in its field, and that employs 100 or fewer persons.

**Q.496:** Please define local, as in “local nonprofit services.”

**A.496:** Local should include the host community where the facility is located.

### **Non-Collusive Bidding**

**Q.497:** With regard to restricted behavior and ethical conduct by Applicants, will the GFLB issue and enforce rules that prohibit material interference with fair competition among Applicants?

**A.497:** The GFLB has not considered the issuance of such conduct-related rules.

### Organizational Documents

**Q.498:** Do executed or binding joint venture or partnership agreements need to be in place or may term sheets, draft agreements or something more generic suffice?

**A.498:** Please refer to page 23 of the RFA, Organizational Documents.

### Partnerships with Entertainment Venues

**Q.499:** Does the term “live entertainment venue” include theaters, movie theaters, restaurants, concert venues, health clubs, etc.?

**A.499:** RFA page 33 outlines specific examples of live entertainment venues. For your specific question, theaters and concert venues would be included, but movie theaters, restaurants and health clubs would not be included.

### Application Fee

**Q.500:** What is the date and time by which the commission needs to receive one million dollars payment for the application fee (as per page 3 of the RFA)?

**A.500:** The fee must be submitted by the Return Date.

**Q.501:** When will the wiring instructions for the application fee be circulated?

**A.501:** Wiring instruction information will be available in timing consistent with the answer to Question 2.

### Annual Machine and Table Fees

**Q.502:** Is there an established methodology for making the inflation adjustment concerning Annual Machine and Table Fees?

**A.502:** No.

### Racing Support Payments

**Q.503:** Who will be obligated to make racing-industry support payments?

**A.503:** Any Applicant awarded a gaming facility license. See PML § 1355.

**Q.504:** Will only video lottery gaming facilities be required to make racing support payments, should they be awarded a gaming facility license?

**A.504:** See answer to Question 503.

**Q.505:** What is the dollar amount of the “certain racing support payments” that must be maintained at 2019 level?

**A.505:** The value of the racing support payments in 2019 dollars and CPI adjusted to 2022 dollars are:

	2019 Dollars	2022 Dollars
<b>NYRA Purses</b>	<b>\$61,053,068.00</b>	<b>\$69,887,446.94</b>
<b>NYRA Capital</b>	<b>\$34,464,016.57</b>	<b>\$39,450,959.76</b>
<b>NYRA Operations</b>	<b>\$25,848,012.43</b>	<b>\$29,588,219.82</b>
<b>NYRA Breeders</b>	<b>\$11,140,524.68</b>	<b>\$12,752,558.60</b>
<b>NYRA Total</b>	<b>\$132,505,621.67</b>	<b>\$151,679,185.12</b>
<b>Yonkers Purses</b>	<b>\$53,301,428.95</b>	<b>\$61,014,145.72</b>
<b>Yonkers Breeders</b>	<b>\$7,614,489.85</b>	<b>\$8,716,306.53</b>
<b>Yonkers Total</b>	<b>\$60,915,918.80</b>	<b>\$69,730,452.25</b>

**Q.506:** If there is more than one licensee in either region two or three of zone one, what method would be used to determine the payment split to horseman for purses at Aqueduct, Belmont, and Saratoga?

**A.506:** It is anticipated that racing support payments obligation will be divided between all licensees in regions two and three of zone one proportionate to the gross gaming revenue of the licensees.

**Q.507:** The RFA states that “the Commission shall determine the obligations of an entity or entities required to maintain certain racing support payments at the same dollar level realized in 2019, to be adjusted annually pursuant to changes in the consumer price index for all urban consumers.” Can you provide schedules and/or financial statements that disclose the support payments from 2019?

**A.507:** See answer to Question 505.

### Permissible Contacts

**Q.508:** Will the permissible point of contact identified in the RFA be the appropriate person with whom to discuss questions concerning the scope of required license applications?

