

REQUEST FOR PROPOSALS
FOR
VIDEO LOTTERY OPERATION LICENSES
#2009-0101

From:

State of Maryland
Video Lottery Facility Location Commission

Issue Date: December 19, 2008
Pre-Proposal Conference: January 12, 2009
Due Date: February 2, 2009

NOTICE: Prospective Applicants who have received this document from eMarylandMarketplace.com or who have received this document from a source other than the Video Lottery Facility Location Commission (“Location Commission”), and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Location Commission (see Section 3.1.1) and provide their name and mailing address so that amendments to this Request For Proposals or other communications can be sent to them. Any prospective Applicant who fails to notify the Location Commission with this information assumes complete responsibility in the event that it does not receive communications from the Location Commission prior to the closing date.

Minority Business Enterprises are Encouraged to Respond to this Request for Proposals

KEY INFORMATION SUMMARY SHEET

Title of RFP: Video Lottery Operation Licenses

RFP Number: 2009-0101

RFP Issue Date: December 19, 2008

The Maryland Video Lottery Facility Location Commission ("Location Commission") is soliciting proposals from qualified Applicants seeking to be awarded one of the five (5) Video Lottery Operation Licenses which the Location Commission is authorized to award at eligible locations as described more fully in this RFP.

Proposals to be Submitted to: Video Lottery Facility Location Commission
c/o Department of Legislative Services
Legislative Services Building, Room #120
90 State Circle
Annapolis, MD 21401

Communications: The only source of information regarding this RFP is the Video Lottery Facility Location Commission. If you receive this information from another source, contact the Location Commission immediately at:
c/o Maryland State Lottery Agency
Attn: Robert W. Howells
Tel: 410-230-8789
Fax: 410-230-8727
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Pre-Proposal Conference: January 12, 2009 at 10:00 a.m. (Local Time)
Maryland State Lottery Agency
Montgomery Park Business Center-Suite 330
1800 Washington Boulevard
Baltimore, MD 21230

Deadline for Receipt of Proposals: February 2, 2009 by 2:00 p.m. (Local Time)

Deadline for Receipt of Supplement to Proposals: April 15, 2009 by 2:00 p.m. (Local Time)

MBE Participation Goal: An MBE subcontracting goal of a minimum of **25%** has been established for the Licenses resulting from this RFP (see Section 3.21).

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SECTION I. INTRODUCTION/OBJECTIVE

1.1 SUMMARY STATEMENT

1.1.1 The Maryland Video Lottery Facility Location Commission (“Location Commission”) is soliciting proposals from qualified Applicants seeking to be awarded one of the five (5) Video Lottery Operation Licenses (“Operation License”) which the Location Commission is authorized to award at eligible locations as described more fully in this RFP.

1.1.2 The Location Commission intends to make up to five (5) License awards as a result of this RFP for the operation of a maximum of 15,000 Video Lottery Terminals (“VLTs”) distributed at Video Lottery Facilities (“Facilities”) at the following locations:

- 4,750 VLTs at a location in Anne Arundel County within two miles of Route 295;
- 3,750 VLTs in Baltimore City, in a nonresidential area within one-half mile of Interstate 95 and Route 295, and not adjacent to or within one-quarter mile of residential property and on city-owned land;
- 2,500 VLTs at a location in Worcester County within one mile of the intersection of Route 50 and Route 589;
- 2,500 VLTs at a location in Cecil County within two miles of Interstate 95; and
- 1,500 VLTs on State property in Allegany County associated with the Rocky Gap State Park in a building physically separate from the Rocky Gap Lodge and Golf Resort.

The Location Commission may alter allocations if warranted by an evaluation of market and other factors; however, no more than 4,750 VLTs may be placed at any one location.

1.1.3 The Location Commission is not required to award all five (5) Operation Licenses authorized by law and reserves the right to cancel this RFP and/or reject all proposals when this action is determined to be fiscally advantageous to the State or otherwise in its best interest.

1.1.4 The Applicant’s proposal shall include its Initial License Fee and completed Application for an Operation License and related forms (see Appendix J, K, K-1 and L). Forms are also available electronically on the Lottery’s website: www.mdlottery.com (click on “Procurements” section).

1.1.5 Applicants are invited to subcontract with other vendors to provide some of the requirements of the RFP, but Applicants must submit proposals encompassing all of the services required in the RFP and may not submit

proposals for only a portion of the services specified in the RFP.

1.1.6 An Operation License resulting from this RFP will be for an initial term of fifteen (15) years. License award is tentatively expected to occur in the Fall of 2009, with the License term set to begin upon the opening date of the Facility, either temporary or permanent, and provide a full fifteen (15) years of operation under the License. Within one (1) year of the end of the initial 15 year License term, a Video Lottery Operation Licensee may reapply for a License that has a License term of ten (10) years and a License fee to be established by statute. All terms and requirements of this RFP shall be incorporated into and become a part of the License.

1.1.7 After award by the Location Commission of an Operation License resulting from this RFP, the Maryland State Lottery Commission ("Lottery Commission") shall be responsible for issuing the License and for all matters relating to regulation of the Licensee and licensing of its officers, directors, employees and other designated persons.

The Lottery Commission shall establish Application and License fees for these persons and other designated individuals which shall be paid by the Applicant or Licensee. Applicants and Licensees shall reimburse the Lottery Commission for all costs related to background investigations and licensing, to include but not limited to, background investigations conducted by a contractor for the Lottery Commission, in-house costs for Lottery Commission staff based on standard rates established by the Lottery Commission, and all reasonable expenses such as travel, lodging, meals, etc.

Draft regulations are attached in Appendix M for informational purposes which have been adopted by the Lottery Commission at its December 17, 2008 meeting and submitted to AELR, but are presently pending review by AELR and subject to final approval by AELR)

1.1.8 An annual fee of \$425.00 shall be paid by each Operation Licensee for each Video Lottery Terminal operated by the Licensee during the year, based on the maximum number of Terminals in use during the year. The fees collected shall be distributed to the Problem Gambling Fund established by VLT law. Fees will be billed to Licensees on June 30 of each year and will be collected by EFT on July 15 of each year. For the first year of operation only, fees will be pro-rated based on the date of opening of the Facility.

1.1.9 VLTs, Central Monitor and Control System ("Central System"), and the Associated Equipment and software shall be owned or leased by the Lottery Commission and under the control of the Lottery Commission. These items will be obtained through separate procurements to be conducted at a later date by the Lottery Commission. The Lottery Commission may award contracts to more than one manufacturer of VLTs and a Facility may have

VLTs from more than one manufacturer installed. Licensee shall work in cooperation with the VLT contractor, Central System contractor, and any other Lottery Commission or Lottery contractors to insure smooth implementation of all systems.

1.2 MINIMUM REQUIREMENTS

The Minimum Requirements apply to all Applicants.

1.2.1 As a prerequisite to submitting an application for an Operation License, the Applicant shall be either the owner or operator of the proposed Video Lottery Facility site

1.2.2 A proposal submitted for an Operation License at a Facility Location shall:

- Include an Initial License Fee with the proposal of **at least** \$3,000,000 for each 500 VLTs included in the proposal, that shall be prorated based on the exact number of VLTs contained in the proposal. Initial License Fee shall be in the form of a certified check payable to the “State of Maryland/State Lottery Agency” and shall accrue to the Education Trust Fund established under VLT Law;
- Include all required Application fees for Background Investigations with the proposal (Fee shall be in the form of a certified check payable to the State of Maryland/State Lottery Agency);
- Provide for **at least** \$25,000,000 in direct investment by the Applicant in construction and related costs for each 500 VLTs contained in the proposal that shall be prorated based on the exact number of VLTs contained in the proposal; and
- Provide for a **maximum** fee in the amount of 33% of VLT Proceeds to be paid to the Video Lottery Operation Licensee.

1.3 GLOSSARY OF TERMS USED IN THIS REQUEST FOR PROPOSALS (RFP)

ADA - Americans With Disabilities Act, Public Law 101-336 of the 101st Congress, enacted July 26, 1990, and regulations promulgated pursuant to that statute.

Applicant – An entity that submits a Proposal in response to this RFP and applies for a Video Lottery Operation License; an entity or individual who applies for any License

Associated Equipment – Hardware located on the Licensee’s premises that is connected to the Video Lottery system for the purpose of performing communication, validation, or other functions, but not including the

communication facilities of a regulated utility or the VLTs.

Average Payout Percentage – The average percentage of money used by Players to play a VLT that is returned to Players of that VLT.

Background Investigation – A security, criminal, and credit investigation of a person who applies for or who is granted a License under this subtitle.

BAFO – Best and Final Offer

Career Offender – A person whose behavior is pursued in an occupational manner or context for the purpose of economic gain and who utilizes methods that are deemed by the Lottery Commission as criminal violations inimical to the interest of the State.

Career Offender Cartel – A group of persons who operate together as Career Offenders.

Central Monitor and Control System (“Central System”) – A central system provided to and controlled by the Lottery Commission to which VLTs communicate for the purposes of:

- (1) Information retrieval;
- (2) Retrieval of the win and loss determination from VLTs; and
- (3) Programs to activate and disable VLTs.

Central Repository – The Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services.

COMAR – The Code of Maryland Regulations (available at <http://www.dsd.state.md.us/comar/>).

Contractor - An entity having a Contract with the Lottery. The term “Contractor” may occasionally be used interchangeably in this RFP to mean the successful Applicant or “Licensee” who is awarded a License resulting from this RFP.

Control – The authority to direct the management and policies of an Applicant or Licensee.

Director - The Director of the Maryland State Lottery Agency.

Eastern Time - Eastern Standard Time or Eastern Daylight Savings Time, as applicable.

EFT - Electronic Funds Transfer through a bank employing the Automated Clearing House (“ACH”) network.

Family – Means spouse, parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews, nieces, fathers-in-law, mothers-in-law, daughters-in-law, sons-in-law, brothers-in-law, and sisters-in-law, whether by whole blood or half blood, by marriage, adoption, or natural relationship.

FY - Fiscal Year, July 1 – June 30. For example, FY09 represents the period beginning July 1, 2008 through June 30, 2009.

Governors Office of Minority Affairs (“GOMA”) –The State agency responsible for monitoring the Licensees’ compliance with the Minority Business Enterprise(“MBE”) requirements of Operation Licenses.

Key Personnel (“Key Person”) – Critical employees of the Licensee identified in its Proposal or upon License commencement who shall perform continuously for the duration of the License and may not be replaced without prior approval of the Lottery Commission.

License – Means, unless the context otherwise requires, a License required under the VLT law.

Licensee – An Applicant who has been issued a License required under the VLT law.

Local Time - Time in the Eastern Time Zone as observed by the State.

Location Commission - The Video Lottery Facility Location Commission.

Lottery Commission - The State Lottery Commission.

Lottery - The State Lottery Agency.

Manufacturer –A person:

- (1) That is engaged in the business of designing, building, constructing, assembling, manufacturing, or distributing a Central System, VLTs, Associated Equipment or software, or the cabinet in which a VLT is housed;
- (2) That produces a product that is intended for sale, lease, or other assignment to the Lottery Commission or a Licensee; and
- (3) That contracts with the Lottery Commission or a Licensee for the sale, lease, or other assignment of a product described in (1) above.

MBE Certification - A determination made by the Maryland Department of Transportation that a legal business entity is certified as a Minority Business Enterprise.

MBE Liaison Officer - The person responsible for administering the Minority Business Enterprise (MBE) Program.

MDOT - The Maryland Department of Transportation.

Minority Business Enterprise (“MBE”) - A business that has been certified by the State of Maryland Department of Transportation to be a minority business enterprise. Any legal entity, other than a joint venture, organized to engage in commercial transactions, which is at least 51 percent owned and controlled by one or more individuals who are socially and economically disadvantaged; and managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it. MBE includes a not-for-profit entity organized to promote the interests of physically or mentally disabled individuals.

Own – Having a beneficial or proprietary interest of at least 2% in the property or business of an Applicant or Licensee.

Player – An individual who plays a VLT at a Facility Licensed by the Lottery Commission.

Proceeds – (1) The part of the amount of money bet through VLTs that is not returned to successful Players but is otherwise allocated under the law.

(2) (I) Subject to subparagraph (II) below, “Proceeds” does not include money given away by an Operation Licensee as free promotional play and used by Players to bet in a VLT.

(II) After the first fiscal year of operations, the exclusion specified in subparagraph (I) above may not exceed a percentage established by the Lottery Commission by regulation of the Proceeds received in the prior fiscal year by the Operation Licensee.

Progressive Jackpot – A prize that increases as one or more VLTs are connected to a Progressive Jackpot System.

Progressive Jackpot System – A system capable of linking one or more VLTs in one or more Licensed Facilities and offering one or more common Progressive Jackpots.

Proposal – The response by an Applicant to this RFP. The response may include but is not limited to an Applicant’s price and terms for the proposed Operation License, proposed Facility, a description of technical expertise, work experience, License Applications, and other information as requested in the RFP.

RFP - This Request for Proposals for Video Lottery Operation Licenses (#2009-0101), dated December 19, 2008, including any amendments.

State - The State of Maryland.

Subcontractor – Any person or firm having an agreement with a contractor to perform all or some of the contractor’s work under a contract with the Lottery Commission. Subcontractor does not include an employee with an employment contract, or an employee organization with a collective bargaining agreement.

Video Lottery – Means gaming or betting conducted using a VLT.

Video Lottery Employee (“Employee”) – An employee of a person who holds a License.

Video Lottery Facility (“Facility”) – A facility at which Players play VLTs.

Video Lottery Operation License (“Operation License”) – A License issued to a person that allows Players to operate VLTs. A License awarded by the Location Commission and Issued by the Lottery Commission to operate a Video Lottery Facility, which incorporates all terms and conditions of the RFP, Amendments to the RFP, and the Licensee’s Proposal.

Video Lottery Terminal (“VLT”) (1) Any machine or other device that, on insertion of a bill, coin, token, voucher, ticket, coupon, or similar item, or on payment of any consideration:

- (I) is available to play or simulate the play of any game of chance in which the results, including the options available to the Player, are randomly determined by the machine or other device; and
- (II) by the element of chance, may deliver or entitle the Player who operates the machine or device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payout is made automatically from the device or in any other manner.

(2) “Video Lottery Terminal” includes a machine or device:

- (I) that does not directly dispense money, tokens, or anything of value to winning players; and
- (II) described under paragraph (1) above that uses an electronic credit system making the deposit of bills, coins, or tokens unnecessary.

(3) “Video Lottery Terminal” does not include an authorized slot machine operated by an eligible organization under Title 12, Subtitle 3 of the Criminal Law Article.

VLT Law – means the Maryland Video Lottery Terminals Law, state Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland.

SECTION II. BACKGROUND OF VIDEO LOTTERY PROGRAM

2.1 During the 2007 special session of the Maryland General Assembly, House Bill 4 and Senate Bill 3 were enacted relating to the legalization of Video Lottery Terminals (“VLTs”) in the State of Maryland. A summary of some of the provisions of these Bills is provided below. The full text may be accessed at the Maryland Division of State Documents website: www.dsd.state.md.us

2.2 House Bill 4 is a constitutional amendment that was approved by the voters on November 4th, 2008, which sets up broad parameters for the operation of VLTs and establishment of VLT Facility locations in the State. Under the constitutional amendment, the General Assembly may only authorize expanded forms of gambling subject to the following restrictions:

- a maximum of 15,000 VLTs may be authorized;
- a maximum of five VLT Facility Licenses may be issued at specified locations, limited to one Facility in each specified county; and
- VLT Facilities shall comply with all applicable planning and zoning laws of local jurisdictions.

Any additional forms or expansion of gaming may only be authorized by an act of the General Assembly and through a referendum that is approved by the voters in a general election. The constitutional amendment does not apply to currently authorized forms of gambling.

2.3 Senate Bill 3 establishes the operational and regulatory framework for the VLT program. Enactment of Senate Bill 3 was contingent on passage of House Bill 4 by the General Assembly and ratification by the voters. Among its many provisions, Senate Bill 3:

- Creates a Video Lottery Facility Location Commission (“Location Commission”) to receive and evaluate Proposals for VLT Facilities.
- Specifies that the State Lottery Commission (“Lottery Commission”) shall regulate the operation of VLTs, including licensing of operators and operation of a Central System;
- Authorizes the operation of VLTs owned or leased by the State that are connected to a Central System owned or leased by the State that allows the Lottery Commission to monitor a VLT; and,
- Requires that only a person with a Video Lottery Operation License issued by the Lottery Commission may offer a VLT for public use in the State.

2.4 A summary of Senate Bill 3 is provided below:

| Senate Bill 3 As Amended | |
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| Contingency | Bill was contingent on passage of constitutional amendment (SB/HB 4) authorizing video lottery gaming in Maryland, which was ratified by the voters of Maryland at the general election on November 4, 2008. |
| Video Lottery Facility Location Commission | <p>Seven member Location Commission:</p> <ul style="list-style-type: none"> • three appointed by the Governor, including the chair; • two appointed by the Senate President; and • two appointed by the House Speaker. <p>Members must file annual financial disclosure statements.</p> <p>Staffed by the Department of Legislative Services (“DLS”) and the Lottery Commission;</p> <p>Shall receive and evaluate proposals from Applicants and award Facility Operation Licenses</p> <p>Location Commission expires in 2015</p> |
| License Award Factors | <p>Video Lottery Facility Location Commission to evaluate proposals based on:</p> <ul style="list-style-type: none"> • 70% on business and market factors, including the highest potential benefit to the State and percentage of MBE equity ownership; • 15% on economic development factors; and • 15% on location siting factors. |

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| <p>State Lottery Commission</p> | <p>Nine-member Lottery Commission:</p> <ul style="list-style-type: none"> • addition of four members to existing five-member Lottery Commission; • no elected officials may be appointed to the Lottery Commission; and • member of Lottery Commission as liaison to Racing Commission and vice versa. <p>State Lottery Agency shall provide assistance to the Lottery Commission in the performance of its duties</p> <p>Lottery Commission owns/leases VLTs and Central System.</p> |
| <p>Oversight</p> | <p>State Lottery Commission shall regulate the operation of VLTs, including licensing of operators and operation of Central System that allows the Lottery Commission to monitor all VLTs</p> |
| <p>Licenses</p> | <p>Up to five Licenses to be awarded (eligible locations specified).</p> <p>No more than one in any county.</p> |
| <p>Locations and Number of VLTs</p> | <p><u>15,000 machines (maximum):</u></p> <ul style="list-style-type: none"> • 4,750 VLTs at a location in Anne Arundel County within two miles of Route 295; • 3,750 VLTs in Baltimore City, in a nonresidential area within one-half mile of Interstate 95 and Route 295, and not adjacent to or within one-quarter mile of residential property and on city-owned land; • 2,500 VLTs at a location in Worcester County within one mile of the intersection of Route 50 and Route 589; • 2,500 VLTs at a location in Cecil County within two miles of Interstate 95; and • 1,500 VLTs on State property in Allegany County associated with the Rocky Gap State Park in a building physically separate from the Rocky Gap Lodge and Golf Resort. <p>Location Commission may alter allocations if warranted by an evaluation of market and other factors; however, no more than 4,750 VLTs may be placed at any one location.</p> |

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| Limits on License Ownership | Prohibits ownership in more than one Operation License. |
| Business Investment Lottery (Administration) Local Government Horse Racing Industry Licensee (Operator) Education Trust Fund | <p><u>Percentage of VLT Proceeds</u></p> <p>1.5% to a small, minority, and women-owned business investment account;</p> <p>2% to the State Lottery for administrative costs, with other costs provided for in the annual State budget;</p> <p>5.5% to local governments in which a Facility is operating, 18% of which would go for 15 years (starting in fiscal 2012 and ending in fiscal 2027) to Baltimore City through the Pimlico Community Development Authority and to Prince George’s County for the community surrounding Rosecroft (\$1 million annually).</p> <p>7% to a purse dedication account to enhance horse racing purses and funds for the horse breeding industry, not to exceed \$100 million annually;</p> <p>2.5% for an eight-year period to a Racetrack Renewal Fund, not to exceed \$40 million annually;</p> <p>33% (maximum) to Video Lottery Operation Licensees; and</p> <p>remainder to the Education Trust Fund (48.5-51.0%).</p> |
| Education Trust Fund | To be used for the Bridge to Excellence in Public Schools Act funding (including the Geographic Cost of Education Index), public school construction, and public higher education construction, including community colleges. |

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| <p>Purse Dedication Account</p> | <p>Provides for the distribution to be allocated with 80% of the funds for the thoroughbred industry and 20% of the funds to the standardbred industry:</p> <ul style="list-style-type: none"> • from the proceeds allocated to the thoroughbred industry: <ul style="list-style-type: none"> – 85% to thoroughbred purses; – 15% to the Maryland-bred Race Fund; and – \$100,000 to Fair Hill. • from the proceeds allocated to the standardbred industry: <ul style="list-style-type: none"> – 85% to standardbred purses; and – 15% to the Standardbred Race Fund. <p>Requires the State Racing Commission to conduct a study on the account's impact on the racing industry, and make a recommendation regarding the account's continuation by 2014.</p> |
| <p>Racetrack Facility Renewal Account</p> | <p>Provides for distribution of the funds in matching grants:</p> <ul style="list-style-type: none"> • 80% to Pimlico, Laurel, and Timonium; and • 20% to Rosecroft and Ocean Downs. <p>\$1 million per year for five years allocated to Timonium with no matching fund requirement.</p> |
| <p>License Fees</p> | <p>Initial license fee of at least \$3 million for every 500 VLTs proposed due with proposal submission by February 2, 2009.</p> |
| <p>License Duration</p> | <p>15 years (must reapply at the end of license term).</p> |
| <p>Construction and Procurement</p> | <p>License Applicant must meet State Minority Business Enterprise (MBE) requirements for construction/procurement contracts and to the extent possible meet county MBE requirements if they exceed the State requirement. Requirement sunsets on July 1, 2011.</p> <p>License Applicant must invest at least \$25 million in construction and related costs for every 500 VLTs proposed.</p> |
| <p>Small, Minority, and Women-owned Business Investment</p> | <p>1.5% of gross VLT proceeds to support investment capital and loans to small, minority, and women-owned businesses (at least 50% to fund businesses near a VLT Facility).</p> |

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| <p>Racing Days</p> <p>Preakness Stakes</p> <p>Maryland Million</p> <p>Racing Improvement Plans</p> | <p><u>Eligibility for Racetrack Subsidies</u></p> <p>To be eligible for Racetrack Renewal Funds:</p> <ul style="list-style-type: none"> • Laurel Park and Pimlico Race Course must conduct a combined minimum of 220 live racing days; • Rosecroft Raceway must conduct a minimum of 90 live racing days; and • Ocean Downs Racetrack must conduct a minimum of 40 live racing days. <p>The Racing Commission is required to award at least 40 racing days to Pimlico Race Course.</p> <p>The VLT and/or horse racing licensee conducting the Preakness must run the event at Pimlico – or conditionally, at another location in Maryland – to maintain eligibility for a VLT license and/or racetrack renewal funds.</p> <p>Horse racing licensee for Laurel Park must run Maryland Million event annually</p> <p>Horse racing licensees must develop a racing improvement plan to improve the quality and marketing of horse racing – including \$1.5 million of annual capital maintenance and improvements at horse racing facilities to be eligible for racetrack renewal funds.</p> <p>A Video Lottery Operation Licensee that holds a horse racing license must also meet the above requirements as a condition of holding the Video Lottery Operation License.</p> |
| <p>Laurel Park</p> | <p>If a Video Lottery Operation License is issued to Laurel Park:</p> <ul style="list-style-type: none"> • the licensee must maintain Bowie Training Center operations or convey the training center property to the State under Program Open Space; and • local impact grants would be distributed: <ul style="list-style-type: none"> – 70% to Anne Arundel County; – 13% to Howard County; – 5% to Prince George’s County; and – 12% to the City of Laurel. |
| <p>Baltimore City</p> | <p>95% of revenues received by Baltimore City through a partnership with a Video Lottery Operation Licensee shall be used to reduce real property taxes and for public school construction.</p> |

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| <p>Worcester</p> | <p>MDOT may pay for and undertake road construction along Route 589 near the area where the Facility is located.</p> <p>Within a 10-mile radius of the Facility, the Video Lottery Operation Licensee may not build public accommodations (e.g., a hotel), a conference/convention center, nor amusement rides. Moreover, dancing, live music, and live entertainment are not allowed.</p> <p>Local impact grants would be distributed: 70% to Worcester County, 20% to Ocean City, and 10% to the Town of Berlin.</p> |
| <p>Local Development Council</p> | <p>Creation of Local Development Council in each area where a VLT Facility is located to advise, comment, and make recommendations on county plans regarding local government revenue.</p> |
| <p>Problem Gambling Fund and Prevalence Study</p> | <p>\$425 annual fee per VLT to be paid by VLT Licensees for a Problem Gambling Fund administered by the Maryland Department of Health and Mental Hygiene (“DHMH”) (15,000 VLTs = \$6.4 million annually).</p> <p>Requires DHMH to conduct a problem and pathological gambling prevalence study to measure the rate of problem and pathological gambling in the State.</p> |
| <p>Annual VLT Payout Percentage</p> <p>Player Restrictions</p> | <p>87% minimum per VLT 90-95% for each Facility</p> <p>Individuals under the age of 21 or intoxicated are prohibited from playing VLTs.</p> |

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| <p>Free Food and Beverage Restrictions</p> <p>Exclusion Policy</p> <p>Voluntary Exclusion Policy</p> <p>State Lottery Games</p> <p>Paycheck Cashing</p> | <p>Free food and alcoholic beverages are generally prohibited.</p> <p>By regulation, the Lottery Commission shall provide for the establishment of a list of individuals to be excluded from VLT Facilities.</p> <p>VLT Facilities are required to develop procedures that permit self-exclusion from Facilities for individuals with gambling problems.</p> <p>VLT Facility shall offer any State Lottery games.</p> <p>Prohibits consumers from cashing paychecks at a VLT Facility</p> |
| <p>Additional Consumer Protections</p> | <p>Lottery Commission to adopt regulations to reduce or mitigate the effects of problem gaming including:</p> <ul style="list-style-type: none"> • limits on dollar amount accepted by VLTs; • payout of winnings above a certain amount by check; • limits on ATM numbers, locations, and maximum withdrawals; conspicuous disclosures related to VLT payouts and odds; and • consumer records of spending levels to the extent that marketing measures track spending. |

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SECTION III. REQUEST FOR PROPOSALS TERMS AND CONDITIONS

THE APPLICANT SHALL PROVIDE IN ITS PROPOSAL A STATEMENT OF INTENT TO COMPLY WITH THE TERMS, CONDITIONS, AND REQUIREMENTS SET FORTH HEREIN. ALSO, THE APPLICANT SHALL PROVIDE IN ITS PROPOSAL ALL INFORMATION REQUIRED BY THIS SECTION.

3.1 ISSUING OFFICE

This RFP is issued by the Video Lottery Facility Location Commission (“Location Commission”) which is the sole point of contact with regard to all matters relating to this RFP and the process for award of a License. The Location Commission is the only entity authorized to change, modify, amend, alter, clarify, etc. the specifications, terms, and conditions of this RFP.

