



**FIRST AMENDED AND RESTATED GAMING FACILITY LICENSE AWARD
TIOGA DOWNS RACETRACK, LLC**

The Gaming Commission ("Commission") having issued a Request for Applications to Develop and Operate a Gaming Facility in New York State dated March 23, 2015 ("RFA"); and

Tioga Downs Racetrack, LLC ("Tioga Downs") having submitted a response to the RFA (the response, along with such other periodic amendments, updates and submissions, the "Application"); and

the Commission having reviewed the entire Application; and

the Commission having determined, based upon an investigation by the New York State Police, that Tioga Downs and its associated entities and individuals are suitable and not disqualified in accordance with sections 1317 and 1318 of the Racing, Pari-Mutuel Wagering and Breeding Law; and

the Commission having determined that Tioga Downs meets each of the minimum license thresholds in accordance with section 1316 of the Racing, Pari-Mutuel Wagering and Breeding Law; and

the Commission having awarded to Tioga Downs, to be effective on the License Award Effective Date as defined herein, a gaming facility license to develop and operate the Tioga Downs Casino ("Gaming Facility") in the Town of Nichols in Tioga County ("License"); and

Tioga Downs having thereafter submitted a written petition on March 6, 2019, to amend and modify such License to reduce the number of operational slot assets and below the minimum required by Item 5 of Exhibit 1 of the License ("Petition to Amend"); and

the Commission having reviewed the entire Petition to Amend; and

the Commission approved of the proposed changes to the License, to be reflected in Item 5 of Exhibit 1 of this First Amended and Restated Gaming Facility License Award ("First Amended and Restated License Award").

Terms of the First Amended and Restated License Award include:

Name and Address of Licensee: Tioga Downs Racetrack, LLC, 2384 W River Road, Nichols, NY 13812.

Name and Address Agent for Service of Process: American Racing and Entertainment, LLC, 2384 West River Road, PO Box 509, Nichols, NY 13812.

License Award Effective Date: The License was awarded effective as of November 23, 2016, pursuant to 9 NYCRR § 5301.6(b)(4).

First Amended and Restated License Award Effective Date: The First Amended and Restated License Award effective date is March 25, 2019. The effective date of the First Amended and Restated License Award does not affect the license duration as awarded originally.

License Duration: 10 years from the License Award Effective Date of November 23, 2016, renewable thereafter for a period of at least 10 years.

License Conditions: The License and this First Amended and Restated License Award are subject to the First Amended and Restated License Award Conditions attached hereto as Exhibit 1 ("License Conditions"). The License Conditions now in effect and as hereafter amended or modified are incorporated by reference, included as if completely set forth herein and made a part of this License.



Kristen M. Buckley
Kristen M. Buckley
Acting Secretary to the Commission

DATED: October 8, 2019

EXHIBIT 1 LICENSE CONDITIONS

All references to laws of New York or provisions of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") are to the provisions of such laws as they exist on the date hereof and as they may hereafter be amended from time to time.

General Conditions

1. License Fee

Tioga Downs shall pay, within 30 days of the License Award Effective Date, a \$20,000,000 gaming facility license fee by electronic funds transfer in accordance with subdivision 4 of section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law, 9 NYCRR § 601.1(a)(3) and 9 NYCRR § 5301.9(b).

2. Bond

Tioga Downs shall, on the License Award Effective Date, deposit via cash or bond, \$10,700,000 (representing 10% of the proposed capital investment) in accordance with subdivision 1 of section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law and 9 NYCRR § 5301.9(a).

3. Capital Investment

Tioga Downs shall invest, or cause to be invested, not less than \$107,000,000 in development of the Gaming Facility in accordance with the design plans submitted with the Application.

4. Land

Tioga Downs shall own or acquire (including by lease), within 60 days of the License Award Effective Date, the land where the Gaming Facility is proposed to be constructed, in accordance with subdivision 2 of section 1316 of the Racing, Pari-Mutuel Wagering and Breeding Law.

5. Gaming Facility

Tioga Downs shall construct the Gaming Facility that, at a minimum, shall include the following:

- a. Gaming floor of no less than 32,590 square feet featuring no less than 942 slot machines and 44 table games at opening, and no less than 892 slot machines and 34 table games on or after March 25, 2019, including a designated high-limit area within such gaming floor that will offer no less than 51 slot machines and six table games;
- b. Hotel containing no less than 161 rooms (of which at least 56 are king standard rooms, 86 are queen standard rooms, 8 are handicapped accessible rooms and 11 suites), a spa, indoor pool and fitness center;
- c. A meeting and entertainment center of approximately 6,552 square feet with capacity for at least 410 dinner guests or 590 concert guests;
- d. At least three restaurants plus various food concessions;

- e. At least three bar/lounges;
- f. Outdoor patio with capacity for 300 guests;
- g. Roof terrace with capacity for 400 guests;
- h. Waterslide, plunge pool and outdoor pool; and
- i. Space for farmers' and antiques markets.

6. Tioga Country Club

Tioga Downs shall operate the Tioga Country Club and golf course and construct a new clubhouse that is at least 5,000-square-feet.

7. Compliance with Construction Plans

Tioga Downs shall comply in all material respects with the Gaming Facility construction plans, specifications, and timelines as contained in the Application or as otherwise approved by the Commission in accordance Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and 9 NYCRR § 5301.

