

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

## Part 1 – General Information

### 1.1 Introduction

1. Will Platform Providers be able to add additional Operators subsequent to the award of the Platform Provider license?

This allowance is not contemplated.

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

### 1.3 Schedule

1. Is the deadline to apply August 9, 2021, as per this section or August 2, 2021, which is mentioned in Section 3.2, Official Submission?

The Application deadline is August 9th at 4:00 pm Eastern Daylight Time. Accordingly, RFA Section 3.2 OFFICIAL SUBMISSION is hereby amended to read as follows:

To apply for a License, a completed Application must be received by the Commission by August 9, 2021 at 4:00 p.m. Eastern Daylight Time. The Commission will not accept or review any Application submitted after the established deadline.

2. In the instance where an amended Applications is due following the end of daylight savings time, will the deadline be shifted to standard time?

Yes.

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

### 1.5 Minimum Qualifications

1. Does an Applicant holding a temporary N.Y.S. Gaming Commission Casino Vendor Enterprise License satisfy the requirement of demonstrating minimum qualifications for licensure?

No, the Applicant must submit a new application for a Mobile Sports Wagering License. However, the Commission will use any previous application or standing as a Casino Vendor Enterprise License to the extent possible in making preliminary licensing determinations. For example, additional fingerprinting may not be necessary for applicants already on file.

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

**1.7 Designated Contacts**

1. May an Applicant contact the Commission's Bureau of Licensing to facilitate the submission of the proper license application forms?

Yes. RFA Section 1.7 DESIGNATED CONTACTS is hereby amended to add a new paragraph as follows:

For purposes of preparation and submission of Appendix E Licensing Documentation, a potential applicant may communicate with the Commission's Bureau of Licensing. Any and all communications with the Bureau of Licensing must be limited to the Appendix E documents and information related to such forms.

**1.8 Question and Inquiries**

1. Is there a timeline when the pre-proposal process referenced in Section 1.8 E will occur?

The process began with the issuance of the RFA. Please refer to Appendix A: Draft Pre-Proposal Regulation Part 5330 to access this material.

**1.9 Licensing**

1. Are geolocation service providers considered vendors who are required to complete the Casino Supplement in addition to the Multi-Jurisdictional Disclosure Forms for key persons?

Geolocation service providers will be required to complete only a Mobile Sports Wagering Vendor Registration.

2. Should Casino Vendor Enterprise applicants wait until later to submit applications after the Platform Provider licenses have been awarded?

A potential Mobile Sports Wagering Vendor Enterprise should await Platform Provider license award(s) before filing.

3. If license applications are submitted in advance of the RFA submission, by what method should they be submitted?

Applications should be submitted to:

Office of the Secretary  
N.Y.S. Gaming Commission  
1 Broadway Center, Fifth Floor  
Schenectady, New York 12305

For common carrier delivery, the telephone number 518-388-3400 should be listed.

4. Is it correct that only Platform Providers and Operators need to submit their applications by August 9th and Mobile Sports Wagering Vendors do not need to file by this date?

Correct.

#### **1.10 Background Investigations**

1. If license applications are submitted as part of the RFA Application, in which binder should they be placed?

License Applications are to be included in the Primary Binder.

2. Can a license application be submitted individually by Operators and Platforms?

Yes, if submitted in advance of RFA submission. If submitted in advance, both electronic and hardcopy must be provided. Additionally, a redacted electronic copy must be included in the filing.

Please be reminded that any RFA submission that is not complete is subject to rejection. The Primary Applicant is responsible for ensuring all elements of an RFA submission are complete and received by the Commission by August 9, 2021.

3. If license applications are submitted in advance, do they need to be submitted again in the formal hardcopy Binder submission?

No.

4. The apparent requirement that an Applicant [Platform Providers and Operators] may submit applicable licensing forms, fingerprints and supporting documentation

in advance of or with its Application submission is in conflict with Draft Regulation 5330.2(a), which provides, “Only platform providers and associated skins selected by the commission as a result of [the RFA process] may submit a license application to operate as such.” Can this inconsistency be reconciled?

The regulations attached to the RFA are in draft form and have not been adopted. The administrative rulemaking process will prevent adoption until the conclusion of this RFA process. Therefore, the RFA governs the submission of licensing forms for Applicants of this RFA.

5. Please clarify whether applications necessary for licensure must be submitted by Applicants at the time of RFA submission?

See Answer to Section 1.10, Questions 2 and 4.

6. Does the term “Application” refer to an Application for Mobile Sports Wagering licensure or an RFA submission?

If the term “Application” is being used in context of Appendix E: Licensing Documentation, then the term regards such document. Otherwise, the term “Application” generally refers to the document submitted in response to this RFA.

7. If an officer, director, or other applicable associate of an applicant Platform Provider or Operator has already completed a background investigation with the Commission, need they submit to this process again?