3.1.1 The sole point of contact in the State for the purposes of this RFP prior to award of a License is:

Video Lottery Facility Location Commission
c/o Maryland State Lottery Agency
Attn: Robert W. Howells
Montgomery Park Business Center
1800 Washington Boulevard, Suite 330
Baltimore, MD 21230
Telephone: (410) 230-8789
Fax: (410) 230-8727
E-mail Address: rhowells@msla.state.md.us

E-mail is the preferred method of written communication to the Location Commission except where specifically noted otherwise.

3.1.2 After the award of a License, the State Lottery Commission (“Lottery Commission”) shall regulate the operation of VLTs including licensing of operators and shall operate the Central System.

3.2 PROCEDURE FOR CONDUCTING THE REQUEST FOR PROPOSALS

The award of the Video Lottery Operation Licenses by the Video Lottery Facility Location Commission does not fall within the definition of a procurement as defined in the State Finance and Procurement Article, Annotated Code of Maryland and Code of Maryland Regulations (“COMAR”) Title 21. However, State procurement procedures will be generally followed to the extent feasible as a guideline for an orderly and fair process and certain specified provisions of State procurement law shall be applicable as follows:

3.2.1. Consistent with its enabling legislation, the Location Commission will award Licenses through a competitive process consistent with the process for Competitive Sealed Proposals under Title 13 of the State Finance and Procurement Article, to the extent feasible.

Upon its receipt, each proposal will be stored in a secure place until the time and date of opening. Proposals will not be opened publicly but shall be opened in the presence of at least two (2) Location Commission members, or designees. Proposals shall be shown only to members of the Location Commission and State employees or other persons deemed to have a legitimate interest in them, and will not be open to public inspection until after a License is issued and in accordance with a Public Information Act request.

A Register of Proposals will be prepared that identifies:

- the name of each Applicant including officers, directors, and principals;
- the proposed Facility location including a description of the site; and
- the number of VLTs proposed for the Facility.

The Register of Proposals will be a publicly available document.

The Location Commission may hold open meetings for Applicants to make oral presentations regarding their proposals. However, the evaluation process shall be conducted in a confidential manner in closed session of the Location Commission.

3.2.2. For the construction and procurement related to the operation of VLTs, the Applicant or Licensee shall at a minimum meet the same requirements of a designated unit for Minority Business Participation (“MBE”) as described under Title 14, Subtitle 3 of the State Finance and Procurement Article.

If the County in which a Video Lottery Facility will be located has higher minority business participation requirements than the State, the Applicant shall meet the County’s minority business participation requirements to the extent possible.

3.2.3. An unsuccessful Applicant for a Video Lottery Operation License may seek, under Title 15 of the State Finance and Procurement Article, review by the State Board of Contract Appeals of the awarding of the Video Lottery Operation License by the Location Commission.

3.2.4. Any other provision as specifically stated herein.

3.3 PROPOSAL DISCLOSURE PROHIBITION

- 3.3.1.** Upon issuance of this RFP, potential Applicants or their representatives shall have no contact or discussions about the contents of this RFP or their proposal with the Location Commission or its representatives, other than in conjunction with the Pre-Proposal Conference, written responses to questions, scheduled Discussions or in open meetings of the Location Commission. (See Section 3.6, 3.8.1 and 8.4.)
- 3.3.2.** Until a License resulting from this RFP is awarded, no employee, agent, or representative of any Applicant may make available or discuss its proposal with any officer of the State of Maryland, any Location Commission member, or any employee, agent or representative of the Location Commission, Lottery Commission, the Lottery or the Department of Legislative Services, unless specifically authorized to do so in this RFP or in writing by the Location Commission for the purposes of clarification, evaluation, and/or negotiation.
- 3.3.3.** Prior to License award, Applicants shall not represent themselves to any officer of the State of Maryland or the public as having the endorsement of the Location Commission or the Lottery Commission or as a holder of a Video Lottery Operation License.

3.4 eMARYLAND MARKETPLACE (“eMM”)

1. Posting of RFP and Related Documents: eMaryland Marketplace (“eMM”) is the State’s electronic commerce system and is the single official source for posting procurement related information. Vendors with an interest in doing business with the State are encouraged to register with eMM. Information about eMM can be found on its website at www.emarylandmarketplace.com.

All efforts will be made to communicate with potential Applicants. However, the Location Commission is not responsible for failures to deliver by mail services, e-mail services, fax service, etc. In addition to using other means, the RFP, summary of the Pre-Proposal Conference, Applicant’s questions and the Location Commission’s responses, amendments to the RFP, and other related information will be provided via eMM. The Location Commission shall expediently post all relevant information to eMM, and it is the responsibility of interested parties to remain informed of any changes to this information by monitoring eMM.

2. Registration: An Applicant must be registered with eMM not later than the time it is recommended for award of a License. In order to receive a License award, an Applicant must be registered on eMM. There is no fee for registration on eMM.

3.5 SCHEDULE

The Key Dates for this RFP as stated below are for informational and planning purposes. The Location Commission reserves the right to change any of these dates, except the Proposal Due date.

| <u>Event</u> | <u>Date</u> |
|--|-------------------|
| Issue Date of RFP | December 19, 2008 |
| Pre-Proposal Conference | January 12, 2009 |
| Site Visits – Facility Locations (Section 3.7) | January, 2009 |
| Proposals Due | February 2, 2009 |
| Supplement to Proposals Due | April 15, 2009 |
| Oral Presentations (Approximately) | May - June, 2009 |
| Anticipated Award Date | Fall 2009 |

3.6 PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference (“Conference”) will be held on **January 12, 2009**, beginning at 10:00 a.m. Local Time, at the Maryland State Lottery Agency, Montgomery Park Business Center-Suite 330, 1800 Washington Boulevard, Baltimore, MD 21230.

Attendance at the Conference is not mandatory, but all potential Applicants are encouraged to attend. Information presented may facilitate the Applicant’s ability to better prepare their proposals and their understanding and ability to meet the Minority Business Enterprise (“MBE”) goals. Attendance will also insure the Applicant’s inclusion on the contact list for distribution of all documents related to the RFP process.

As promptly as is practicable subsequent to the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Applicants known to have received a copy of this RFP.

In order to assure adequate seating and other accommodations for this Conference, prospective attendees are requested to return the Pre-Proposal Conference Response Form (Appendix C of the RFP) or telephone the Location Commission at 410-230-8789 no later than January 7, 2009, to provide notice of the anticipated number of individuals who will attend.

If any individual interested in attending the Conference is in need of sign language

interpretation or other special accommodations due to a disability, it is requested that notice be provided by January 7, 2009. Reasonable efforts will be made to provide such special accommodation.

3.7 SITE VISITS TO FACILITY LOCATIONS

Applicants will be provided an opportunity to visit the locations specified for certain Facilities in Baltimore City and in Allegany County at Rocky Gap State Park. Applicants intending to submit a proposal for one of these locations should contact the Location Commission (see Section 3.1.1) to establish the time, place, procedure, scope, and format for the site visit(s).

3.8 QUESTIONS

1. The Location Commission, prior to the Pre-Proposal Conference, will accept **written** questions from prospective Applicants, which should be received no later than **January 7, 2009**.

All questions must be submitted in writing. E-mail is the preferred method of written communication to the Location Commission except where specifically noted otherwise. Telephone inquiries will not be answered.

If possible and appropriate, such questions will be answered at the Conference. No substantive question will be answered prior to the Conference. Questions, both oral and written, will also be accepted from prospective Applicants attending the Conference.

The Location Commission will prepare written responses to all questions received, both questions received prior to the Conference and questions asked at the Conference, and will distribute these responses to all prospective Applicants who are known to have received a copy of the RFP.

Questions will also be accepted subsequent to the Conference. The Location Commission, based on the availability of time to research and communicate an answer, will decide whether an answer can be given before the proposal due date. Answers to all substantive questions that have not previously been answered and are not clearly specific only to the requestor, will be distributed to all potential Applicants who are known to have received a copy of the RFP.

2. If an Applicant discovers any conflict, discrepancy, omission, or other error in this RFP, it shall immediately notify, in writing, the Location Commission. In addition, should a potential Applicant identify alleged ambiguities in the specifications or License provisions included in this RFP, or should there be doubt as to the meaning or intent of any section herein, the potential Applicant must request clarification from the Location Commission prior to the proposal due date. Failure to do so may prevent consideration of a future review by the State Board of Contract Appeals.

3. If an Applicant fails to notify the Location Commission of an error in the RFP known to the Applicant, or an error that reasonably should have been known to the Applicant, the Applicant shall submit a proposal at the Applicant's own risk; and, if awarded the License, the Applicant shall not be entitled to additional compensation or time by reason of the error or its later correction.

3.9 PROPOSAL SUBMISSION

3.9.1 Deadline for Receipt

The submission of Proposals shall be conducted by a two step process as described in Section VII, whereby Applicants will submit a Proposal and subsequently a Supplement to the Proposal:

All Proposals must be received by the Video Lottery Facility Location Commission, at the address listed in Section 3.9.2 and the Key Information Summary Sheet, no later than 2:00 p.m. (Local Time) on February 2, 2009, in order to be considered.

All Supplements to Proposals must be received by the Video Lottery Facility Location Commission, at the address listed in Section 3.9.2 and the Key Information Summary Sheet, no later than 2:00 p.m. (Local Time) on April 15, 2009, in order to be considered.

3.9.2 General Submission Requirements

These requirements apply to the submission of both the Proposal and the Supplement to Proposal.

Proposals and Supplements shall be submitted to the following address:

**Video Lottery Facility Location Commission
c/o Department of Legislative Services
Legislative Services Building, Room #120
90 State Circle
Annapolis, MD 21401**

Requests for extension of the Deadline for Receipt date or time will not be granted. Applicants mailing proposals should allow sufficient delivery time to ensure timely receipt by the Location Commission.

Proposals **may not** be sent by fax or e-mail to the Location Commission.

All written materials shall be in English.

Proposals or requests for withdrawal or modification received by the Location

Commission after the proposal Deadline for Receipt may not be considered.

Modifications or Withdrawals: Proposals may be modified or withdrawn only by written notice to the Location Commission prior to the Deadline for Receipt of proposals.

Late Actions: A proposal, request to withdraw a proposal, or a modification to a proposal is late if the Location Commission does not receive it by the Deadline for Receipt. A late proposal, late request for withdrawal, or late modification will not be considered, except under the following circumstances:

- A. When a late proposal, modification or withdrawal is received before a License is awarded and the proposal, modification or withdrawal would have been timely but for the action or inaction of State personnel directing the RFP activity or their employees.
- B. A late modification of a successful proposal, which makes its terms more favorable to the State, shall be considered at any time it is received and may be accepted at the sole discretion of the Location Commission

3.10 LICENSE AND APPLICATION FEES

3.10.1 Initial License Fee

A proposal submitted for an Operation License at a Video Lottery Facility Location shall include an Initial License Fee with the proposal of at least \$3,000,000 for each 500 Video Lottery Terminals included in the proposal, that shall be prorated based on the exact number of VLTs contained in the proposal. The Initial License Fee shall be in the form of a certified check payable to the “State of Maryland/State Lottery Agency” and will be deposited by the Location Commission into a bank account of the State.

3.10.1.1 Disposition – Successful Applicant/Licensee

The Initial License Fee including any interest earned thereon will be retained by the State and deposited to the Education Trust Fund.

3.10.1.2 Disposition – Refund to Unsuccessful Applicant

The Initial License Fee will be refunded to an unsuccessful Applicant, provided that Applicant has properly fulfilled all requirements of the RFP process and paid all License fees, within forty five (45) days after the award of a License to another Applicant, unless Applicant challenges the award of the License as stated in Section 3.2.3. Any interest earned thereon will be retained by the State.

3.10.1.3 Disposition – Forfeiture by Applicant

Failure to Enter into License agreement: If an Applicant upon acceptance by the Location Commission of its proposal within the period specified herein for acceptance of three hundred sixty-five (365) days shall fail or refuse to execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the proposal as accepted within the time specified (ten (10) days if no period is specified), then the Applicant shall forfeit the Initial License Fee.

Frivolous Litigation/Protest: An Applicant shall forfeit the Initial License Fee upon determination of a frivolous lawsuit or protest to permit the Location Commission to recover, in addition to its attorney's fees, damages that result from delay in implementing a license, as stated below:

1. The Applicant brings any legal action or protest against the Location Commission, the State of Maryland, the Lottery Commission, or any individual member thereof, or any employee of the State, over the award of a License resulting from this RFP;
2. The Location Commission or such other party is the prevailing party at the conclusion of the action or protest; and,
3. The tribunal before which the action was brought, or any other authorized tribunal, determines that the action or any portion thereof was frivolous, was brought in bad faith, or was not based upon reasonable grounds.

3.10.2 Application and License Fees and Background Investigation Costs

Applicant shall pay any other required fees such as but not limited to fees required to be submitted with the Applications contained in Appendix J, K, K-1 and L, administrative costs of the background investigation process, or any other fees designated by the Lottery Commission. Any amounts due and not paid by an Applicant, such as but not limited to fees for background investigations and license fees, will be deducted from the Initial License Fee or portion thereof that would otherwise be due to be refunded to an Applicant in accordance with Section 3.10.1.

3.11 DURATION OF OFFER

Proposals submitted in response to this RFP are irrevocable for three hundred sixty-five (365) days following the closing date for submission of proposals or of Best and Final Offers ("BAFO"), if requested. This period may be extended only by written mutual agreement between the Applicant and Location Commission.

3.12 ORAL PRESENTATIONS/DISCUSSIONS/SITE VISITS

Oral Presentations

Applicants shall be required to make individual oral presentations concerning their proposed Facility to the Location Commission and may be required to make a presentation(s) in a public meeting.

Discussions

During the evaluation process, the Location Commission may enter into confidential discussions in closed session with qualified or potentially qualified Applicants in order to clarify their proposals. Submission of a proposal does not guarantee an Applicant the opportunity to be invited to participate in oral presentations or discussions. An Applicant's oral presentations/discussions must include the Key staff that would be assigned if awarded a License.

Site Visits

The Location Commission may make site visits to the Applicant's place of business or to the location proposed for the Video Lottery Facility.

Scheduling

The Location Commission will notify Applicants of the time, place, procedure, scope, and format for any oral presentations, discussions and/or site visits that may be required. These events may be scheduled concurrently or separately at the Location Commission's discretion. An Applicant's failure to promptly comply and cooperate with these requirements could result in its proposal being rejected and eliminated from further consideration.

Representations

Significant representations made by an Applicant during oral presentations, discussions and site visits shall be reduced to writing by the Applicant. All such representations will become part of the Applicant's Proposal and shall be binding if a License is awarded.

3.13 OWNERSHIP OF MATERIAL

All opened proposals become the property of the Location Commission upon receipt and will not be returned to the Applicant. Selection or rejection of the proposal will not affect this right.

3.14 REVISIONS TO THE RFP

If it becomes necessary to revise any part of this RFP before the due date for submission of proposals, the Location Commission will provide amendments to all prospective Applicants who were sent this RFP or otherwise are known by the Location Commission to have obtained a copy of this RFP. Amendments will be distributed in reasonable time to allow prospective Applicants to consider them in preparing their proposals

Amendments made after the due date for submission of proposals will be sent only to those Applicants who submitted a timely proposal.

Acknowledgment of the receipt of all amendments to this RFP issued before the proposal due date shall be required from all Applicants in their Transmittal Letter accompanying their Proposal. Acknowledgement of the receipt of amendments to the RFP issued after the proposal due date shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the Applicant from complying with all terms of any such amendments.

3.15 INFORMATION NOT CONTAINED IN THE RFP

Proposals shall be based solely on the material contained in this RFP and any amendments thereto. Applicants are to disregard any newspaper advertisements, news articles, and any oral representations when preparing their proposals.

3.16 CANCELLATION OF THE RFP; REJECTION OF ALL PROPOSALS

The Location Commission may cancel this RFP or reject all proposals submitted in response to this RFP when this action is determined to be in the State's best interest.

3.17 PROPOSAL ACCEPTANCE; DISCUSSIONS

The Location Commission reserves the right to accept or reject any or all proposals, in whole or in part, received in response to this RFP, to waive or permit cure of minor irregularities, and to conduct discussions or negotiations with all qualified or potentially qualified Applicants in any manner necessary to serve the best interests of the State. This may be followed by submission of Applicant-revised proposals and a Best and Final Offer ("BAFO"). This request does not commit the Location Commission to award a License.

The Location Commission also reserves the right, in its sole discretion, to award a License based upon the written proposals received without prior discussions or negotiations with respect to those proposals.

3.18 INCURRED EXPENSES AND ECONOMY OF PREPARATION

The Location Commission will not be responsible for any costs incurred by an Applicant in preparing and submitting a proposal, in making an oral presentation, in providing a demonstration, or in performing any other activities relative to this RFP. Proposals should be prepared simply and economically, providing a straightforward, concise description of how the Applicant proposes to meet the requirements of this RFP.

3.19 PUBLIC INFORMATION ACT NOTICE

An Applicant should give specific attention to the clear identification of those portions of its proposal that it deems to be confidential, proprietary commercial

information or trade secrets, and provide justification of why such materials, upon request, should not be disclosed by the State pursuant to the Access to Public Records Act (“PIA”), Title 10, Subtitle 6, State Government Article, Annotated Code of Maryland. A blanket statement by an Applicant that its entire proposal is confidential, proprietary commercial information or a trade secret is unacceptable. Proposals shall be open to public inspection only after award of the License, to the extent permitted by the PIA.

3.20 APPLICANT/LICENSEE RESPONSIBILITIES

The Location Commission will award a License only to the selected Applicant. The selected Applicant shall be responsible for all products, equipment and services required by this RFP. The selected Applicant remains responsible for all work performed by, and any deliverable submitted by, a subcontractor.

3.21 MINORITY BUSINESS ENTERPRISE (“MBE”) SUBCONTRACT PARTICIPATION GOAL

Minority business enterprises are encouraged to respond to this Request for Proposals.

3.21.1 Applicants will be closely scrutinized and monitored for MBE compliance. The Governor’s Office of Minority Affairs (“GOMA”) shall monitor a Licensee’s compliance with all MBE requirements and the Lottery Commission shall ensure that an Operation Licensee complies with the requirements of this Section as a condition of holding the Operation License.

3.21.2 For the construction and other procurements related to the development, management and operation of VLTs, the Licensee shall at a minimum meet the requirements for Minority Business Enterprise (“MBE”) Participation as described under Title 14, Subtitle 3 of the State Finance and Procurement Article.

A **minimum** certified MBE participation goal as specified below has been established for the expenditures related to the Licenses issued as a result of this RFP, including but not limited to design, construction, development and operational expenditures.

Overall goals:

| | |
|---------------------|-------------|
| Anne Arundel County | minimum 35% |
| Baltimore City | minimum 35% |
| Cecil County | minimum 25% |
| Worcester County | minimum 25% |
| Allegany County | minimum 25% |

Sub-goals (for all jurisdictions):

| | |
|-----------------------------|----------------|
| African American-owned MBES | minimum of 10% |
| Women-owned certified MBES | minimum of 10% |

By submitting a Proposal and Supplement in response to this RFP, the Applicant agrees to meet or exceed the overall and sub-goals established in the License with the participation of Maryland Department of Transportation (“MDOT”) certified MBE(s).

3.21.3 If the jurisdiction in which a Video Lottery Facility will be located has higher minority business participation requirements than the State, the Licensee shall meet the jurisdiction’s minority business participation requirements.

3.21.4 Any collective bargaining agreement or agreements, including a project labor agreement or a neutrality agreement, entered into by an Applicant or Licensee may not negate these requirements.

3.21.5 MBE form are contained in Appendix D: Minority Business Enterprise (“MBE”) Instructions/Forms. The Applicant shall submit Attachments D-1 and D-2 to the Location Commission with its Supplement to the Proposal. All other forms are included herein for informational purposes only, are subject to revision by GOMA, and shall be submitted directly to GOMA at a later date as directed by GOMA.

3.21.6 General Requirements

1. All MBE firms proposed must be certified by MDOT prior to License award in order to be counted, except as set forth in Section 3.21.3. The spirit and intent of the State of Maryland is to afford MBEs the opportunity to perform viable and meaningful services in a teaming effort on its contracts. It is the desire of the State to maximize notice, and the opportunity to participate in the procurement process, to a diverse and broad range of MBEs.

The Contractor — including an MBE prime Contractor or a prime Contractor comprising a joint venture that includes MBE partner(s) — must accomplish an amount of work not less than the MBE subcontract participation goal with MDOT certified MBE subcontractors, unless it has requested and been granted a waiver. An MBE prime cannot subcontract to itself; a prime joint venture with MBE partners cannot subcontract to its MBE partners.

2. Applicants requiring assistance in locating certified MBEs are encouraged to contact the following office:

The Governor's Office of Minority Affairs
6 Saint Paul Center, #1502
William Donald Schaefer Tower
Baltimore, Maryland 21202
(410) 767-8232

Applicants requesting a Maryland MBE Directory, also available on diskette,

may contact:

Maryland Department of Transportation
Office of Minority Business Enterprise and Equal Opportunity
P.O. Box 8755
Baltimore-Washington International Airport
Linthicum, Maryland 21240-0753
(800) 544-6056 or (410) 865-1269

The MBE Directory is also available on the MDOT website at www.mdot.state.md.us.

3. To achieve the result specified in Section 3.21.2, the Applicant shall conduct the subcontractor solicitation process in such a manner as to not place MBE subcontractors at a disadvantage. In this process, the Applicant shall:
 - a. Identify specific and meaningful work categories within the solicitation's scope of work that are appropriate for subcontracting;
 - b. Solicit diverse certified MBEs through written notice at least ten (10) days before bids or proposals are due, describing the identified work categories under item (a) above and providing detailed instructions on how to submit a bid for the subcontracts (Make sure the MBEs are certified in the work category for which they are being solicited – carefully check the NAICS code);
 - c. Attempt to make personal contact with the certified MBEs solicited in item (b) above and document these attempts;
 - d. Assist certified MBEs to fulfill bonding requirements or to obtain a waiver of those requirements; and,
 - e. In order to publicize subcontracting opportunities to certified MBEs, attend pre-proposal conferences or other meetings scheduled by the procurement agency. Notify and encourage those MBEs solicited to attend the pre-proposal conference.

4. Waiver
 - a. If the Applicant believes a waiver of some or all of the MBE goal is necessary, including any sub-goal, then the Applicant must request a waiver by completing the applicable section of Appendix D-1, "MBE Utilization And Fair Solicitation Affidavit". The waiver request must clearly indicate what portion of the established goal the Applicant intends to meet. Documentation supporting any waiver request shall include:
 - i. A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBEs in order to increase the likelihood of achieving the stated goal;

- ii. A detailed statement of the efforts made to contact and negotiate with certified MBEs including the names, addresses, dates, and telephone numbers of the certified MBEs contacted and a description of the information provided to the certified MBEs regarding plans, specifications, and anticipated time schedule for portions of the work to be performed;
 - iii. As to each certified MBE that placed a subcontractor quotation or offer that the apparent successful Applicant considered not to be acceptable, a detailed statement of the reasons for this conclusion; and,
 - iv. In the event certified minority subcontractors are found to be unavailable, a signed and notarized MBE Statement of Unavailability must be prepared by the apparent successful Applicant, to include the names, addresses, dates, times, and telephone numbers of the certified MBEs contacted and the reason each MBE is unavailable.
 - b. An Applicant requesting a waiver must demonstrate reasonable good faith efforts to meet the goal, and a waiver of any portion of the MBE goal shall be granted only upon reasonable demonstration by the apparent successful Applicant that: 1) certified MBE participation was unable to be obtained or was unable to be obtained at a reasonable price, and 2) if the Location Commission determines that the public interest is served by a waiver.
 - c. The documentation shall be furnished within the time specified by the Location Commission. If the Location Commission determines that the recommended Licensee has not complied with the certified MBE subcontract participation contract goal, has not obtained a waiver as required, fails to submit the documentation required by the solicitation, or fails to comply in good faith with outreach efforts, the Location Commission, upon review by the Office of the Attorney General, may reject the proposal or cancel the award of the License.
 - d. The D1 waiver request shall be submitted with the Supplement to the Proposal.
5. Amendment for Unforeseen Circumstances

If at any time after submission to the Supplement to the Proposal before or after the award of the License, the Applicant or Licensee determines that a certified MBE listed on the MBE Participation Schedule (Appendix D-2) required under Section 3.21.5 has become or will become unavailable, then the Applicant/Licensee shall immediately notify GOMA who may verify such unavailability. The notification shall indicate the Applicant/Licensee's efforts to substitute another certified MBE subcontractor to perform the

work. Within ten (10) working days from notification to GOMA, the Applicant/Licensee shall submit a revised MBE Participation Schedule (Appendix D-2) if applicable, and new Subcontractor Project Participation Statement (Appendix D-4) signed by both the Applicant/Licensee and the newly proposed certified MBE(s), which must be approved by GOMA. In the event that the Applicant/Licensee is unable to find one or more MBE replacements, the Applicant/Licensee shall document and submit in writing all efforts to find such replacements, including but not limited to seeking assistance from GOMA.

6. Compliance

GOMA shall monitor a Licensee's compliance with the requirements of this Section. GOMA shall report to the Lottery Commission at least every six months on the compliance of Licensees with these requirements. If GOMA reports that a Licensee is not in compliance, the Lottery Commission may take immediate action to ensure the compliance of the Licensee.

- a. To ensure compliance with certified MBE subcontract participation goals, GOMA shall verify that the certified MBEs listed in the MBE Participation Schedule (Appendix D-2) are actually performing work and receiving compensation as set forth in the schedule. The Licensee shall:
 - i. Permit GOMA to inspect any relevant matter and conduct periodic reviews, including reviewing records, visiting jobsites and interviewing subcontractors and workers;
 - ii. Submit monthly to GOMA a report listing unpaid invoices over 30 days old received from a certified MBE subcontractor, and the reason payment has not been made. By the 15th of each month, beginning the first month after the License commencement date, the Licensee shall submit to GOMA a Contractor's MBE Monthly Payment Progress Report (Appendix D-5), for each certified MBE. The report shall include: 1) a listing of all invoices submitted by each MBE subcontractor during the reporting period, and, 2) all invoices paid by the contractor to the MBE during the reporting period .
 - iii. Include in its agreements with its certified MBE subcontractors a requirement that the certified MBE subcontractors submit by the 15th of each month to GOMA a report, the MBE Subcontractor Payment Report (Appendix D-6), identifying the License, and listing:
 - (1) All invoices submitted to the Licensee during the reporting period;
 - (2) All payments received from the Licensee in the preceding 30 days; and,

- (3) Subcontractor invoices over 30 days old.
- b. Provide right-of-entry at reasonable times to enable GOMA's representatives to verify compliance with the MBE participation obligations. The Licensee shall maintain and retain all records concerning MBE subcontractor participation and make them available for GOMA's inspection for a period of three (3) years from the date of final payment under the License. Subcontract agreements documenting the work performed by all MBEs shall be retained by the Licensee and furnished to GOMA upon request. (All MBE information from the first day of the License until the last day of the License shall be retained for three years after the final payment made to the License.)
 - c. Upon notification by GOMA of the Licensee's noncompliance, including failure to meet MBE reporting deadlines, the Lottery Commission shall notify the Licensee in writing of its findings and shall specify what corrective actions are required. The Licensee shall be required to initiate the corrective actions within ten (10) working days and complete them within the time specified by the Lottery Commission.
 - d. If the Lottery Commission determines that material noncompliance with MBE provisions exists and that the Licensee refuses or fails to take the corrective action required by the Lottery Commission, then the following sanctions may be invoked:
 - i. Withholding payment
 - ii. Suspend, revoke or terminate the License
 - iii. Suspend the right of the Licensee to participate in any future licenses or contracts
 - iv. Refer to the Office of the Attorney General for appropriate action
 - v. Initiate any other specific remedy identified by the License
 - vi. The Lottery Commission may use any other compliance mechanism available at law.
 - e. GOMA may, upon termination or expiration of the License, and before final payment or release of retainage or both, require that the Licensee submit a final report, in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.
 - f. If GOMA determines that the Licensee has not complied with the MBE requirements, the Lottery Commission, upon review by the Office of the Attorney General, may determine the Licensee to be in breach of its License. The determination and any associated actions taken by the Lottery Commission shall be specified in writing to the

Licensee.