**A.508:** Yes.

**Q.509:** May an Applicant contact the Commission's Bureau of Licensing to discuss license applications?

**A.509:** See answer to Question 508.

### Post-Licensure Responsibilities

**Q.510:** If there is a subsequent review after an Applicant's selection, what variables will be used to guide that review?

**A.510:** Presuming that an "Applicant's selection" means a positive referral by the GFLB to the Commission, please note that the Commission is limited by statute to evaluation of minimum license thresholds, investigation of license applicants and disqualifying criteria, as set forth in PML §§ 1321-f, 1321-g and 1321-h, which incorporate by reference PML §§ 1316, 1317 and 1318.

**Q.511:** How will the Commission verify MWBE compliance?

**A.511:** The Commission will require each gaming facility licensee to procure at its expense and subject to Commission approval a certified public accounting firm to verify the commercially useful functions on all engaged MWBE firms, or of a sampling of such entities, as approved by the Commission.

**Q.512:** What, if any, fees or deposits would a third party have to pay?

**A.512:** We are uncertain which third parties are referenced in this question.

**Q.513:** The RFA requests various financial items to be provided for "at least the first 10 years after opening." If an Applicant proposed a phased development to benefit the State by accelerating a portion of tax revenue generation and economic

impact, will the GFLB consider the first 10 years after opening of the full phase development for the purpose of comparing Applicants' proposals and financial contribution?

**A.513: The Applicant is required to provide financial information for the first 10 years of a gaming facility. Please note that a temporary gaming facility is not permissible. See answer to Question 355.**

**Q.514: Are there any limitations allowing an Applicant to withdraw its Application after a license is awarded but not formally accepted?**

**A.514: A license, once awarded, does not need to be "formally accepted." A licensee may surrender its license, but note that only unexpended portions of the application fee can be returned.**

**Q.515: Will converted video lottery gaming facilities continue to be required to operate a lottery redemption window?**

**A.515: No. All gaming facility licensees, however, may choose to operate a lottery prize redemption window in conjunction with the Commission.**

**Q.516: For facilities with video lottery gaming agent licenses, is a singular transition date from operation as a video lottery gaming facility to commercial casino license contemplated?**

**A.516: Yes, however an Applicant may propose a conversion timetable as part of its RFA response.**

**Q.517: If a casino license is awarded in NYC, how will State Finance Law § 97-nnnn be applied in light of the counties in the City of New York having been amalgamated into one governing entity?**

**A.517: Since the issuance of the RFA, State Finance Law § 97-nnnn has been amended and we respectfully direct interested parties to the amended statute.**

**Q.518: Will 5 percent of the fund still be due to the borough/county?**

**A.518: See answer to Question 517.**



**Q.519:** Will 5 percent of the revenues be appropriated directly to the borough/county, or will such be appropriated to the City of New York to be transferred to the relevant borough/county?

**A.519:** See answer to Question 517.

**Q.520:** For tax purposes, are electronic table games classified as slot machines?

**A.520:** Yes.

**Q.521:** How will changes in material assumptions underlying a bid change due to no fault of an Applicant be handled pre-license award and post-license award?

**A.521:** If the material change has general applicability to all Applicants, the GFLB may determine to revise the RFA. If the material change has applicability to a singular Applicant, in a pre-licensure situation, the Applicant may withdraw its Application. If the material change is post-licensure, the Commission may consider its applicability at a future date.

**Q.522:** In circumstances where substantial competition is proximate to an Applicant, will the Applicant have an ability to make appropriate changes to the project scope and size to preserve its economic feasibility?

**A.522:** An Applicant's submission should take into account the reasonable potential for competition. Please note in the Supplement Return Date Materials an Applicant will be able to adjust its offered tax rate with knowledge of the proposed location of all other Applicants.

### **Promoters, Sponsors and Others**

**Q.523:** What is meant by promoters and sponsors?

**A.523:** An entity involved in aiding or assisting an Applicant's efforts to obtain a license pursuant to this RFA.

### **Highest Number of Quality Jobs**

**Q.524:** Does the GFLB have a preference as to the type of job classification used, e.g., SOC codes or categories defined in applicable collective bargaining agreements?

