

REQUEST FOR PROPOSALS

FOR A

VIDEO LOTTERY OPERATION LICENSE

IN ALLEGANY COUNTY

#2012-0102

From:

State of Maryland
Video Lottery Facility Location Commission

Issue Date: June 24, 2011
Pre-Proposal Conference: July 20, 2011
Due Date: September 23, 2011

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 Request for Proposals (RFP), should immediately contact the Location Commission (see Section 2.1.1) and provide their names and mailing addresses so that amendments to this RFP 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 further 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 License in Allegany County

RFP Number: 2012-0102

RFP Issue Date: June 24, 2011

The Maryland Video Lottery Facility Location Commission ("Location Commission") is soliciting Proposals from qualified Applicants seeking to be awarded a Video Lottery Operation License in Allegany County 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, Maryland 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
e-mail: rhowells@msla.state.md.us

Pre-Proposal Conference: July 20, 2011 at 10:00 a.m. (Local Time)
Maryland State Lottery Agency
Montgomery Park Business Center-Suite 330
1800 Washington Boulevard
Baltimore, Maryland 21230

Deadline for Receipt of Proposals: September 23, 2011 by 2:00 p.m. (Local Time)

MBE Ownership and Participation Goals: As part of its required evaluation criteria for business and market factors, the Location Commission will consider the percent of Applicant ownership by entities meeting the MBE definition under State law. In addition, a MBE subcontracting goal of a minimum of **25%** has been established for the License resulting from this RFP (see Section 2.21).

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THE FOLLOWING APPENDICES ARE AVAILABLE ONLINE AT <http://slots.mdlottery.com/> :

APPENDIX J – SERVICES AND SUPPLY AGREEMENTS AND LEASE SCHEDULE
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APPENDIX N – AUDITED FINANCIAL STATEMENTS

SECTION 1. INTRODUCTION/OBJECTIVE

1.1 SUMMARY STATEMENT

- 1.1.1** The Maryland Video Lottery Facility Location Commission (“Location Commission”) is soliciting Proposals from Applicants seeking to be awarded a Video Lottery Operation License (“Operation License”) in Allegany County as described in this RFP.
- 1.1.2** The Location Commission intends to award as a result of this RFP a license for the operation of the statutory allocation of up to 1,000 video lottery terminals (VLTs) in Allegany County on State property associated with the Rocky Gap State Park. Subsequent to License award, Board of Public Works approval is required for a ground lease and purchase agreements, and financial settlement on the purchase of the Rocky Gap Lodge and Resort’s assets.
- 1.1.3** The Location Commission is not required to award the Operation License and reserves the right to cancel this RFP and/or reject all Proposals when such action is determined to be in the best interest of the State.
- 1.1.4** The Applicant’s Proposal must meet the minimum requirements in Section 1.2.

Pursuant to Chapter 240 of 2011, the Initial License Fee is waived for up to 500 VLTs for the Allegany County location. Chapter 240 also prohibits the Location Commission from awarding more than 1,000 VLTs for the Allegany County location. As such, the Proposal shall include the Applicant’s Initial License Fee if requesting more than 500 VLTs (\$3 million for 500 additional VLTs, prorated based on the exact number of VLTs contained in the Proposal - see Sections 1.2.2.1 and 2.10 for further instructions), completed Background Investigation Application and any other required forms, and the associated background investigation, application, and license fees.
- 1.1.5** Applicants are invited to engage 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** 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 has adopted regulations concerning Application

and License fees for these persons and other designated individuals, which must be paid by the Applicant or Licensee (see COMAR 14.01). Applicants and potential Licensees shall reimburse the Lottery Commission for all costs and expenses related to the processing and investigation of the Application package including, but not limited to, background investigations conducted by a contractor for the Lottery Commission, in-house costs for Lottery Commission staff based on the hourly rates of Commission employees, and all reasonable expenses such as travel, lodging, and meals.

- 1.1.7** 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 late 2011, with the License term set to begin upon issuance of the License. A full fifteen (15) years of operation will be provided 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.

- 1.1.8** An annual fee of \$425.00 shall be paid by the 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 under the 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, the 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. The Central System has been obtained from GTECH through a separate procurement conducted by the Lottery Commission. The Lottery Commission has awarded master contracts to manufacturers of VLTs and the Licensee may have VLTs from more than one manufacturer installed. The manufacturers currently under contract for VLTs are AGS Partners, LLC, Aristocrat Technologies, Inc., Bally Gaming, Inc., Diamond Game Enterprises, Inc., IGT, KGM Gaming, LLC (Distributor for Ainsworth Gaming), Scientific Games International, Inc., Shuffle Master, Inc., and Spielo Manufacturing ULC. (Distributor for Konami Gaming and WMS Gaming). The VLTs offered will be Class III machines with ticket in ticket out (TITO) capability. The Licensee shall work in cooperation with the VLT contractors, the Central System contractor, and any other Lottery Commission or Lottery contractors to insure smooth implementation of all systems.

- 1.1.10** An Applicant is expected to be conversant and abide in all respects with the VLT law and State Lottery Commission regulations, which may be changed or amended from time to time. An Applicant may not submit a Proposal that is inconsistent with the VLT law or State Lottery Commission regulations. The Applicant must provide a specific affidavit expressing its intent to comply with the terms, conditions and requirements of the VLT law, this RFP, and Lottery Commission regulations (Appendix A) and provide any information required by this RFP.

1.2 MINIMUM REQUIREMENTS

The Minimum Requirements apply to all Applicants.

- 1.2.1** Pursuant to Chapter 240 of 2011, the Applicant must propose to purchase the Rocky Gap Lodge and Golf Resort. The Applicant shall be either the owner or operator of the proposed Video Lottery Facility. **See Sections 3.1.6 and Section 4 for further instructions.**

- 1.2.2** A Proposal submitted for an Operation License at a Facility Location in Allegany County shall:

1.2.2.1 If requesting more than 500 VLTs, include an Initial License Fee with the Proposal of at least \$3,000,000 per 500 VLTs included in the Proposal that shall be prorated based on the exact number of VLTs above 500 VLTs contained in the Proposal. Any Proposal for more than 500 VLTs will be evaluated based on the number of VLTs for which the Initial License Fee is paid.