7. Prohibited Acts; Fines

Under Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland, any person who commits any of the following acts is guilty of a felony, and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both:

- a. Fraudulently obtains, holds, or attempts to obtain or hold certification;
- b. Aids another person in performing an act prohibited under item (a) of this paragraph;
- c. Willfully obstructs, impedes, or attempts to obstruct or impede a State official or employee investigating the qualifications of a business entity that has requested certification;
- d. Fraudulently obtains, attempts to obtain, or aids another person in fraudulently obtaining or attempting to obtain, public monies to which the person is not otherwise entitled under this subtitle; or,
- e. In any minority business enterprise matter administered under this subtitle:
 - i. Willfully falsifies, conceals, or covers up a material fact by any scheme or device;
 - ii. Makes a false or fraudulent statement or representation; or,
 - iii. Uses a false writing or document that the person knows to contain a false or fraudulent statement or entry.

3.22 ARREARAGES

By submitting a proposal in response to this RFP, an Applicant represents that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the License if selected for award.

3.23 PROPOSAL AFFIDAVIT

All Applicants submitting a proposal must complete the Proposal Affidavit which is included in Appendix A of this RFP and submit it with their proposal. The Affidavit includes anti-bribery, non-collusion, debarment, and financial disclosure and political contribution disclosure affirmations.

3.24 CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

All Applicants submitting a proposal must complete the Conflict of Interest Affidavit and Disclosure which is included in Appendix G of this RFP and submit it with their proposal.

It is unlawful for any State officer, employee, or agent to participate personally in his official capacity through decision, approval or disapproval, recommendation, advice, or investigation in any Contract, License or other matter in which he, his spouse, parent, minor child, brother, or sister has a financial interest or to which any firm, corporation, association, or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, is a party, unless such officer, employee, or agent has previously complied with the provisions of the Maryland Code Annotated, State Government. Article, §15-501 et seq.

3.25 CONFIRMATORY AFFIDAVIT

All Applicants are advised that if a License is awarded as a result of this RFP, the successful Applicant will be required to complete a Confirmatory Affidavit. A copy of this Affidavit is included for information purposes as Appendix B of this RFP. This Affidavit is not required to be submitted with the Applicant's proposal, but shall become a part of the License.

3.26 VERIFICATION OF REGISTRATION AND TAX PAYMENT

Before a corporation can do business in the State of Maryland it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore Maryland 21201 and Department of Labor, Licensing and Regulation. Corporations that are not incorporated in Maryland are required to have a resident agent. The resident agent must be either an individual (not the corporation itself) with an address in Maryland or a corporation that represents other corporations as a resident agent. Further, both corporations and individuals should contact the Comptroller's office to verify that they have no tax liability.

The Licensee shall ensure that all subcontractors meet these requirements, and further, that the Licensee and all subcontractors meet these requirements for the duration of the License.

Any potential Applicant who has questions concerning this requirement is advised to contact the Department of Assessments and Taxation at (410) 767-1330. It is strongly recommended that Applicants and subcontractors be completely registered prior to the due date for receipt of proposals. Failure to register may disqualify an otherwise successful Applicant from final consideration and recommendation for License award.

3.27 PAYMENTS BY ELECTRONIC FUNDS TRANSFER

By submitting a proposal in response to this RFP, the Applicant agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Applicant shall register using the attached form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAD X-10 form is provided in Appendix E or it can be downloaded at: <http://compnet.comp.state.md.us/gad/pdf/GADX-10.pdf>.

3.28 MULTIPLE OR ALTERNATE PROPOSALS

Neither Multiple nor Alternate proposals will be accepted.

3.29 FALSE STATEMENTS

Applicants are advised that Section 9-1A-07(G) of the VLT Law provides as follows:

(1) An individual may not knowingly give false information or make a material misstatement in an application required for any License under VLT Law or in any supplemental information required by the Lottery Commission.

(2) An individual who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.

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SECTION IV - REQUIREMENTS OF LICENSE AND LICENSEE

The following requirements shall apply to the Licensee and shall be effective during the term of the License. In this Section, the terms "Licensee" and "Contractor" and the terms "License" and "Contract" may be used interchangeably.

4.1 PRECEDENCE OF DOCUMENTS

In the event of inconsistencies and/or ambiguities between the License, the RFP, the Amendments modifying the RFP and the Licensee's Proposal, the Licensee's obligations are defined in order of precedence by (1) the License and License Agreement, if any; (2) the Amendments modifying the RFP; (3) the RFP; and (4) the Licensee's Proposal, to the extent that the Proposal does not conflict with the License, RFP or Amendments. The State shall not be bound by any part(s) of the Licensee's Proposal that contains information, options, exceptions, conditions, terms, or prices not requested or required in the RFP, unless specifically included in the License.

4.2 COMPENSATION AND METHOD OF PAYMENT

4.2.1 Compensation to the Licensee will be at the percentage of VLT Proceeds established in the proposal and accepted by the Location Commission, up to but not to exceed thirty-three (33%) percent of VLT Proceeds.

All proceeds from the operation of VLTs shall be electronically transferred daily into the State Lottery Fund. On a properly approved transmittal prepared by the Lottery Commission, the Comptroller of Maryland shall pay from the proceeds of VLTs at each Facility the amounts as specified by the VLT law, to include payment to the Operation Licensee of the percentage amount stated in the accepted Proposal for the Facility, not to exceed 33% of VLT Proceeds.

The State's payment processing and funds transfer procedures may take up to ten (10) days for funds to be received by Licensee after collection by the Lottery Commission.

4.2.2 The stated percentage fee shall be fully loaded and expressly include overhead expenses (e.g., fringe benefits, administrative costs, profits, etc.), and all other related and incidental expenses (e.g., travel) associated with providing all goods and services and equipment required by this License. No other amounts or costs will be paid to the Licensee. Specifically, no taxes or assessments or License fees or permits of any type will be paid.

4.2.3 The Lottery Commission may withhold and/or reduce payment, as well as institute for set-off, counterclaim, penalties, or any other legally permitted deduction, for the Licensee's unsatisfactory performance, failure to provide the Lottery Commission with all required deliverables within the specified timeframe, or material breach of the terms and conditions of the License.

The rights and remedies of the State under the License are cumulative. The enforcement of any right or election of any remedy by the State provided by the License for any breach of the License will not preclude the State from enforcing other rights and availing itself of other remedies available under the License for the same breach or any other breach of the License.

4.3 NON-HIRING OF OFFICIALS AND EMPLOYEES

No official or employee of the State of Maryland, as defined in State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this License, shall, during the pendency and term of this License and while serving as an official or employee of the State, become or be an employee of the Licensee or any entity that is a subcontractor on this License.

A member of the Senate of Maryland or the House of Delegates may not be an Owner or an employee of any business entity that holds an Operation License.

A member of the Location Commission may not:

- a) have an official relationship to a person who holds a License under the VLT Law;
- b) have any direct or indirect financial interest, ownership, or management, including holding any stocks, bonds, or other similar financial interests in any gaming activities, including horse racing, VLTs, or Lottery;
- c) receive or share in, directly or indirectly, the receipts or proceeds of any gaming activities, including horse racing or Lottery;
- d) have a beneficial interest in any contract for the manufacture or sale of gaming devices, the conduct of any gaming activity, or the provision of any independent consulting services in connection with any gaming establishment or gaming activity.

A member of the Lottery Commission may not:

- a) have a direct or indirect financial interest in VLTs;
- b) have an official relationship to a person who holds a License under the VLT Law;
- c) hold any stocks, bonds, or other financial interest in a person holding a License under the VLT Law.

4.4 MARYLAND LAW PREVAILS

The place of performance of the obligations under this License shall be the State of Maryland, and this License shall be governed by the laws of the State of Maryland and for all purposes shall be construed, interpreted, and enforced in accordance with said laws and the decisions of the courts of the State of Maryland thereon and as required under applicable laws and regulations, including approval of the Board of Public Works where appropriate, and shall be binding upon the successors and assigns of the parties hereto. Any and all litigation arising under this License shall be instituted in the appropriate court of the State of Maryland.

4.5 NONDISCRIMINATION IN EMPLOYMENT/SEXUAL HARASSMENT

The Licensee agrees:

1. Not to discriminate in any manner against any employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, sexual orientation, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment;
2. To include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials;
3. To post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause;
4. To operate under this License so that no employee or client is subjected to sexual harassment in the workplace or in locations and situations otherwise associated with the performance of duties per the terms of this License. Further, except in sub-contracts for standard commercial supplies or raw materials, the Licensee shall include this clause, or a similar clause approved by the Lottery Commission, in all sub-contracts. The Licensee has primary responsibility for enforcement of these provisions and for

securing and maintaining the sub-contractor's full compliance with both the letter and spirit of this clause; and

4.6 CONTINGENT FEE PROHIBITION

The Licensee warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson or commercial selling agency working for the Licensee, to solicit or secure this License, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson or commercial selling agency, any fee or any other consideration contingent on the making of this License.

4.7 FINANCIAL DISCLOSURE

The Licensee shall comply with Section 13-221 of the State Finance and Procurement Article, Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

4.8 POLITICAL CONTRIBUTION DISCLOSURE

The Licensee shall comply with Election Law Article, Sections 14-101 through 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

4.9 RETENTION OF RECORDS

The Licensee shall retain and maintain all records and documents in any way relating to this License for three (3) years after final payment by the State under

this License or until the expiration of any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Lottery Commission or designee, at all reasonable times.

4.10 COMPLIANCE WITH LAWS / WARRANTIES

The Licensee hereby represents, agrees, and warrants that:

1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
2. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this License;
3. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this License;
4. It shall obtain, at its expense, all Licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this License.

4.11 SUBCONTRACT, ASSIGNMENT AND PROHIBITION ON AFFILIATED ENTITY RELATIONSHIPS

The Licensee may not subcontract any portion of the services provided under this License without obtaining the prior written approval of the Lottery Commission. Any such subcontract or assignment shall include any terms and conditions that the Attorney General deems necessary to protect the interests of the Lottery Commission and the State. The State shall not be responsible for the fulfillment of the Licensee's obligations to any subcontractor or assignee.

The Licensee shall not assign this License or any of its rights or obligations hereunder without approval of the Lottery Commission if over 5% of equity is being assigned, and shall not pledge this License as a receivable.

If an Operation Licensee contracts with another person other than an employee of the Operation Licensee to provide any of the services related to operating a Facility, each person and each other person who owns or controls the person or management and supervisory personnel and other principal employees of the person shall qualify under the standards and provisions set for Operation Licensees.

4.12 INDEMNIFICATION AND RESPONSIBILITY FOR CLAIMS AND LIABILITY

1. The Licensee shall indemnify and save and hold harmless the Lottery Commission, the State of Maryland, its agents, or any individual member thereof, or any employee of the State, against and from all liability for any costs, expenses, losses, liabilities, fines, penalties, suits, actions, demands, or claims of any nature or character whatsoever arising from or relating to the performance of the Licensee or its subcontractors under this License or in any manner related to the subject matter of this License. This section 4.12 shall survive the termination of this License.

The Licensee shall indemnify and save and hold the aforementioned entities and individuals harmless for the failure of the Licensee, its agents or employees, or its subcontractor(s), to comply with the terms of this License (or any part thereof), negligence of the Licensee, injury or death to any person, damage to property, nuisance (public or private), or trespass arising out of or attributable to the performance of work by the Licensee, its agents or employees, or its subcontractor(s), except to the extent caused by the negligent or willful act or omission of the State or its employees, agents, or independent contractors, other than the Licensee, its agents or employees, or its subcontractor(s). The whole, or so much of the moneys due, or to become due the Licensee under this License, as may be considered necessary by the Lottery Commission, may be retained by the Lottery Commission until such suits or claims for damages shall have been settled, or otherwise disposed of, and satisfactory evidence to that effect furnished to the Lottery Commission.

2. The Licensee further agrees to indemnify the State for damage, loss, or destruction of State property in the Licensee's care, custody, and/or control during the term of this License due to the action or inaction of the Licensee or its subcontractor(s).
3. State law prohibits the State from incurring, by way of an indemnity agreement, a potentially unlimited liability when no funds have been appropriated to fund the liability, the risk is uninsured, and the indemnity agreement is not conditioned upon the future appropriation of funds to satisfy the liability. Notwithstanding any other provisions of the License, the State shall have no liability to the Licensee under the circumstances described in this paragraph.
4. The State has no obligation to provide legal counsel or defense or pay attorney's fees to the Licensee or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this License against the Licensee or its subcontractors as a result of or relating to the Licensee's obligations under this License.
5. The State has no obligation for the payment of any judgments or the settlement of any claims against the Licensee or its subcontractors as a

result of or relating to the Licensee's obligations under this License.

6. The Licensee shall immediately notify the Lottery Commission of any claim, suit or action made or filed against the Licensee or its subcontractors regarding any matter resulting from or relating to the Licensee's obligations or performance under the License, and shall cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Licensee's performance under this License. Neither the Licensee nor subcontractors may settle or resolve any such claim, suit or action without advance notice to the State.
7. The Lottery Commission will provide written notice of any claims filed against the Lottery Commission arising out of the Licensee's performance under the License of which it has notice. With the concurrence of the Office of the Maryland Attorney General, the Lottery Commission may allow Licensee the right to control such litigation, but the Lottery Commission and the State reserves the right to jointly participate in all such legal proceedings, as well as the settlement of any such claims.

4.13 NO WAIVER OF RIGHT

The failure of a party to insist upon strict adherence to any term of the License resulting from this RFP shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the License.

4.14 CHANGE IN FINANCIAL CONDITION

In addition to the requirement in the VLT Law for the Licensee to submit annual financial statements, If the Licensee experiences a substantial change in its financial condition during the term of the License or any extension thereof the Licensee shall immediately notify the Lottery Commission in writing of the change at the time the change occurs or is identified. Failure to notify the Lottery Commission of such a substantial change in financial condition may be sufficient grounds for terminating the License.

4.15 BANKRUPTCY

Upon the filing of any bankruptcy proceeding by or against the Licensee, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Licensee shall notify the Lottery Commission in writing immediately.

4.16 TAXES

The Lottery Commission shall have no responsibility for the payment of any federal, state or local taxes which become payable by the Licensee or its subcontractors as a result of this License.

The State is generally exempt from Federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. Exemption certificates will be completed upon request. Where a licensee is required to furnish and install material in the construction or improvement of real property in performance of its obligations in holding a Licensee, the Licensee shall pay the Maryland sales tax and the exemption does not apply.

4.17 LIABILITY FOR LOSS OF DATA OR RECORDS

In the event of loss of any data or records necessary for the performance of this License where such loss is due to the error, negligence, or intentional action of the Licensee or its employees, agents or subcontractors, the Licensee shall be responsible, irrespective of cost to the Licensee, for recreating such lost data or records in a manner, format, and time frame acceptable to the State.

4.18 PROPERTY RIGHTS/USUFRUCT

If, for any reason, the Licensee ceases to perform the obligations under the License other than because of the natural expiration of the term of the License, the Lottery Commission shall, in addition to any other rights it may have under this License, acquire a property right (usufruct) in all property (tangible or intangible, real or personal) used by the Licensee to perform the obligations under the License and which is necessary to provide such service. Said property right (usufruct) shall be limited to the right of the Lottery Commission to possess and make use of such property solely for the use and benefit of the Lottery Commission in operating, maintaining, altering and improving the operational characteristics of the programs and systems being used by the Lottery Commission under the License. Such property right (usufruct) shall be limited in time to the duration of the License or as the Lottery Commission deems necessary to fulfill the obligations under the License and any extension thereof or obtain a substitute system.

4.19 RIGHT TO REJECT OR SUBSTITUTE PERSONS PROPOSED FOR PROJECT

The Lottery Commission shall have the right to reject any person proposed by the Licensee to work on this License if the Lottery Commission determines that the use of such person is not suitable for the License or such person is not qualified for a License.

All Key personnel described in the Licensee's proposal, or identified at License

commencement, shall perform continuously for the duration of the License, and for so long as performance is satisfactory to the Lottery Commission. The Lottery Commission will give written notice of performance issues to the Licensee, describing the problem and delineating remediation requirement(s). The Licensee shall respond with a written remediation plan within three (3) days and implement the plan immediately upon written acceptance of the Lottery Commission. If performance issues persist, the Lottery Commission may require the immediate removal of person(s) whose performance is at issue and determine whether a substitution is required.

The Licensee may not substitute Key personnel, other than by reason of an individual's death, sudden illness or termination of employment, without the prior written approval of the Lottery Commission. To replace any Key personnel specified in the Licensee's proposal, the Licensee shall submit the resumes of the proposed substitute personnel to the Lottery Commission for approval at least two weeks prior to the effective date of substitution. All proposed substitute personnel shall have qualifications at least equal to those of the replaced personnel, shall be approved by the Lottery Commission, and must be licensed as appropriate.

4.20 CONFLICT OF INTEREST

The Licensee shall ensure that there is no real or perceived conflict of interest at any time during the term of the License. If the Licensee has any gaming-related affiliations which would be perceived as improper in its alliance to the Lottery Commission at the time of License award, or any such conflicts arise during the term of the License, the Licensee shall notify the Lottery Commission of such conflicts.

The Lottery Commission shall make the final determination as to whether any activity constitutes a conflict of interest, pursuant to this provision. The Lottery Commission's decision shall be final and without recourse; however, the Lottery Commission will not make any such decision without providing the Licensee with an opportunity to present comments. Failure of the Licensee to resolve such conflicts upon notification by the Lottery Commission that a conflict exists, shall constitute a material breach of the License, and the License is subject to termination by the Lottery Commission

4.21 CONFIDENTIALITY

The Licensee agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this License shall be kept confidential and not be disclosed to any person other than the State, its designated officials, employees, and authorized agents. The Licensee shall immediately notify the State in writing if it is requested to disclose any information made known to or discovered by it during the performance of the

License.

4.22 SET-OFF

The Lottery Commission may deduct from and set-off against any amounts due and payable to the Licensee any back charges or damages sustained by the State that are caused by the Licensee. Nothing herein shall be construed to relieve the Licensee of liability for additional costs resulting from a failure to satisfactorily perform the services.

4.23 DISSEMINATION OF INFORMATION

The Licensee shall not release any information related to the services or performance of the services under this License nor publish any final reports or documents, other than those required by a governmental entity or by law, without the prior written approval of the Lottery Commission. The Licensee shall indemnify the State and Lottery Commission, their officials, agents, and employees, from any liability that may be incurred by reason of dissemination, publication, distribution or circulation, of any information, or materials pertaining to this License by the Licensee, its agents, or employees.

4.24 RESTRICTIONS ON PLAYING OF VLTs

During the term of this License, no officer or employee of the Operation Licensee, their spouse, child, brother, sister, domestic partner, or parent residing in the household of such officer or employee shall play any VLT at any Facility within the State or be paid a prize by any Maryland VLT Facility. This restriction shall also apply to any subcontractor whose use is subject to Lottery Commission approval who are directly involved with the Licensee and/or Facility, and their spouse, child, brother, sister, domestic partner, or parent residing in the household of such officer or employee. The Licensee shall ensure that this requirement is made known to each officer and employee of the Licensee and any subcontractor whose use is subject to Lottery Commission approval. The Lottery Commission shall have the sole discretion to determine the applicability of this restriction to any specific individual.

No restrictions apply to the purchase of any Maryland Lottery ticket or to the receipt of any prize in any Maryland Lottery game.

4.25 LICENSEE COOPERATION

The Licensee shall cooperate with any subsequent licensee, contractor or any other contractor designated by the Lottery Commission to accomplish the Lottery Commission's objectives.

4.26. PENALTIES

The Lottery Commission may deny a license to an applicant, reprimand or fine a licensee, or suspend or revoke a license for a violation of the VLT Law, a regulation adopted under VLT Law, requirements of the RFP or the Licensee's proposal or a condition that the Lottery Commission sets.

For each violation specified above the Lottery Commission may impose a penalty not exceeding \$5,000. Each day that a person is in violation shall be considered a separate violation. To determine the amount of the penalty imposed, the Lottery Commission shall consider:

- (i) the seriousness of the violation;
- (ii) the harm caused by the violation; and
- (iii) the good faith or lack of good faith of the person who committed the violation.

Except as otherwise expressly provided in this subtitle, nothing contained in this provision abrogates or limits the criminal laws of the State or limits the authority of the General Assembly to enact statutes establishing criminal offenses and penalties relating to Video Lottery Operations.

4.27 BOND REQUIREMENTS - LICENSEE

4.27.1 Fidelity Bond

The Licensee shall submit to the Lottery Commission, within ten (10) business days after notice of License award, a Fidelity Bond in the amount of One Hundred Thousand Dollars (\$100,000.00) covering any loss to the State due to any fraudulent or dishonest act on the part of the Licensee, and any officer, employee, or subcontractor of the Licensee. If coverage for subcontractors is not included in the Fidelity Bond, then Licensee shall require each subcontractor to provide the Lottery Commission sufficient evidence of its own coverage. The bond must be in the form of a policy or certificate underwritten by a surety company authorized to do business in the State and shall be subject to approval by the Lottery Commission, or other acceptable security for bond as described in COMAR 21.06.07. The Fidelity Bond shall be maintained throughout the term of this License, and any renewal option period, if exercised. Evidence of renewal of the Fidelity Bond and payment of the required premium shall be provided to the Lottery Commission.

Failure of the Licensee to submit and maintain the required Fidelity Bond coverage, including subcontractor coverage, throughout the term of the License, and any Renewal Option Period, if exercised, will constitute an

event of Default under the License.

4.27.2 Performance Bond

The Licensee shall submit to the Lottery Commission, within ten (10) business days after notice of License award, a Performance Bond in the amount of One Million Dollars (\$1,000,000.00), guaranteeing that the Licensee shall well and truly perform the License. The bond shall be in the form provided in Appendix G and underwritten by a surety company authorized to do business in the State and shall be subject to approval by the Lottery Commission, or other acceptable security for bond as described in COMAR 21.06.07. The Performance Bond shall be maintained throughout the term of this License, and any renewal option period, if exercised. Evidence of renewal of the Performance Bond and payment of the required premium shall be provided to the Lottery Commission. This bond shall also secure liquidated damages.

The Performance Bond may be renewable annually. The Licensee shall require that the surety provide to the Lottery Commission thirty (30) days written notice of non-renewal, cancellation, or material modification of the bond by either the surety or the Licensee. Non-renewal, cancellation or material modification of the bond by the Surety will not constitute an event of default by the Licensee provided that the Licensee obtains an acceptable replacement Performance Bond to be effective prior to the expiration of the thirty (30) day notice period.

Failure of the Licensee to submit and maintain the required Performance Bond coverage throughout the term of the License, and any Renewal Option Period, if exercised, will constitute an event of Default under the License.

After the first year of the License, the Licensee may request a reduction in the amount of the Performance Bond. The amount and the duration of the reduction, if any, will be at the Lottery Commission's sole discretion. If any reduction is granted, the Lottery Commission shall have the right to increase the amount of the Performance Bond to any amount, up to the original amount, at any time and at the Lottery Commission's sole discretion.

The Performance Bond is forfeited to the Lottery Commission, in whole or in part, if the Licensee defaults in the performance of its contractual obligations or if the Lottery Commission incurs damages due to the willful or negligent performance of the Licensee or its subcontractors. However, the surety shall have the option within thirty (30) days of notice of default to cure the default or tender funds sufficient to pay the cost of completion up to an amount not to exceed the penal sum of the bond. With the concurrence of the Lottery Commission, the surety may assume the remainder of the License to perform or sublet.

4.27.3 Payment Bond

The Licensee shall submit to the Lottery Commission, within ten (10) business days after notice of License award, a Payment Bond in the amount of Two Million Dollars (\$2,000,000.00), guaranteeing that the Licensee shall promptly make payment to all claimants for all labor and materials furnished, supplied and reasonably required for use in the performance of the License. The bond shall be in the form provided in Appendix H and underwritten by a surety company authorized to do business in the State and shall be subject to approval by the Lottery Commission, or other acceptable security for bond as described in COMAR 21.06.07. The Payment Bond shall be maintained throughout the term of this License, and any renewal option period, if exercised. Evidence of renewal of the Payment Bond and payment of the required premium shall be provided to the Lottery Commission. This bond shall also secure liquidated damages.

Failure of the Licensee to submit and maintain the required Payment Bond coverage throughout the term of the License, and any Renewal Option Period, if exercised, will constitute an event of Default under the License.

After the first year of the License, the Licensee may request a reduction in the amount of the Payment Bond. The amount and the duration of the reduction, if any, will be at the Lottery Commission's sole discretion. If any reduction is granted, the Lottery Commission shall have the right to increase the amount of the Payment Bond to any amount, up to the original amount, at any time and at the Lottery Commission's sole discretion.

The Payment Bond is forfeited to the Lottery Commission, in whole or in part, if the Licensee defaults in its payment of subcontractors or vendors for work performed under this License. However, the surety shall have the option within thirty (30) days of notice of default to cure the default or tender funds sufficient to pay the subcontractors or vendors up to an amount not to exceed the penal sum of the bond.

4.27.4 General Bond Information

4.27.4.1 Individual Surety: In accordance with the Maryland Board of Public Works Advisory #2006-04 (see www.bpw.state.md.us), a bond executed by an individual surety that meets certain specified criteria is also an acceptable form of security.

4.27.4.2 Surety Bond Assistance Program: Small businesses may qualify for assistance in obtaining bid, performance and payment bonds through the Maryland Small Business Development Financing Authority (MSBDFA). MSBDFA can directly issue bid, performance or payment bonds up to \$5 million. MSBDFA may also guarantee up to 90% of a surety's losses resulting from a contractor's breach of a bid, performance or payment bond or \$1,350,000, whichever is less. Bonds issued directly by the MSBDFA Surety Bond Program (Program) will remain in effect for the term of the contract. Bond guarantees will remain in effect

for the term of the bond.

To be eligible for bonding assistance, an applicant must:

1. Have its principal place of business in Maryland or be a Maryland resident;
2. First be denied bonding by at least one surety in both the standard and specialty markets within 90 days of submitting a bonding application to MSBDFA;
3. Employ fewer than 500 full-time employees or have gross sales of less than \$50 million annually;
4. Not subcontract more than 75 percent of the work;
5. Have good moral character and a history of financial responsibility;
6. Demonstrate that the contract will have a substantial economic impact; and
7. Never have defaulted on any loan or financial assistance made or guaranteed by MSBDFA.