If an officer, director, or other associate of an applicant already holds an applicable Commercial Gaming license, such individual will not need to be re-licensed. The Applicant is encouraged to work with the Commission’s Bureau of Licensing to ensure applicability on a case-by-case basis.

8. Should Platform Providers and Operators submit background and licensing information in advance of filing their response to the RFA?

Applicants are not required to submit licensing information in advance. However, Applicants are encouraged to submit such information as early as practicable to ensure a timely consideration process.

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

## 1.12 Non-Collusive Bidding Requirements

1. In which binder should an Applicant's Non-Collusive Application Certification Form be included?

The Non-Collusive Application Certification Form is to be included in the Primary Binder.

2. Can the Commission provide guidance on non-collusive bidding?

The purpose of the non-collusive bidding prohibition is to prevent tax rate collusion among applicants. The RFA process is intended to foster a competitive process among parties seeking to operate Mobile Sports Wagering for the benefit of New York State. Collusion among potential bidders concerning a submitted tax rate would be contrary to State interests, hence its prohibition. For clarity, the non-collusive prohibitions are to prevent Applicant-to-Applicant collusion, not to prohibit discussion of tax rates among Platform Providers and Operators within a single application.

3. Will only the Primary Applicant be required to exercise a Non-Collusive Bidding Certification?

No. All parties to an Application must sign an Appendix D: Non-Collusive Application Certification Form.

4. The RFA indicates that an entity may be part of several applicant groups. Can the Commission clarify that an entity may be part of more than one Application and to what extent the non-collusive prohibitions apply to that single entity?

See Answer to Section 1.12, Question 2.

5. Will the Commission provide detail on what the term "Applicant" means in the context of an application that includes multiple Platform Providers and Operators?

In this context, an Applicant means all Platform Provider and Operators included in a submission.

6. What is the distinction between a "Primary Applicant" and an "Applicant" for purposes of the RFA?

The term "Primary Applicant" is defined at RFA Section 2.1. Otherwise, please see Answers to Section 1.12, Questions 6 and 7.

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

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

**1.15 Clarification Process**

1. If the Commission needs clarification about a particular item submitted in an Application that includes multiple Platform Providers, will it communicate exclusively through the Primary Applicant even if the clarification involves another Platform Provider and/or associated Operator?

**Yes. The Commission will communicate with the Primary Applicant.**

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

**1.17 Waiver, Release, Covenant Not To Sue and Indemnification**

1. Will only the Primary Applicant be required to exercise a Waiver, Release, Covenant Not To Sue and Indemnification Certification?

**No. All parties to an application must sign the Waiver, Release, Covenant Not To Sue and Indemnification Certification.**

2. Will each Platform provider in an application be required to complete and submit a certification?

**Yes.**

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

## **Part 2 – Licensee Duties and Distinctions**

**2.1 Mobile Sports Wagering Platform Provider**

1. Does the Primary Applicant need to integrate the text of the responses from each of the Operators or other Platforms in its Bid into one single response to each question in the RFA on behalf of all entities in the Bid, or can the Primary Applicant submit one set of responses for itself, another set of separate responses for Operator A, another set of separate responses for Platform B, etc.?

The Primary Applicant may submit separate responses from each Platform Provider and Operator when responses are specific to an individual Platform Provider or Operator.

2. Does an Applicant need to submit its license application as part of the RFA application or can its license application be submitted separately from the RFA application?

See Answer to Section 1.10, Question 2.

3. Can you please clarify if the Primary Applicant Platform Provider is also responsible for any additional Platform Provider and its Operators?

The designation of a Primary Applicant is for the purpose of the submission of an Application. Post-award, each Platform Provider included in a successful Application will be responsible for the operation and maintenance of a Platform for the integration of Operator(s) to accept and process Mobile Sports Wagers.

4. In a scenario where an Application contains multiple Platform providers, will the Commission accept the Primary Applicant's application with redacted versions of partner Platform Provider's information documentation, redacting competitively sensitive information that the partner Platform Provider cannot share with the Primary Applicant?

Confidentiality among applicant partners should be addressed among such parties.

5. How should an applicant group manage data confidentiality issues in the context of the RFA requirement for the Primary Applicant to submit the complete application on behalf of the applicant group?

Confidentiality among applicant partners should be addressed among such parties.

6. Where an Operator breaches any of the obligations that are specified as being the responsibility of the 'skin' in the draft regulation (e.g., § 5330.24. Skin reserve requirement), will any regulatory fine or other penalty be attributed to, and be the responsibility of, the Operator or the Platform Provider?

This would be reviewed and acted upon on a case by case basis.

7. Would a regulatory breach, solely attributable to an Operator's conduct, affect the Platform Provider's status as a Mobile Sports Wagering licensee?

This would be reviewed and acted upon on a case by case basis.

8. Are there particular designated portions of the RFA that must be completed on behalf of an Operator?

As indicated in Section 2.1, each Application must designate a Primary Applicant who is responsible for the submission of all information. There are Parts of the RFA, including Part 2.3 and Part 5, where specific information on each Operator is required.