The Initial License Fee shall be in the form of a certified check payable to the "State of Maryland/State Lottery Agency" or a wire/electronic transfer and shall be held in escrow until award of the License. The specific instructions for wire/electronic transfer are as follows:

Maryland Lottery Account Number – 446014266944

Name of the Account – Maryland Lottery VLT Escrow Account

026009593 Bank of America New York, New York

If required, the SWIFT code is BOFAUS3N Ref: Bank of America in the State of Maryland

Upon award of the License, the Initial License Fee shall accrue to the Education Trust Fund established under the VLT Law. Applicants making payment by wire/electronic transfer shall provide written evidence with the Transmittal Letter submitted with the Proposal (**see Section 3.1.3**) that payment has been made by wire/ electronic transfer;

- 1.2.2.2** Include all required Application and license fees for the

Background Investigation Application forms with the Proposal (fees shall be in the form of a certified check payable to the “State of Maryland/State Lottery Agency” or a wire/electronic transfer). Applicants making payment by wire/electronic transfer shall provide written evidence with the Transmittal Letter submitted with the Proposal (see **Section 3.1.3**) that payment has been made by wire/electronic transfer;

To expedite the background application process, an Applicant may, at its option, submit the Operator License Application Form (Form 1001) and all required application and license fees specified in the applicable form prior to the Deadline for Receipt of Proposals. The name and any identifying information of an Applicant will be kept confidential until after the Deadline.

1.2.2.3 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.

Pursuant to Chapter 240 of 2011, the purchase price for the Rocky Gap Lodge and Golf Resort will be counted by the Location Commission toward the direct investment requirement (see **Section 3.1.6.3**).

1.2.2.4 Pursuant to Chapter 240 of 2011, provide for a *maximum* fee in the amount of 50% of VLT Proceeds to be paid to the Video Lottery Operation Licensee for the first 10 years of operations, and a *maximum* fee of 33% of VLT proceeds after the first 10 years of operation.

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.

Awardee – an Applicant whose Proposal for a video lottery operation license has been approved by the Video Lottery Facility Location Commission but whose license has not yet been issued by the State Lottery Commission.

Background Investigation Application – An application for a security, criminal, and credit investigation of a person or entity who applies for or who is awarded a license under this RFP.

Form 1001 -	Operator Application/Disclosure
Form 1004 -	Principal Employee Application/Disclosure
Form 1006 -	Principal Entity Application/Disclosure
Form 1007 -	Principal Employee Waiver
Form 1009 -	Institutional Investor Waiver
Form 1020 -	Contractor Application Form

Web Address: <http://slots.mdlottery.com/licensing>

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 – A person or individual, other than an employee of a video lottery operation licensee, who contracts with a video lottery operation licensee or other person to:

- (a) manage or operate a video lottery Facility;
- (b) provide security for a video lottery Facility;

- (c) perform service, maintenance or repairs of a video lottery terminal, central operating system, associated equipment, or software;
- (d) own or control a person described in subsections (a) – (c) of this section; or
- (e) provide any other service that is essential to operation of a video lottery Facility.

Unless the context clearly indicates otherwise, contractor includes a subcontractor.

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 – 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, FY12 represents the period beginning July 1, 2011, through June 30, 2012.

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

Institutional Investor –

- (1) a retirement fund administered by a public agency for the exclusive benefit of federal, state, or local public employees;
- (2) an investment company registered under the Investment Company Act of 1940;
- (3) a collective investment trust organized by banks under Part 9 of the rules of the Comptroller of the Currency;
- (4) a closed end investment trust;
- (5) a chartered or licensed life insurance company;
- (6) a property and casualty insurance company;
- (7) a banking or other chartered or licensed lending institution;
- (8) an investment advisor registered under the Investment Advisors Act of 1940; or

- (9) any other person registered in any foreign jurisdiction and regulated in accordance with a statute of any foreign jurisdiction that the Commission determines to be substantially similar to that regulated by the Investment Company Act of 1940 or the Investment Advisors Act of 1940.

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

Licensee or Operation Licensee – An Applicant who has been issued a License and, if the context so indicates, an Awardee.

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 paragraph (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 State's 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 5% in the property or business of an Applicant or Licensee.

Person – Unless such a construction would be unreasonable, a corporation, partnership, business trust, statutory trust, or limited liability company.

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

Principal employee –

- (1) means a video lottery employee who owns, controls or manages an Operation Licensee, or otherwise exercises control over a video lottery function of a Licensee;
- (2) includes an employee of a contractor who performs any function of a contractor as defined in this section;
- (3) does not include a gaming employee as defined in Lottery Commission regulations.

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 jackpot offered by a video lottery terminal that may increase uniformly in value based on wagers as the video lottery terminal is played.

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

Proposal – The response by an Applicant to this RFP.

RFP – This Request for Proposals for a Video Lottery Operation License (#2012-0102), including any amendments.

State – The State of Maryland.

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

Video Lottery – 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 awarded by the Video Lottery Facility Location Commission and issued by the State Lottery Commission to a person that allows players to operate video lottery terminals and which incorporates all terms and conditions of the RFP, Amendments to the RFP, the Operation Licensee's Proposal, and the Location Commission's Decision Statement, and is in compliance with the VLT law and all applicable Lottery Commission regulations.

Video Lottery Operator – A person licensed to operate a Video Lottery Facility.

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 Terminal Program, State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland, as amended from time to time.

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SECTION 2. REQUEST FOR PROPOSALS TERMS AND CONDITIONS

2.1 ISSUING OFFICE

This RFP is issued by the 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.

2.1.1 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, Maryland 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.

2.1.2 After the award of a License, the State Lottery Commission ("Lottery Commission") shall regulate the operation of VLTs, including licensing of Video Lottery Operators.

2.2 PROCEDURE FOR CONDUCTING THE REQUEST FOR PROPOSALS

The award of a Video Lottery Operation License 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 or inapplicable as follows.

2.2.1 Consistent with the VLT law, the Location Commission will award Operation Licenses through a competitive process consistent with the process for Competitive Sealed Proposals under Title 13 of the State Finance and Procurement Article (SFP), to the extent feasible.

SFP § 13-104 relates generally to the process for negotiating a State procurement contract through Competitive Sealed Proposals. However, in this license application process, there is no Procurement Officer, nor is there an equivalent to the Agency Head of the Unit. Accordingly, references to "Procurement Officer" and "Unit" should be interpreted to mean the Location

Commission acting in its official capacity. Further, subsections (a), (c), (e)(2), (f), and (g) of § 13-104 are not applicable to this process. Similar concepts may be addressed elsewhere in this RFP.

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 awarded and in accordance with State law.

A Register of Proposals for the Operation License will be prepared that identifies:

- the name of each Applicant including officers, directors, and principals;
- the number of VLTs proposed for the Facility; and
- the Initial License Fee paid, if applicable.