Applicants are encouraged to apply for assistance under the Program through their respective bonding agents. Questions regarding the bonding assistance program should be referred to:

Maryland Small Business Development Financing Authority
c/o Meridian Management Group, Inc.
826 East Baltimore Street
Baltimore, Maryland 21202
Phone 410-333-2548
Fax: 410-333-2552
Email: mmgdeal@mmggroup.com

4.28 INSURANCE REQUIREMENTS

The requiring of any and all insurance as set forth in these specifications, or elsewhere, shall be in addition to and not in any way in substitution for all the other protection provided under the License documents. The Licensee must provide evidence of third-party legal liability insurance for itself and any subcontractor under the agreement covering claims arising from the operations and services provided under this License. All insurances required by this section shall be effective when License commences and shall remain in full force and effect during the term of the License.

Certificates of Insurance duly issued and certified by the insurance company and evidence of the payment of premiums shall be furnished to the Lottery Commission within ten (10) business days after notice of License award. Insurance Certificates shall indicate effective dates and dates of expiration of policies. In the event the Insurance Certificate is not received within the required time, or if such certificate is insufficient respecting the limits and scope specified herein, then the Lottery Commission may not issue a License. Time is of the

essence.

The Licensee shall not commence work under this License until all the insurance required under this section has been obtained and approved by the Lottery Commission, nor shall the Licensee allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has been obtained and approved.

All insurance companies shall be Licensed or authorized to do business within the State and subject to approval by the Lottery Commission. No acceptance and/or approval of any insurance by the Lottery Commission shall be construed as relieving or excusing the Licensee, or the Surety of its Bonds, from any liability or obligation imposed upon either or both of them by the provisions of the License.

It is the sole responsibility of the Licensee to see that any and all of its subcontractors or their subcontractors carry insurance required herein to the extent Licensee wishes to impose on its subcontractor such liability insurance. The Licensee shall be held responsible for compliance and enforcement of the Lottery Commission's insurance requirements and its own requirements and for any modifications or waivers of these insurance requirements as they apply to subcontractors.

The Licensee shall require that the policies of insurance name the Lottery Commission as an additional insured and that each insurer shall provide to the Lottery Commission sixty (60) days written notice of non-renewal, cancellation, or material modification of the insurance policy by either the insurance carrier or the Licensee. Upon notification of non-renewal or cancellation, the Licensee shall provide replacement coverage to be effective prior to the expiration of the sixty (60) day notice period, or the Licensee may be deemed to be in default of this License.

By requiring such coverage, the Lottery Commission shall not be deemed to have waived any immunity from liability which it may otherwise have. Any Applicant who seeks to self-insure for any of the coverage required herein shall meet all applicable local, state and federal laws and regulations regarding self-insurance and shall submit evidence of such compliance to the Lottery Commission for approval with its Proposal.

The Lottery Commission shall have the right to require that the limits of liability set forth in this Section be raised if in its judgment economic or insurance market conditions warrant.

If any contract of insurance between the Licensee or any subcontractor and its insurance company shall, to any extent, be determined to be void or unenforceable, it is the intention of the parties that such circumstances shall not otherwise affect the validity or enforceability of Licensee's agreements and

obligations under the License nor the validity or enforceability of such contract of insurance, each of which shall be enforced to the fullest extent permitted by law.

The furnishing of evidence of insurance by certificate or policy copy that is not in conformance with the requirements shall not constitute a waiver of or amendment to, the aforementioned requirements. Any modification or waiver of the requirements must be provided by the Lottery Commission in writing to the Licensee and agreed to by signature of any authorized Officer of the Licensee.

4.28.1 Property Insurance

Insurance for extended coverage on all Licensee owned equipment shall be maintained in the amount of actual replacement cost thereof. The policy shall include an All Risk Property Floater to insure personal property including contents, equipment and mobile items against fire, collision, flood, etc. Neither the State nor the Lottery Commission will be responsible for any equipment not owned by the State. Licensee shall be responsible for all State-owned equipment located in its Facility.

4.28.2 Liability Insurance

The Licensee shall maintain Comprehensive General Liability Insurance covering the full scope of the License with limits of at least One Million Five Hundred Thousand Dollars (\$1,500,000.00) for any one person, and Three Million Dollars (\$3,000,000.00) for any one occurrence for death or personal injury, and Three Million Dollars (\$3,000,000.00) for any one occurrence for property damage; or a Combined Single Limit for Bodily Injury and Property Damage in the amount of \$6,000,000.

4.28.3 Worker's Compensation

The Licensee shall maintain Worker's Compensation Insurance, which shall include Employer's Liability coverage, in amounts as required by law of the State.

4.29 AUDIT REQUIREMENTS

Licensee shall provide an annual audit prepared by a Certified Public Accountant licensed to do business in the State, disclosing whether the accounts, records, and control procedures examined are maintained by the Video Lottery Operation Licensee as required by VLT Law and the regulations that shall be issued under the VLT Law.

The Lottery Commission will establish periodic financial reports and the form and provide for minimum uniform standards of accountancy methods, procedures, and forms as are necessary to assure consistency, comparability, and effective disclosure of all financial information, including percentages of profit for VLTs.

4.30 NEWS/PRESS RELEASES

The Lottery Commission is the only entity authorized to issue news releases relating to this License and performance thereunder. The Licensee shall not issue any news or press releases or any commercial advertising pertaining to its performance under this License or to the Lottery Commission or Lottery without the prior written approval of the Lottery Commission.

4.31 ADVERSE INTEREST

The Licensee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Licensee further agrees that in the performance of this License it will not knowingly employ, directly or indirectly, any person having such an interest.

4.32 COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

Licensee shall comply with the Americans with Disabilities Act (ADA), 42 USC §§ 12101 et seq. and applicable regulations. To the extent required by the ADA, Licensee's facilities, services, and programs shall be accessible to persons with disabilities. Licensee shall bear sole responsibility for assuring that its activities under this License conform to the ADA. Licensee shall indemnify the State in any action brought pursuant to the ADA for all damages, attorney fees, litigation expenses, and costs, if such action or proceeding arises from the acts of Licensee, or of Licensee's employees, agents, or subcontractors.

4.33 RELATIONSHIP OF THE PARTIES

During the course of this License, the Licensee may enter into agreements with third-parties in order for Licensee to fulfill its contractual obligations and responsibilities under this License. Licensee fully understands and agrees that the relationship between the Lottery Commission (State) and the Licensee is that of client and independent Licensee, and is not, and shall not be deemed to be, any other relationship, including but not limited to, that of joint venture, partners, joint employers or principal and agent. No agent, employee, or servant of the Licensee or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Licensee shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this License.

From any amount due the Licensee, there will be no deductions for federal income tax or FICA payments, nor for any State income tax, nor for any other purposes that are associated with any employer-employee relationship, unless required by law. Payment of federal income tax, FICA, and any State income tax is the

responsibility of the Licensee. The Licensee is responsible for complying with all federal and state laws as to taxes and Social Security payments to be withheld from wages paid to its employees and other Licensees.

4.33.1 NO LIABILITY TO THIRD-PARTY VENDORS OR SUBLICENSEES

The Lottery Commission, Lottery, Location Commission, State and their officers, employees and agents, have no liability for payment or performance to any third-party which enters into an agreement with the Licensee for work related to this License. The Licensee does not have the power or authority to sign an agreement in the Lottery Commission's name or on behalf of the Lottery Commission, to bind or attempt to bind the Lottery Commission, Lottery, the State, or any employee or official thereof, to any agreement with a third-party vendor, for payment of any monies or other obligations related to, or arising out of that third-party agreement, or to obligate the Lottery Commission to any liability if the Licensee fails to pay any subcontractor or other third-party vendor. All agreements into which the Licensee enters with subcontractors and other third-party vendors for work to be performed under this License shall be in the Licensee's name only and shall not name the Lottery as a party to the agreement.

4.33.2 LICENSEE ACKNOWLEDGEMENT, INDEMNIFICATION AND DUTY TO NOTIFY

Licensee acknowledges, fully understands and agrees that the Lottery Commission, Lottery, Location Commission, State, and their officers, employees and agents, is not a party to, and is not liable for payment or performance, any third-party agreement that the Licensee may enter into arising out of work related to this License. Licensee agrees to remove, redact, or strike any language from agreements it signs with subcontractors and third-party vendors, noting a responsibility or liability by the Lottery Commission, Lottery or State with respect to the payment of any monies or other obligations. Licensee agrees to fully indemnify and hold harmless the Lottery Commission, Lottery and State from any and all liability of any nature arising out of its third-party relationships, and agrees to provide written notice through a form prepared by the Lottery Commission for each agreement it completes with a third-party vendor, notifying such entities of the Independent Licensee relationship.

4.34 PROMPT PAYMENT

4.34.1 If a Licensee withholds payment of an undisputed amount to its subcontractor, the Lottery Commission, at its option and in its sole discretion, may take one or more of the following actions:

- A. Not process further payments to the contractor until payment to the subcontractor is verified;

B. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;

C. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;

D. Place a payment for an undisputed amount in an interest-bearing escrow account; or

E. Take other or further actions as appropriate to resolve the withheld payment.

4.34.2 An “undisputed amount” means an amount owed by a Licensee to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

4.34.3 An act, failure to act, or decision of a procurement officer or a representative of the Lottery Commission, concerning a withheld payment between a Licensee and subcontractor under this policy directive, may not:

A. Affect the rights of the contracting parties under any other provision of law;

B. Be used as evidence on the merits of a dispute between the Lottery Commission and the Licensee in any other proceeding; or

C. Result in liability against or prejudice the rights of the Lottery Commission.

4.34.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

4.34.5 To ensure compliance with certified MBE subcontract participation goals, the Lottery Commission may, consistent with COMAR 21.11.03.13, take the following measures:

A. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.

B. This verification may include, as appropriate:

1. Inspecting any relevant records of the Licensee;

2. Inspecting the jobsite; and
3. Interviewing subcontractors and workers.
4. Verification shall include a review of:

(a) The Licensee's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and

(b) The monthly report of each certified MBE subcontractor, which lists payments received from the contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.

C. If the Lottery Commission determines that a Licensee is in noncompliance with certified MBE participation goals, then the Lottery Commission will notify the Licensee in writing of its findings, and will require the Licensee to take appropriate corrective action.

1. Corrective action may include, but is not limited to, requiring the Licensee to compensate the MBE for work performed as set forth in the MBE participation schedule.

D. If the Lottery Commission determines that a Licensee is in material noncompliance with MBE License provisions and refuses or fails to take the corrective action that the Lottery Commission requires, then the Lottery Commission may:

1. Terminate the License;
2. Refer the matter to the Office of the Attorney General for appropriate action; or
3. Initiate any other specific remedy identified by the License, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.

E. Upon completion of the License, but before final payment or release of retainage or both, the Licensee shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

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SECTION V. LICENSES – APPLICATION FORMS, REQUIREMENTS, AND APPLICATION PROCEDURE

5.1 LICENSE APPLICATION AND DISCLOSURE FORMS

5.1.1 The required License Application and Disclosure Forms are attached to this RFP in Appendix J, K, K-1 and L and are also available electronically on the Lottery’s website: www.mdlottery.com (click on “Procurements” section). Applicants are advised that at this time these are draft forms subject to the final approval of regulations governing these forms. It is anticipated that the regulations will be approved and the final forms will be available prior to the due date for submission of proposals. Do not change or alter these forms in any way.

The forms referenced in Sections 5.1.2, 5.1.3, 5.1.4 and 5.1.5 are part of the application for an Operation License and shall be submitted by Applicant with its Proposal.

5.1.2 All Applicants for a Video Lottery Operation License shall submit an application in the form provided in Appendix J.

5.1.3 All officers, directors, partners and trustees of an Applicant for a Video Lottery Operation License shall submit a Multi-Jurisdictional Personal History Disclosure in the form provided in Appendix K.

5.1.4 All officers, directors, partners and trustees of an Applicant for a Video Lottery Operation License shall submit a Maryland Supplement to Multi-Jurisdictional Personal History Disclosure in the form provided in Appendix K-1.

5.1.5 All entities having an interest of 2% or more in an Applicant for a Video Lottery Operation License shall submit a Principal Entity Disclosure in the form provided in Appendix L.

5.2 APPLICATION FEES FOR BACKGROUND INVESTIGATIONS

The Lottery Commission shall establish fees for background investigations of the Applicant and its officers, directors, employees and other designated persons which shall be paid by the Applicant. All administrative costs of the background investigation process shall be reimbursed to the Lottery Commission. The Lottery Commission will provide to the Applicant for an Operation License a bi-weekly invoice itemizing all background investigation amounts due. Payment shall be due within thirty (30) days of the invoice date. Failure to reimburse the Commission shall be grounds for disqualification of the Applicant. Any unpaid amounts shall become a lien against the

Initial License Fee and shall be deducted from any refund of the Initial License Fee that may be otherwise due.

Application for Background Investigation Fee Schedule

| | |
|-------------------------------------|------------|
| Operation License | \$5,000.00 |
| Operation License Affiliated Entity | \$2,500.00 |
| Principal Employee | \$2,500.00 |
| Principal Entity | \$2,500.00 |

Application fees shall be submitted with the proposal which are non-refundable deposits that will be used by the Lottery Commission to process and investigate the Applicants filing forms as part of the application process. Application fees shall be submitted for each Applicant.

There will be additional costs and expenses incurred by the Lottery Commission in its processing and investigation of Applicants. Applicants and Licensees shall reimburse the Lottery Commission for all additional costs and expenses related to the processing and investigation of the Application package, to include but not limited to, background investigations conducted by a contractor for the Lottery Commission, in-house costs for Lottery Commission staff based on standard rates, and all reasonable expenses such as travel, lodging, meals, etc.

5.3 PERSONS REQUIRED TO BE LICENSED

(a) The following persons shall be licensed:

- (1) a Video Lottery Operator;
- (2) a Manufacturer;
- (3) a person not licensed under item (1) or (2) above who manages, operates, supplies, provides security for, or provides service, maintenance, or repairs for VLTs; and
- (4) a Video Lottery Employee.

(b) The Lottery Commission may require a person that contracts with a Licensee and the person's employees to obtain a license if the Lottery Commission determines that the licensing requirements are necessary in order to protect the public interest and accomplish the policies established.

(c) Unless an individual holds a valid License, the individual may not be employed by a Licensee as a Video Lottery Employee. Except that the Lottery Commission may exempt categories of Video Lottery Employees who are not directly involved in the video lottery operations from this requirement if the Lottery Commission

determines that the requirement is not necessary in order to protect the public interest or accomplish the policies established.

5.4 GENERAL SUBMISSION REQUIREMENTS AND OBLIGATIONS OF APPLICANT/LICENSEE

(a) an Applicant for a License shall submit to the Lottery Commission an application:

- (1) in the form that the Lottery Commission requires; and
- (2) on or before the date set by the Lottery Commission.

(b) (1) Applicants and Licensees shall have the affirmative responsibility to establish by clear and convincing evidence the person's qualifications.

(2) Applicants and Licensees shall provide information required by the VLT Law and satisfy requests for information relating to qualifications in the form specified by the Lottery Commission.

(3) Applicants and Licensees shall consent to inspections, searches, and seizures authorized by VLT law.

(4) (I) Applicants and Licensees shall have the continuing duty to:

1. provide assistance or information required by the Lottery Commission; and
2. cooperate in an inquiry, investigation, or hearing conducted by the Lottery Commission.

(II) on issuance of a formal request to answer or produce information, evidence, or testimony, if an Applicant or Licensee refuses to comply, the application or License of the person may be denied, suspended, or revoked by the Lottery Commission.

(5) (I) if the Applicant is an individual, the Applicant shall be photographed and fingerprinted for identification and investigation purposes.

(II) if the Applicant is not an individual, the Lottery Commission may establish the categories of individuals who shall be photographed and fingerprinted for identification and investigation purposes.

(6) (I) Applicants and Licensees shall have a duty to inform the Lottery Commission of an act or omission that the person knows or should know constitutes a violation of VLT law.

(II) Applicants and Licensees may not discriminate against a person who in good faith informs the Lottery Commission of an act or omission that the person believes constitutes a violation of VLT law.

(c) Continuing Obligations:

(1) Applicants who are awarded a license must, during the term of their licensures, conform to all of the information contained in their license applications.

(2) Failure to conform to the information contained in a license application shall be grounds for the Commission invoking sanctions against the licensee, including the assessment of fines and civil penalties.

5.5 VIDEO LOTTERY OPERATION LICENSE

5.5.1 General requirements

(a) An owner or operator of a Facility Location may submit an application for a Video Lottery Operation License (“Operation License”). Application forms for the owner, operator, principal and principal entities are contained in Appendix J, K, K-1 and L,, as applicable.

(b) A License issued is not valid at a geographic location other than the geographic location of the Facility Location at the time the License is issued.

(c) (1) In this subsection, “Owner” includes any type of owner or beneficiary of a business entity, including an officer, director, principal employee, partner, investor, stockholder, or beneficial owner of the business entity and, notwithstanding any other provisions of this subtitle, including a person having any ownership interest regardless of the percentage of ownership interest.

(2) an individual or business entity may not own an interest in more than one Facility.

(3) a member of the Senate of Maryland or the House of Delegates may not be an owner or an employee of any business entity that holds an Operation License.

(d) During the initial term of an Operation License, the Licensee shall provide the Lottery Commission with an annual update of the information required for the issuance of a License by the date set by the Lottery Commission and on the form required by the Lottery Commission.

(e) Applicants and Licensees shall produce information, documentation, and assurances to establish the following qualification criteria by clear and convincing

evidence:

- (I) the financial stability, integrity, and responsibility of the Applicant or Licensee;
- (II) the integrity of any financial backers, investors, mortgagees, bondholders, and holders of other evidences of indebtedness that bear a relation to the application;
- (III) the Applicant's or Licensee's good character, honesty, and integrity; and
- (IV) sufficient business ability and experience of the Applicant or Licensee.

5.5.2 Term of License

- (a) The initial term of an Operation License is 15 years.
- (b) One year before the expiration of the term of an Operation License, the Licensee shall file with the Lottery Commission a notice of intent to reapply for the License.
- (c) Within 1 year of the end of the initial 15-year License term, an Operation Licensee may reapply for a License that has a License term of 10 years and a License fee to be established by statute.
- (d) If a Licensee has its License revoked or otherwise surrenders the License, the Operation License reverts to the State.

5.5.3 Disqualification

The Lottery Commission shall disqualify an Applicant on the basis of any of the following criteria:

- (1) Failure of the Applicant to prove by clear and convincing evidence that the Applicant and each person who owns or controls the Applicant are qualified under the VLT Law;
- (2) Failure of the Applicant or any person required to be qualified as a condition of a License to provide information, documentation, and assurances required by VLT Law or requested by the Lottery Commission;
- (3) Failure of the Applicant or any person required to be qualified as a condition of a License to reveal any fact material to qualification;
- (4) Supplying, by the Applicant or any person required to be qualified as a condition of a License, information that is untrue or misleading as to a material fact concerning the qualification criteria;

(5) Conviction of the Applicant or of any person required to be qualified as a condition of a License of an offense under the laws of the United States or any jurisdiction within the United States that is a criminal offense involving moral turpitude or a gambling offense;

(6) Current prosecution of the Applicant or a person who is required to be qualified as a condition of a License for an offense described under item (5) above, provided that, at the request of the Applicant, the Lottery Commission may defer its decision on the application during the pendency of the charge;

(7) Pursuit by the Applicant or a person who is required to be qualified as a condition of a License of economic gain in an occupational manner or context that is in violation of the laws of the State, if the pursuit creates a reasonable belief that participation of the Applicant in Video Lottery operations would be inimical to the policies of the VLT Law;

(8) Identification of the Applicant or a person who is required to be qualified as a condition of a License as a Career Offender or a member of a Career Offender Cartel or an associate of a Career Offender or Career Offender Cartel in a manner that creates a reasonable belief that the association is of a nature as to be inimical to the policies of the VLT Law;

(9) The committing of an act by the Applicant or a person who is required to be qualified as a condition of a License that would constitute an offense described under item (5) above, even if the act has not been or may not be prosecuted under the criminal laws of the State;

(10) Willful defiance by the Applicant or a person who is required to be qualified as a condition of a License of a legislative investigatory body or other official investigatory body of the United States or a jurisdiction within the United States when the body is engaged in the investigation of crimes relating to gambling, official corruption, or organized crime activity; and

(11) Any other reason established in regulations of the Lottery Commission as a reason for denying a License.

5.5.4 Special Conditions – Racetracks

5.5.4.1 Laurel Park

(1) If an Operation License has been issued for a racetrack location at Laurel Park, the Operation License for the location shall be revoked if the name, common law and statutory copyrights, service marks, trademarks, trade names, or horse racing events that are associated with the Preakness Stakes race or the Woodlawn Vase are transferred to a location outside the State.

(2) As an additional condition of an Operation License, if a racetrack Licensee holds a Operation License for Laurel Park, the Licensee shall be required to:

(I) promote and conduct the Preakness Stakes race at the Pimlico Race Course each year; or

(II) if the Pimlico Race Course no longer exists, the Preakness Stakes race is prevented from being conducted at the Pimlico Race Course, or the State Racing Commission, under § 11–513 of the Business Regulation Article, deems an emergency exists, promote and conduct the Preakness Stakes race each year at another track located in the State that is approved by the State Racing Commission.

(3) If a racetrack Licensee has been issued an Operation License for a racetrack location at Laurel Park, the Licensee shall permit the event known as the Maryland Million to be run annually at Laurel Park unless:

(I) the Licensee is prevented from doing so by weather, acts of god, or other circumstances beyond the control of the Licensee; or

(II) the Licensee and the Maryland Million LLC agree to another location that is approved by the State Racing Commission.

(4) If an Operation License is issued to a racetrack location at Laurel Park, the Operation Licensee shall:

(I) maintain the operation of the Bowie Training Center; or

(II) if State law no longer requires the Bowie Training Center to operate as a training facility, convey the property associated with the Bowie Training Center to the State as preserved land under Program Open Space.

5.5.4.2 Ocean Downs

With respect to an Operation License issued for the location in Worcester County, the holder of the Operation License or any other person with a direct or indirect legal or financial interest in the Ocean Downs Racetrack or Video Facility may not:

1. build any type of hotel, motel, or other public lodging accommodation on or within 10 miles of the property owned by the holder of the License on which a Facility is operated;

2. convert an existing facility on or within 10 miles of the property described in subparagraph 1. above into any type of hotel, motel, or other public lodging accommodation;

3. build or operate a conference center or convention center, amusement park, amusement rides, arcade, or miniature golf course on or within 10 miles of the property described in subparagraph 1. above; or

4. offer to patrons of the Facility the playing of live music, floor shows, dancing, dancing exhibitions, performances, or any other form of live entertainment in or near the Facility, provided that the holder of the Video Lottery Operation License for the location in Worcester County or another person with a direct or indirect legal or financial interest in the Ocean Downs Racetrack or the Facility may allow:

a. live fireworks displays to be conducted on the property; and

b. a single piano that is played by an individual.

The prohibitions above apply to any subsequent holder of an Operation License issued for a Worcester County location.

5.5.5 Licensee - Employees

(1) If an Applicant for employment at a Facility believes that the Applicant has been discriminated against in the employment process, the Applicant may appeal the employment decision to the local Human Relations Board in the County where the Facility is located.

(2) Notwithstanding any collective bargaining agreement or agreements, an Operation Licensee shall give a preference to hiring qualified employees from the communities within 10 miles of the Facility.

5.6 VIDEO LOTTERY EMPLOYEE LICENSE

1. Unless an individual holds a valid Video Lottery Employee License issued by the Lottery Commission, the individual may not be employed by an Operation Licensee as a Video Lottery Employee ("Employee").

2. Before issuance of an Employee License, an Applicant shall provide sufficient information, documentation, and assurances that the Lottery Commission may require.

3. The Lottery Commission shall deny an Employee License to an Applicant who is disqualified due to:

(1) the Applicant's failure to prove the Applicant's good character, honesty, and integrity;

- (2) the Applicant's lack of expertise or training to be an Employee;
- (3) the Applicant's conviction for any crime involving moral turpitude or gambling under the laws of the United States or any state;
- (4) the Applicant's current prosecution for any crime involving moral turpitude or gambling under the laws of the United States or any state, but, at the request of the Applicant, the Lottery Commission may defer a decision on the application during the pendency of the charge;
- (5) pursuit by the Applicant of economic gain in an occupational manner or context that is in violation of the laws of the State, if the pursuit creates a reasonable belief that participation of the Applicant in Video Lottery operations would be inimical to the policies of the VLT Law;
- (6) identification of the Applicant as a Career Offender or a member of a Career Offender Cartel or an associate of a Career Offender or Career Offender Cartel in a manner that creates a reasonable belief that the association is of a nature as to be inimical to the policies of the VLT Law;
- (7) commission of an act by the Applicant that would constitute an offense described under item (3) above, even if the act has not been or may not be prosecuted under the criminal laws of the State;
- (8) willful defiance by the Applicant or a person that is required to be qualified as a condition of a License of a legislative investigatory body or other official investigatory body of the United States or a jurisdiction within the United States when the body is engaged in the investigation of crimes relating to gambling, official corruption, or organized crime activity; and
- (9) any other reason established in the regulations of the Lottery Commission as a reason for denying a License.

5.7 LICENSE RECIPROCITY

- a. For all Licenses required **other than** an Operation License, if an Applicant or Licensee holds a valid License in another state and the Lottery Commission determines that the licensing standards of the other state are comprehensive, thorough, and provide similar adequate safeguards to those provided in this State, the Lottery Commission may:
 - (1) waive some or all of the requirements; and
 - (2) issue a License to a person having a similar License in another state.
- b. (1) Except as provided in paragraph c. below, on the request of an Applicant,

the Lottery Commission may grant an exemption or waiver of a licensing requirement or grounds for denial of a License if the Lottery Commission determines that the requirement or grounds for denial of a License as applied to the Applicant are not necessary in order to protect the public interest or accomplish the policies established by VLT Law.

(2). On granting to an Applicant an exemption or waiver of a licensing requirement or grounds for denial of a License, or at any time after a waiver or exemption has been granted, the Lottery Commission may:

(i) limit or place restrictions on the exemption or waiver as the Lottery Commission considers necessary in the public interest; and

(ii) require the person that is granted the exemption or waiver to cooperate with the Lottery Commission and to provide the Lottery Commission with any additional information required by the Lottery Commission as a condition of the waiver or exemption.

c. The Lottery Commission may not waive any of the requirements for issuance of a Video Lottery Operation License.

5.8 LICENSE RENEWAL

For all Licenses required ***other than*** an Operation License, subject to the power of the Lottery Commission to deny, revoke, or suspend a License, a License in force may be renewed by the Lottery Commission for the next succeeding License period on:

(1) proper application for renewal; and

(2) payment of all required application, License, and other fees and taxes.

5.9 LICENSE REVOCABLE

a. Because the public has a vital interest in Video Lottery operations and has established a limited exception to the policy of the State concerning gambling for private gain, participation in Video Lottery operations by a Licensee under this subtitle shall be deemed a revocable privilege conditioned on the proper and continued qualification of the Licensee and on the discharge of the affirmative responsibility of each Licensee to provide to the regulatory and investigatory authorities under this subtitle or any other provision of law, any assistance and information necessary to assure that the policies declared by the VLT Law are achieved.

b. Consistent with the policy described in paragraph a. above, it is the intent of this section to:

(1) preclude:

(i) the creation of any property right in any License required under VLT Law;

(ii) the accrual of any monetary value to the privilege of participation in Video Lottery operations; and

(iii) the transfer of any License issued under VLT Law; and

(2) require that participation in Video Lottery operations be conditioned solely on the continuing individual qualifications of the person who seeks the privilege.