9. If only one party is required to sign (e.g., the Primary Applicant), is the signature on behalf of the Primary Applicant only, or on behalf of all parties to the application (i.e., the Primary Applicant, any secondary Platform Provider and all the Operators)?

All parties to the Application are required to sign.

10. Would the Commission consider an Operator to also meet the definition of a “Platform Provider” if that Applicant owns, or otherwise controls all required technology through agreements with third parties, such that the Applicant can perform all required services of a Platform Provider?

Yes.

11. Within a consortium Application, how will confidentiality between the applicants be handled?

Confidentiality among applicant partners should be addressed among such parties.

## **2.2 Services to be Provided by a Platform**

1. The list of services of be provided by a Platform includes the generation and/or submission to the Commission all required reports. Please clarify what is meant by “all required reports.”

The Commission will be required to ensure statutory and regulatory compliance of Platform Providers and Operators. To that end, a variety of reports may be requested. The Commission will cooperatively work with each Platform Provider and Operator to understand the capacity of the hardware and software to generate such reports.

## **2.3 Services to be Provided by an Operator**



1. The draft Regulation § 5330 does not refer to Platform Providers and Operators (as the RFA does), but rather Mobile Sports Wagering licensees, Platform providers and skins. Could this be clarified by the Commission?

Please refer to the definitions provided in the RFA.

### **Part 3 – Application Instructions**

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

#### **3.2 Official Submission**

1. Is the deadline to apply August 2, 2021, as per this section or August 9, 2021, which is mentioned in Section 1.3, Schedule?

Please see Answer to Section 1.3, Question 1. Additionally, Section 3.2 OFFICIAL SUBMISSION is hereby amended to read as follows:

To apply for a License, a completed Application must be received by the Commission by August 9, 2021 at 4:00 p.m. Eastern Daylight Time. The Commission will not accept or review any Application submitted after the established deadline.

2. Do the hard copies of the Application and the electronic copies of the Application (including those on a USB drive) need to be postmarked or received by the due date and time?

All responsive RFA submission material must be received by the Commission no later than August 9, 2021 at 4:00 p.m. Eastern Daylight Time.

3. Please confirm that the Commission is willing to accept electronic notarizations, certifications and/or signatures, as required, of all documents and forms to be submitted with the Application?

No, the Commission is unwilling to accept electronic signatures.

#### **3.3 Application Format**

1. In what manner may the electronic applications be submitted to the Commission?

The media upon which the electronic applications reside shall be physically delivered to the Commission.

2. The language indicates that there is to be an original electronic application and a copy of the electronic application. Is this accurate?

The electronic application copy submitted may be cloned off the original electronic version.

3. Do Applicants need to submit only one copy of the Application with confidential information redacted?

Yes, only one redacted copy must be submitted.

4. Can the Commission confirm that the redacted copy of the application needs to be submitted only in electronic format?

Yes.

5. If an Application includes multiple Platform Providers, must all documentation be submitted by the Primary Applicant?

See Answer to Section 1.10, Question 2.

6. What is the preferred means of receiving both the physical binders and electronic files?

The methodology for delivery is left to the submitter. All submissions must be in Commission possession no later than August 9, 2021 at 4:00 p.m. Eastern Daylight Time.

7. Where should the hard copies of the Application described in Section 3.3 be submitted and are there any other instructions on delivery that we should be aware of?

Office of the Secretary  
N.Y.S. Gaming Commission  
1 Broadway Center, Fifth Floor  
Schenectady, New York 12305

For common carrier delivery, the telephone number 518-388-3400 should be listed.

8. Language reads that “more than one section may not appear in a single binder,” however this section indicates that the primary binder, sub-binder 1 and sub-binder 2 each must contain the response to entire parts. Is it correct that a binder may not contain more than one “part”?

Yes.

### **3.4 Oral Presentation**

If an oral presentation is desired by the Commission, may representatives from differing Platform Providers participate or will be oral presentation be limited to the Primary Applicant?

The necessity for, along with structure and format of any oral presentations, will be determined after Applications are received.

### **3.5 Public Disclosure of Application Materials** [no questions have been asked regarding this section]

### **3.6 Regulations** [no questions have been asked regarding this section]

### **3.7 Incurred Expenses and Economy of Preparation** [no questions have been asked regarding this section]

## **Part 4 – Application Information**

#### 1. Can a Platform Provider join multiple bids?

Yes.

#### 2. If a Platform Provider is in multiple bids and wins with one, how will its second bid be scored?

Each Application containing the same Platform Provider will be scored independently, irrespective of the score obtained by another Application containing that Platform Provider. Please note that if the Platform Provider is included in multiple Selected Applications, the Platform Provider will be required to pay the \$25 million Licensing Fee for each Selected Application.