**A.524: The GFLB has not established a preference.**

**Q.525:** With respect to the number of positions to be filled by residents of various areas, please define “nearby municipalities.”

**A.525: Please see answer to Question 166.**

**Q.526:** For purposes of an Applicant’s plans and minimum commitments for “New York-based suppliers,” what constitutes a New York-based supplier?

**A.526: A business that maintains operations and employment within the State such that the goods and services related to the applicant’s project are derived primarily by utilization of in-state resources.**

### **Public Disclosure**

**Q.527:** What specific information will have been provided to all applicants about other applicants before the Supplement Return Date?

**A.527: An Applicant will have the ability to access all redacted information posted to the GFLB website.**

**Q.528:** Is there an appeal process concerning GFLB or Commission redaction determinations under FOIL?

**A.528: The GFLB and Commission responses to FOIL inquiries are governed by the Freedom of Information Law, NYS Public Officers Law Article 6. An Applicant's rights to participate in Freedom of Information Law determinations are set forth in such law.**

**Q.529:** If there is a redaction determination FOIL appeal process, can the GFLB please provide the redaction determinations guidelines for that process?

**A.529: See answer to Question 528.**

**Q.530:** When will the RFA responses become publicly available?

**A.530: It is the GFLBs intention to post redacted versions of all Applications submitted as quickly as practicable.**

**Q.531:** Will redaction determinations made by the GFLB or Commission be considered public record and made available to the public?

**A.531: Records of internal deliberations of the GFLB or the Commission concerning redaction determinations are, by their nature, internal deliberations that are not subject to public disclosure pursuant to FOIL.**

**Q.532:** Should the redacted files be submitted on the same USB flash drives as the Applicant's unredacted Application?

**A.532: No. Redacted files should be submitted on a separate USB flash drive. Additionally, such drives should be submitted in clearly marked separate envelopes.**

**Q.533:** What portion of an Applicant submissions will be publicly available on the GFLB's website?

**A.533: The full redacted copy of an Applicant's submission will be posted.**

**Q.534:** Will the GFLB make available its analysis of the revenue impact of each Applicant's proposed gaming facility on existing facilities and potential facilities with the public to assist with Applicants' feasibility studies?

**A.534: The GFLB has not established what it will include in its final report and recommendation to the Commission and the public.**

**Q.535:** Before the Commission grants a FOIL request, will an Applicant have an opportunity to protest the inspection or copying of its Application materials?

**A.535: Yes, to the extent permitted by law.**

**Q.536:** Will redacted applications be posted on the Commission's website? If so, when in the process will that occur?

**A.536: See answer to Question 530.**

**Q.537:** Will the GFLB or Commission challenge the specified redacted confidential materials when the Applications are received, or will a challenge arise only when a third party requests the materials that have been redacted?

**A.537: The GFLB and Commission have an obligation to review all redactions for legal and regulatory sufficiency. In the event of disagreement between the agency and the Applicant, the procedural safeguards of the Freedom of Information Law will be followed.**

**Q.538:** Are there any sections of the RFA that cannot be redacted?

**A.538: Each Applicant is expected to apply redactions faithfully to only those sections that are reasonably appropriate for withholding pursuant to FOIL.**

**Q.539:** Are CACs subject to FOIL?

**A.539: Yes.**

**Q.540:** What level of redaction is allowable?

**A.540: See answer to Question 538.**

**Q.541:** What is the process to preserve FOIL exceptions?

**A.541: See Public Officers Law Article 6.**

**Q.542:** Who may receive the confidential Applicant materials?

**A.542: The GFLB does not understand the question.**

**Q.543:** What rules apply to sharing of confidential Applicant information by the GFLB or Commission?

**A.543: The GFLB does not understand the question.**

**Q.544:** Some reports that might be included in an Application may explicitly state they may not be published or shared. If reports prohibit dissemination, is there an exemption from providing them as part of the Application?