5.10 LICENSE TRANSFER

a. Except as provided in paragraph b. below, a License issued under VLT Law may not be:

(1) transferred or assigned to another person; or

(2) pledged as collateral.

b. (1) a Licensee may not sell or otherwise transfer more than 5% of the legal or beneficial interests of the Licensee unless:

(i) the Licensee notifies the Lottery Commission of the proposed sale or transfer;

(ii) the Lottery Commission determines that the proposed buyer or transferee meets the requirements of VLT Law; and

(iii) the transfer is consistent with the policies and intent Section 5.9.

(2) unless the Lottery Commission needs a longer time to determine whether the proposed buyer or transferee meets the requirements of the VLT Law, if the requirements of paragraph b. (1) above are not satisfied, a License issued under the VLT Law is automatically revoked 90 days after the sale or transfer.

5.11 BACKGROUND INVESTIGATION REQUIRED FOR LICENSE

a. In this section, “approved vendor” means a person that:

(1) specializes in conducting background investigations;

(2) has experience in the gaming industry; and

(3) obtains the approval of the Lottery Commission to conduct background investigations under this section.

b. The Department of State Police or an approved vendor shall:

(1) conduct a background investigation in a timely manner of:

(i) a Video Lottery Terminal Operation Licensee;

(ii) a Video Lottery operator; and

(iii) any other Applicant the Lottery Commission considers necessary; and

(2) cooperate with the Lottery Commission in obtaining and providing the necessary background investigation information.

c. (1) an Applicant shall provide the Department of State Police or an approved vendor with all information the Department requires in order to conduct a background investigation.

(2) failure to provide timely or accurate information is grounds for the Lottery Commission to deny an application.

d. (1) the Department of State Police or an approved vendor shall apply to the Central Repository for a State and a national criminal history records check for the Applicant if required by the Lottery Commission.

(2) as part of the application for a criminal history records check, the Department of State Police or an approved vendor shall submit to the Central Repository:

(i) three (3) complete sets of the Applicant's legible fingerprints taken on forms approved by the director of the Central Repository and the Director of the Federal Bureau of Investigation;

(ii) the fee authorized under § 10-221(b)(7) of the Criminal Procedure Article for access to Maryland criminal history records;

(iii) the mandatory processing fee required by the Federal Bureau of Investigation for a national criminal history records check; and

(iv) the mandatory processing fee required by Interpol for an international criminal history records check.

(3) in accordance with §§ 10–201 through 10–234 of the Criminal Procedure Article, the Central Repository shall forward to the Applicant and the Lottery Commission a printed statement of the Applicant’s criminal history record information.

(4) information obtained from the Central Repository under this section:

(i) shall be confidential;

(ii) may not be disseminated; and

(iii) may be used only in connection with the issuance of a License required under VLT Law.

(5) the subject of a criminal history records check under this section may contest the contents of the printed statement issued by the Central Repository as provided in § 10–223 of the Criminal Procedure Article.

e. After completion of the background investigation of each person specified in item b. (1) above, the Department of State Police or an approved vendor shall promptly forward the results of the investigation to the Lottery Commission.

f. The Lottery Commission shall adopt regulations specifying the factors used to determine whether an Applicant for a License must submit to an international criminal history records check.

g. Consent for Investigation.

A. An individual who is required to provide personal and background information under Regulation .04 of this chapter shall provide a statement that irrevocably gives consent to the Commission, the Maryland State Police, and persons authorized by the Commission to:

(1) Verify all information provided in the application documents; and

(2) Conduct a background investigation of the individual.

B. An applicant shall authorize the Commission to have access to any and all information the applicant has provided to any other jurisdiction while seeking a similar license in that other jurisdiction, as well as the information obtained by that other jurisdiction during the course of any investigation it may have conducted regarding the applicant.

5.12 LOTTERY COMMISSION PROCEDURE AND DUTIES

5.12.1 Procedure

(a) On the filing of an application for an Operation License, the Lottery Commission shall refer the application to the Department of State Police and/or an approved vendor to conduct a background investigation on the qualifications of the Applicant and any person who is required to be qualified as a condition of a License.

(b) (1) after receiving the results of the Background Investigation and conducting any hearing, if required, the Lottery Commission may either qualify or disqualify Applicant.

(2) if an Applicant is disqualified, the Lottery Commission shall prepare a statement informing the Applicant and the Location Commission of its determination and the reasons for the disqualification.

(c) (1) an individual may not knowingly give false information or make a material misstatement in an application required for any License or in any supplemental information required by the Lottery Commission.

(2) an individual who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.

5.12.2 Duties

(a) The Lottery Commission shall:

(1) hear and decide, promptly and in reasonable order, License applications and causes affecting the granting, suspension, revocation, or renewal of Licenses;

(2) after a hearing, suspend or revoke as applicable the License of a Licensee who has a License suspended or revoked in another state;

(3) conduct hearings concerning civil violations or regulations;

(4) collect application, License, and other fees to cover the administrative costs related to licensing;

(5) deposit application, License, and other fees to a bank account that the State Treasurer designates to the credit of the State Lottery Fund to cover the administrative costs related to licensing;

(6) levy and collect civil penalties for civil violations or regulations;

(7) be present at a Video Lottery operation through its Commissioners, employees and agents at any time during the operation of any VLT for the purpose of certifying revenue from the VLTs, receiving complaints from the public, and

conducting any other investigation into the operation of the VLTs and the maintenance of the VLTs and Associated Equipment and software as the Lottery Commission may deem necessary and proper; and

(8) review and rule on any complaint by a Licensee regarding any investigative procedures of the Lottery Commission that are unnecessarily disruptive of Video Lottery operations.

(b) The Lottery Commission may:

(1) issue subpoenas to compel the attendance of witnesses at any place within the State in the course of any investigation or hearing;

(2) administer oaths and require testimony under oath before the Lottery Commission in the course of any investigation or hearing conducted;

(3) serve or cause to be served its process or notices in a manner provided for service of process in civil actions under the Maryland rules; and

(4) propound written interrogatories.

(c) Except as otherwise provided, the Lottery Commission shall conduct a hearing in the same manner as specified in Title 10, subtitle 2 of State Government Article.

(d) The Lottery Commission shall adopt regulations that include the following specific provisions:

(1) establishing the methods and forms of application that an Applicant for any License required shall follow and complete before consideration of the application by the Lottery Commission;

(2) establishing the methods, procedures, and form for delivery of information from an Applicant or Licensee concerning any person's Family, habits, character, associates, criminal record, business activities, and financial affairs;

(3) establishing the procedures for the fingerprinting of an Applicant for any License required or other methods of identification that may be necessary in the judgment of the Lottery Commission to accomplish effective enforcement of the law;

(4) establishing the manner and procedure of hearings conducted by the Lottery Commission;

(5) establishing the manner and method of collection of taxes, fees, and civil penalties;

(6) defining and limiting the areas of operation for VLTs, rules of VLTs, odds for VLTs, the types and values of promotional items that may be given away to encourage play of VLTs, and the method of operation of the VLTs;

(7) regulating the practice and procedures for negotiable transactions involving players, including limitations on the circumstances and amounts of negotiable transactions and the establishment of forms and procedures for negotiable instrument transactions, redemptions, and consolidations;

(8) prescribing the grounds and procedures for reprimands of Licensees or the revocation or suspension of Licenses;

(9) governing the manufacture, distribution, sale, and servicing of VLTs;

(10) establishing the procedures, forms, and methods of management controls;

(11) providing for minimum uniform standards of accountancy methods, procedures, and forms as are necessary to assure consistency, comparability, and effective disclosure of all financial information, including percentages of profit for VLTs;

(12) establishing periodic financial reports and the form of the reports, including an annual audit prepared by a certified public accountant licensed to do business in the State, disclosing whether the accounts, records, and control procedures examined are maintained by the Operation Licensee as required and the regulations that shall be issued;

(13) requiring Licensees to demonstrate and maintain financial viability;

(14) ensuring that the operation of VLTs and Video Facilities is conducted legally; and

(15) otherwise carrying out the provisions of the law.

(e) (1) The Lottery Commission shall by regulation require an Applicant or Licensee to file a bond for the benefit of the State for the faithful performance of the requirements and any regulations issued.

(2) an Applicant or Licensee shall obtain and submit satisfactory proof of the bond to the Lottery Commission before a License is issued or reissued.

(3) the bonds furnished may be applied by the Lottery Commission to the payment of an unpaid liability of the Licensee.

(4) the Lottery Commission by regulation may exempt categories of Video Lottery Employees who are not directly involved in the Video Lottery operations from the

requirements of this subsection if the Lottery Commission determines that the requirement is not necessary in order to protect the public interest or accomplish the policies established under the VLT Law.

(f) (1)The Lottery Commission shall promptly and thoroughly investigate all applications and enforce VLT Law and regulations that are adopted under VLT Law.

(2) the Lottery Commission and its employees and agents shall have the authority, without notice and without warrant, to:

(i) inspect and examine all premises in which Video Lottery operations are conducted or any authorized VLTs, Central System, or Associated Equipment and software designed, built, constructed, assembled, manufactured, sold, distributed, or serviced, or in which records of those activities are prepared or maintained;

(ii) inspect any VLTs, Central System, or Associated Equipment and software in, about, on, or around those premises;

(iii) seize summarily and remove from those premises and impound, or assume physical control of, any VLTs, Central System, or Associated Equipment and software for the purposes of examination and inspection;

(iv) inspect, examine, and audit books, records, and documents concerning a Licensee's Video Lottery operations, including the financial records of a parent corporation, subsidiary corporation, or similar business entity; and

(v) seize, impound, or assume physical control of books, records, ledgers, cash boxes and their contents, a counting room or its equipment, or other physical objects relating to Video Lottery operations.

(3) a Licensee shall authorize any other person having financial records relating to the Licensee to provide those records to the Lottery Commission.

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SECTION VI. TECHNICAL SPECIFICATIONS/SCOPE OF WORK FOR VIDEO LOTTERY FACILITIES

6.1 GENERAL

6.1.1 The Maryland Video Lottery Location Commission (“Location Commission”) intends to award Video Lottery Operation Licenses to up to five (5) qualified Licensees for the operation of Video Lottery Facilities at the five (5) eligible locations as described more fully in this RFP.

6.1.2 The Location Commission intends to make up to five (5) License awards as a result of this RFP for the operation of a maximum of 15,000 VLTs distributed at Video Lottery Facilities at the following locations:

- 4,750 VLTs at a location in Anne Arundel County within two miles of Route 295;
- 2,500 VLTs at a location in Cecil County within two miles of Interstate 95;
- 1,500 VLTs on State property in Allegany County associated with the Rocky Gap State Park in a building physically separate from the Rocky Gap Lodge and Golf Resort.
- 2,500 VLTs at a location in Worcester County within one mile of the intersection of Route 50 and Route 589; and
- 3,750 VLTs in Baltimore City, in a nonresidential area within one-half mile of Interstate 95 and Route 295, and not adjacent to or within one-quarter mile of residential property and on city-owned land;

The specific requirements for each of these locations are stated below. The Location Commission may alter allocations if warranted by an evaluation of market and other factors; however, no more than 4,750 VLTs may be placed at any one location.

6.1.3 A Video Lottery Operation License at a Video Lottery Facility Location shall require:

- An initial License fee of at least \$3,000,000 for each 500 VLTs to be operated at the Facility that shall be prorated based on the exact number of VLTs;
- Provide for at least \$25,000,000 in direct investment by the Licensee in construction and related costs for each 500 VLTs to be operated at the Facility that shall be prorated based on the exact number of VLTs; and
- All required zoning and permits

The following sections describe the **SCOPE OF WORK** required to be provided by the Licensee in order to meet the requirements for issuance of a Video Lottery Operation

License. The Licensee shall meet all requirements and shall be responsible for all technical functionality and business support.

Sections 6.2 through 6.6 below define specific requirements that uniquely apply to each of the five (5) eligible locations, and Section 6.7 defines general requirements that apply to all locations.

The Licensee shall develop and operate a Video Lottery Facility in compliance with the specifications herein and shall comply with all laws and/or regulations and procedures established by the Lottery Commission.

6.2 ANNE ARUNDEL COUNTY LOCATION

6.2.1 Required Location: in Anne Arundel County, within 2 miles of MD Route 295.

6.2.2 Maximum Number of VLTs: 4750

6.2.3 Special Conditions

For a racetrack location at Laurel Park, refer to Section 5.5.4.1 for specific additional requirements for the Operation License for that location.

Applicants should immediately contact the local jurisdiction where the proposed Facility site is located to verify all requirements for zoning, permits, etc.

6.3 CECIL COUNTY LOCATION

6.3.1 Required Location: in Cecil County, within 2 miles of Interstate 95.

6.3.2 Maximum Number of VLTs: 2500

6.3.3 Special Conditions

Applicants should immediately contact the local jurisdiction where the proposed Facility site is located to verify all requirements for zoning, permits, etc.

6.4 ALLEGANY COUNTY LOCATION

6.4.1 Required Location: on State property associated with the Rocky Gap State Park in Allegany County that shall be in a building that is physically separate from the Rocky Gap Lodge and Golf Resort.

6.4.2 Maximum Number of VLTs: 1500

6.4.3 Special Conditions:

6.4.3.1 The Rocky Gap State Park property is owned by the Maryland Department of Natural Resources (“DNR”) and the portion of the site associated with the Lodge and Golf Resort is leased to the Maryland Economic Development Corporation (“MEDCO”).

6.4.3.2 Applicants will be responsible for contacting DNR in order to review the specific requirements for the Facility and to directly negotiate an agreement for the Facility site. Applicants should contact the Location Commission’s point of contact specified in Section 3.1.1 to make arrangements to meet with DNR. The Location Commission shall be notified of all meetings between DNR/MEDCO and an Applicant and a member of the Location Commission or its staff may attend.

6.4.3.3 Applicant shall submit with its Proposal a Notice of Intent to Negotiate obtained from DNR and shall submit with its Supplement a signed lease or other agreement verifying that it has entered into an agreement for the Facility site, and any other agreement related to the control of the Facility site and operation of the Facility.

6.4.3.4 Location

The general boundary of the area identified as appropriate for a VLT Facility falls entirely within the area currently under lease to MEDCO for operation of the Rocky Gap Lodge and Golf Resort. It is expected that a more specific area will be identified for use by the VLT Facility, through consultation with DNR and MEDCO. An agreed upon area will subsequently be removed from the existing leasehold and leased independently by MEDCO to the successful Applicant. Final lease of this area will require agreement with DNR and MEDCO. Final lease terms will ultimately be subject to an agreed upon fee structure and Board of Public Works approval.

6.4.3.5 Taxes

- (a) The governing body of Allegany County shall enter into an agreement with an owner or operator of a Facility that locates in Allegany County for a negotiated payment in lieu of taxes on the Facility.
- (b) An agreement for a negotiated payment in lieu of taxes under this section shall provide that, for the term specified in the agreement:
 - (1) a specified amount shall be paid to Allegany County in lieu of the payment of Allegany County property tax; and
 - (2) all or a specified part of the real and personal property at the Facility shall be exempt from Allegany County property tax for the term of the agreement.

6.4.4 OPTIONAL TASK - Operation of the existing Lodge and Conference Center: Alternative approaches that involve partnership with MEDCO or agreements that secure control of the entire leasehold are also encouraged. The Applicant, as an Optional Task, may include in its proposal a scenario that would involve the acquisition of all existing facilities at the Rocky Gap Lodge and Golf Resort. Such scenarios would be subject to agreement with DNR, MEDCO and approval by the Board of Public Works.

6.5 WORCESTER COUNTY LOCATION

6.5.1 Required Location: in Worcester County, within 1 mile of the intersection of Route 50 and Route 589.

6.5.2 Maximum Number of VLTs: 2500

6.5.3 Special Conditions:

For a location in Worcester County, refer to Section 5.5.4.2 for specific additional requirements for the Operation License for that location.

Applicants should immediately contact the local jurisdiction where the proposed Facility site is located to verify all requirements for zoning, permits, etc.

6.6 BALTIMORE CITY LOCATION

6.6.1 Required Location: in Baltimore City that is:

1. Located:
 - A. In a nonresidential area;
 - B. Within one-half mile of Interstate 95;
 - C. Within one-half mile of MD Route 295; and
 - D. On property that is owned by Baltimore City on the date on which the Application for an Operation License is submitted; and
2. Not adjacent to or within one-quarter mile of property that is:
 - A. Zoned for residential use; and
 - B. Used for a residential dwelling on the date the Application for an Operation License is submitted.

6.6.2 Maximum Number of VLTs: 3750

6.6.3 Special Conditions:

6.6.3.1 The VLT Facility must be constructed on City-owned land

6.6.3.2 Applicants will be responsible for contacting Baltimore City in order to review the specific requirements for the Facility and to directly negotiate an

agreement for the Facility site. Applicants should contact the Location Commission's point of contact specified in Section 3.1.1 to make arrangements to meet with Baltimore City. The Location Commission shall be notified of all meetings between Baltimore City and an Applicant and a member of the Location Commission or its staff may attend.

6.6.3.3 Applicant shall submit with its Proposal a Notice of Intent to Negotiate obtained from Baltimore City and shall submit with its Supplement a signed lease or other agreement verifying that it has entered into an agreement for the Facility site, and any other agreement related to the control of the Facility site and operation of the Facility.

6.6.3.4 Site Description

The Mayor and City Council control two contiguous properties ("VLT Site") that meet the required criteria. In addition, the City owns a nearby parcel (Parcel C) that can be made available for parking to service the VLT Facility Site. It is anticipated that the Mayor and City Council will enter into a ground lease with the selected Applicant/Licensee. Additional property to enhance the development of the VLT Facility can be provided by the Licensee.

A. Site A

1. Address: 1411 Warner Street
2. Block: 0845
3. Lot: 001
4. Size: 3.772 Acres
5. Critical Area: Critical Area regulations might reduce the useable space of the site by approximately up to 1.28 acres and/or require the payment of offset fees.
6. Current Owner: Six GS, LLC. The Mayor and City Council have an approved option to purchase the property by February 1, 2009.
7. Description: The 3.772 acre site is within the Critical Area as defined in State law and governed by the State Critical Area Commission. Also, the site is within a State of Maryland Enterprise Zone, although it is expected that the property will pay the equivalent of full taxes. The site is currently paved for parking.

B. Site B

1. Name: Site B
2. Address: 301 Stockholm Street
3. Block: 0984
4. Lot: 001
5. Size: 2.564 Acres
6. Critical Area: Critical Area regulations might reduce the useable space of the site by approximately up to .68 acres and/or require the payment of offset fees.
7. Current Owners: Mayor and City Council
8. Description: The 2.564 acre site is within the Critical Area as defined in State law and governed by the State Critical Area Commission. Also, the site is within a State of Maryland Enterprise Zone, although it is expected that the property will pay the equivalent of full taxes. The site is improved with a 21,721 square foot building currently occupied by the Baltimore Animal and Rescue Shelter, which will need to be relocated.

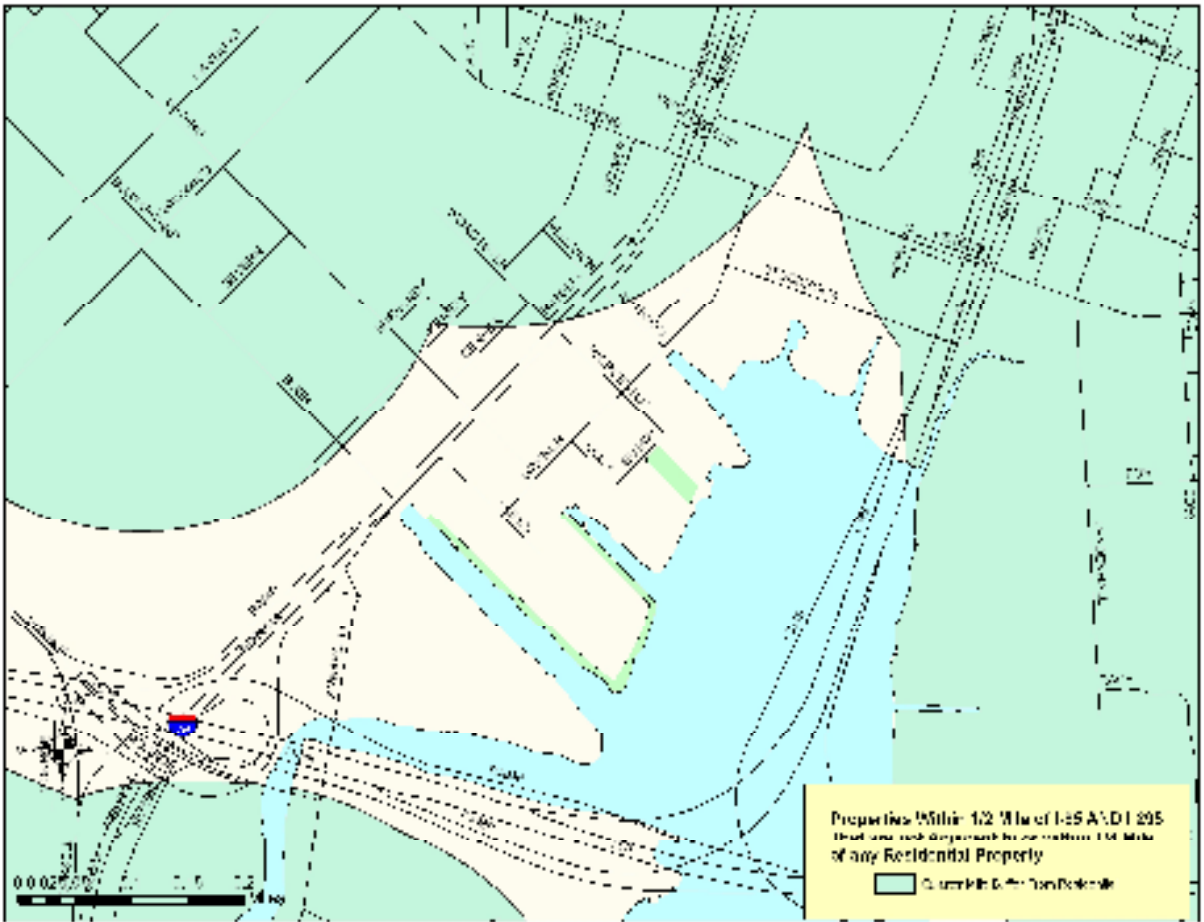
C. Site C (Potentially available for off-site parking and facilities related to the development of a VLT Facility on Site A and Site B. VLTs cannot be located on this site.)

1. Name: Site C
2. Address: 701 Ostend Street
3. Block: 0954
4. Lot: 001
5. Size: 4.044 acres
6. Critical Area: Not Applicable
7. Current Owners: Mayor and City Council
8. Description: The site is currently paved for parking of approximately 600 cars.

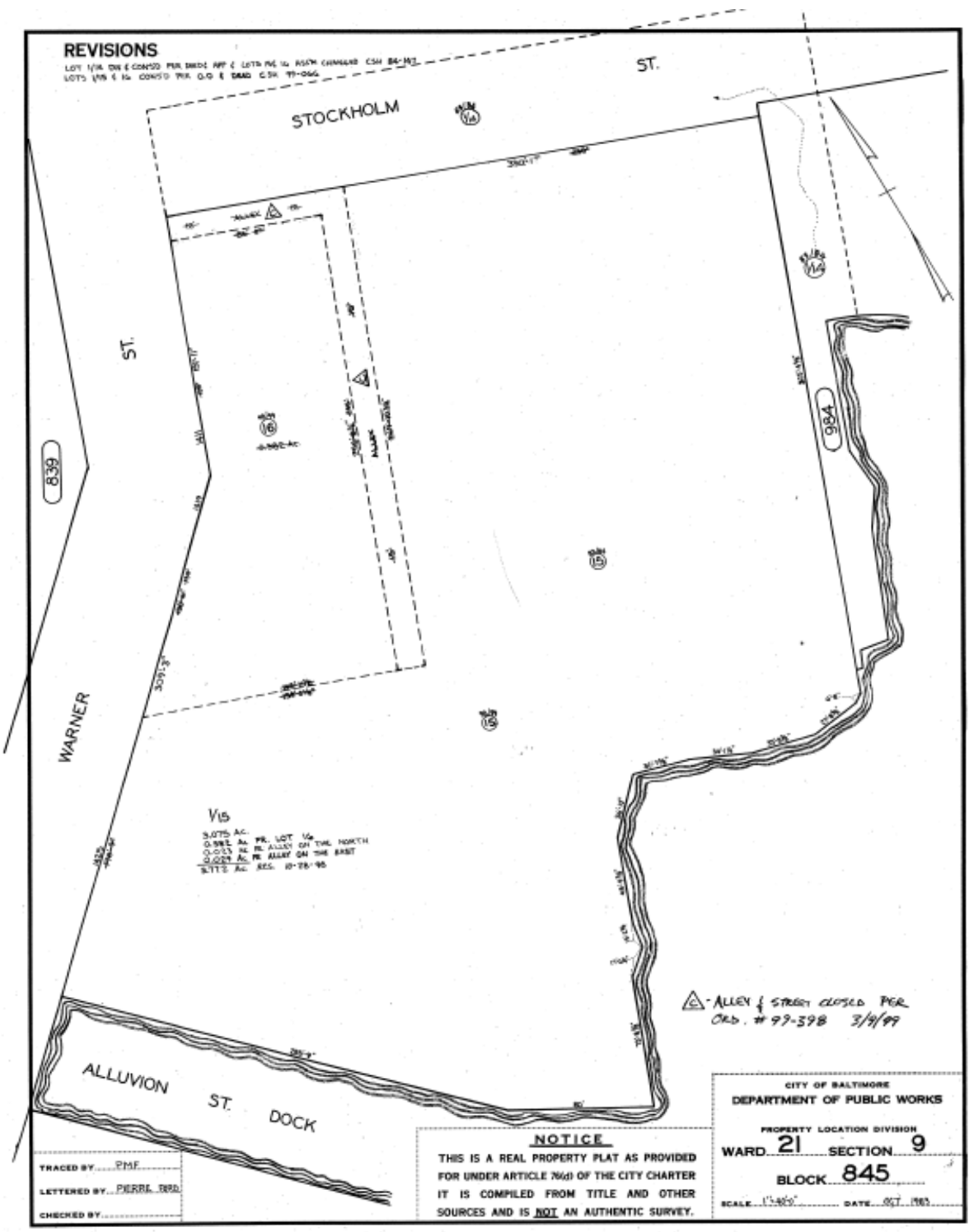
D. **Other Sites.** Applicants/Licensees can submit alternative sites as long as they meet the location and ownership criteria established under State law. In addition, the City reserves the right to make alternative sites available after the selection of a Licensee. Working with the Location Commission and the Licensee, the City may propose to change, modify, expand, or contract the area initially designated by the Licensee for the VLT facility.