#### 3. If an Operator is in multiple bids and wins with one, how will its second bid be scored?

If an Operator is included within a Selected Application, the Operator will be assigned to the highest scoring Application containing that Operator. All other Applications containing that Operator will be rescored removing that Operator for the purpose of making additional selections. An Operator will be licensed in connection with only one Platform Provider.

#### **4.1 Executive Summary**

1. If an Application contains multiple Platform Providers, should the Application include a single Executive Summary for the entire Application, or should an Executive Summary for each Platform provider be provided?

**A single Executive Summary should be submitted.**

2. Can you provide clarification on what the Executive Summary should address?

**The Applicant should provide a summary overview of its Application as a whole, highlighting the terms it deems most relevant.**

3. Is it necessary for a Platform Provider that intends to also be an Operator to submit the same information requested in Section 5.3 as it provided in response to Sections 4.3 through 4.14?

**Yes.**

#### **4.2 Name of Applicant** [no questions have been asked regarding this section]

#### **4.3 Contact Person**

1. May an Applicant name more than one contact person?

**No.**

#### **4.4 Locations of the Applicant's Principal Place of Business** [no questions have been asked regarding this section]

#### **4.5 Type of Business Formation** [no questions have been asked regarding this section]

#### **4.6 Table of Ownership** [no questions have been asked regarding this section]

#### **4.7 Organizational Chart**

1. Can the Commission provide clarification regarding who will be determined a "key employee"?

**See Appendix A: Draft Regulation Part 5330.6, Licensing of individuals.**

2. If a Platform Provider and Operator are undergoing a merger during the pendency of the application process, should they each submit their current, pre-merger

organization chart or should the initial application include the expected post-merger organization chart?

The current, pre-merger organization chart should be submitted, with the expected post-merger organization chart submitted as a supplement.

3. If the current pre-merger organization chart is submitted, with the ongoing duty to update applications, at what point in the merger should a new post-merger organization chart be submitted?

An Applicant is encouraged to work with the Commission's Bureau of Licensing to ensure necessity of additional or supplemental filings.

#### **4.8 Names, Addresses and Experience of Directors and Officers**

1. Please clarify the definition of "principals" as to whom an Applicant must submit resumes or curriculum vitae.

Please review the language of RFA Section 4.8, which provides detail.

2. Can the Commission specify what information is sought from resumes or curriculum vitae?

The Commission seeks comfort that the individual is qualified for the position held.

#### **4.9 Lobbyist Registration Requirement**

1. Can the Commission clarify what is required by the Applicant for the Lobbyist Registration Requirement?

Please review the Form, which is accessible at this [link](#). Scroll to the bottom of the page and, under the map, and click on Lobbyist Registration Form.

#### **4.10 Names, Addresses and Ownership and Other Interests** [no questions have been asked regarding this section]

#### **4.11 Conflicts of Interest** [no questions have been asked regarding this section]

#### **4.12 Public Officials**

1. Please clarify the individuals who need to be listed. It is unclear whether the scope of this request is limited to those with connections to public officials or whether professional services firms such as consultants, external lawyers, lobbyists assisting the application need to be listed.

Any individuals who have any arrangement, written or oral, to receive any compensation from anyone in connection with the Application, the RFA process or the process of obtaining a Mobile Sports Wagering License from the State, describing the nature of the arrangement, the service to be provided and the amount of such compensation, whether actual or contingent, should be listed.

2. Is this requirement limited to New York state governmental entities or government entities in any jurisdiction?

New York State.

3. In Section 4.6 the Commission limited the table of ownership for publicly traded companies to individuals who have 5 percent or more ownership. Is this disclosure requirement likewise limited to entities that have 5 percent or more ownership?

Yes.

4. Does the Commission intend to include all employees and officials of all governmental entities (state and local) and all of their immediate family members?

Yes.

5. Does the Commission intend to include school districts within in the definition of “governmental entities”?

No.

6. Does the Commission consider employee participation in a profit-sharing program a “beneficial interest”?

If the employee’s profit sharing interest equals 5 percent or more of the company, then yes. Otherwise, no.

7. Would the Commission consider restricting this provision to cover only Commission officials and employees?

No.

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

**4.14 Organizational Documents**

1. Are each holding company through to the ultimate owner of the Applicant required to make this submission, or just for the Applicant and its immediate owner?

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

## Part 5 – Operators

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

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

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

### 5.4 Applicant as an Operator

1. Is it necessary for a Platform Provider that intends to also be an Operator to submit the same information requested in this section as it provided in response to Sections 4.3 through 4.14?

Yes. An Application shall be completed in its entirety.

2. Please clarify whether only one set of application documents is required if the Platform Provider and the Operator are the same entity, or whether the Commission requires a separate application for each?

An entity needs to submit only one Appendix E: Licensing Documentation. This applies whether the entity is both a Platform Provider and Operator.

### 5.5 Licensure

1. Can a participant sub-license its operational license post-RFA?

No.