**A.544: An Applicant should be cognizant of the requirements of the Freedom of Information Law and its trade-secrets exemption when entering into contracts for third parties to undertake required reports. The Commission and GFLB is subject to FOIL.**

### **Public Hearing**

**Q.545:** Will the GFLB conduct separate public hearings for each application?

**A.545:** **The GFLB has not yet advised as to any public hearing process.**

**Q.546:** May Applicants attend public hearing(s) for other applicants?

**A.546:** **Yes.**

### **Public Notification and News Releases**

**Q.547:** Will the GFLB announce entities submitting RFA responses on a rolling basis?

**A.547:** **No. The GFLB will post a listing of all timely received Applications as soon as practicable after the Return Date.**

**Q.548:** Does the prohibition on news releases apply after the GFLB or Commission has disclosed information publicly?

**A.548:** **No.**

**Q.549:** For Applicants with SEC Regulation FD public disclosure obligations, may such applicants make appropriate regulatory filings and related press releases in compliance with such laws?

**A.549:** **Yes.**

**Q.550:** Do communications with an Applicant's investors and financing sources, their affiliates and their respective representatives constitute a "release" if such communications are subject to a legal duty or obligation of confidentiality?

**A.550:** **No.**

**Q.551:** In the course of seeking clarifications or otherwise communicating with Applicants, will the GFLB disclose non-public information concerning the tax rate or other financial assurances and commitments proposed by one Applicant to any other Applicants?

**A.551: Proposed tax rates are required to be submitted only at the Supplement Return Date. Accordingly, they will be of little competitive advantage if exposed after that date. The Commission and GFLB are subject to the Freedom of Information Law. If requests to exempt such information from disclosure are deemed to be lawfully appropriate, records of such information will be exempt from disclosure. Otherwise, records of such information may be published in an unredacted form.**

### **Public Officials**

**Q.556:** How should a tribal gaming authority respond to the section concerning Public Officials contacts, as on its face it would require listing every tribal official and every employee if this section were read to include tribal governments?

**A.556:** Please see answer to Question 21. Accordingly, tribal government officials are not responsive to this section.

### **Public Presentations**

**Q.557:** What is the estimated time allotted for Stage 2 public presentations?

**A.557:** The GFLB has not established parameters concerning public presentations. However, public presentations are likely to be similar to the 2014 process, which is listed [here](#).

**Q.558:** How long did Applicants have to present public presentations undertaken during the upstate casino licensing process?

**A.558:** Please see answer to Question 557.

**Q.559:** In addition to live entertainment venues, will the GFLB permit other community constituents (including hotels, retailers, restaurants, other local business owners, local universities, and other impacted businesses) to appear and be granted the same standing as live entertainment venues?

**A.559:** The limitation concerning live entertainment venues derives from PML § 1321-j(2)(c).

### **Questions and Inquiries**

**Q.560:** Is an Applicant permitted to include material in appendices?

**A.560: No. All materials relating to a question must be contained in the designated file-name convention.**

**Q.561:** Is it possible that additional rounds of questions beyond the two listed will be scheduled?

**A.561: No additional rounds are contemplated at this time.**

### **Requirements Before Board Review**

**Q.562:** Given that a land use application at the NYC Department of City Planning takes 18 to 24+ months on average to process (including pre-certification, environmental review, and ULURP), how will the GFLB see the land use timeline work with the CAC and GFLB review timeline?

**A.562: See answer to Question 267.**

**Q.563:** Please confirm that the Application fee is due on the Return Date.

**A.563: Confirmed.**

### **Schedule**

**Q.564:** The RFA states that full completion of all zoning approvals must be obtained before the GFLB may evaluate an application. What if zoning approval is not complete before the Application deadline?