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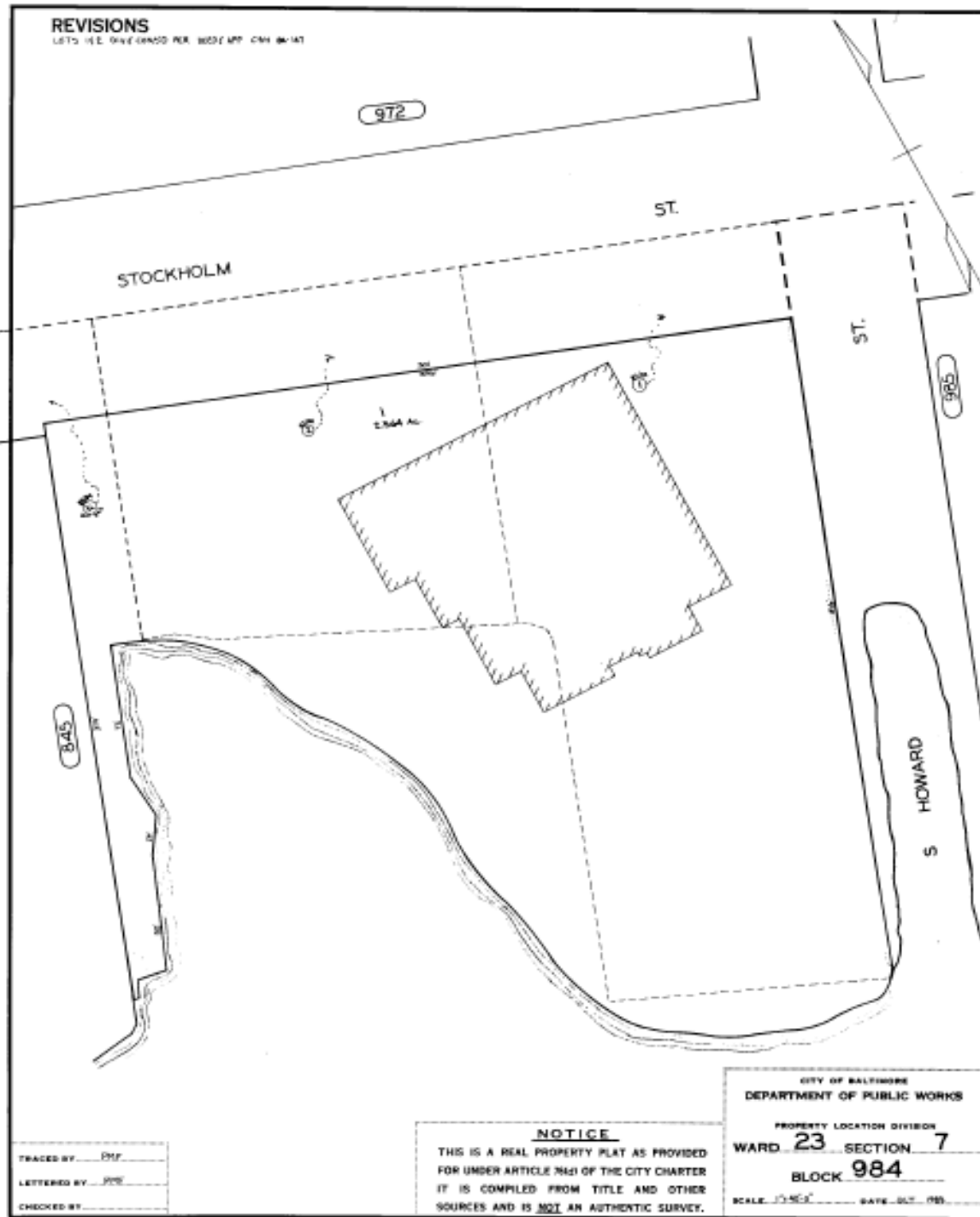


SITE A

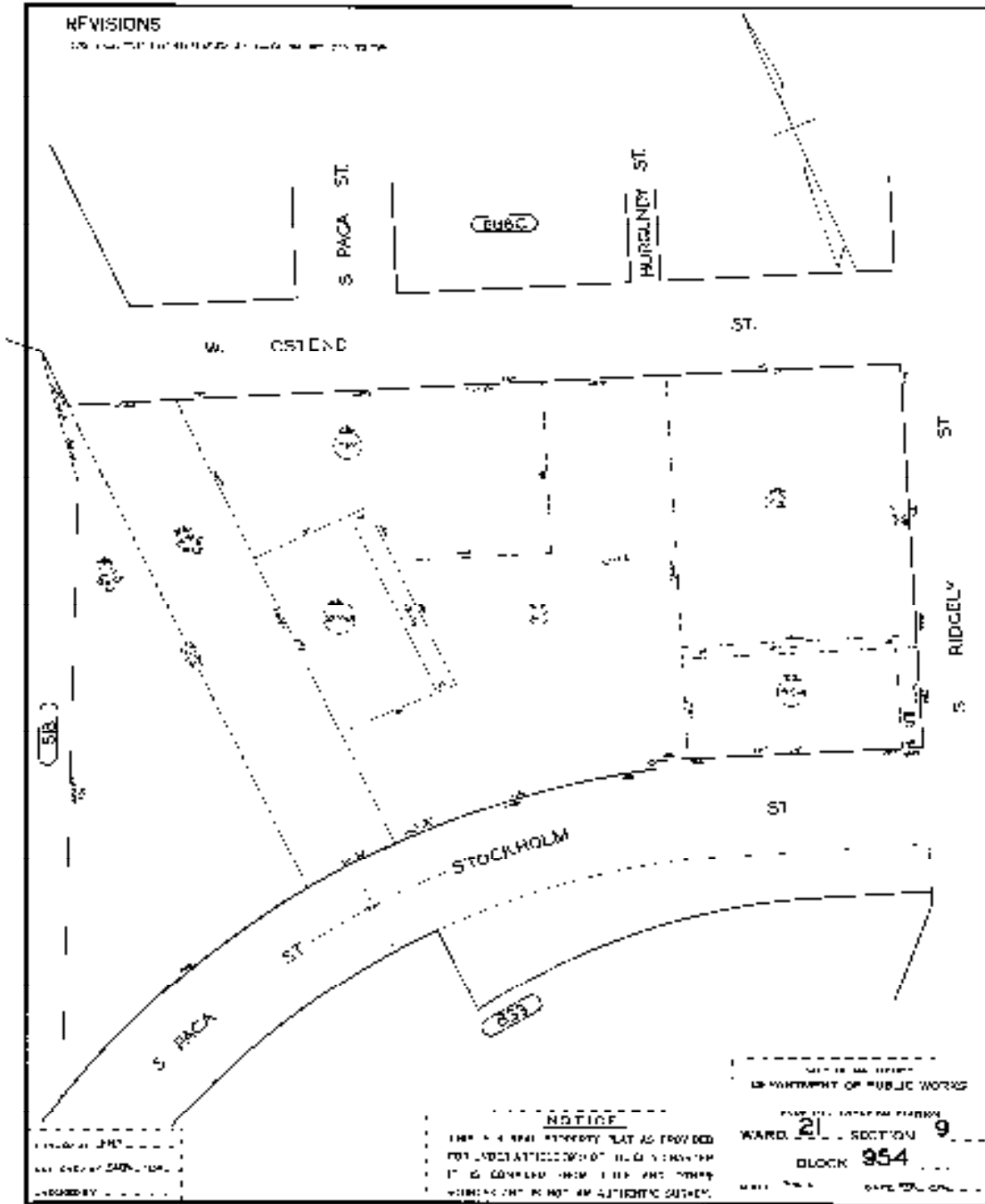


SITE

B



SITE C



6.7 REQUIREMENTS – ALL LOCATIONS

6.7.1 System of Record

The Central System owned or leased by the Lottery Commission and under the control of the Lottery Commission shall be the “system of record”. The Facility shall submit to the Lottery Commission a daily accounting of each VLT in operation on that given day.

6.7.2 Unclaimed Winnings

Players shall have a maximum of 182 days to claim VLT winnings from the Licensee, after which time all unclaimed winnings shall become the property of the State. Licensee shall provide players with clear notice of this requirement.

6.7.3 Facility Accounting and Internal Control Procedures

The Licensee shall submit its accounting procedures for the Facility to the Lottery Commission for approval at least 30 days prior to the scheduled opening of the Facility.

6.7.4 Facility Specifications

The Licensee shall:

- Provide secure office space (300 square feet minimum) immediately adjacent to the gaming floor for the Lottery Commission staff, to include all typical office equipment.
- Provide for the Central System contractor, at no cost: computer room space; HVAC, power and back-up power; cable infrastructure access to VLT floor; storage area for spare equipment.
- Provide for the VLT contractor(s), at no cost: storage area for spare equipment.
- Provide all necessary bases and high-back chairs for each VLT.
- Provide all necessary wiring for gaming floor that is needed for the Licensee’s operations, except for such wiring that may be performed by a contractor of the Lottery Commission.
- Provide areas where the Maryland Lottery games will be sold at the Facility
- If utilizing a temporary Facility, pay all costs associated with the transition

from the temporary to permanent Facility including, but not limited to, the cost of moving all VLTs and the Central System wiring and equipment.

6.7.5 Cooperation with Other Contractors

The Licensee shall work in cooperation with the VLT contractor(s), Central System contractor, and any other Lottery Commission or Lottery contractors to insure smooth implementation of all systems.

6.7.6 Hiring Preference

The Licensee shall give a preference to hiring qualified employees from the communities within 10 miles of the video lottery facility.

6.7.7 Commencement of Operation

1. Permanent Facility

A. A Licensee shall commence operation of VLTs in a permanent facility at the location for which the Operation License has been issued within eighteen (18) months after the License is issued.

B. On determination by the Lottery Commission that extenuating circumstances exist that are beyond the control of a Licensee and have prevented the Licensee from complying with the requirements of paragraph A. above, the Lottery Commission:

(1) may allow the Licensee an extension of six (6) months to comply with the requirements, and

(2) may not grant more than two extensions to a Licensee under this paragraph.

C. If an Operation Licensee fails to comply with the requirements of this Section, the License issued to the Licensee shall be revoked and shall automatically revert to the State.

2. Temporary Facility

A. An Operation Licensee that is awarded a License may begin VLT operations in a temporary Facility that meets the minimum requirements established by the Lottery Commission. The minimum requirements shall include, but not be limited to, proper permits and adequate power and electric service, backup generator, wiring to operate the VLT system, HVAC, rest rooms, secure areas, surveillance area and system, level flooring, carpeting.

B. Notwithstanding the provisions of paragraph A. above, an Operation Licensee at a temporary Facility shall be operational in a permanent Facility no later than thirty (30)

months after the issuance of the Operation License.

6.7.8 Re-allocation of VLTs

1. The Location Commission may allocate VLTs in a manner that is different from the allocation provided in Section 6.1.2 on determination that the market factors and other factors evaluated under Section 8.3 warrant the different allocation, provided that no one location may be allocated more than 4,750 VLTs.
2. Beginning with the termination date for the Location Commission and every 3 years thereafter, if all of the VLTs authorized under this subtitle are not allocated or have been allocated but are not in regular operation, the Lottery Commission may allocate or reallocate VLTs to Operation Licensees in a manner that ensures that the highest potential revenues are achieved.
3. In determining the highest potential revenues to be achieved by additional VLTs at each potential location, the Lottery Commission shall consider the market performance of the existing VLTs at each location.

6.7.9 Equipment

1. Each VLT, the Central System, and the Associated Equipment and software shall be:
 - (a) owned or leased by the Lottery Commission; and
 - (b) under the control of the Lottery Commission.
2. Subject to the Lottery Commission's ability to cancel or alter the contract in the event one or more eligible Applicants for a Facility fail to obtain a License, the Lottery Commission shall contract with one or more Licensed Manufacturers for the lease or purchase of the VLTs, Central System, and Associated Equipment and software authorized.
3. (a) the Lottery Commission shall adopt regulations governing the sale or lease of VLTs by the Lottery Commission under this subtitle.
 - (b) the Lottery Commission may adopt regulations to provide incentives to Licensed Manufacturers based on the performance of the Manufacturers' VLTs.
4. The Lottery Commission shall establish a process enabling a Licensee and the Lottery Commission to select VLTs from a list approved by the Lottery Commission, subject to available funds, for use in the Licensee's Facility.

6.7.10 VLT Payout

1. Except as provided in paragraphs 2. and 3. below, a VLT shall have an average

payout percentage of at least 87%.

2. The Lottery Commission may by regulation establish an average payout percentage of more than 90% but not more than 95% for Operation Licensees.

3. The Lottery Commission may approve an average payout percentage of more than 95% for the VLTs at a Facility.

6.7.11 Hours of Operation and Marketing

1. A Facility may operate daily from 8 a.m. to 2 a.m.

2. An Operation Licensee shall be responsible for all marketing, advertising, and promotion for its Video Lottery operation.

6.7.12 Food and Beverages

(1) The Operation Licensee shall comply with the requirements of the county alcoholic beverages licensing authority for the county in which a Facility is located.

(2) Except as provided in subparagraph (3) below, an Operation Licensee may not provide food or alcoholic beverages to individuals at no cost.

(3) Any food or alcoholic beverages offered by an Operation Licensee for sale to individuals may be offered only at prices that are determined by the county alcoholic beverages licensing authority to be commensurate with the price of similar types of food and alcoholic beverages at restaurants in the county in which the Facility is located.

(4) An Operation Licensee may provide food at no cost to individuals to the same extent allowed under Article 2B, § 12–106 of the Annotated Code of Maryland for a person engaged in the sale or barter of spirituous, malt, or intoxicating liquors and licensed under the laws of Maryland.

6.7.13 Excluded Individuals

1. An Operation Licensee shall ensure that intoxicated individuals and individuals under the age of 21 years are not allowed to play VLTs and are not allowed in areas of the Facility where VLTs are located.

2. An Operation Licensee shall comply with the list established by the Lottery Commission of individuals who are to be mandatorily excluded or ejected from any Facility, which will include standards for exclusion or ejection relating to individuals:

(i) who are Career Offenders as defined by the Lottery Commission;

(ii) who have been convicted of a criminal offense under the laws of the United States or any jurisdiction within the United States that is a criminal offense involving moral turpitude or a gambling offense; or

(iii) whose presence in the establishment of a Licensee would be adverse to the interest of the State, the Licensee, or the person.

3. The Operation Licensee shall comply with measures adopted by the Lottery Commission that are intended to reduce or mitigate the effects of problem gambling, which shall:

(i) include establishment of a voluntary exclusion list of individuals with gambling problems who have requested to be excluded from any Facility; and

(ii) provide a simple mechanism for an individual who is sober and informed to request placement on the voluntary exclusion list for a specified period of time.

4. An Operation Licensee may not permit an individual on the voluntary exclusion list to enter into the Facility or to play a VLT.

6.7.14 Protection of Public Interest

The Lottery Commission shall:

1. Limit the number and location of and maximum withdrawal amounts from automated teller machines;

2. Require payouts above an amount adopted by the Lottery Commission to be made by check;

3. Require conspicuous disclosures related to the payout of VLTs;

4. Limit the dollar amount that VLTs will accept;

5. Prohibit the use of specified negotiable instruments at Facilities and the use of credit cards, debit cards, and similar devices in VLTs;

6. Provide consumers with a record of VLT spending levels if marketing measures are utilized that track consumer spending at Facilities;

7. Prohibit consumers from cashing paychecks at Facilities; and

8. Prohibit Operation Licensees from engaging in or contracting with another to engage in predatory marketing practices.

6.7.15 Electronic Transfer of Proceeds

All proceeds from the operation of VLTs shall be electronically transferred daily into the State Lottery Fund. On a properly approved transmittal prepared by the Lottery Commission, the Comptroller of Maryland shall pay from the proceeds of VLTs at each Facility the amounts as specified by the VLT law, to include payment to the Operation Licensee of the percentage amount stated in the accepted Proposal for the Facility, not to exceed 33%. Payment of proceeds to the Operation Licensee may take up to ten (10) days.

6.7.16 Local Development Council

A Local Development Council shall be established in each geographic area where a Facility is located. A Video Lottery Operation Licensee shall provide to the Local Development Council:

1. one representative to serve as a member of the Council; and
2. a master plan for the development of the site on which the Facility will be located.

6.7.17 Problem Gambling Fund

An annual fee of \$425.00 shall be paid by each Operation Licensee for each Video Lottery Terminal operated by the Licensee during the year, based on the maximum number of Terminals in use during the year, and distribute the fees collected to the Problem Gambling Fund. Fees will be billed to Licensees on June 30 of each year and will be collected by EFT on July 15 of each year. For the first year of operation only, fees will be pro-rated based on the date of opening of the Facility.

6.7.18 Zoning and Permits

The Operation Licensee shall obtain all proper zoning and permits prior to the issuance of a License by the Lottery Commission.

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SECTION VII. INFORMATION REQUIRED IN APPLICANT'S PROPOSAL

7.1 SUBMISSION DEADLINE – TWO STEP PROCESS FOR PROPOSALS

7.1.1 The Applicant must submit its Proposal as described in Section 7.2 and 7.3 by the Deadline for Receipt time and date specified in Section 3.9 of this RFP. **(February 2, 2009 by 2:00 p.m. Local Time)**

In the Proposal, Applicant shall provide all information required in Section 7.3 below. The response to Section 7.3.5 should be as detailed as possible and include as much of the required supporting documentation (see Section 7.4) as possible. At minimum, this Section shall contain an overview of the Video Lottery Facility being proposed and a summary of the Applicant's proposed approach to its development. Supporting documentation that is not yet available may be submitted in the Supplement to the Proposal.

7.1.2 The Applicant must submit its Supplement to the Proposal as described in Section 7.2 and 7.4 by the Deadline for Receipt time and date specified in Section 3.9 of this RFP. **(April 15, 2009 by 2:00 p.m. Local Time)**

In the Supplement, Applicant shall provide a full detailed description of the Video Lottery Facility being proposed by expanding upon the information submitted with its Proposal in response to Section 7.3.5, and provide any and all of the supporting documentation outlined in Section 7.4 that was not previously submitted.

7.2 PROPOSAL FORMAT

These requirements apply to both the Proposal and Supplement

1. An unbound original, so identified, twelve (12) paper copies and one (1) complete and exact electronic copy shall be submitted. The electronic copy shall be included with the original paper copy of the Proposal.
2. The electronic version of the Proposal shall be submitted in MS Word format, media shall be a CD, and bear the RFP number, name and name of Applicant.
3. The Proposal shall be submitted in a sealed package. The Applicant must include on the outside of the sealed package the RFP Title and number, the name and address of the Applicant, and the Deadline for Receipt date and time.
4. All pages of the Proposal must be consecutively numbered from beginning (Page 1) to end (Page "x"). The final page shall state "Final Page".
5. For the Applications required to be submitted with the Proposal, submit one (1) paper copy and one (1) complete and exact electronic copy on CD in PDF format.

7.3 PROPOSAL FOR VIDEO LOTTERY FACILITY

7.3.1 Transmittal Letter

A brief Transmittal Letter prepared on the Applicant's business stationary must accompany the original Proposal. The purpose of this letter is to transmit the proposal and it shall:

1. State which of the five (5) eligible locations is addressed by the Proposal and identify the exact site being proposed.
2. Acknowledge receipt of all Amendments to the RFP, if any.
3. Be signed by an individual who is authorized to commit the Applicant to all requirements as stated in the RFP, including the prices and financial amounts contained in its proposal.

Checks: Attach to the transmittal letter a separate sealed envelope containing all checks submitted and identify the envelope as "checks enclosed". Submit a separate certified check for the Initial License Fee and another certified check for all other fees required payable to "State of Maryland/State Lottery Agency".

7.3.2 General Format of Technical Proposal

If an Applicant is the subsidiary of another entity, all information submitted by the Applicant such as, but not limited to, references and financial reports, shall pertain exclusively to the Applicant. If applicable, the Applicant's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary, in substantially the format as follows:

"(Parent) hereby guarantees absolutely the full, prompt and complete performance by (Applicant) of all the terms, conditions and obligations contained in this License, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this License, including any and all financial commitments, obligations and liabilities. (Parent) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the Lottery Commission. (Parent) further agrees that if the Lottery Commission brings any claim, action, suit or proceeding against (Applicant), (Parent) may be named as a party, in its capacity as Absolute Guarantor. (Parent) expressly recognizes and agrees that any and all notices, correspondence, or other written or oral communication from the Lottery Commission to (Applicant) shall be conclusively deemed to have been received by (Parent), and (Parent) hereby waives any and all requirements that it receive any such notices, correspondence or written or oral communications, whatsoever."

This section provides specific instructions for submission of the Applicant's Proposal.

Adherence to the required organization and numbering will allow the Location Commission to “map” the RFP requirements directly to the Applicant’s responses by paragraph number and facilitate a fair and uniform review process. In addition, the Proposal shall:

1. Be prepared in a clear and concise manner.
2. Address all points of this RFP. The Applicant shall regard all specifications in this RFP as mandatory.
3. Be organized and numbered in the same order as given in the RFP, using the correct subsection and paragraph number for each specification. For example, Section 2.1 Para 1; Section 3.2 Para 4; etc.
5. Include the specific sections as described below in Sections 7.3.3 through 7.3.10.

7.3.3 Title Page, Table of Contents and Confidential Information

The Proposal should begin with a title page bearing the name and address of the Applicant and the name and number of this RFP, followed by a table of contents.

Confidential Information: Information that is claimed to be proprietary or confidential is to be labeled accordingly throughout the text and a summary of those sections is to be placed after the Title Page and before the Table of Contents, if applicable. The entire proposal may not be labeled confidential. Only those portions that can reasonably be shown to be proprietary or confidential may be identified as such.

7.3.4 Executive Summary

- A. The Applicant shall condense and briefly highlight the contents of the Proposal in a separate section titled “Executive Summary.”
- B. The Applicant shall state whether or not it meets the Minimum Requirements (Section 1.2), specifically:
 1. Provide evidence of Applicant’s ownership or control of the Video Lottery Facility Location proposed;
 2. Confirm that Applicant has Included an Initial License Fee with the proposal of **at least** \$3,000,000 for each 500 VLTs included in the proposal that shall be prorated based on the exact number of VLTs contained in the proposal. State the amount of the License fee being proposed for each 500 VLTs, the number of VLTs being proposed for the facility, and the actual total amount of the check enclosed for the license fee;
 3. Confirm that the proposal provides for **at least** \$25,000,000 in direct

investment by the Applicant in construction and related costs for each 500 VLTs contained in the proposal that shall be prorated based on the exact number of VLTs. State the amount of the direct investment being proposed for each 500 VLTs, the number of VLTs being proposed for the facility, and the actual total amount of direct investment being proposed; and

4. Confirm that the proposal provides for a **maximum** fee in the amount of 33% of VLT Proceeds to be paid to Video Lottery Licensee. State the actual percentage amount of VLT Proceeds for the Licensee fee being proposed.

- C. The Applicant must provide a specific statement of intent to comply with the terms, conditions and requirements of the RFP and provide any information required by these Sections.
- D. The Applicant shall identify any exceptions it has taken to the requirements of this RFP or any other attachments. If an Applicant takes no exception to the State's terms, conditions and requirements, the Executive Summary should so state. By submitting a proposal in response to this RFP, the Applicant shall be deemed to have agreed to and accepted all mandatory terms and conditions set forth in the RFP and the License, unless otherwise noted.

Warning: If there is any item, including any standard clause or legally mandated provision with which the Applicant cannot or will not comply, such exception must be clearly noted and explained, including the degree to which the Applicant may consider some degree of compliance. Exceptions to terms and conditions may result in having the proposal deemed unacceptable.

7.3.5 Applicant's Response to RFP Requirements

The Applicant shall address each requirement in the Proposal and describe how the Applicant proposes to meet the requirements as described in Technical Specifications/Scope of Work for Video Lottery Facilities - Section VI of the RFP. Any paragraph that represents a work requirement shall include a detailed explanation of how the work will be done.

Specifically, in this section the Applicant shall address and describe each of the following topics:

7.3.5.1 Site and Facility

A. Location

Rocky Gap only - In addition to all requirements specified below, if the proposal being submitted is for the Allegany County location at Rocky Gap:

- Provide a Notice of Intent to Negotiate obtained from DNR, and

- Indicate whether or not the Applicant is proposing a scenario that would involve the acquisition of all existing facilities at the Rocky Gap Lodge and Golf Resort. Proposals will be equally considered whether or not the Applicant is proposing the acquisition of all existing facilities at the Rocky Gap Lodge and Golf Resort.

Baltimore City only - In addition to all requirements specified below, if the proposal being submitted is for the Baltimore City location:

- Provide a Notice of Intent to Negotiate obtained from Baltimore City.

- (1) The name of the county and, if applicable, the municipality in which the Facility is to be located;
- (2) The legal description of the Facility site;
- (3) The name and address of each person who has held title to the real property during the preceding five-year period;
- (4) The name and address of each person who holds a mortgage or other security interest in the real property;
- (5) An unconditional commitment by the titleholder of the real property for a title insurance policy;
- (6) An aerial photograph of the Facility site;
- (7) A photograph of the site from each roadway adjacent to the site;
- (8) A description of the current commercial and industrial uses for all property within a 1-mile area around the facility site.
- (9) A list of any hospital, place of worship, school, charitable institution, park, zoo or any similar place frequented by the public within 1500 feet of the proposed Facility.
- (10) Road and transit access, parking, and centrality to market service area.
- (11) A concept site plan.
- (12) The identity, credentials and experience of the architectural firm that has been retained to design the Facility.

B. Lease of Facility: If the Applicant intends to lease the Facility from another person, include a copy of the lease agreement and every other agreement or contract between the lessor and lessee.

C. Zoning and Government Improvements. Current zoning, any variances

needed, status of local approvals, etc., and a specific schedule of applications for zoning approvals and anticipated approval dates.

(1) Zoning and Permits

- (a) Describe the applicable zoning designation for the facility site;
- (b) List any local zoning or special use permits, including liquor sales permits, that the applicant must obtain for the facility site, and for such permits describe:
 - (i) The procedure by which the applicant shall obtain the permits,
 - (ii) What conditions, if any, are likely to be placed on the permits, and
 - (iii) The estimated dates on which the applicant will obtain the permits; and
- (d) State whether a variance is required for the height of the facilities.

(2) Describe the sewer, water, and other utility improvements needed to adequately serve the facility site, to include:

- (a) The estimated cost of the improvements;
- (b) The estimated date of completion;
- (c) The names of the parties, whether public or private, initiating the improvements;
- (d) The names of the parties responsible for the costs of the improvements; and
- (e) If more than one party is responsible for the costs, the proportionate distribution of the costs among the parties.

(3) Describe the roadway improvements needed to ensure adequate access to the facility site to include:

- a) The estimated cost of the improvements;
- (b) The estimated date of completion;
- (c) The names of the parties, whether public or private, initiating the improvements;
- (d) The names of the parties responsible for the costs of the improvements; and
- (e) If more than one party is responsible for the costs, the proportionate distribution of the costs among the parties.

(4) For the improvements described under (2) or (3) above:

- (a) State whether local government approval is necessary for making the improvements;
- (b) Include a description of the procedure by which the local government approval is going to be obtained;
- (c) Indicate all conditions likely to be placed on the local government approval; and
- (d) Indicate the estimated date on which local government approval will be granted.

D. Defects.

- (1) List any geological or structural defects and include a description of the engineering, design, and construction plans to remedy the defect
- (2) Indicate whether or not the Facility is located in a floodplain and include a description of the flood history of the site.

E. Access and Transportation.

- (1) Submit a traffic flow study prepared by a traffic engineer containing a:
 - (a) Statement, in miles, of the distance of the facility site from the center of the nearest population center;
 - (b) Description and map of the roadway access to the facility site;
 - (c) Photograph of each roadway that will be used to access the facility site;
 - (d) Description of the transportation facilities that serve the population center; and
 - (e) Description of the transportation facilities that will serve the facility site.
- (2) Include a statement of the experience and qualifications of the traffic engineer who prepared the study.