### 5.6 Advertising and Promotional Plans

1. Do certain elements of an Applicant's Advertising and Promotional plan have greater import than other elements or will each individual element be considered of equal value?

The plan will be evaluated as a whole.

2. How will the Commission evaluate Advertising and Promotions?

Advertising and promotions will be evaluated by the Committee based on the plans ability to bring and retain customers to its platform and attract customers from the illegal market.

3. Should an estimated marketing budget be submitted for Year 1 only, or is a longer time span preferred?

The estimated marketing budget must be forecast for a minimum of one year.

4. Is the budget limited to in-state marketing spend, or other jurisdictions as well?

Any such forecast shall relate only to the anticipated expenditure in the New York market.

5. Please elaborate on what is meant by the phrase “player acquisition models”?

The phrase “player acquisition models” means the method in which an Applicant proposes to attract authorized sports bettors to its Platform.

## **Part 6 – Applicant Technical Proposal**

1. Can an Applicant change its technology provider post-RFA selection?

The Commission fails to understand what is meant by the term “Technology Provider.”

2. Can a Platform Provider increase the number of Operators at a later date?

Such an allowance is not being considered at this time.

3. The Part 6 Preamble provides that "In cases where multiple Platform Providers and/or Operators are included in an Application, the Applicant shall provide information required by this Part in context of and including all Platforms and Providers." Does this mean the Application should be limited to "no more than the five most comparable Platform operations" for all of the Platform Providers and associated Operators in the Application?

Where information differs between individual Platform Providers and Operators, information and examples should be given for each individual entity. When the consideration should be given to the Application as a whole, one answer should be provided on behalf of all entities.



4. Is a separate description from each Platform Provider with multiple examples expected?

See Answer to Section 6, Question 3.

## 6.1 Experience

1. Please clarify whether the Commission expects a separate response for each company in a multiple Platform Providers and/or Operators Application with respect to market share?

Annual market share shall be estimated for each Platform Provider and Operator.

2. Are there geographic limitations on the examples that can be used to illustrate experience, or is it a subjective decision by the Applicant on the comparability to New York?

There are no geographic limitations to illustrate experience. The Commission will subjectively evaluate whether the proffered example is comparable.

3. A Platform Provider must describe in what jurisdictions it operates. Does this question simply seek a list of each country where it houses staff and equipment or each country in which it accepts wagers, or something else?

Platform Providers and Operators must detail each location where they are authorized to accept wagers.

5. May each Operator provide detailed examples of the five most comparable Sports Wagering operations or should the Application be limited to five examples for all of the Operators in the Application?

The required information must be provided for each Operator included in the Application.

## 6.2 Expertise

1. Can you confirm the two-page limitation in Section 6.2(A) applies only to the summary and not the additional bullet points?

Confirmed.

2. Is the two-page summary narrative described in Section 6.2(A) intended to address all Platform providers in the Application or is each Platform provider required to provide its own two-page summary?

The summary should highlight the expertise of the Applicant as a whole. Supporting documentation outlining the expertise of each individual Platform Provider and Operator shall be provided outside the summary.

3. When will the Commission inform applicants of the likely casino location(s) for hosting the servers?

No official date for the disclosure of this information has been determined. An Applicant should identify specific needs to assist the Commission in assignment of locations.

4. Beyond the requirement to locate the server which processes the wager at the casino location, will Platform Providers and/or Operators be authorized to utilize servers at a secure data center in New York (or another jurisdiction), or cloud storage, to manage other portions of their operation (for example account and wallet)?

Yes. However, such utilization must be done only with the approval of the Commission to ensure the acceptance of the wager occurs at the casino location.

### **6.3 Integrity, Sustainability and Safety**

1. Will Platform providers be authorized and/or expected to locate the server(s) for their Platform at more than one casino location to ensure resilience of their system?

A Platform Provider will be required to locate servers at only one casino location. The Commission is open to allowing a Platform Provider to site a backup server(s) at another casino location if the Platform Provider seeks such to ensure resilience of their wagering system.

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

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

### **6.6 Other Factors Impacting Revenue to the State**

1. Is the information sought intended to collectively address all the Platform Providers or Operators in the Application or may each individual Platform Provider and Operator provide its own response?

The information sought should be addressed collectively.

## 6.7 Revenue-Sharing Agreements

1. Does the Commission require any specific content in a Tribal revenue-sharing agreement?

No.

2. Will a revenue-sharing agreement with a tribal casino entity that is wholly owned by a tribe and operates an Indian gaming casino under a New York gaming compact qualify for the bonus?

Yes.

## 6.8 Pricing Matrix and Accompanying Analysis

1. What is the time horizon that the Commission requires for the economic analysis (e.g., 3-years, 5-years, 10-years, etc.)?

The Commission defers to the length the Applicant believes useful.

2. Is market share required for each Platform Provider and Operator within the Applicant's Preferred Scenario consortium, assuming no other Platform Providers and Operators?