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.

2.2.2. 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 Allegany County sets higher minority business participation requirements than the State, the Applicant shall meet the County's minority business participation requirements to the extent possible.

2.2.3. 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 award or rejection of the Video Lottery Operation License by the Location Commission. As held by the Court of Appeals of Maryland in *Laurel Racing Assoc., Inc. v. Maryland Video Lottery Location Comm'n, et al.*, 409 Md. 445 (2009), an appeal to the Board of Contract Appeals may be taken only upon award of the single Operation License for Allegany County. If no license is awarded in Allegany County, an appeal to the Board of Contract Appeals may be taken only after the Location Commission has rejected all Proposals for that operation license.

2.3 PROPOSAL DISCLOSURE PROHIBITION

- 2.3.1** 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, meetings with the Department of Natural Resources (DNR), the Maryland Economic Development Corporation (MEDCO), MEDCO bondholders, the manager of the Rocky Gap Lodge and Resort, and any other interested parties, scheduled Discussions, changes in financial condition, or in open meetings of the Location Commission. **Contact with any interested party without the prior approval of the Location Commission is grounds for rejection of an Applicant's Proposal.** (See Sections 2.6, 2.8.1, 4.2.3.2, 5.4 and 5.5.)
- 2.3.2** Until an Operation 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 by the Location Commission for the purposes of clarification, evaluation, and/or negotiation.
- 2.3.3** 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.

2.4 eMARYLAND MARKETPLACE ("eMM")

- 2.4.1. 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.

The Location Commission will make all efforts 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.

- 2.4.2. 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 an

Operation License award, an Applicant must be registered on eMM. There is no fee for registration on eMM.

2.5 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.

<u>Event</u>	<u>Date</u>
Issue Date of RFP	June 24, 2011
Pre-Proposal Conference	July 20, 2011
Site Visits – Facility Location (Section 2.7)	July- August 2011
Deadline for Receipt of Proposals	September 23, 2011
Oral Presentations	October – November 2011
Anticipated Award Date	December 2011

2.6 PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference (“Conference”) will be held on July 20, 2011, beginning at 10:00 a.m. Local Time, at the Maryland State Lottery Agency, Montgomery Park Business Center-Suite 330, 1800 Washington Boulevard, Baltimore, Maryland 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 ensure the Applicant's inclusion on the contact list for distribution of all documents related to the RFP process.

As promptly as is practicable after 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 July 14, 2011, 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 **July 14, 2011**. Reasonable efforts will be made to provide such special accommodation.

2.7 SITE VISITS TO FACILITY LOCATIONS

Applicants will be provided an opportunity to visit the location in Allegany County at Rocky Gap State Park. Applicants should contact the Location Commission (see Section 2.1.1) to establish the time, place, procedure, scope, and format for site visits.

2.8 QUESTIONS

2.8.1. The Location Commission, prior to the Pre-Proposal Conference, will accept written questions from prospective Applicants, which should be received no later than July 14, 2011.

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 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.

2.8.2. 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 any doubt as to the meaning or intent of any section herein, the potential Applicant must request clarification from the Location Commission as soon as possible and in any event prior to the Proposal due date. Failure to make a timely request for clarification shall estop review of such concerns by the State Board of Contract Appeals. Applicants will be required to submit with their Proposals an acknowledgment of the requirements of this section (Appendix A).

2.8.3. 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.

2.9 PROPOSAL SUBMISSION

2.9.1 Deadline for Receipt

All Proposals must be received by the Video Lottery Facility Location Commission at the address listed in Section 2.9.2 below no later than 2:00 p.m. (Local Time) on September 23, 2011, to be considered.

2.9.2 General Submission Requirements

Proposals 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, Maryland 21401**

Requests for extension of the Deadline for Receipt of Proposals 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.

2.9.3 Proposal Format

The Proposal must be formatted and submitted in the following manner:

- A. An unbound original, so identified, and twelve (12) paper copies. All paper copies should be unbound and assembled in a manner that ensures all documents will be maintained in a secure and orderly manner in a three ring binder. One (1) complete and exact electronic copy shall also be submitted and included with the original paper copy of the Proposal.
- B. 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. Any drawings may be submitted in PDF format.
- C. 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.
- D. All pages of the Proposal must be consecutively numbered from beginning (Page 1) to end (Page "x"). The final page shall state "Final Page".
- E. For the Background Investigation Application and other forms 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.

2.9.4 Actions After Deadline for Receipt of Proposals

Proposals or requests for unilateral withdrawal or modification received by the Location Commission after the Deadline for Receipt of Proposals 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 modification of a Proposal which makes its terms more favorable to the State shall be considered at any time it is received and may be accepted in the sole discretion of the Location Commission; or
- C. Under extraordinary circumstances, in the sole discretion of the Location Commission.

2.10 LICENSE AND APPLICATION FEES

2.10.1 Initial License Fee

The Initial License Fee is waived for the first 500 VLTs proposed for the Operation License in Allegany County, and no more than 1,000 VLTs may be awarded by the Location Commission. **Any Proposal submitted for VLTs in excess of 500 VLTs shall include an Initial License Fee for any additional VLTs requested (\$3,000,000 for an additional 500 VLTs) in the Proposal.** This fee shall be prorated based on the exact number of VLTs contained in the Proposal for which the Initial License Fee is required to be paid.

Any Proposal for more than 500 VLTs will be evaluated based on the number of VLTs for which the Initial License Fee is paid.

The Initial License Fee shall be in the form of a certified check payable to the "State of Maryland/State Lottery Agency" or a wire/electronic transfer and will be deposited by the Location Commission into a bank account of the State.

2.10.1.1 Disposition – Successful Applicant/Licensee

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

2.10.1.2 Disposition – Refunds¹

Unsuccessful Applicants: 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 and application fees and background investigation costs incurred by the State, within forty-five (45) days after the award of a License to another Applicant, unless the Applicant challenges the award of the License as stated in Section 2.2.3. Any interest earned thereon will be retained by the State.

Failure to Be Issued License: The Initial License Fee will be refunded, in the sole discretion of the Location Commission, to an Awardee who fails to be issued a License in spite of all good faith efforts by the Awardee to comply with the conditions for issuance of the License. Any interest earned thereon will be retained by the State.

2.10.1.3 Disposition – Forfeiture by Applicant

Withdrawal of Proposal: Applicant's withdrawal of Proposal, except as provided in Section 2.9.4, will result in the forfeiture of the Applicant's Initial License Fee. Any interest earned thereon will be retained by the State.