F. Architect's Plan.

- (1) Submit layout drawings of the proposed:
 - (i) Gaming floor,
 - (ii) Facilities and equipment,

- (iii) Facilities for personnel, and
 - (iv) Player facilities
- (2) Include a description of the experience of the architect who designed the proposed Facility, including a statement of the number of similar facilities the architect has visited and designed.
- (3) The required drawings shall be:
- (a) To scale; and
 - (b) In sufficient detail to:
 - (i) Illustrate the facilities and equipment specified,
 - (ii) Show the measurements of all areas including gaming floor, and
 - (iii) Demonstrate compliance with the Americans with Disabilities Act.

G. Public Areas.

- (1) State the specifications for areas of the Facility to which the public will have access and include a description of the configuration and location of the:
- (a) Gaming floor;
 - (b) Placement of VLTs;
 - (c) Areas of the facility that will not be used for VLTs;
 - (d) Proposed surveillance cameras;
 - (e) Concession areas;
 - (f) Restrooms;
 - (g) Drinking fountains; and
 - (h) Special clubs or other facilities for certain players.
- (2) Describe plans for maintaining and cleaning the public areas of the facility.
- (3) Include patterns for pedestrian traffic in and around the facility and the provisions for disabled players.
- (4) State the maximum capacity of the facility.

H. Parking Facilities. State the specifications for parking facilities for the Facility, including a description of the:

- (1) Access to the parking facilities from each roadway adjacent to the Facility

site;

(2) Location and number of spaces for each type of parking available, including public, Commission employee, individual licensee, and handicapped parking;

(3) Road surface to be used in the parking facilities;

(4) Distance between the parking facilities and the facility entrances.

I. Utilities and Easements.

(1) Describe the location of utilities throughout the Facility site, including:

(a) Whether electrical service is overhead or underground;

(b) The location, depth, and size of water and sewer lines; and

(c) The availability of a backup generator or other source of energy.

(2) State the name of each owner of an easement across the facility site and describe the nature of the easement.

7.3.5.2 Gaming Proposal

The Applicant shall describe the:

1. Number of VLTs to be licensed at the Facility, including whether or not the Applicant would operate more than the maximum number of VLTs specified for a given location if additional VLTs should be come available through reallocation per Section 6.7.8 (all locations except Anne Arundel County).

2. License Fees proposed (Initial Fee minimum \$3 million/500 VLTs)

3. Proposed operator share (Maximum 33% of VLT Proceeds)

4. Plan for selling of Lottery tickets at the Facility at locations as near as practicable to the pay windows and other locations, provide a proposed floor plan specifying locations where Lottery tickets will be sold.

5. Schedule of implementation

a) Temporary Facility and plan for transition to the permanent Facility, if applicable

b) Permanent Facility

6. Analysis of estimated gross revenues (2010 – 2015)

7. Description of Applicant's Player Tracking System, specifically to include the

frequency of data feed to the Lottery Commission, using a generally accepted protocol language to be determined by the Lottery Commission at a later date.

7.3.5.3 Capital Proposal

The Applicant shall describe its:

1. Proposed capital investment at VLT facility (specify timeframe for spending the required minimum \$25 million/500 VLTs)
2. Facility and capital development proposal and timeline
3. Analysis of competitiveness of proposed Facility with out of State facilities
4. For racetrack locations, analysis of the relationship of the Facility to the track and the proposed investment in track improvements
5. Proposed investment in ancillary facilities
6. Ancillary facility and capital development proposal timeline
7. Program plan for attaining local approval

7.3.5.4 Business Plan and Economic Impact

The Applicant shall describe its:

1. Five (5) Year Business Plan including:
 - Projected employment, wage levels and total payroll by year
 - Value of contracts awarded by year
 - Marketing Plan
 - Plan for securing MBE participation
 - Plan for recruitment in surrounding communities
 - Ancillary operations
 - Projections beyond 5 years
2. Economic analysis of overall impact of investment and operations on:
 - Total employment within the State and surrounding community
 - Net direct and induced economic benefit or loss to the State and community
3. Explanation of how the Plan meets statutory criteria for:
 - 70% on business and market factors
 - 15% on economic development factors
 - 15% on location siting factors

7.3.5.5 Community Impact

The Applicant shall submit:

1. Its proposed hours of operation
2. An analysis of the capacity of the existing infrastructure to support the Facility
3. A description of necessary transportation improvements, estimated cost and source of funds
4. Its Security Plan for floor operations, parking and area adjacent to facility.

7.3.5.6 Labor Relations, Employees and Non-Discrimination Policies

The Applicant shall:

1. Labor Relations - Explain its Labor Relations policies and indicate any union affiliations, labor agreements, etc.
2. Living Wage - Describe its intent to adhere to the spirit of the State's Living Wage Law as contained in Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland.
3. Health Insurance for Employees – Describe its plan to provide health insurance coverage for its employees including, if the Facility is a racetrack location, its plan to provide health insurance coverage to all employees of the racetrack, including the employees of the racetrack on the backstretch of the racetrack.
4. Retirement Benefits for Employees – Describe its plan to provide retirement benefits for its employees including, if the Facility is a racetrack location, its plan to provide retirement benefits to its video lottery operation employees and an analysis of the comparability of these benefits to the level of benefits provided to the racetrack employees who are eligible under the Maryland Racetrack Employees Pension Fund.
5. Nondiscrimination – Describe its intent and ability to comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

7.3.6 Applicant's Organization, Background, and Financial Stability

7.3.6.1 Organization and Structure

The Applicant should provide any information about its business and/or organization that demonstrates its capabilities to fulfill the requirements of this RFP. The Applicant shall describe its organization and its structure, to include:

1. The exact name of the Applicant submitting the proposal, the type of business entity (e.g., corporation, partnership, etc.), and the place of the Applicant's incorporation, if applicable. State the Contractor's Federal Tax Identification Number.
2. A brief history of the company.
3. The name, address and telephone number of all personnel, consultants, sales agents or other entities involved in aiding the Applicant's efforts to obtain this License pursuant to this RFP or otherwise assisting the Applicant.
4. The organizational structure and staffing plan for the management and operation of the VLT Facility. Provide an organization chart of the Applicant's organization showing:
 - a. All major divisions and units;
 - b. Which components will perform the requirements of this License;
 - c. Where the management of this License will fall within the organization;
 - d. What corporate resources will be available to support this License in both primary and secondary, or back-up roles;
 - e. Highlight name/positions on the chart who will work on activities related to the License and indicate for each the percent of time to be dedicated to performance of obligations under the License. Include on the chart any new positions that would be created as a result of acquiring the Lottery's account and provide a description of how these positions would be filled and when.
5. Provide resumes/biographies of all principals and known individuals who will perform executive management duties. The Lottery Commission can not issue a License to an Applicant if any of its principals do not meet the specified requirements to be issued a License. Has the Applicant divested all interests that would prohibit issuance of a License and eliminated any principal who does not meet the requirements? If not, provide an explanation. If it does not apply, write "does not apply".
6. A list of all professional affiliations.
7. A description of how the Applicant plans to fulfill the MBE requirement associated with this License.

7.3.6.2 Background and Experience

The Applicant shall describe its background and experience related to VLT programs and other gaming activities. This experience must be under the Applicant's company name. Applicant shall provide information, documentation and assurances demonstrating that it has sufficient business ability and experience to create and maintain a successful, efficient operation. Applicant's description of how its organization can meet the requirements of this RFP shall include:

1. Present Business: Describe all business done and intended to be done by the Applicant and its parent, holding, subsidiary and intermediary companies and the general development of such business during the past five (5) years, or such shorter period as the Applicant or its parent, subsidiary and intermediary companies may have been engaged in business. The description shall include information on matters such as the following:
 - A. The competitive conditions in the industry or industries involved and the competitive position of the Applicant.
 - B. The principal products produced and services rendered by the Applicant and its parent, intermediary and subsidiary companies, the principal markets for said products or services, and the methods of distribution.
 - C. The sources and availability of raw materials, critical technology and employees essential to the business of the Applicant.
 - D. The intellectual property owned by Applicant and its importance to business and the duration and effect of all material patents, trademarks, licenses, franchises and concessions held.
 - E. In describing developments, provide information such as the following:
 - the nature and results of any bankruptcy, receivership or similar proceedings with respect to the Applicant or its parent, intermediary or subsidiary companies;
 - the nature and results of any other material reorganization, readjustment or succession of the Applicant or any of its subsidiaries;
 - the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and
 - any material changes in the mode of conducting the business.

2. Former Business: Describe any former business, not listed in response to paragraph #1. above, which the Applicant or any parent, intermediary or subsidiary company engaged in during the last ten (10) year period and the reasons for the cessation of such business. Also indicate the approximate time period during which each such business was conducted.
3. References: Provide a minimum of three (3) client references capable of documenting the Applicant's ability to manage projects of comparable size and complexity and two (2) references from other organizations, subcontractor or service providers, which you think are relevant. Each reference must include the following information:
 - a. Name of client organization;
 - b. Name, title, and telephone number of point of contact for client organization;
 - c. Value, type, and duration of contract(s) supporting the client organization;
 - d. The services provided, scope of the contract, geographic area being supported, and performance objectives satisfied; and
 - e. An explanation of why the Applicant is no longer providing the services to the client organization, should that be the case.

NOTE: The Applicant authorizes the Lottery Commission to contact any of the above references and should be aware that the Lottery Commission may also contact any reference of its own choosing, or any other source, as part of the evaluation and selection process.
4. State of Maryland Contracts: Provide a list of any current or previous contracts that the Applicant has had with any department or agency of the State of Maryland, to include the contract name and number, contract term and contract amount.

7.3.7 Financial Capability and Legal Action Summary

1. Applicants shall provide evidence of their financial capacity to provide the goods and services required by this RFP, to include:
 - a. A detailed explanation of how the proposed Facility is being financed and provide commitment letters from lenders. In consideration of the legal structure of the Applicant described in Section 7.3.6.1, explain whether the Applicant's financial resources are on a stand-alone basis or if financial backing is available from other sources such as a parent or other affiliated entity.

- b. At least five (5) financial references from banks or other financial institutions attesting to the Applicant's credit worthiness.
2. Applicants shall include the following information regarding legal actions (To the extent that any of this information is provided in the Application, it need not be repeated here):
 - a. A statement as to whether there are any pending legal actions against the Applicant and a brief description of any such action.
 - b. A brief description of any settled or closed legal actions against the Applicant over the past three (3) years.
 - c. A description of any judgments against the Applicant within the past five (5) years, including the case name, number, court, and what the final ruling or determination was from the court.
 - d. In instances where litigation is ongoing and the Applicant has been directed not to disclose information by the court, provide the name of the judge, location of the court, and case name and number.
 - e. Address items a through d above for all subsidiary or intermediary company, parent company or holding company.
 - f. A statement whether the Applicant, a subsidiary or intermediary company, parent company or holding company was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation during the past five (5) years.
 - g. A statement whether the Applicant, a subsidiary or intermediary company, parent company or holding company was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining it from or otherwise limiting its participation in any type of business, practice or activity during the past five (5) years.

7.3.8 Assigned Personnel's Background and Experience

Applicants shall describe the team that will be assigned to perform all required activities and obligations under the Operation License. Identify by name, title and function each of the Key personnel who will be directly involved with providing the services rendered under this License; state the percent of participation of each Key person in this License; and provide their resumes.

For each person identified as Key Personnel and other key staff who will be involved in matters related to the License, the Applicant must state their full name, title, function, business address and business telephone number and provide their biography/resume with minimum five (5) year employment history specifically to include experience relevant to VLTs. State whether or not, during the last five (5)

years, any of the following events occurred relative to any of the persons identified:

- a. Such person was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation (excluding non-incarcerable traffic violations and other minor offenses).
- b. Such person was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining such person from engaging in any type of professional or business practice or activity.
- c. Such person was the subject of any order, judgment or decree of any federal, state or local authority barring, suspending or otherwise limiting the right of such person to engage in any professional or business practice or activity.

7.3.9 Subcontractors

Applicants shall identify all subcontractors, if any, and provide a complete description of the roles these subcontractors will have in the performance of the License. Subcontractors used to meet the MBE goal shall also be identified, if known.

7.3.10 Required Submissions with Proposal

Applicants must submit the following items #1 through 8 with the original Proposal

1. Initial License Fee of at least \$3,000,000 for each 500 VLTs included in the proposal, that shall be prorated based on the exact number of VLTs proposed (Certified Check payable to State of Maryland/State Lottery Agency)
2. Application fees for Background Investigations as required (Certified Check payable to State of Maryland/State Lottery Agency)

Note: Applicants must submit only one (1) paper original of items #3 & 4:

- 3 A completed Proposal Affidavit (Appendix A);
- 4 A completed Conflict of Interest Affidavit and Disclosure (Appendix F);

Note: Applicants must submit only one (1) paper original and one (1) electronic copy on CD in PDF format of items #5 through 8, to include all exhibits and appendices to the Applications):

5. Application for Background Investigation of a Video Lottery Operation License Applicant (Appendix J)
6. Multi-Jurisdictional License Application for Principals (Appendix K)
7. Maryland Supplement to Appendix K (Appendix K-1)

8. Principal Entity Disclosure Form (Appendix L)

7.4 SUPPLEMENT TO PROPOSAL

7.4.1 If the Applicant has submitted a Proposal for either the Rocky Gap or Baltimore City location, Applicant shall submit a signed lease or other agreement verifying that it has entered into an agreement for the Facility site.

7.4.2 In the Supplement, the Applicant may expand upon the information previously submitted in response to Section 7.3.5 with its Proposal and submit any required information or supporting documentation that was not previously submitted with its Proposal. Information submitted in the Supplement may not deviate from that submitted in the original Proposal and changes to the Proposal shall not be permitted in the Supplement. Applicant shall provide a full detailed description of the Facility being proposed and all supporting documentation, to include but not limited to:

1. Site Plans: Submit a complete proposed site plan of the proposed Facility, inclusive of traffic studies and parking plan, including the number of parking spaces, accompanied by architectural drawings and proposed gaming floor layout. The gaming floor layout must clearly delineate the square footage of the area to be used for the placement of VLTs as well as the square footage of the area that will not be used for the placement of VLTs. Further, the gaming floor layout must delineate the square footage reserved for additional VLTs. Provide details of the proposed location of VLTs at the Facility and the number of VLTs proposed. Proposed surveillance camera locations both within and outside the proposed Facility must also be clearly delineated on the gaming floor layout as well as proposed security zones on the gaming floor and within and outside the Facility. (Note: The site plan, gaming floor layout and related surveillance and security proposals shall be finalized upon License award and subject to approval of the Lottery Commission prior to operation.)
2. Land Acquisition: Provide details of land acquisition costs.
3. Zoning Approvals and/or Status: Provide copies of current local zoning and any rezoning or variances that are required and any land use approvals or a detailed explanation of the status of the request with copies of all filings.
4. Temporary Facility, if applicable: If a temporary facility is to be used, provide details of the temporary Facility as well as a plan for how the Licensee will transition to a permanent Facility, including a date for the completion of the permanent Facility.
5. Retail and Food: Provide details of proposed retail and food venues for the Facility and identify the operators of each venue.

6. Administrative and Accounting Procedures: Submit an initial narrative description of administrative and accounting procedures, including a written system of internal control, which shall be finalized upon License award and subject to approval of the Lottery Commission prior to operation.

7. Local Impact Report: Provide a local impact report, engineering reports and traffic studies, including details of any adverse impact on transportation, transit access, housing, water and sewer systems, local police and emergency service capabilities, existing tourism, including historical and cultural resources or other municipal service or resource. (Note: A copy of the local impact report shall be provided to each political subdivision in which the Facility will be located as directed by the Location Commission.)

8. Marketing Plans: Provide marketing plans and proposal and details of the proximity of the Facility to its marketing service area.

9. New Jobs: Describe the potential for new job creation and economic development which will result from granting a License to the Applicant.

10. Diversity: Describe the Applicant's good faith plan to recruit, train, and upgrade diversity in all employment classifications in the Facility.

Describe the Applicant's good faith plan for enhancing the representation of diverse groups in the operation of its Facility through the ownership and operation of business enterprises associated with or utilized by its Facility or through the provision of goods or services utilized by its Facility and through the participation in the ownership of the Applicant.

11. Consumer Protection Policies: Describe the Applicant's proposed policies.

7.4.2 Required Submissions with Supplement to Proposal

Applicants must submit the following items with the original Supplement to Proposal (Applicants need to submit only one (1) paper original of these items):

1. Signed Lease or other agreement;
2. The Certified MBE Utilization and Fair Solicitation Affidavit (Appendix D-1);
3. The MBE Participation Schedule (Appendix D-2);

SECTION VIII. EVALUATION AND SELECTION PROCEDURE

8.1 EVALUATION PROCESS

All proposals will be evaluated by the Location Commission. Applicants may be required to make oral presentations regarding their proposals to the Location Commission in open session. However, the evaluation process shall be conducted in a confidential manner and in closed session of the Location Commission. The Location Commission may request additional assistance from any other source and may obtain information from any source regarding verification of an Applicant's qualifications.

For qualifying proposals that meet the requirements of Section 8.2, the Location Commission shall conduct its evaluation of the merits of the proposals in accordance with the Factors for Evaluation set forth in Section 8.3. If at any time in the evaluation process an Applicant is determined to be not qualified or a proposal is determined to be unacceptable, the proposal will be dropped from further consideration in the awarding of the License, unless otherwise determined by the Location Commission.

8.2 QUALIFYING PROPOSAL

8.1.1 All Proposals received by the deadline for receipt will be first reviewed by the Location Commission to determine if the Minimum Requirements specified in Section 1.2 have been met and to determine compliance with the submission requirements of the RFP. An Applicant or proposal not meeting the Minimum Requirements will be determined to be unacceptable and the proposal not further considered.

8.1.2 The Location Commission shall refer to the Lottery Commission the name and all relevant information concerning an Applicant that submits a proposal and application for a License. On receipt of this information, the Lottery Commission shall determine whether an Applicant is qualified to hold an Operation License (see Section 5.5.3 Denial of License). On completion of its determination, the Lottery Commission shall notify the Location Commission of the determination as to whether an Applicant is qualified to hold an Operation License. The Location Commission may not award an Operation License to a person that is not qualified. Therefore, for any Applicant determined to be not qualified to hold an Operation License, the Applicant's proposal shall not be further considered.

8.1.3 All Supplements to Proposals received by the deadline for receipt will be first reviewed by the Location Commission to determine compliance with the submission requirements of the RFP and, in particular, with the requirement for submission of the MBE Forms contained in Appendix D-1 and D-2.

8.3 FACTORS FOR EVALUATION

In awarding an Operation License, the Location Commission shall evaluate the Proposals using the factors specified below. The decision by the Location Commission to award a License shall be weighted by:

1. 70% Based on Business and Market Factors, including:

- (I) The highest potential benefit and highest prospective total revenues to be derived by the State;
- (II) The proposed revenues from a proposed location based on a market analysis;
- (III) The extent to which the proposed location encourages Maryland gaming participants to remain in the State;
- (IV) The extent to which the proposed location demonstrates that the Facility will be a substantial regional and national tourist destination;
- (V) The proposed Facility capital construction plans and competitiveness of the proposed Facility;
- (VI) The amount of gross revenues to be allocated to the operator over the term of the License;
- (VII) The percent of ownership by entities meeting the definition of Minority Business Enterprise under Title 14, Subtitle 3 of the State Finance and Procurement Article;
- (VIII) The extent to which the proposed location will preserve existing Maryland jobs and the number of net new jobs to be created; and
- (IX) The contents of the License's plan to achieve Minority Business participation goals in accordance with the requirements described in Section 3.2.2. and 3.21.

2. 15% Based on Economic Development Factors, including:

- (I) The anticipated wages and benefits for new jobs to be created; and
- (II) Any additional economic development planned in the area of the proposed Facility.

3. 15% Based on Location Siting Factors, including:

- (I) The existing transportation infrastructure surrounding the proposed Facility location;
- (II) The negative impact, if any, of a proposed Facility location on the surrounding residential community; and
- (III) The need for additional public infrastructure expenditures at the proposed Facility.

8.4 DISCUSSIONS

The Location Commission may enter into discussions with qualified or potentially qualified Applicants. Discussions, however, need not occur. Applicants may be asked to participate in face to face discussions with the Location Commission or other State representatives concerning their proposals. Discussions may be conducted by telephone, or may be in the form of written questions to be answered by the Applicants and conducted by mail, e-mail, or facsimile transmission at the discretion of the Location Commission.

8.5 BEST AND FINAL OFFERS

When it is deemed in the best interest of the State, the Location Commission may permit a qualified Applicant to revise its initial proposals by submitting a Best and Final Offer (“BAFO”). The Location Commission shall notify each qualified Applicant of the scope of the requested BAFO and shall establish a common date and time for the Applicant’s submission. The Location Commission may require more than one series of BAFOs and discussions if the Location Commission makes a written determination that it is in the State’s best interest to conduct additional discussions or change the Location Commission’s requirements and require submission of another BAFO. If more than one BAFO is requested, an Applicant’s immediate previous offer shall be construed as its best and final offer unless the Applicant submits a timely notice of withdrawal or another BAFO.

8.6 SELECTION FOR AWARD AND ISSUANCE OF LICENSE

8.6.1 Award of License

Upon completion of all discussions and negotiations, the Location Commission may award a Video Lottery Operation License to the qualified Applicant whose proposal is determined to be the most advantageous to the State, considering the evaluation factors as set forth in this RFP, for each of the five (5) eligible locations.

Notwithstanding any of the provisions contained herein, the Location Commission may not award an Operation License unless the Location

Commission determines and declares that a proposal selected for award of the License is in the public interest and consistent with the purposes of the applicable law.

Upon selection of an Applicant for award of an Operation License, the Location Commission will provide written notification to the Lottery Commission.

8.6.2 Issuance of License

Upon receipt of notification of award from the Location Commission as described in Section 8.6.1, the Lottery Commission will issue to the successful Applicant a Notice of License Award specifying the terms and conditions of the award. All terms and conditions contained in the RFP, and Amendments to the RFP and the Applicant's Proposal shall be incorporated into the License. Upon receipt of a properly signed and acknowledged Notice of License Award from the Applicant and compliance with the conditions below, the Lottery Commission will issue the Operation License.

A License shall not be issued to an Applicant that has been selected for award until:

- 1) all proper zoning approvals and permits for the proposed Facility location have been obtained and submitted to the Location Commission. If zoning approvals and permits are not provided as required, the award may be revoked or suspended; and**
- 2) all required fees have been paid, including but not limited to License fees and background investigation costs.**

8.7 DEBRIEFING OF UNSUCCESSFUL APPLICANTS

Unsuccessful Applicants may be debriefed upon their written request to the Location Commission, provided the request is made within a reasonable period of time, not to exceed ten (10) days, after receiving notice of not being recommended for award of a License. Request for debriefings will be honored at the earliest feasible time after the request has been received.

An unsuccessful Applicant for an Operation License may seek, under Title 15 of the State Finance and Procurement Article, review by the State Board of Contract Appeals of the awarding of the Operation License by the Location Commission.

SECTION IX. APPENDICES

APPENDIX A - Proposal Affidavit. This form must be completed and submitted with the Applicant's Proposal.

APPENDIX B - Confirmatory Affidavit. Not required to be submitted with Proposal, but must be completed by the selected Applicant and submitted to the Location Commission within five (5) days after notification of proposed License award.

APPENDIX C - Pre-Proposal Conference Response Form

APPENDIX D - Minority Business Enterprise (MBE) Instructions/Forms

APPENDIX D-1 – Certified MBE Utilization and Fair Solicitation Affidavit

APPENDIX D-2 – MBE Participation Schedule

APPENDIX D-3 – Outreach Efforts Compliance Statement

APPENDIX D-4 – Subcontractor Project Participation Statement

APPENDIX D-5 – Contractor's MBE Monthly Payment Progress Report

APPENDIX D-5a – Prime Contractor Unpaid MBE Invoice Report

APPENDIX D-6 – Subcontractor Payment Report

APPENDIX E – Vendor Electronic Funds Transfer (EFT) Registration Request Form

APPENDIX F – Conflict of Interest Affidavit and Disclosure

APPENDIX G – Performance Bond

APPENDIX H – Payment Bond

APPENDIX I – Authorization for Release of Information

APPENDIX J – Application for Background Investigation of a Video Lottery Operation License Applicant (Submit with Proposal)

APPENDIX K – Multi-Jurisdictional Personal History Disclosure Form (Submit with Proposal)

APPENDIX K-1 – Maryland Supplement to Appendix L (Submit with Proposal)

APPENDIX L – Principal Entity Disclosure Form (Submit with Proposal)

APPENDIX M – Draft Lottery Commission Regulations

(NOTE: Appendix J, K, K-1, L and M may also be downloaded from the Lottery's website: www.mdlottery.com (click on "Procurements" section))

PROPOSAL AFFIDAVIT

(This Affidavit is Required to be Completed/Submitted with Applicant’s Proposal)

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____ and the duly authorized representative of (business) _____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Applicant hereby certifies and agrees that the following information is correct: In preparing its proposal on this project, the Applicant has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in “discrimination” as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. “Discrimination” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendors, supplier’s or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”. Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the proposal submitted by the Applicant on this project, and terminate any contract awarded based on the proposal. As part of its proposal, the Applicant herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the state of Maryland that the Applicant discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Applicant agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in §16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
 - (a) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt

Organization Act, 18 U.S.C. §1961, et seq., or the Mail Fraud Act, 18 U.S.C. §1341, et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of the §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (1) through (5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or
- (9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B — C and subsections (1) through (8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension):

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

- (1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to §16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the price proposal of the Applicant or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying offer is submitted.

I. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of §13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

K. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;

- (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business' policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;
- (h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

- (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
 - (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
 - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic ___) (foreign __) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:
Name: _____

Address: _____

(If not applicable, so state).

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

N. Repealed.

O. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____
(Authorized Representative and Affiant)

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

APPENDIX B

CONFIRMATORY AFFIDAVIT

(This Affidavit Is Not Required To Be Completed & Submitted With Applicant's Proposal.)

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title)_____

and the duly authorized representative of (business)_____

_____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

1. The business named above is a (domestic_____)
(foreign _____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name:_____

Address:_____

_____.

2. Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Proposal Affidavit dated _____, 2009, and executed by me for the purpose of obtaining the License resulting from the RFP to which this Affidavit is attached remains true and correct in all respects as if made as of the date of this Confirmatory Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____
(Authorized Representative and Affiant)

Printed Name

Title

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

APPENDIX C - Pre-Proposal Conference Response Form

Project Title: VIDEO LOTTERY OPERATION LICENSE #2009-0101

A Pre-Proposal Conference will be held at **10:00 a.m. (Local Time)**, on **January 12, 2009**, at:

**Maryland State Lottery Agency
Montgomery Park Business Center-Suite 330
1800 Washington Boulevard
Baltimore, MD 21230.**

For directions to the meeting site, you may contact Robert W. Howells at 410-230-8789.

Please return this form via e-mail or fax by January 7, 2009 advising whether or not you plan to attend to:

Video Lottery Facility Location Commission
c/o Maryland State Lottery Agency
Attn: Robert W. Howells
Telephone: (410) 230-8789
Fax: (410) 230-8727
E-mail Address: rhowells@msla.state.md.us

Please indicate:

Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.
- 4.