The Applicant shall provide an analysis for its Preferred Scenario and for each alternative competitive scenario.

3. Is an Applicant required to provide different market share information beyond Preferred Scenario for each of the competitive scenarios on the Pricing Matrix?

Given the slight variations between scenarios, an Applicant is permitted to band or group various scenarios together for purposes of such analysis.

4. May Applicants have more than one preferred scenario that they bid at least 50 percent tax rate, or is the preferred scenario limited to only the amount of Platform Platforms and Operators in their specific bid?

An Applicant must bid at least a 50 percent tax rate for the scenario of Platform Providers and Operators included in their specific bid, or the scenario of two Platform Providers and four Operators if the Applicant's specific bid is less than these numbers. An Applicant must also bid a tax rate for all other scenarios in which the Applicant is willing to participate.

## 6.9 Internal Controls

1. Will the Internal Controls required to be submitted per Section 6.9 be graded?

Internal Controls will not be individually scored but will be considered as a demonstration of the Applicant's technical abilities.

## Part 7 – Evaluation Criteria and Selection Process

### 7.1 Evaluation Methodology [no questions asked]

### 7.2 Evaluation Criteria

1. Are the 5 points awarded for a sports wagering revenue share agreement with a Native American tribe awarded on a per agreement basis? For example, would agreements with two Native American tribes result in the award of 10 points?

Up to 5 points will be awarded as determined by the Committee, based on the number of Nations or Tribes with whom agreements have been executed and the perceived value of the agreements as they benefit the Nations or Tribes, in the Committee's estimation.

2. Will a revenue-sharing agreement with a tribal casino entity that is wholly owned by a tribe and operates an Indian gaming casino under a New York gaming compact qualify for the bonus?

Yes, subject to the limitations set forth in the Answer to Section 7.2, Question 2.

3. Can the Commission clarify the scoring and evaluation of Applications that contain more than one Platform Provider and Operator?

The Committee will evaluate each Application as a whole, taking into consideration all Platform Providers and Operators contained in the Application. An Applicant's Technical Factor Score must reach 60 points to become a Qualified Applicant, otherwise the Application will be removed from consideration.

4. For an Applicant that is a consortium consisting of multiple Platform Providers, if one Platform Provider is eligible for the “Native American bonus” will the entire consortium receive the 5 bonus points?

See Answer to Section 7.2, Question 1. The value of points the consortium will receive will be impacted by the estimated market share of consortium partners holding a qualifying Nation or Tribal agreement.

5. Are the points available under Technical Factor all or nothing, or is a value between 0 and the maximum possible?

Points will be given within a range of 0 and the maximum in each category, according to the Committee’s judgment.

6. Can the Commission provide guidance on the most important factors in each category for reaching maximum points?

No.

7. Are the point totals for tax rate fixed within the prescribed range? For example, will 42 percent and 49 percent both be awarded 15 points?

No, the Commission will award points within a stated tax range up to the maximum based upon increases in the proffered rate. Accordingly, for clarity the Pricing Factor Chart in RFA Section 7.2 EVALUATION CRITERIA is hereby amended to read as follows:

| <b>Pricing Factor</b>  | <b>Value</b>    |
|--|-----------------|
| <b>Proposed taxation rate on Mobile Sports Wagering Gross Gaming Revenue</b>                     |                 |
| 12.5 percent up to 30 percent  | up to 3 Points  |
| 30 percent up to 40 percent  | up to 10 Points |
| 40 percent up to 50 percent  | up to 15 Points |
| 50 percent   | up to 20 Points |
| An Applicant shall be awarded an additional point for each full percentage point over 50 percent |                 |

8. What happens if a Tribe does not waive exclusivity?

There is no need for a Nation or Tribe to waive exclusivity. State law specifies that the wager occurs where the server is located. No servers will be located on Indian lands. Therefore, by operation of law, no wagering activity will take place on Indian land or within any exclusivity zone.

9. Is the Tribal Bonus included in an applicant's Total Score?

Yes.

10. Does bringing in an MBE partner qualify for the full 2.5 points on the diversity question?

No. Points will be awarded in the allowable range based on the totality of the Application.

11. How will scoring be affected if a bid includes a condition that its tax rate will drop if additional Platform Providers and Operators beyond the bid's Preferred Scenario are subsequently added by the Commission?

Each applicable scenario will be scored separately based on the Pricing Matrix submitted by the Applicant.

12. If the Commission selects a second-place bid in addition to the first-place bid, and the first-place bid has a condition that its tax rate drops if additional Platform Providers and Operators beyond its Preferred Scenario are added, how will the Commission calculate the applicable tax rate?

The tax rate will be determined utilizing the Final Tax Rate Matrix, as described in RFA Section 7.4.

13. What benefit does being a land-based Operator within New York have from a scoring standpoint?

An Applicant would need to demonstrate that its Application is enhanced by such affiliation for the affiliation to impact scoring evaluation.