Revocation after 365 Days: If, after 365 days following Deadline for Receipt of Proposals, the Location Commission has not made an award, and the Applicant revokes its Proposal under Section 2.11 of this RFP, the Initial License Fee shall be refunded in accordance with the procedure for refunding the Initial License Fee to an unsuccessful Applicant.

Failure to Complete Licensure Process: If an Applicant, upon acceptance by the Location Commission of its Proposal, shall fail or refuse to complete the licensure process or fully cooperate with the Location Commission or the Lottery Commission 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 in order 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 issue of refund of the Initial License Fee was the subject of litigation which has been subsequently dismissed. Any language in this RFP that is different from RFP # 2009-0101 issued on December 19, 2008, is not intended as a change in refund policy. Any such change is intended for clarification only and for the sole purpose of avoiding further litigation.

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.

2.10.2 Background Investigation Application Fees and Costs

Applicants shall pay any other required fees such as but not limited to fees required to be submitted with the Background Investigation Application, administrative costs of the background investigation process, or any other fees designated by the Lottery Commission. Furthermore, there may be additional costs and expenses incurred by the Commission in its processing and investigation of Applicants. 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 2.10.1.

2.11 DURATION OF OFFER

Proposals submitted in response to this RFP are irrevocable for three hundred sixty-five (365) days following the Deadline for Receipt of Proposals. This period may be extended only by written mutual agreement between the Applicant and the Location Commission.

2.12 ORAL PRESENTATIONS/DISCUSSIONS/SITE VISITS

Oral Presentations

Applicants will be required to make individual oral presentations concerning their proposed Facility to the Location Commission and may be required to make presentations in a public meeting.

Discussions and Negotiations

During the evaluation process, in its sole discretion, the Location Commission may enter into confidential discussions in closed session with qualified or potentially qualified Applicants in order to obtain additional information or 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 principal employees

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 on the Applicant.

2.13 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.

2.14 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 the Transmittal Letter accompanying their Proposals. 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.

2.15 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 made by any person when preparing their respective Proposals.

2.16 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 such action is determined to be in the best interest of the State.

2.17 PROPOSAL ACCEPTANCE; DISCUSSIONS AND NEGOTIATIONS

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 some or all qualified or potentially qualified Applicants, as outlined in Section 5.4, in any manner necessary to serve the best interests of the State. This may be followed by submission of revised Proposals. Any receipt of revised Proposals does not commit the Location Commission to award an Operation License. The Location Commission also reserves the right, in its sole discretion, to award an Operation License or reject a Proposal based upon the written Proposals received without prior discussions or negotiations with respect to the Proposals.

2.18 INCURRED EXPENSES AND ECONOMY OF PREPARATION

The State is not 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 and concise description of how the Applicant proposes to meet the requirements of this RFP.

2.19 PUBLIC INFORMATION ACT NOTICE

An Applicant should clearly identify those portions of its Proposal that it deems to be confidential, or that contain any 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 Maryland Public Information Act ("PIA"), Title 10, Subtitle 6, Part III, 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 State law.

2.20 APPLICANT/LICENSEE RESPONSIBILITIES

The Location Commission will award an Operation 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 contractor.

2.21 MINORITY BUSINESS ENTERPRISE (MBE) SUBCONTRACT PARTICIPATION GOAL

Minority Business Enterprises are encouraged to respond to this RFP.

In this section, Awardee and Licensee are used interchangeably.

2.21.1 The Awardee/Licensee will be closely scrutinized and monitored for Minority Business Enterprise (MBE) compliance. The Governor's Office of Minority Affairs ("GOMA") shall monitor 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.

2.21.2 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 MBE participation as described under Title 14, Subtitle 3 of the State Finance and Procurement Article.

A minimum certified MBE participation goal of **25%** has been established for the expenditures related to the Operation License issued as a result of this RFP, including but not limited to design, construction, development and operational expenditures.

Chapters 252 and 253 of 2011 repeal provisions of law related to minimum sub-goals for African American-owned MBEs and Women-owned MBEs and instead require GOMA to establish guidelines to determine whether sub-goals for minority groups should be set.

By submitting a Proposal in response to this RFP, the Applicant/Licensee agrees to meet or exceed the overall and sub-goals established in the License with the participation of Maryland Department of Transportation ("MDOT") certified MBEs.

2.21.3 If Allegany County sets a higher minority business participation requirement than the State, the Licensee shall meet Allegany County's minority business participation requirements to the extent possible.

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

2.21.5 MBE forms are contained in Appendix D: Minority Business Enterprise

(MBE) Instructions/Forms.

Each Applicant shall complete, sign and include with its Proposal submitted to the Location Commission in response to this RFP Appendix D-1 – Applicant's Acknowledgement of MBE Requirements. (Note: If the Applicant fails to submit Appendix D-1 at the time of submittal of its Proposal as required, the Location Commission may determine that the Proposal is not acceptable)

Submission of Appendix D-1 is the only MBE requirement at the time of submission of a Proposal in response to this RFP. All other forms are included herein for informational purposes, shall be submitted by the Awardee/Licensee directly to GOMA at a later date as directed by GOMA, and are subject to revision by GOMA.

2.22 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 Operation License if selected for award. If an Applicant is in arrears, this may make an otherwise successful Applicant ineligible for further consideration for License award.

2.23 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, financial disclosure, political contribution disclosure, estoppel, and compliance affirmations.

2.24 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 E of this RFP and submit it with their Proposal.

It is unlawful for any State officer, employee, or agent to participate personally in his or her official capacity through decision, approval or disapproval, recommendation, advice, or investigation in any Contract, License or other matter in which (s)he, his or her spouse, parent, minor child, brother, or sister has a financial interest or to which any firm, corporation, association, or other organization in which (s)he has a financial interest or in which (s)he is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom (s)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.

2.25 CONFIRMATORY AFFIDAVIT

All Applicants are advised that if an Operation License is awarded as a result of this RFP, the successful Applicant will be required to complete a Confirmatory Affidavit that confirms that the affirmations made in the required Proposal Affidavit remain true and correct. 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 Operation License.

2.26 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 Operation Licensee shall ensure that all contractors meet these requirements, and further, that the Operation Licensee and all contractors meet these requirements for the duration of the Operation 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 contractors be completely registered prior to the Deadline for Receipt of Proposals. Failure to register may make an otherwise successful Applicant ineligible for further consideration for License award.