No, we will not be in attendance.

Company/Firm/Vendor Name

Telephone

Signature

Name/Title

APPENDIX D

MINORITY BUSINESS ENTERPRISE INSTRUCTIONS/FORMS

State of Maryland VIDEO LOTTERY FACILITY LOCATION COMMISSION

MINORITY BUSINESS ENTERPRISE PARTICIPATION

PURPOSE

Licensee shall structure its procedures for the performance of the work required by this License to attempt to achieve the Minority Business Enterprise (MBE) goal stated in the Request for Proposals. MBE performance must be in accordance with this Appendix, as authorized by Code of Maryland Regulations (COMAR) 21.11.03. Licensee agrees to exercise all good faith efforts to carry out the requirements set forth in this Appendix.

MBE GOALS AND SUBGOALS

An MBE subcontract participation goal of _____ percent of the total dollar amount for the construction and procurement related to the operation of VLTs has been established for this License. By submitting a response to this RFP, the Applicant agrees that this percentage of the total dollar amount for the construction and procurement related to the operation of VLTs will be performed by certified MBEs.

OR

An overall MBE subcontract participation goal of _____ percent of the total dollar amount for the construction and procurement related to the operation of VLTs has been established for this License. This overall goal includes sub-goals of:

- ___ percent to be allocated to certified women-owned MBEs; and
- ___ percent to be allocated to certified African American-owned MBEs.

By submitting a response to this RFP, the Applicant agrees that these percentages of the total dollar amount for the construction and procurement related to the operation of VLTs will be performed by certified MBEs, including the MBE groups specified herein.

- ◆ A prime Contractor — including an MBE prime Contractor — must accomplish an amount of work not less than the MBE subcontract goal with certified MBE subcontractors.
- ◆ A prime Contractor comprising a joint venture that includes MBE partner(s) must accomplish the MBE subcontract goal with certified MBE subcontractors.

SOLICITATION AND LICENSE FORMATION

- ◆ An Applicant must include with its Supplement to Proposal:
 - (1) A completed Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1) whereby the Applicant acknowledges the certified MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process.
 - (2) A completed MBE Participation Schedule (Attachment D-2) whereby the Applicant responds to the expected degree of Minority Business Enterprise participation as stated in the RFP, by identifying the specific commitment of certified Minority Business Enterprises at the time of submission. The Applicant shall specify the price and/or the percentage of License value associated with each MBE subcontractor identified on the MBE Participation Schedule.

If an Applicant fails to submit Attachment D-1 and Attachment D-2 at the time of submittal of the Supplement to Proposal as required, the Location Commission may deem the proposal to be unacceptable.

- ◆ Within ten (10) working days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Lottery Commission.
 - (1) Outreach Efforts Compliance Statement (Attachment D-3)
 - (2) Subcontractor Project Participation Statement (Attachment D-4)
 - (3) If the apparent awardee has requested a waiver (in whole or in part) of the overall MBE goal or of any subgoal as part of the previously submitted Attachment D-1, it must submit documentation supporting the waiver request that complies with COMAR 21.11.03.11.
 - (4) Any other documentation required by the Lottery Commission to ascertain the Applicant's responsibility in connection with the certified MBE participation goal.

If the apparent awardee fails to return each completed document within the required time, the Lottery Commission may determine that the apparent awardee is not eligible for issuance of a License.

LICENSE ADMINISTRATION REQUIREMENTS

The Licensee shall:

1. Submit monthly to GOMA a report listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made.
2. Include in its agreements with its certified MBE contractors and subcontractors a requirement that those contractors submit monthly to GOMA a report that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority contractors and subcontractors employed under the License, the type of work performed by each, and the actual dollar value of work performed. Agreements documenting the work performed by all MBE participants must be retained by the Licensee and furnished to GOMA on request.
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Licensee must retain all records concerning MBE participation and make them available for State inspection for three (3) years after final completion of the License.
5. At the option of GOMA, upon completion of the License and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE contractors and subcontractors.

Attachments

- D-1 Certified MBE Utilization and Fair Solicitation Affidavit (must be submitted with Supplement to Proposal)
- D-2 MBE Participation Schedule (must be submitted with Supplement to Proposal)
- D-3 Outreach Efforts Compliance Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)
- D-4 Subcontractor Project Participation Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)

Note: D-5, D-5a & D-6 will not be completed or submitted by Applicant at this time.

ATTACHMENT D-1

CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

This document shall be completed and included with the submittal of the Supplement to Proposal. If the Applicant fails to submit this form with the Supplement to Proposal as required, the Location Commission may deem the proposal to be unacceptable.

In conjunction with the proposal submitted in response to RFP No. 2009-0101, I affirm the following:

1. I acknowledge the overall certified Minority Business Enterprise (MBE) participation goal of _____ percent, and, if specified in the RFP subgoals of _____ percent for MBEs classified as African American-owned and _____ percent for MBEs classified as women-owned. I have made a good faith effort to achieve this goal.

OR

After having made a good faith effort to achieve the MBE participation goal, I conclude I am unable to achieve it. Instead, I intend to achieve an MBE goal of _____% and request a waiver of the remainder of the goal. If I am selected as the apparent awardee, I will submit written waiver documentation that complies with COMAR 21.11.03.11 within ten (10) working days of receiving notification that our firm is the apparent awardee.

2. I acknowledge that the MBE contractors/subcontractors/suppliers listed in the MBE Participation Schedule will be used to accomplish the percentage of MBE participation that I intend to achieve.
3. I have identified the specific commitment of certified Minority Business Enterprises by completing and submitting an MBE Participation Schedule with the Supplement to Proposal.
4. I understand that if I am notified that I am the apparent awardee, I must submit the following documentation within ten (10) working days of receiving notice of the potential award:
 - (a) Outreach Efforts Compliance Statement (Attachment D-3)
 - (b) Subcontractor Project Participation Statement (Attachment D-4)
 - (c) MBE Waiver Documentation per COMAR 21.11.03.11 (if applicable)
 - (d) Any other documentation required by the Lottery Commission to ascertain the Applicant's responsibility in connection with the certified MBE participation goal.

I acknowledge that if I fail to return each completed document within the required time, the Lottery Commission may determine that I am not responsible and therefore not eligible for issuance of a License.

5. In the solicitation of contract/subcontract quotations or offers, MBE contractors/subcontractors were provided not less than the same information and amount of time to respond as were non-MBE contractors/subcontractors.
6. The solicitation process was conducted in such a manner so as to otherwise not place MBE contractors/subcontractors at a competitive disadvantage to non-MBE contractors/subcontractors.

I solemnly affirm under the penalties of perjury that the contents of this Affidavit are true to the best of my knowledge, information, and belief.

Applicant Name

Signature of Affiant

Address

Printed Name, Title

Date

**SUBMIT THIS AFFIDAVIT WITH
SUPPLEMENT TO PROPOSAL**

ATTACHMENT D-2

MBE PARTICIPATION SCHEDULE

This document shall be completed and included with the submittal of the Supplement to Proposal. If the Applicant fails to submit this form with the Supplement to Proposal as required, the Location Commission may deem the proposal to be unacceptable.

| | |
|---|--|
| Prime Contractor (Firm Name, Address, Phone) | Project Description: VIDEO LOTTERY OPERATION LICENSES |
| Project Number #2009-0101 | |
| List Information For Each Certified MBE Contractor/Subcontractor On This Project | |
| 1. Minority Firm Name, Address, Phone | MBE Classification: _____ Federal Identification No. MBE Certification No. |
| Work To Be Performed/SIC | |
| Project Commitment Date | Project Completion Date |
| Percentage of Total Contract | |
| 2. Minority Firm Name, Address, Phone | MBE Classification: _____ Federal Identification No. MBE Certification No. |
| Work To Be Performed/SIC | |
| Project Commitment Date | Project Completion Date |
| Percentage of Total Contract | |

USE ATTACHMENT D-2 CONTINUATION PAGE AS NEEDED

SUMMARY

TOTAL MBE PARTICIPATION: _____ %
TOTAL AFRICAN-AMERICAN MBE PARTICIPATION: _____ %
TOTAL WOMAN-OWNED MBE PARTICIPATION: _____ %

Document Prepared By: (please print or type)
 Name: _____ Title: _____

ATTACHMENT D-2

MBE PARTICIPATION SCHEDULE (continued)

| | |
|---|--|
| Prime Contractor (Firm Name, Address, Phone) | Project Description VIDEO LOTTERY OPERATION LICENSE |
| Project Number #2009-0101 | |
| List Information For Each Certified MBE Contractor/Subcontractor On This Project | |
| 3. Minority Firm Name, Address, Phone | MBE Classification: _____ Federal Identification No. MBE Certification No. |
| Work To Be Performed/SIC | |
| Project Commitment Date | Project Completion Date |
| Percentage of Total Contract | |
| 4. Minority Firm Name, Address, Phone | MBE Classification: _____ Federal Identification No. MBE Certification No. |
| Work To Be Performed/SIC | |
| Project Commitment Date | Project Completion Date |
| Percentage of Total Contract | |
| 5. Minority Firm Name, Address, Phone | MBE Classification: _____ Federal Identification No. MBE Certification No. |
| Work To Be Performed/SIC | |
| Project Commitment Date | Project Completion Date |
| Percentage of Total Contract | |

| |
|---|
| <p>List Additional MBE Subcontractors Or Provide Any Additional Comments on Separate Paper.</p> |
|---|

ATTACHMENT D-3

OUTREACH EFFORTS COMPLIANCE STATEMENT

This document shall be completed and submitted by Offeror within ten (10) working days of notification of recommendation for Contract award

In conjunction with the bid or offer submitted in response to Solicitation No. 2009-0101, I state the following:

- 1. Bidder/ Offeror identified opportunities to subcontract in these specific work categories:

Attached to this form is the "MBE Subcontractor Solicitation Summary", which identifies the MBE and the service to be provided.

- 2. Attached to this form are copies of completed written solicitations (with bidding instructions) used to solicit bids from certified minority business enterprises and non-minority firms for these subcontract opportunities.

- 3. Bidder/Offeror made the following attempts to contact personally the solicited MBEs:

- 4. Bidder/Offeror assisted MBEs to fulfill or to seek waiver of bonding requirements. (DESCRIBE EFFORTS)

This project does not involve bonding requirements.

- 5. Bidder/Offeror did/did not attend the pre-bid/proposal conference
- No pre-bid/proposal conference was held.

Bidder/Offeror Name

By: _____
Signature of Affiant

Address

Name, Title

Date

MBE SUBCONTRACTOR SOLICITATION SUMMARY
(THIS FORM MUST IDENTIFY ALL MBE SUBCONTRACTORS SOLICITED.)

Contract: VIDEO LOTTERY OPERATION LICENSE

ID. No.: 2009-0101

Contract MBE Goal: _____

MBE Subgoals: African-American: N/A%
Women: N/A%

Offeror: _____

Address: _____

Telephone No.: _____

Offeror Liaison for Minority Affairs: _____

Telephone No.: _____

Offeror's Solicited MBEs

| <u>MBE Firm</u> | <u>MDOT Certification Number</u> | <u>Contact Person & Telephone No.</u> |
|----------------------|----------------------------------|---|
| 1. _____ | _____ | _____ |
| *Minority Code _____ | Service Provided: _____ | _____ |
| | Price Quote: _____ | _____ |
| 2. _____ | _____ | _____ |
| *Minority Code _____ | Service Provided: _____ | _____ |
| | Price Quote: _____ | _____ |

MBE SUBCONTRACTOR SOLICITATION SUMMARY

| <u>MBE Firm</u> | <u>MDOT Certification Number</u> | <u>Contact Person & Telephone No.</u> |
|----------------------|--|---|
| 3. _____ | _____ | _____ |
| *Minority Code _____ | Service Provided: _____ | _____ |
| | Price Quote: _____ | _____ |
| 4. _____ | _____ | _____ |
| *Minority Code _____ | Service Provided: _____ | _____ |
| | Price Quote: _____ | _____ |
| 5. _____ | _____ | _____ |
| *Minority Code _____ | Service Provided: _____ | _____ |
| | Price Quote: _____ | _____ |

(Attach Additional Pages if Needed. Pursuant to COMAR 21.11.03.10 B.(4)(c), also include the same information noted above for non-minority subcontractors)

Offeror Signature: _____ Date: _____

Title: _____

*Minority Classification Code

1. African American (Not of Hispanic origin)
2. Hispanic
3. American Indian
4. Asian
5. Female
6. Physically or Mentally Disabled

ATTACHMENT D-4

SUBCONTRACTOR PROJECT PARTICIPATION STATEMENT

This document shall be completed and submitted by Offeror within ten (10) working days of notification of recommendation for Contract award

SUBMIT ONE FORM FOR EACH CERTIFIED MBE LISTED IN THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-2).

Provided that _____ is awarded
Prime Contractor Name

the Lottery contract in conjunction with RFP #2009-0101, it and _____,

Subcontractor Name
MDOT Certification No. _____, intend to enter into a contract by which Subcontractor

shall : (describe work) _____

____ No bonds are required of Subcontractor.

The following amount and type of bonds are required of Subcontractor: _____

The following dollar amount has been agreed upon for payment to Subcontractor for work described above: _____

Prime Contractor Signature

Subcontractor Signature

By: _____
Name

By: _____
Name

Title

Title

Date

Date

The above signed Prime Contractor and MBE subcontractor agree to enter into a contract for the work/service indicated above for the dollar amount indicated, subject to the prime contractor's execution of a contract with the Maryland State Lottery Agency for the above referenced RFP number. The above signed subcontractor is currently a Maryland Department of Transportation certified MBE.

ATTACHMENT D-5

**VIDEO LOTTERY FACILITY LOCATION COMMISSION
MINORITY BUSINESS ENTERPRISE PARTICIPATION
CONTRACTOR'S MBE MONTHLY PAYMENT PROGRESS REPORT**

* Complete and submit this form for each MDOT certified Minority Business Enterprise Subcontractor by the 15th of each month. Failure to comply with MBE reporting requirements may result in sanctions being invoked, up to and including contract termination.

CONTRACTOR: _____

CONTRACTOR LIAISON FOR MINORITY AFFAIRS: _____
Name
Signature _____ Date _____

MBE SUBCONTRACTOR NAME: _____

CONTRACT NUMBER: 2009-0101

CONTRACT TITLE: _____

MONTH REPORTING: _____, 200__

| Invoice Number | Invoice Date | Invoice Amount | **Date Paid | Amount Paid |
|----------------|--------------|----------------|-------------|-------------|
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |

** Copies of invoices and canceled checks must be attached for the period stated above. Any invoice over 30 days old must be explained as to why payment has not been made. Attach additional pages as necessary.

Return form(s) to the following address:

The Governor's Office of Minority Affairs
6 Saint Paul Center, #1502
William Donald Schaefer Tower
Baltimore, Maryland 21202
(410) 767-8232

ATTACHMENT D-5a

**VIDEO LOTTERY FACILITY LOCATION COMMISSION
MINORITY BUSINESS ENTERPRISE PARTICIPATION
Prime Contractor Unpaid MBE Invoice Report**

To be Completed and Submitted Monthly by Prime Contractor

| | |
|------------------------|-------|
| Contract # | _____ |
| Contracting Unit | _____ |
| Contract Amount | _____ |
| MBE Subcontract Amount | _____ |
| Contract Begin Date | _____ |

| |
|--|
| Month Reporting Month/Year _____ _____ |
|--|

Prime Contractor Name _____ Contact Person _____

Address _____

City _____ State _____ Zip _____

Phone # _____ Fax # _____

Subcontractor Name _____ Contract Person _____

Address _____

City _____ State _____ Zip _____

Phone # _____ Fax # _____

Subcontract Service Provided _____

List any unpaid invoice numbers over 30 days old received from this vendor and reason for non-payment.

INVOICE#: AMOUNT \$: REASON:

- 1.
- 2.
- 3.

Total Amount Unpaid \$ _____

If more than one MBE subcontractor is used for contract, please use separate report forms.

Return one (1) copy of this form to the following address: The Governor's Office of Minority Affairs
6 Saint Paul Center, #1502
William Donald Schaefer Tower
Baltimore, Maryland 21202
(410) 767-8232

Signature _____ Date _____

Title: _____

**ATTACHMENT D-6
VIDEO LOTTERY FACILITY LOCATION COMMISSION
MINORITY BUSINESS ENTERPRISE PARTICIPATION**

Subcontractor Payment Report

This form is to be completed and submitted monthly by the MBE Subcontractor.

| | |
|------------------------|-------|
| Contract # | _____ |
| Contracting Unit | _____ |
| Contract Amount | _____ |
| MBE Subcontract Amount | _____ |

| |
|-------------------------------------|
| Month Reporting Month/Year _____ |
|-------------------------------------|

| | |
|---|---|
| MBE Subcontractor Name: _____ | |
| MDOT Certification #: _____ | Fed ID #: _____ |
| Contact Person: _____ | |
| Address: _____ | |
| City: _____ | State: _____ Zip: _____ |
| Phone: _____ | Fax: _____ |
| List all payments received , including invoice number, invoice date and services provided for work performed in the reporting month. | List all outstanding payments , including invoice number, invoice date, and services provided for work performed in the reporting month. |
| 1. Invoice #: _____ Date: _____ Payment Amount: \$ _____ Services Provided: _____ | 1. Invoice #: _____ Date: _____ Payment Amount: \$ _____ Services Provided: _____ |
| 2. Invoice #: _____ Date: _____ Payment Amount: \$ _____ Services Provided: _____ | 2. Invoice #: _____ Date: _____ Payment Amount: \$ _____ Services Provided: _____ |
| 3. Invoice #: _____ Date: _____ Payment Amount: \$ _____ Services Provided: _____ | 3. Invoice #: _____ Date: _____ Payment Amount: \$ _____ Services Provided: _____ |
| Total Dollars Paid \$ _____ | Total Dollars Unpaid \$ _____ |

Return one (1) copy of this form to the following address:

The Governor's Office of Minority Affairs
6 Saint Paul Center, #1502
William Donald Schaefer Tower
Baltimore, Maryland 21202
(410) 767-8232

Signature: _____

Date: _____

APPENDIX E

VENDOR ELECTRONIC FUNDS TRANSFER (EFT)
REGISTRATION REQUEST FORM
State of Maryland
Comptroller of Maryland

Date of Request _____

Business Identification Information (Address to be used in case of default to check):

Business Name _____

Address Line 1 _____

Address Line 2 _____

City _____ State _____ Zip code

Taxpayer Identification Number:

Federal Employer Identification Number:

(or) Social Security Number:

Business contact name, title, e-mail and phone number including area code. (And address if different from above):

Financial Institution Information:

Name and address _____

Contact name, phone number (include area code), _____

ABA Number

Account Number

ACCOUNT TYPE CHECKING MONEY MARKET

Format Desired: _____ CCD _____ CCD+ _____ CTX* (Check one.)

*Note – There may be a charge to you by your bank with this format.

A VOIDED CHECK from the bank account must be attached.

Transaction Requested:

1. ___ Initiate all disbursements via EFT to the above account.
2. ___ Discontinue disbursements via EFT, effective _____.
3. ___ Change the bank account to above information – a copy of the approved Registration Form for the previous bank account must be attached.

I am authorized by * _____
 (hereinafter Company) to make the representations contained in this paragraph. Company authorizes the Comptroller and the Treasurer of Maryland to register it for electronic funds transfer (EFT) using the information contained in this registration form. Company agrees to receive all funds from the State of Maryland by electronic funds transfer according to the terms of the EFT program. Company agrees to return to the State of Maryland any EFT payment incorrectly disbursed by the State of Maryland to the Company's account. Company agrees to hold harmless the State of Maryland and its agencies and departments for any delays or errors caused by inaccurate or outdated registration information or by the financial institution listed above.

*Name of registering business entity

 Signature of company treasurer, controller, or chief financial officer and date

Completed by GAD/STO

Date Received _____

GAD registration information verified _____ Date to STO _____

STO registration information verified _____ Date to GAD _____

R*STARS Vendor No. and Mail Code Assigned:

 State Treasurer's Office approval date

 General Accounting Division approval date

To Requestor:

Please retain a copy of this form for your records. Please allow approximately 30 days from the date of your request for the Comptroller's and Treasurer's Offices to process your request. Failure to maintain current information with this office could result in errors in payment processing. If you have any questions, please call the EFT registration desk at 410-260-7375.

Please submit form to: EFT Registration, General Accounting Division
 Room 205, P.O. Box 746
 Annapolis, Maryland 21404-0746

Instructions: Electronic Funds Transfer instructions are located: <http://compnet.comp.state.md.us/gad>. Questions may be requested by email, gad@comp.state.md.us. Or call 1-888-784-0144.
 COT/GAD X-10

APPENDIX F

CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE
(THIS AFFIDAVIT IS REQUIRED TO BE SUBMITTED WITH THE OFFEROR'S PROPOSAL.)

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a Bidder, Offeror, Contractor, Consultant, or Subcontractor or Subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

C. The Bidder or Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain detail—attach additional sheets if necessary):

E. The Bidder or Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder or Offeror shall immediately make a full disclosure in writing to the Procurement Officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Bidder or Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the Contract has been awarded and performance of the Contract has begun, the Contractor shall continue performance until notified by the Procurement Officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____
(Authorized Representative and Affiant)

APPENDIX G
PERFORMANCE BOND

PAGE 1 OF 3

Principal _____ Business Address of Principal _____

Surety _____ Oblige: STATE OF MARYLAND
a corporation of the State of _____ By and through the following
and authorized to do business in Administration _____
the State of Maryland

\$1,000,000
Penal Sum of Bond (express in words and figures) _____

_____, 20_____
Date Bond Executed

Contract Number: #2009-0101 _____, 20_____
Description of Contract: _____ Date of Contract
Video Lottery Operation Licenses

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Oblige named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we, the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the State of Maryland, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of the time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as "the Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, during the original term of said Contract, during any extensions thereto that may be granted by the Administration, and during the guarantee and warranty period, if any, required under the Contract, unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions contained in this Performance Bond.

Whenever Principal shall be declared by the Administration to be in default under the Contract, the Surety may, within 15 days after notice of default from the Administration, notify the Administration of its election to either promptly proceed to remedy the default or promptly to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Administration thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on the Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of: **INDIVIDUAL PRINCIPAL**
Witness _____ as to _____ (SEAL)

In Presence of: **CO-PARTNERSHIP PRINCIPAL**
Witness _____ (SEAL)

(Name of Co-Partnership)

_____ as to BY : _____ (SEAL)
_____ as to _____ (SEAL)
_____ as to _____ (SEAL)

CORPORATE PRINCIPAL

Attest: _____
(Name of Corporation)

_____ BY: _____
Corporate Secretary President
AFFIX CORPORATE SEAL

SURETY

Attest:
Signature _____ BY: _____ AFFIX CORPORATE SEAL
Title: _____

(Business Address of Surety)

Bonding Agent's Name _____ - _____

Agent's Address _____

PAYMENT BOND

| | | | |
|--|-------------------------------|--------|--|
| Principal | Business Address of Principal | | |
| Surety | Obligee | | |
| a corporation of the State of _____ | STATE OF MARYLAND | | |
| and authorized to do business in the State of Maryland | By | and | through the following Administration |
| Penal Sum of Bond (express in words and figures) | Date | of | Contract |
| <u>\$2,000,000</u> | _____ | , 2007 | |
| Description of Contract | Date | Bond | Executed |
| Contract Number: <u>2009-0101</u> | _____ | , 2007 | |

The required payment bond shall be in the form specified as follows:

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, being authorized to do business in Maryland, and having business address as shown above, are held and firmly bound unto the Obligee named above, for the use and benefit of claimants as hereinafter defined, in the Penal Sum of this Payment Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the State, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as the "Contract".

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials furnished, supplied and reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined to be any and all of those persons supplying labor and materials (including lessors of the equipment to the extent of the fair market value thereof) to the Principal or its subcontractors and subcontractors in the prosecution of the work provided for in the Contract, entitled to the protection provided by Section 9-113 of the Real Property Article of the Annotated Code of Maryland, as from time to time amended.

2. The above named Principal and Surety hereby jointly and severally agree with the Oblige that every claimant as herein defined, who has not been in full may, pursuant to and when in compliance with the provisions of the aforesaid Section 9-113, sue on this Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant and have execution thereon. The Oblige shall not be liable for the payment of any costs or expenses of any such suit.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Payment Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Payment Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Payment Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of: Individual Principal
Witness: _____ as to _____ (SEAL)

In Presence of: Co-Partnership Principal
Witness: _____ (SEAL)

(Name of Co-Partnership)
By: _____ (SEAL)
_____ as to _____ (SEAL)
_____ as to _____ (SEAL)
_____ as to _____ (SEAL)

Corporate Principal
Attest: _____
(Name of Corporation)

AFFIX

By: _____ CORPORATE
Corporate Secretary President
SEAL

(Surety)

AFFIX

Attest: (SEAL) By: _____ CORPORATE
SEAL

Signature Title _____

Bonding Agent's Name: _____

(Business Address of Surety)

Agent's Address _____

Approved as to legal form and sufficiency this
_____ day of _____ 20 __

Asst. Attorney General

APPENDIX I

AUTHORIZATION FOR RELEASE OF INFORMATION

(Name of Applicant) has submitted a proposal in response to RFP #2009-0101 issued by the Video Location Commission Facility Location Commission (“Location Commission”). As part of the Location Commission’s evaluation of the proposal, the Location Commission will be contacting other entities that have had business relationships with the Applicant

This document, signed by an authorized representative of the Applicant, demonstrates the desire of the Applicant to:

1. Allow representatives of the Location Commission unfettered access to any and all monitoring reports, licensing or certification documents, and records of evaluations related to the experiences of the Applicant in its prior or current contracts for Location Commission related services, as well as the experiences of any of its parent or subsidiary corporations or other entities with which it has been associated;
2. Allow the same access afforded by the previous section 1 to apply to situations in which the Applicant may have functioned as a subcontractor;
3. Grant representatives of the Location Commission unfettered access to discuss openly the performance of the Applicant related to the experiences set out in sections 1 and 2; and
4. Expressly authorize that any and all of the information conveyed to representatives of the Location Commission be kept in confidence by the Location Commission without any expectation or requirement that the content of such information shall ever be released to the Applicant or any other entity, except where otherwise required by law.

Name & Title:

(Name of Applicant) _____

Date: _____

APPENDIX J

APPLICATION FOR BACKGROUND INVESTIGATION OF A VIDEO LOTTERY OPERATION LICENSE APPLICANT

MARYLAND LOTTERY COMMISSION

Video Lottery Facility Gaming Application

You must make accurate statements and include all material facts. Any misrepresentations, failure to provide requested any information, or failure to meet any other requirement as set out in the law or regulations, may result in the denial of the application.

APPENDIX K

MULTI-JURISDICTIONAL PERSONAL HISTORY DISCLOSURE FORM

MARYLAND LOTTERY COMMISSION

APPENDIX K-1
MARYLAND SUPPLEMENT TO MULTI-JURISDICTIONAL PERSONAL
HISTORY DISCLOSURE FORM

MARYLAND LOTTERY COMMISSION

APPENDIX L

PRINCIPAL ENTITY DISCLOSURE FORM
MARYLAND LOTTERY COMMISSION

APPENDIX M

DRAFT LOTTERY COMMISSION REGULATIONS

(NOTE: These regulations have been adopted by the Lottery Commission at its December 17, 2008 meeting and have been submitted to AELR, but are presently pending review by AELR and subject to approval by AELR)