8. Commencement of Operations and Public Opening

Tioga Downs shall commence gaming operations within 24 months following the License Award Effective Date in accordance with subdivision 3 of section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law and 9 NYCRR § 5301. Tioga Downs shall be approved to open for gaming upon the Commission's determination that the Gaming Facility, as described in General Condition 5 above has been substantially completed in accordance with the Application and is in compliance with 9 NYCRR § 5301.10.

9. Compliance with Executive Law Article 15-A and MWBE Requirements

Tioga Downs shall comply with the provisions of Article 15-A of the Executive Law and 5 NYCRR §§ 140-144 and 9 NYCRR § 5311, including compliance with regulations in regard to utilization plans and procurement contracts for gaming facility capital projects.

10. Compliance with all Permitting Requirements

Tioga Downs shall take all reasonable steps necessary to obtain and comply with all Federal, State, local and special permits and zoning approvals as required for the project.

11. Compliance with Agreements

Tioga Downs shall maintain and comply in all material respects with the terms and conditions of the following agreements now in effect and as hereafter amended:

- a. Impacted live entertainment agreements as listed in Exhibit IX.B.2.a of the Application including the Memorandum of Understanding between Tioga Downs and Upstate Theater Coalition for a Fair Game, dated June 25, 2014.

- b. Project labor agreements as listed in Exhibit X.B.5 of the Application including the Project Labor Agreement between Tioga Downs and the Binghamton-Oneonta Building & Construction Trades Council, dated May 7, 2014 and the Memorandum of Agreement with the Rochester Regional Joint Board Workers United entered into on April 11, 2012 and amended February 11, 2015.
- c. Labor peace agreements as listed in Exhibit X.B.6 of the Application including the Memorandum of Agreement between Tioga Downs and the Rochester Regional Joint Board, Workers United dated May 9, 2014.
- d. Agreements with local partners as listed in Exhibit IX.B.4 of the Application.
- e. Affirmative action program agreements as listed in Exhibit X.B.2 of the Application.
- f. Executed signature forms contained in Attachments 1, 2 and 3 of the Application.

Tioga Downs shall be given notice and a reasonable opportunity to cure any defects or failures to comply with any agreement listed above.

12. Workforce

Tioga Downs shall employ a minimum of 526 full-time-equivalent employees.

Tioga Downs shall undertake to establish a workforce development and affirmative action program that conforms, at a minimum, to the programs and practices described in Exhibit X.B. of the Application and that complies with Racing, Pari-Mutuel Wagering and Breeding Law, 9 NYCRR § 5312 and any applicable regulations promulgated in relation thereto.

13. Problem Gambling

Tioga Downs shall undertake to establish a problem gambling program that conforms, at a minimum, to the program described in Exhibit X.A. of the Application and complies with sections 1342, 1362 and 1363 of the Racing, Pari-Mutuel Wagering and Breeding Law and any applicable regulations promulgated in relation thereto.

14. Litigation Update

Tioga Downs shall, within 30 days of the date hereof and thereafter on a quarterly basis, file with the Commission and timely update a list regarding the status of all litigation to which Tioga Downs is a party. For the purposes of this condition, litigation is defined as any matter in which (a) the damages may reasonably be expected to exceed \$1,000,000 and which is not fully and completely covered under an insurance policy with a licensed insurance carrier or (b) the legal or equitable relief requested seeks to revoke or suspend Tioga Downs's license or otherwise may materially affect Tioga Downs's ability to apply for or maintain a gaming facility license in New York State or any other jurisdiction. For purposes of this section Tioga Downs shall include any qualifying entities and individuals associated with the project as determined by the Commission.

15. Compliance with debt to equity ratio requirements

Tioga Downs shall comply with the debt-to-equity ratio requirements as established through regulation by the Commission.

16. Notification of Defaults

Tioga Downs shall promptly inform the Commission of any declared default or any failure to meet any material payment of interest or principal when due under any of its existing or future debt.

17. Notification of Refinancing of Debt

Tioga Downs shall, pursuant to 9 NYCRR § 5301.10(b), provide written notification to the Commission if Tioga Downs intends to enter into a transaction to refinance its existing debt or incur any additional capital debt obligations of \$50 million or more, whether in a single transaction or cumulative transactions during any consecutive 12-month period, other than as contained in the Application.

18. Financial Audit Statements

Tioga Downs shall comply with any and all regulations promulgated by the Commission requiring the submission of audited financial statements.

19. Anti-Money Laundering

Tioga Downs shall submit at least 90 days prior to the anticipated opening date and, thereafter, implement and maintain a plan for compliance with the United States Currency and Foreign Transaction Reporting Act ("The Bank Secrecy Act of 1970") and any applicable regulations promulgated in relation thereto.

20. Application for Alcoholic Beverage License

Tioga Downs shall apply for a casino alcoholic beverage license in accordance with section 1340 of the Racing, Pari-Mutuel Wagering, and Breeding Law and any applicable regulations promulgated in relation thereto.

21. Conditions Binding as of date hereof

All of the terms and conditions of the License, except those specific to the License Award Effective Date, are binding as of the date on which the License was granted. All of the terms and conditions of the First Amended and Restated Gaming Facility License Award, except those specific to the License Award Date, are binding as of the date hereof.

22. Re-opening of conditions

Nothing shall prevent the Commission from amending or modifying the License Conditions upon a petition by Tioga Downs or upon a motion by the Commission.

23. Conditions Binding on Successors and Assigns

All of the terms and conditions of the license shall be binding upon Tioga Downs and its permitted successors and assigns.