2.27 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 form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. The COT/GAD X-10 Form can be downloaded at: <http://compnet.comp.state.md.us/gad/pdf/GADX-10.pdf>.

2.28 MULTIPLE OR ALTERNATE PROPOSALS

Neither Multiple nor Alternate Proposals will be accepted.

2.29 FALSE STATEMENTS

Applicants are advised that 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 the 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.

2.30 LITIGATION/PROTEST BOND

Each Applicant must submit with its Proposal a Litigation/Protest Bond in the amount of Five Hundred Thousand Dollars (\$500,000.00). The purpose of the Litigation/Protest Bond is to discourage frivolous lawsuits and protests by permitting the Location Commission to recover, in addition to its attorney's fees, damages that result from delay in awarding or issuing a Video Lottery Operation License. A claim upon the bond may be made by the Location Commission if:

- (1) The Applicant brings any legal action or protest against the Location Commission, the State of Maryland, 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.

The bond shall 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 Location Commission, or other acceptable security for bond as described in COMAR 21.06.07. Applicants may submit Litigation/Protest Bond in a form as found in Appendix G.

The bond shall remain in effect for one (1) year from the Deadline for Receipt of Proposals, subject to renewal as deemed necessary by the Location Commission. Applicants, including the successful Applicant/Licensee, may request a release of the bond after the date of License award in return for a release and Covenant Not To Sue in a form acceptable to the Location Commission, signed by the Applicant, notarized and accepted by the Location Commission.

2.31 COMMENCEMENT OF OPERATION

2.31.1. Permanent Facility

A. The Awardee shall commence operation of VLTs in a permanent Facility within eighteen (18) months after the Operation License is awarded by the Location Commission.

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

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

(2) may not grant more than two extensions to the Awardee under this paragraph.

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

2.31.2. Temporary Facility

A. An Awardee or Licensee may begin VLT operations in a temporary Facility, if approved by the Location Commission, that meets the minimum requirements established by the Lottery Commission and includes 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, and carpeting.

B. Notwithstanding the provisions of paragraph A. above, the Licensee shall be operational in a permanent Facility no later than thirty (30) months after the award of the Operation License.

SECTION 3. INFORMATION REQUIRED IN APPLICANT'S PROPOSAL

- 3.1 PROPOSAL FOR VIDEO LOTTERY FACILITY.** In the Proposal, the Applicant shall provide all information required in this section and Section 4. The response should be as detailed as possible and include all required supporting documentation.

3.1.1 Required Submissions with Proposal

Applicants must submit the following items #A through #H with the Proposal.

- A. Initial License Fee of at least \$3,000,000 for 500 VLTs included in the Proposal above the first 500 VLTs proposed, that shall be prorated based on the exact number of VLTs proposed (Certified Check payable to State of Maryland/State Lottery Agency or wire/electronic transfer). Failure to provide the requisite Initial License Fee will result in automatic rejection.
- B. Application and license fees for the Background Investigation Application as required (Certified Check payable to State of Maryland/State Lottery Agency or wire/electronic transfer.) Applicants must submit only one (1) paper original and one (1) electronic copy on CD in PDF format of Form 1001 (unless submitted prior to the Deadline for Receipt of Proposals), Form 1004 (or 1007), Form 1006, Form 1009, and/or Form 1020 to include all exhibits and appendices to the Applications. Forms can be downloaded at: <http://slots.mdlottery.com/licensing/> .
- C. A completed Proposal Affidavit (Appendix A) (Applicant must submit only one (1) paper original).
- D. A completed Applicant's Acknowledgment of MBE Requirements (Appendix D-1).
- E. A completed Conflict of Interest Affidavit and Disclosure (Appendix E) (Applicant must submit only one (1) paper original).
- F. A completed Exhibit 4B.
- G. Authorization for Release of Information (Appendix F).
- H. Litigation/Protest Bond (Appendix G).

3.1.2 General Format of Technical Proposal

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:

- A. Be prepared in a clear and concise manner.
- B. Address all points of this RFP. The Applicant shall regard all specifications in this RFP as mandatory.
- C. 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.
- D. Include the specific sections as described below in Sections 3.1.3 through 3.1.9.

3.1.3 Transmittal Letter

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

- A. State the number of VLTs being proposed for the Allegany County Operation License.
- B. Acknowledge receipt of all Amendments to the RFP, if any.
- C. Be signed by an individual who is authorized to commit the Applicant to all requirements as stated in the RFP.
- D. 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." For Applicants making payment by wire/electronic transfer, the Applicant must provide written evidence that payment has been made by wire/electronic transfer.

3.1.4 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.

3.1.5 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. Confirm that the Applicant will purchase the Rocky Gap Lodge and Golf Resort and that the Applicant shall be either the owner or operator of the proposed Video Lottery Facility. State the proposed purchase price, either in cash or in cash and equity, and whether the Facility will be located within the Lodge and Resort or in a separate building on land adjacent to the Lodge and Resort;
 - 2. Confirm that Applicant has included an Initial License Fee with the Proposal of at least \$3,000,000 for 500 VLTs for any VLTs requested in the Proposal above 500 VLTs, which shall be prorated based on the exact number of VLTs above 500 VLTs contained in the Proposal. State the amount of the License fee being proposed for the VLTs above 500 VLTs, the number of VLTs being proposed for the Facility, and the actual total amount of the check enclosed for the license fee or the amount of funds paid by wire/electronic transfer;
 - 3. Confirm that the Proposal provides for **at least** \$25,000,000 in direct investment by the Applicant for the purchase of the Rocky Gap Lodge and Resort and construction and related costs for each 500 VLTs contained in the Proposal, which shall be prorated based on the exact number of VLTs. State the amount of direct investment being proposed for each 500 VLTs, the number of VLTs being proposed, and the actual amount of the direct investment being proposed. Specify the amount of direct investment in construction and related costs excluding the purchase price of the Rocky Gap Lodge and Resort; and
 - 4. Confirm that the Proposal provides for a *maximum* fee in the amount of 50% of VLT Proceeds to be paid to the Video Lottery Licensee for the first 10 years of operation, and a *maximum* fee of 33% of VLT proceeds after the first 10 years of operation. State the actual percentage amount of VLT Proceeds being proposed.
- C. 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.

3.1.6 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 the RFP. Any paragraph that represents a work requirement shall include a detailed explanation of how the work will be done.

