

**VIDEO LOTTERY OPERATION LICENSE IN  
BALTIMORE CITY  
(#2012-0101)**

**RESPONSES TO WRITTEN QUESTIONS  
June 22, 2011**

This List of Questions and Responses #4 (Q&A#4) is being issued to clarify certain information contained in the above named RFP. The statements and interpretations of License requirements, which are stated in the following questions are not binding on the State, unless the State expressly amends the RFP. Nothing in the State's responses to these questions is to be construed as agreement to or acceptance by the State of any statement or interpretation on the part of the entity asking the question as to what the License does or does not require. Some questions have been edited for brevity and clarity, and duplicate questions may have been combined or eliminated.

The following are questions submitted pursuant to the RFP and the Location Commission's responses to those questions:

**48. QUESTION:** Section 1.3: In the glossary of terms in the RFP "Proceeds" is defined as "The part of the amount of money bet through VLTs that is not returned to successful Players but is otherwise allocated under the law".

a) COMAR section 14.01.02.10 states that unclaimed video lottery jackpots are returned to the State after 182 days. Please confirm that said jackpots are accounted for as a cost in determining "Proceeds".

b) Does promotional play count or not toward the taxable amount of VLT proceeds?

**ANSWER:** a) Yes, unclaimed jackpots are accounted for as a cost in determining Proceeds.

b) As stated in the definition contained in Section 1.3, "Proceeds" does not include money given away by an Operation Licensee as free promotional play and used by players to bet in a VLT. (Coin In – Coin Out – Promotions = Proceeds)

**49. QUESTION:** a) What if there is no resolution in the outstanding litigation between BCEG and Baltimore City and the applicant cannot get clear title to the property?

b) Are there any other outstanding legal issues with respect to the Gateway South property?

**ANSWER:** a) In February 2011, the Circuit Court for Baltimore City, in *BCEG v. Mayor and City Council*, ordered and declared that the City “is the absolute owner of the [property], free and clear from any claims by BCEG under its contracts with the Mayor and City Council” and that “there exists no cloud upon the title of the property at issue resulting from BCEG’s claim of right to purchase and or lease said properties.”

b) On June 21, 2011, Baltimore City announced that it had reached a settlement agreement with the Baltimore Development Corporation and Gateway South LLC (GWS) concerning GWS’ exclusive negotiating privilege. The settlement agreement was approved by the Baltimore City Board of Estimates on June 22, 2011.

**50. QUESTION:** Section 3.2: In paragraph 1 of the Certification in Form 1008 (page 14 of 16,) an applicant for a Principal Entity waiver must certify it has "no present involvement in and ... no intention of influencing or affecting the affairs" of a licensee. The last sentence of that paragraph acknowledges that applicant for a Principal Entity waiver "shall be permitted to vote on matters put to the vote of the outstanding security holders."

a. Are there any limitations on those voting rights?

b. Is an applicant for a Principal Entity waiver permitted to vote for the managers of a manager-managed limited liability company?

**ANSWER:** Section 3.2 of the RFP is being amended. Form 1006 is being revised and Form 1008 will no longer be used. (See Amendment #1 to the RFP)

**51. QUESTION:** Section 3.2: In paragraph 1 of the Chief Executive Officer Affidavit of Principal Entity in Form 1008 (page 15 of 16,) the CEO must certify that the applicant for the Principal Entity waiver holds an ownership interest under 15% of the licensee or its holding or intermediary companies “if such securities are those of a publicly traded corporation.” Does that mean a Principal Entity waiver is not available if the securities constituting the ownership interest in the licensee or its holding or intermediary companies are not publicly traded?

**ANSWER: Section 3.2 of the RFP is being amended. Form 1008 will no longer be used. (See Amendment #1 to the RFP)**

**52. QUESTION:** If a Principal Entity with a 5-15% ownership interest in the licensee or its holding or intermediary companies has filed Form 1008 and qualifies for a Principal Entity Waiver, are the officers, directors, managers and owners of that entity required to file Form 1007 and seek their own individual waivers or does the Principal Entity waiver apply to those individuals also?