**A.564: Pursuant to the RFA, at page 26, the Application will not advance if the required actions, including evidence of compliance with zoning requirement, are not accomplished by the Supplement Return Date.**

**Q.565:** What if zoning approval is not complete before the Supplement Return Date?

**A.565: See answer to Question 564.**

**Q.566:** How may an Applicant withdraw its Application?

**A.566: An Applicant may withdraw by correspondence from the Applicant's Designated Contact to the Commission's Designated Contact.**

**Q.567:** The RFA provides that “by the supplement return date” both Evidence of Public Support and Evidence of Compliance with Zoning requirements “must take place for the Board to commence an official review.” The timeline provided in the RFA contemplates that the CAC approval process takes place before an Applicant submits its proposal to local zoning authorities. How much time does the GFLB contemplate between the CAC vote and an Applicant’s submission demonstrating evidence of compliance with zoning requirements?

**A.567:** An Applicant may submit its proposal to applicable zoning authorities at any time, even before the Return Date. (The last row of Stage 1 elements on page 5 of the RFA is not intended to follow the CAC vote.) The Commission presumes that the zoning process has already commenced. The GFLB will announce a zoning completion deadline as a component of Stage 2 of the process and had not determined such date at this time.

**Q.568:** Is an applicant selected by the GFLB or the Commission?

**A.568:** The GFLB evaluates Applications and selects Applicants to advance to the Commission for the Commission’s licensure consideration pursuant to PML §§ 1321-f, 1321-g and 1321-h.

**Q.569:** Will the Commission commit to deadlines concerning responses to questions posed?

**A.569:** There were no deadlines included in the RFA timeline.

**Q.570:** In previous RFP’s, the Commission took between two and four weeks to respond to questions. Does the Commission believe it will take a similar amount of time in this process?

**A.570:** Obviously, no.

**Q.571:** Given the variability of time and complexity in receiving zoning and land-use approvals among the applicants, will the GFLB evaluate applications for license award only once all of the Applicants have completed the process, irrespective of how long it takes?

**A.571:** Yes. However, the GFLB will establish a timeline providing all Applicants a reasonable amount of time to obtain CAC and zoning approvals for their proposed projects.



## Alcoholic Beverage Licensing

**Q.572:** Will the Commission follow the same process with respect to the issuance of liquor licenses to the winning bidder(s)?

**A.572:** It is anticipated that the present consideration of Casino Alcoholic Beverage Licenses will be followed for new gaming facility licensees.

## Structure

**Q.573:** Please clarify the differences between the Revenue Study and the Market Study.

**A.573:** The Market Study is where Applicant plans on drawing its customers from, while the Revenue Study details the revenue derived from such customers.

**Q.574:** What is meant by “The Applicant, if applicable, has waived a potential recoverable license fee amount”?

**A.574:** This language is no longer applicable, as the period subject to the recoverable license fee, as set forth in PML § 1311(1), has expired.

**Q.575:** What specific information will be provided in the scenario worksheet?

**A.575:** The contents of the scenario worksheet will be available upon release of the worksheet.

**Q.576:** At what point will an Applicant need to agree to an imposed tax rate?

**A.576:** The Applicant appears to misunderstand the process. On the Supplement Return Date (when the competitive landscape will be more evident), an Applicant shall propose tax rates applicable to its gaming facility.

**Q.577:** If an application fails to meet criteria or be considered by the GFLB, will the Applicant be notified immediately or have to wait until a short list is announced?

**A.577:** The vote by the applicable CAC is an action that will take place in an open meeting. An Applicant will be in communication with the applicable zoning authority and will have the duty to demonstrate

**satisfaction of zoning compliance with its submission on the Supplement Return Date.**

### **Supplement Return Date Materials**

**Q.578:** To the extent that visitation statistics are unavailable for casino properties that would be considered “comparable,” will the GFLB provide visitation numbers for the most directly comparable existing video lottery gaming facilities in the downstate region for comparison purposes or otherwise provide additional guidance on what may be used as an alternative comparison?