The Applicant should refer to Section 4 of this RFP for additional Facility requirements for the Allegany County Operation License. Specifically, in this section the Applicant shall address and describe each of the following topics:

3.1.6.1 Site and Facility

A. Control of Site: Describe the changes to the ground lease agreement between DNR and MEDCO (see Appendix K) that would be needed for the transfer of the ground lease to the Applicant, and any other changes the Applicant requests as part of its Proposal.

B. Purchase of Lodge and Resort: Describe the key elements of the proposed purchase agreement for the acquisition of the Lodge and Resort, and any other financial settlement documents that are necessary to complete the transaction.

C. Site Plans: Submit a complete 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, if any. 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. (See subsections G and H below for further detail on architectural plans and public areas)

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.

D. Zoning and Permit 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, including a specific schedule of applications for zoning approvals and anticipated approval dates.

(1) Zoning and Permits

- (a) Prior to the start of design and construction, the Awardee is required to execute a Right of Entry For Construction with DNR;
- (b) Describe the applicable zoning designation for the Facility site;
- (c) List any State and/or local permits 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 by which the Applicant will obtain the permits; and
- (d) The height of the Facility shall be no greater than the existing Lodge.

(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.

- (f) The Maryland Environmental Service (MES) manages the operation and maintenance of the existing water and wastewater treatment facilities serving the Park, Lodge and the Leased Area. MES is currently evaluating the relocation and upgrade of the water plant that is currently located in the campground area. Because the water line runs under the lake to the main water storage tank, MES wants to relocate it along Pleasant Valley Road. The Licensee shall be responsible for the prorata share of the capital construction costs of a replacement facility serving the Lodge and Resort. Any water and wastewater treatment plant expansion or upgrades necessary for the VLT facility are the responsibility of the Awardee/Licensee and shall be coordinated through MES and DNR.
- (3) Describe the roadway improvements needed to ensure adequate access to the Facility site, including ingress and egress consistent with a park setting, 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 by which local government approval will be granted.
- (5) It is preferred that Environmental Site Design practices be incorporated into the roadway and walkway design and management of stormwater. The preferred practices include infiltration and/or bio-retention systems.

E. 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.

F. 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.
- (3) The traffic flow study shall be submitted to the Maryland State Highway Administration and DNR for review and comment. Applicant shall provide evidence of this submission with the Proposal.

G. Architect's Plan.

- (1) Submit layout drawings of the proposed:
 - (a) Gaming floor;
 - (b) Facilities and equipment;
 - (c) Facilities for personnel; and
 - (d) 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:

- (a) Be to scale;
 - (b) Be in sufficient detail to:
 - (i) Illustrate the facilities and equipment specified;
 - (ii) Show the measurements of all areas including gaming floor;
 - (iii) Demonstrate compliance with the Americans with Disabilities Act; and
 - (c) Include specific information as to the elevation schematics to reflect site and visibility from the road, the lake and the lodge as well as demonstrate the lighting, signage and visual impact from all angles.
- (4) The Facility shall reflect and be consistent with the architectural and aesthetic features of the existing and planned facilities in Rocky Gap State Park and the Lodge and Conference Center and be subject to review and approval by DNR.

H. 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;
- (h) Special clubs or other facilities for certain players;
- (i) ATMs;

- (2) Describe the plan for Lottery ticket and monitor game sales at the Facility at locations as near as practicable to the pay windows and other locations, and provide a proposed floor plan specifying locations where Lottery tickets will be sold;
- (3) Provide a security plan for floor operations, parking and area adjacent to Facility;
- (4) Describe plans for maintaining and cleaning the public areas of the Facility;
- (5) Include patterns for pedestrian traffic in and around the Facility and the provisions for disabled players; and
- (6) State the maximum capacity of the Facility.

I. Parking Facilities.

- (1) State the specifications for parking facilities for the Facility, including a description of the:
 - (a) Access to the parking facilities from each roadway adjacent to the Facility site;
 - (b) Location and number of spaces for each type of parking available, including public, Commission employee, Facility employees, and handicapped parking;
 - (c) Road surface to be used in the parking facilities; and
 - (d) Distance between the parking facilities and the Facility entrances.
- (2) Parking must be provided on-site by the Licensee, with a strong preference for structured parking to minimize impervious surface footprint. If the Facility is to be located on the existing parking area, the Licensee must provide alternative and convenient parking. Bus parking must be provided in a manner that is consistent with a park setting, provides natural screening, and minimizes impacts on the Rocky Gap State Park, Lodge and Resort areas.

J. 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.

(3) Any new electrical power, utility, and phone lines are the responsibility of the Licensee and shall be buried lines. The design and location of these lines shall be coordinated with DNR to avoid interference with existing or planned underground utilities in the Park and Leased Area.

3.1.6.2 Gaming Proposal

The Applicant shall describe the:

A. Number of VLTs to be licensed at the Facility;

B. Initial License Fee proposed (At least \$3 million for 500 VLTs above the first 500 VLTs requested, prorated based on the number of VLTs above 500 VLTs requested);

C. Proposed operator share (Maximum 50% for the first 10 years of operations and maximum 33% after the first 10 years of operations);

D. Proposed hours of operation (Facility may operate from 8 a.m. to 2 a.m., and until 4 a.m. on weekends, pursuant to Chapter 240 of 2011); and

E. Schedule of implementation

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

(2) Permanent Facility.

3.1.6.3 Capital Proposal

The Applicant shall describe its:

A. Proposed direct investment at VLT Facility and specify timeframe for spending the required minimum \$25 million per 500 VLTs;

B. Plan for funding resort infrastructure capacity, which should demonstrate the Applicant's ability to support the needs of the resort and related gaming and any ancillary facilities;

C. VLT Facility and capital development proposal and timeline;

D. Analysis of competitiveness of proposed VLT Facility with other gaming facilities;

E. Proposed investment in other (ancillary) facilities in addition to the VLT Facility; and

F. The capital development proposal timeline for any facilities other than the VLT Facility.

3.1.6.4 Business Plan and Economic Impact

The Applicant shall provide:

A. Five (5) Year Business Plan including:

- Projected employment, wage levels and total payroll by year;
- Value of contracts awarded by year;
- Analysis of estimated gross revenues, expenditures, and projected economic/project viability, including, but not limited to, Earnings Before Interest and Taxes (EBIT), Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA), and win per day for the first five years of operation;
- Projections beyond five years of operation;
- Plan for recruitment in surrounding communities; and
- Ancillary operations.