14. What factors drive the points for each technical factor category and allocation of points?

There is no publicly available list and scoring criteria beyond those set forth within the RFA.

15. Is there a specific scoring rubric?

There is no publicly available rubric.

16. Can you provide a list of qualitative factors and scoring criteria?

There is no publicly available list and scoring criteria beyond those set forth within the RFA.

17. Is the Primary Applicant weighted more heavily?

No.

18. Is scoring binary (*i.e.*, all or nothing for each category)?

No.

19. In the Pricing Factor chart, please clarify the point values in the chart. It appears that a tax rate of 30 percent could get either 3 or 10 points, 40 percent could get 10 or 15 points, and 50 percent could get 15 or 20 points.

Values at the transition point will receive the lower point value.

20. If the final tax rate chosen is exactly 30 percent, do market entrants receive a three-year license term or a five-year license term?

If selected, an Applicant would receive a five-year license term.

21. How many points are awarded to an Applicant if it bids exactly 30 percent, 3 points or 10 points?

An exact bid of 30 percent would receive 3 points.

22. In a consortium submission, can each Operator have different tax rates?

No.

### **7.3 Recommendation Methodology**

1. If re-ranking is required, what is the purpose of the Initial Ranking Score?

The initial ranking establishes the number of Platform Providers and Operators to be considered in the first iteration, so that scoring of the Pricing Factor can be undertaken.

2. If re-ranking is required, is the number of Platform Provider and Operators identified under Section 7.3(A) determined by the Preferred Scenario of the Applicant with the Highest Total Score?

Yes, if the highest-ranking Application after re-ranking occurs meets the minimum of two Platform Providers and four Operators, that is the scenario to be used. Otherwise, the scenario is determined by the combination of highest-scoring Applicants required to meet the minimum number of Platform Providers and Operators.

3. If re-ranking is required, will the “revised Total Score” be based on the tax rates proposed by the Applicant for the given amount of Platforms and Operators or the highest tax rate of any Applicants included in such re-ranking?

The tax rates proposed by the Applicant for the given number of Platform Providers and Operators will be used.

4. How does the Tribal bonus contribute to scoring?

The Bonus is included as part of the Technical Factor Score for all ranking purposes. It is excluded only for the sole purpose of establishing if an Applicant has met the minimum technical factor score threshold.

5. Can Applicants on multiple bids be a Platform Provider on one bid and an Operator on another bid?

Yes.

6. Is an Applicant awarded extra points for bidding a 50 percent or higher tax rate in more than one scenario?

No. Each scenario will be scored independently.

7. To clarify, is an Applicant only disqualified from additional license consideration when its Appendix B: Pricing Matrix does not conform with the Final Tax Rate Matrix and that Applicant declines or fails to amend its Application to conform with the Final Tax Rate Matrix within the five business days offered by the Commission?

An Applicant would still have to meet all requirements that are in place for Qualified Applicants.

#### **7.4 Final Tax Rate Matrix Determination**

1. If there is only one Selected Applicant that meets the statutory minimum number of Platforms and Operators, will the Selected Applicant’s Pricing Matrix be adopted as the Final Tax Rate Matrix?



The Final Tax Rate Matrix will be computed based on the highest-scoring Applicant or Applicants upon the completion of the RFA Section 7.3 process.

2. Will the Commission be scoring the named Applicant, or all the entities incorporated as part of an Application?

The Application will be scored as a whole.

3. Can the Commission confirm that under Section 7.3(a)(1) that the Qualified Applicant will be the only Applicant to be reviewed and ranked under Section 7.3(b)?

No. Each applicant will be reviewed using the number of Platform Providers and Operators in the highest-ranking applicants' bid.

4. If the highest Qualified Applicant under Section 7.3(a)(1) is the only applicant to be reviewed and ranked under Section 7.3(b), will that applicant's proposed tax rate be the Final Tax Rate matrix under Section 7.4?

All Qualified Applicants will be reviewed and ranked under RFA Section 7.3(b).

5. Is the preference of the Commission to select only one consortium or two?

The Commission has no preference.

6. Once the Final Tax Rate Matrix is established and the Committee offers "each Applicant" five business days to amend its Appendix B to conform with the Final Tax Rate Matrix, will every Applicant be given the opportunity to amend, or only those already deemed to be Qualified Applicants based on Technical Factor scoring?

Only Qualified Applicants will have the opportunity to amend to conform with the Final Tax Rate Matrix.

## **7.5 Additional License Consideration**

1. Does the Commission have a preference as to whether an Applicant uses a third-party vendor to perform the market analysis described in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1367-a(7)(c)(i) or whether the Applicant performs such market analysis on its own?

The Commission has no preference.

2. Can the Commission provide additional information regarding the “market analysis” to be used by the Commission to determine if additional Applicants will increase aggregate revenue?

The Commission will use all information submitted by each Applicant’s market analysis for a consensus market analysis.