**A.578: It is incumbent upon the Applicant to undertake its own research.**

**Q.579:** The initial RFA submission asks for an independent market assessment of gaming revenue for a period of at least the first 5 years of operation and the supplemental submission asks for the first 10 years of operation. Will 10 years be acceptable in both submissions?

**A.579: So long as the independent market assessment is a minimum of 5, the requirement is satisfied.**

**Q.580:** If “none of the proposal parameters submitted in the first submission (including but not limited to: jobs, capital investment, gaming facility of the highest caliber) should be amended,” why would the underlying projections of gaming revenues and visitors change relative to the initial assessment?

**A.580: By the Supplement Return Date, the competitive landscape will be more evident. Therefore, projections of gaming revenue and visitors might be adjusted accordingly.**

**Q.581:** Due to the subjectivity of the Applicants’ views on the competitive market, forecasts of revenue and tax scenarios may widely vary. Can the GFLB provide a more definitive competitive market supply outlook, so Applicants’ forecasts are more directly comparable to one another?

**A.581: It is incumbent upon the Applicant to undertake its own research.**

**Q.582:** Applicants must submit a full independent market study, a revenue study completed by an independent expert and a description of the competitive environment in which the Applicant anticipates the proposed gaming facility will operate. For purposes of assessing the competitive impact of other gaming facilities

on the applicant's proposed gaming facility in the independent market study, what competitive gaming facilities should applicants assume will be licensed?

**A.582: It is incumbent upon the Applicant to undertake its own research.**

**Q.583:** With respect to the material to be submitted on the Supplement Return Date, will applicants be permitted to modify items not expressly restricted and to modify items upward.

**A.583: No. An Applicant shall submit its best and final proposal at the Supplement Return Date. If selected, an Applicant may then modify its proposal upward.**

**Q.584:** How can the Commission have two different tax rates in the same region?

**A.584: The question appears to misunderstand the manner of setting tax rates. It is incumbent upon the Applicant by the Supplement Return Date, understanding the competitive landscape, to bid a rate that the Applicant is prepared to pay. This process may result in accepted proposals that differ among the ultimate gaming facility licensees.**

**Q.585:** Will a form or template of the "scenario worksheet" be provided to Applicants?

**A.585: Yes.**

**Q.586:** After the GFLB provides Applicants with a "scenario worksheet" it requests updated proposals on gaming tax rates. Is the intent that such proposals will be entirely conditioned on the scenarios given?

**A.586: Presuming the questioner means that a proffered tax rate can be conditioned upon the number of competitive licenses issued, yes.**

**Q.587:** After the Return Date and prior to the Supplement Return Date, may an Applicant continue to supplement its initial submission responses?

**A.587: An Applicant has a continuing duty to disclose updates to its Application. However, an Applicant must respond fully to required sections of the RFA by the Return Date. The GFLB may, in its sole discretion, determine to accept the update as an amendment to the Application. See page 8 of the RFA.**

**Q.588:** Will the scenario worksheet be provided after the GFLB announces the remaining Applicants?

**A.588:** See answer to Question 612.

### **Table of Ownership**

**Q.589:** Multi-Jurisdictional Personal History and New York Supplemental Form are required for a person having a beneficial interest of five percent or more of an applicant. Is the five percent based on actual or a look-through basis?

**A.589:** We are unable to respond without a better understanding of the Applicant's ownership structure.

**Q.590:** If a casino entity is owned 25 percent each by four entities (Holdco's), one of which is an LLC having eight members, four of whom own 20 percent of Holdco and four of whom own five percent of Holdco, are members owning percent of Holdco required to submit all the forms, since they each own less than two percent of the applicant?

**A.590.** The GFLB will not entertain hypothetical scenarios.

**Q.591:** Are applications and related disclosure forms required for an Indian tribe as a result of its 25+ percent indirect ownership interest in Applicant?

**A.591:** We are unable to respond without a better understanding of the Applicant's ownership structure.

**Q.592:** Are applications and related disclosure forms required for an Indian tribe as a result of its 100 percent indirect ownership interest in a gaming facility operator?