B. Plan for securing MBE participation: Provide a plan to meet or exceed the minimum MBE subcontracting goal of 25%.

C. Economic Impact: Provide an economic analysis of the overall impact of investment and operations on:

- Total employment within the State and surrounding community (including new direct and indirect jobs to be created or jobs to be retained); and
- Net direct and induced economic benefit or loss to the State and community.

D. Retail and Food: Provide details of proposed retail and food venues for the Facility and identify the operators of each venue.

E. 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 after License award and subject to approval of the Lottery Commission prior to operation.

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

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

H. Evaluation: Describe how the Applicant's Proposal meets the Location Commission's statutory criteria for evaluating Proposals (see Section 5.3):

- 70% on business and market factors;
- 15% on economic development factors; and
- 15% on location siting factors.

3.1.6.5 Labor Relations, Employees and Non-Discrimination Policies

A. Labor Peace Agreement – Under the VLT law, an Applicant is required to produce evidence that it has entered into required labor peace agreements. For the Lottery Commission to qualify an Applicant for a Video Lottery Operation License, an Applicant who has not yet entered into the required labor peace agreements must produce an affidavit stating it shall enter into a labor peace agreement with each labor organization that is actively engaged in representing or attempting to represent video lottery and hospitality workers in the State. In order for the Lottery Commission to issue a video lottery operation license and for operations to commence, the Applicant must produce documentation that it has entered into a labor peace agreement with each labor organization that is actively engaged in representing or attempting to represent video lottery and hospitality industry workers in the State as required by the VLT Law.

B. 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.

C. Health Insurance for Employees – Describe its plan to provide health insurance coverage for its employees.

D. Retirement Benefits for Employees – Describe its plan to provide retirement benefits for its employees.

E. 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.

F. Diversity – Describe the Applicant's good faith plan to recruit, train, and promote diversity in all employment classifications in the Facility, including 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.

3.1.7 Applicant's Organization, Background, and Financial Stability

3.1.7.1 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:

- A. 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.
- B. A brief history of the company.
- C. 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.
- D. 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:
 - (1) All major divisions and units;
 - (2) Which components will perform the requirements of this License;
 - (3) Where the management of this License will fall within the organization;
 - (4) What corporate resources will be available to support this License in both primary and secondary, or back-up roles;
- E. Provide resumes/biographies of all principals and known individuals who will perform executive management duties.
- F. A list of all professional affiliations.
- G. Pursuant to the evaluation criteria established in the VLT Law on which the Location Commission shall evaluate Proposals, provide the percent ownership of the Applicant by entities meeting the definition of MBE under State law and describe the efforts made to include MBE owners in the Proposal.

3.1.7.2 Parent Guarantee

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 for the construction period and at least the first 18 months of operation.

3.1.7.3 Background and Experience

The Applicant shall describe its background and experience related to VLT programs and other gaming activities. Applicant shall provide information, documentation and assurances demonstrating that it has sufficient business ability and experience to create and maintain a successful, efficient operation. If the Applicant is a new joint venture, the Applicant should submit as much detailed information as possible about the joint venture's business ability and experience.

Applicant's description of how its organization can meet the requirements of this RFP shall include:

- A. 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:
- (1) The competitive conditions in the industry or industries involved and the competitive position of the Applicant;
 - (2) 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;
 - (3) The sources and availability of raw materials, critical technology and employees essential to the business of the Applicant;
 - (4) 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; and
 - (5) 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.
- B. Former Business: Describe any former business, not listed in response to paragraph A. 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.
- C. 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, contractor, or service providers, which you think are relevant. Each reference must include the following information:
- (1) Name of client organization;
 - (2) Name, title, and telephone number of point of contact for client organization;
 - (3) Value, type, and duration of contract(s) supporting the client organization;
 - (4) The services provided, scope of the contract, geographic area being supported, and performance objectives satisfied; and
 - (5) 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 LOCATION COMMISSION TO CONTACT ANY OF THE ABOVE REFERENCES AND SHOULD BE AWARE THAT THE LOCATION COMMISSION MAY ALSO CONTACT ANY REFERENCE OF ITS OWN CHOOSING, OR ANY OTHER SOURCE, AS PART OF THE EVALUATION AND SELECTION PROCESS.

- D. State of Maryland Contacts: Provide a list of any current or previous contracts that the Applicant has had with and any current or previous licenses that the Applicant has had under any department or agency of the State of Maryland, to include the contract or license name and number, and a concise explanation of the nature of the contract or license.

3.1.8 Financial Capability and Legal Action Summary

- A. Applicants shall provide evidence of their financial capacity to fulfill the terms required by this RFP, to include:
- (1) A detailed explanation of how the proposed Facility is being

- financed, including satisfactory evidence of adequate financing from lenders. In consideration of the legal structure of the Applicant described in Section 3.1.7.1, 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; and
- (2) At least five (5) financial references from banks or other financial institutions attesting to the Applicant's credit worthiness.
- B. (1) Applicants shall include the following information regarding legal actions:
- (a) A statement as to whether there are any pending legal actions to which the Applicant is a party 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 companies, parent companies or holding companies;
 - (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; and
 - (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.
- (2) The Location Commission may consider any information provided under Paragraph (1) or the failure of the Applicant to disclose any legal action as required under Paragraph (1) in its evaluation, including possible rejection, of an Applicant's Proposal.

3.1.9 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 principal employees and other staff who will be directly involved with providing the services rendered under this License; state the percent

of participation of each principal employee and other staff in the Operation License; and provide their resumes.

For every person identified as a principal employee and other staff who will be involved in matters related to the Operation 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.

3.2 BACKGROUND INVESTIGATION APPLICATION PROCESS

3.2.1 Required Applications

- A. All Applicants for a Video Lottery Operation License shall submit Form 1001 – Operation License Application Form, in the form provided on the Lottery Commission’s website: <http://slots.mdlottery.com/licensing/>
- B. If the proposed operator of the facility is a different entity than the Applicant for the Video Lottery Operation License, the Applicant shall submit on behalf of the proposed operator Form 1020 – Contractor Application Form, in the form provided on the Lottery Commission’s website: <http://slots.mdlottery.com/licensing/>
- C. To the extent that the Applicant knows the identity of its Principal Employees or the Principal Employees of the proposed operator of the facility (where different than the Applicant), the Applicant for a Video Lottery Operation License shall submit Form 1004 – Principal Employee Application Form (or, if applicable, Form 1007 – Principal Employee Waiver Form), in the form provided on the Lottery Commission’s website: <http://slots.mdlottery.com/licensing/>
- D. All individuals and entities having a beneficial or proprietary interest of 5% or more in an Applicant for a Video Lottery Operation License (and, where different than the Applicant, in the proposed operator of the facility) shall submit Form 1006 –

Principal Entity Disclosure Form in the form provided on the Lottery Commission's website: <http://slots.mdlottery.com/licensing/>

E. Where applicable, Applicants may submit Form 1009 – Institutional Investor Waiver Form, in the form provided on the Lottery Commission's website: <http://slots.mdlottery.com/licensing/>

F. A list of revised and integrated definitions for use in completing all forms shall be posted on the Lottery Commission's website and should be used by all Applicants.