3. Will the Commission use its own independent market analysis?

The Commission reserves the right to use its own market analysis, in addition to using those submitted by Applicants.

4. In considering additional licenses outside of the Selected Applicants, will each Qualified Applicant be assessed relating to its potential benefit to New York or only to the extent the next-highest-ranking Qualified Applicant was deemed a benefit to the State and awarded a license?

Only the potential benefit of the next highest ranked Applicant will be considered.

5. In assessing Additional License Consideration, will the Commission assess potential market sizing implications related to an increased or reduced number of Platforms and Operators?

Only the potential benefit of marginal increases in the number of Platform Providers and Operators will be assessed.

6. When determining whether to add additional licenses after the first two Platforms and four Operators have been identified, what tax rate will the Commission use to determine whether to award additional licenses?

After a qualifying Application or Applications have been selected, the award of an additional license will be made on the basis of benefit to the State.

## **Part 8 – Term of License and Post-Licensure Responsibilities**

### **8.1 Term of License**

1. How will the renewal process work?

While N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Section 1367-a(2)(b) provides that the Commission shall establish a process for renewal, the Commission has not yet established such process.

2. Will an incumbent Platform Provider be required to pay an additional \$25 million to renew their license?

The Commission has not yet established a renewal process.

3. Does the Commission anticipate another Request For Applications process at the end of the license term?

The Commission has not yet established a renewal process.

4. If an Applicant bids a final tax rate of 50 percent or greater under a scenario with the statutory minimum of two Platforms and four Operators, but, in a scenario where the State awards additional licenses beyond the statutory minimum and the tax rate drops below 50 percent (as a function of a matrix having a tax rate below 50 percent if the number of Operators is greater than four), will the Applicant still be awarded a license term of 10 years?

No. The term of license will be determined by the utilized Final Tax Rate.

5. If a tax rate lower than 50 percent results in a 3-year or 5-year term, what happens at the conclusion of the term?

The Commission has not yet established a renewal process.

## 8.2 Payment of Licensing Fee

1. Does the fee apply to Operators or just Platform Providers?

The fee applies to the Platform Providers.

2. Does a single fee apply if an entity is applying as both a Platform Provider and Operator?

The fee applies to the Platform Providers.

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

## Part 9 – Definitions

1. In the definition for “Mobile Sports Wagering Platform”, does the Commission make any distinction in its treatment between “owned” elements of the overall technology system and those elements that may be sourced under a “license” or “lease” from third-party technology vendors?

No.

2. Can the Commission provide more information on what the term "Applicant" means in the context of an Application that includes multiple Platform Providers and Operators?

An Applicant consists jointly of all Platform Provider and Operations included in a submission. The term "Primary Applicant" is defined at RFA Section 2.1.

3. Does the term "Applicant" refer to each Platform Provider and Operator in an Application unless the RFA expressly references a "Primary Applicant"?

For clarity, an Applicant should review the definition of "Primary Applicant" found at RFA Section 2.1.

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

**Appendix B, Pricing Matrix** [no questions have been asked regarding this Appendix]

### **Appendix C, Previous Questions & Answers**

1. In Licensing Matters the Commission simply answered 'No' to Question 10. The Question, however, has two functional parts:

"During the 10-year license term, are Operators able to voluntarily swap Platform providers, if agreed by the relevant parties?"

Are Operators and Platform Providers required to maintain the exact Platform-Operator partnerships included in the initial application?"

Does the answer "NO" apply to both questions?

No. While Platform Providers and Operators are expected to maintain the Platform-Operator partnerships included in the initial application, the Commission will consider changes that will in their subjective determination generate as much or more revenue for the State.

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

### **Appendix E, Licensing Documentation**

1. Will additional documents be required during the licensing process that are not required in response to the application included in this Appendix?

Supplemental information to complete the licensing process may be required and will be requested as such need is identified.

2. Do Applicants have to complete the Multi-Jurisdictional Business Form, as well as the Supplemental Attachment to the Multi-Jurisdictional Business Form?

Yes.

3. Where an Applicant already holds a Casino Vendor Temporary License issued by the Commission, and where the Commission is currently conducting an investigation, will the Commission waive any of, or all of, the requirements for the submission of licensing documentation set out in Appendix E relating to both entities and individuals?

An Applicant is encouraged to work with the Commission's Bureau of Licensing to ensure necessity of additional or supplemental filings. This will be reviewed on a case-by-case basis.

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

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

1. Please clarify who exactly is required to sign the Waiver, Release, Indemnification Agreement and Covenant Not to Sue. i.e. just the Primary Applicant, or all Platform Providers and Operators?

All Platform Providers and Operators associated with the Application must complete the Waiver, Release, Indemnification Agreement and Covenant Not to Sue.

2. Please confirm that a Tribe will not be required to sign the Waiver, Release, Indemnification Agreement and Covenant Not To Sue?

Confirmed.