**A.592:** Yes.

**Q.593:** Please confirm whether the 5 percent ownership threshold should be based on actual or beneficial ownership.

**A.593:** See answer to Question 589.

**Q.594:** The RFA requires documents that apply to "the Applicants' owners." Is this request limited to direct ownership or does it include indirect ownership as well?

**A.594: We are unable to respond without a better understanding of the Applicant's ownership structure.**

### **Gaming Taxation**

**Q.595:** Is the gaming taxation rate anticipated to be the same across all gaming facility licensees or will it vary to reflect the differing scale of investment?

**A.595: See answer to Question 584.**

**Q.596:** Is it possible that the tax rate imposed on gross gaming revenue might be different from the tax rate bid by an Applicant awarded the gaming facility license?

**A.596: No.**

**Q.597:** Is it possible for the Commission to determine the tax rate imposed on GGR to be different from the tax rate bid by the Applicant if the Applicant should be awarded the gaming facility license?

**A.597: See answer to Question 596.**

**Q.598:** Will the gross gaming taxation rates be uniform across the new gaming licensees?

**A.598: See answer to Question 584.**

### **Sustainable Development**

**Q.599:** Does “Institute for Sustainable Infrastructure techniques” refer to a specific standard, specification, or guidance document?

**A.599: The Institute for Sustainable Infrastructure provides verification for certain project assertions. Please refer to such organization’s website to better understand how a project component can be verified.  
<https://sustainableinfrastructure.org/>**

**Q.600:** Is there a threshold for what constitutes a “major source of energy consumption”?

**A.600: The Applicant should apply industry standard to answer this question.**

**Q.601:** What qualifies as a renewable energy source pursuant to New York State Energy Research and Development Authority (NYSERDA) guidelines?

**A.601:** Please refer to the NYSERDA [website](#) to better understand what qualifies.

**Q.602:** If the renewable energy is procured off-site, must it have to be from the same power zone as the facility?

**A.602:** The RFA does not profess a preference.

**Q.603:** Are the naming conventions for (.Electricity) and (.Renewable) swapped?

**A.603:** The naming convention is irrelevant to content response.

**Q.604:** Is the scoring for the Utilizing Sustainable Development Principals section all or nothing?

**A.604:** A breakdown of the evaluation criteria is not presently contemplated.

**Q.605:** Are LEED requirements to be submitted by the Return Date or Supplement Return Date?

**A.605:** Return Date.

**Q.606:** Does a facility need to meet a specific level of LEED certification?

**A.606:** LEED certification is not a requirement but will enhance evaluation for the applicable section.

### **Workforce Development Plan**

**Q.607:** Please define vicinity in the context of in “the vicinity of the Gaming Facility.”

**A.607:** Please see answer to Question 167.

**Q.608:** With respect to the Applicant being required to provide the composition of the workforce broken down by part-time and “permanent positions,” does “permanent” mean “full-time” employees?

**A.608: In the context of the question asked, yes.**

**Q.609:** How does the Workforce Development Plan compare to the requirement to provide the highest number of quality jobs?

**A.609: The RFA speaks for itself.**

**Q.610:** Given that construction trades rotate in and out of a project at different phases of construction, how should applicants calculate an FTE worker?

**A.610: FTE workers should be calculated by projecting anticipated scheduled hours over a defined period.**

**Q.611:** Will the State establish baseline required thresholds (minimum percentages) for the number of positions to be filled by State residents, region residents, host municipality residents, and nearby municipality residents?

**A.611: The GFLB and the Commission do not intend to establish a baseline requirement.**

**Q.612:** When will the GFLB provide Applicants with the scenario worksheet?

**A.612: The date for the release of the scenario worksheet has not yet been established.**

**Q.613:** What factors will the GFLB consider in setting the Stage 2 Supplement Return Date?

**A.613: The GFLB intends to provide all Applicants a reasonable amount of time to obtain zoning approval for their proposed projects.**

[nothing follows]