**ANSWER: Section 3.2 of the RFP is being amended. Form 1006 is being revised and Form 1008 will no longer be used. Whether or not Form 1007 should be filed will depend upon whether the person intending to file the form is required to be licensed, based on that individual's functions within the Facility. (See Amendment #1 to the RFP)**

**53. QUESTION:** Section 3.2: In paragraph C.10 of Form 1007, the definition of Principal Employee includes "...an officer; director; person who directly holds a beneficial interest in or ownership of the securities of an applicant or licensee; person who has a controlling interest in an applicant or licensee, or has the ability to elect a majority of the board of directors of a licensee or to otherwise control a licensee...."

- a. Are the enumerated Principal Employees of an entity eligible for a Principal Employee waiver if they are not "...assigned to the Business Entity Gaming Operations and [their] duties do not have an effect on or require contact with slot machines for use or play in Maryland"?
- b. Other than matters related to the disclosures required by Form 1007, are there any other criteria affecting the eligibility of a Principal Employee of the Licensee or a privately held holding or intermediary company of a Licensee for a Principal Employee waiver?

**ANSWER: a) Section 3.2 of the RFP is being amended. Whether or not Form 1007 should be filed depends on whether the person intending to file the form is required to be licensed, based on that individual's functions within the Facility. (See Amendment #1 to the RFP)**

**b) The criteria for the evaluation of Form 1007 waiver applications are set out in statute (Md. Code Ann., § 9-1A-16) and regulation (COMAR 14.01.10.12).**

**54. QUESTION:** Section 3.2: Since Forms 1004 (or 1007) and 1006 (or 1008) must be submitted with the proposal (if not submitted previously), what effect

would the denial of an application for a waiver by an individual or entity pursuant to Forms 1007 or 1008, respectively, have on an Applicant's proposal?

- a. Would the proposal be rejected or be deemed unacceptable?
- b. If so, would the Applicant be entitled to a prompt refund of the initial License Fee?
- c. Would the Applicant be given the opportunity to supplement the proposal and submit Forms 1004 or 1006 for such individual or entity?
- d. Would the Applicant be given the opportunity to revise the proposal to substitute other individuals or entities?

**ANSWER: a) No**

**b) N/A**

**c) Yes**

**d) An Applicant may be permitted to substitute other individuals or entities, at the sole discretion of the Location Commission. Such substitutions would not generally be considered to be a revision of the Applicant's Proposal, unless the Location Commission in its discretion determined that the substitutions were so numerous or so substantive that they constituted an overall constructive withdrawal of the Applicant's original Proposal.**

**55. QUESTION: Section 3.2: a) May a non-US individual or entity be an acceptable Principal, Financial backer, or holding or intermediary company of a Licensee regardless of whether such individual or entity has ever paid federal or state taxes, does not otherwise do business in the United States, and therefore much of the information required to be supplied pursuant to Forms 1004 and 1006 is not applicable?**

**b) Are there alternative forms to Exhibits 15, 17 and 18 to Form 1004 and Exhibits 11 and 13 to Form 1006 applicable to information to be obtained from non-US jurisdictions and other sources?**

**ANSWER: a) Yes (See COMAR 14.01.10.05C).**

**b) Alternative forms or directions on how to complete the existing forms will be made available upon request as necessary. Contact Steven W. Martin, VLT Licensing Specialist, at the Lottery (410-230-8936)**

**56. QUESTION:** Section 3.2: does not indicate whether a natural person with any indirect or direct ownership (not a director officer partner or trustee) of an applicant must file any personal disclosure form in this RFP. Is that accurate? How about if the natural person does not own 5% or more? Is the entity “interest of 5% or more” that must file just direct ownership of the applicant, or does that also apply to upstream entities in the chain of ownership?

**ANSWER:** Section 3.2 of the RFP is being amended. Individuals and entities having a beneficial or proprietary interest of 5% or more in an Applicant for a Video Lottery Operation License must submit Form 1006 – Principal Entity Disclosure Form. This requirement applies to all upstream entities. (See Amendment #1 to the RFP)