3.2.2 Background Investigation Costs

A. 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 monthly invoice itemizing all background investigation amounts due. Failure to provide timely invoices does not constitute a waiver of amounts due. Invoices shall be immediately payable and 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.

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 the hourly rates of the Commission employees, and all reasonable expenses such as travel, lodging, and meals. Furthermore, there may be additional costs and expenses incurred by the Commission in its processing and investigation of Applicants.

If any funds remain after the background investigation is either completed or terminated by the Commission, those funds shall be returned to the Applicant. In addition, if the potential Applicant does not submit a Proposal, any remaining funds shall be returned to the Applicant.

B. To begin the background investigation of an Applicant before the Deadline for Receipt of Proposals, an Applicant may, at its option, submit the Operation License Application Form (Form 1001) and the required application and license fees to the Lottery Commission. The name and any identifying information of an Applicant will be kept confidential until after the Deadline for Receipt of Proposals. If a potential Applicant does not submit a Proposal, any application and license fees submitted are non-refundable. In addition, any additional costs incurred by the Lottery Commission will be invoiced to the potential Applicant, as described in Paragraph A. above.

3.2.3 Application and License Fees

The Lottery Commission has established by regulation fees for background investigations of the Applicant and its officers, directors, employees and other designated persons which shall be paid by the Applicant. The required Application and license fees for each application/disclosure form are listed on the applicable form. 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. License fees for individuals shall be submitted with the Proposal, which are also non-refundable. License fees shall be submitted for each Applicant/individual.

3.2.4 Consent for Investigation

An individual who submits the required Background Investigation Application and related forms is required to provide personal and background information under Lottery Commission regulations. By signing the consent for investigation in each applicable form, an individual is providing a statement that irrevocably gives consent to the Lottery Commission, the Maryland State Police, and persons authorized by the Lottery Commission to:

- (1) Verify all information provided in the application documents; and
- (2) Conduct a background investigation of the individual.

An Applicant shall authorize the Lottery Commission to have access to any and all information the Applicant has provided to any other jurisdiction while seeking a gaming 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.

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SECTION 4. FACILITY SPECIFICATIONS

4.1 GENERAL

The following section describes the requirements for a Proposal for a Video Lottery Operation License in Allegany County.

4.2 SPECIFIC FACILITY REQUIREMENTS

4.2.1 Required General Location: On State property associated with the Rocky Gap State Park in Allegany County.

4.2.2 Maximum Statutory Number of VLTs: 1,000

4.2.3 Special Conditions:

4.2.3.1 The Rocky Gap State Park property is owned by the Maryland Department of Natural Resources (“DNR”) and approximately 260 acres of the park associated with the Lodge and Golf Resort is leased by DNR to the Maryland Economic Development Corporation (“MEDCO”) pursuant to a Ground Lease.

4.2.3.2 An Applicant should be familiar with all aspects of the existing Lodge and Resort, operations, and debt. Applicants should contact the Location Commission’s point of contact specified in Section 2.1.1 to make arrangements to meet with DNR, MEDCO, and other interested parties, including MEDCO Bondholders. The Location Commission shall be notified of all meetings and an Applicant and a member of the Location Commission or its staff may attend, at the sole discretion of the Location Commission.

Contact with any interested party without the prior approval of the Location Commission is grounds for rejection of an Applicant’s Proposal.

4.2.3.3 Applicant must purchase the Lodge and Resort and shall be either the owner or operator of the proposed Facility. License award shall be contingent on Board of Public Works approval of the ground lease and purchase agreements, and financial settlement on the purchase of the Lodge and Resort’s assets.

4.2.3.4 Applicant may enter into a management agreement with an individual or business entity to operate the Facility, if approved by the Location Commission and the Lottery Commission.

4.2.3.5 Applicant may propose a VLT Facility within the existing Lodge and Resort or in a separate building. Attached as Exhibit 4A is a map showing the general boundary of the 18-acre area approved by the Board of Public Works for a VLT Facility, which falls entirely within the area currently under lease to MEDCO for operation of the Rocky Gap Lodge and Resort. If proposing to build a separate VLT Facility, that Facility must be within the 18-acre area adjacent to the Lodge

and Resort. Final lease of this area will require agreement with DNR, with lease terms subject to an agreed upon fee structure, and will be subject to approval by the Board of Public Works.

4.2.3.6 Financial Conditions:

4.2.3.6.1 Applicant must submit Exhibit 4B indicating its Proposal for: the purchase price of the Lodge and Resort; the proposed direct investment in the VLT Facility (either within the existing Lodge/Resort or as a separate building); annual ground rent to be paid to DNR (minimum of \$275,000); and proposed changes to the current Ground Lease.

4.2.3.6.2 Ground Lease - A copy of the current Ground Lease is available on the Commission's website <http://slots.mdlottery.com/> as Appendix K. The remaining outstanding term of the Ground Lease is 54 years with an expiration date of April 30, 2065. The current annual ground rent under the lease is approximately \$275,000, which is subject to adjustment annually. Depending upon the Applicant's Proposal, amendments to the current Ground Lease and/or a new Ground Lease will be agreed upon among the appropriate parties prior to License Award, subject to Board of Public Works approval, with a full release of MEDCO as an obligor at closing.

4.2.3.6.3 Outstanding Borrowed and Accrued/Accruing Debt – The Resort is subject to indebtedness in the total amount of approximately \$50 million and approximately \$16 million in accrued and accruing obligations as of June 30, 2011. Appendix I (attached) contains a summary of the Resort's outstanding debt. Appendices L and M, which contain the Trust Indenture for the MEDCO Bonds and other relevant information, are available on the Commission's website.

A purchase price for acquisition of the Resort must be acceptable to all parties in interest including MEDCO bondholders. This may be the subject of Discussions and Negotiations in accordance with Section 5.4 of this RFP. The transaction must result in an acceptable resolution of the repayment of the MEDCO Bonds and other Resort debts and obligations, with the full release of all liens on the Resort at closing, subject to Board of Public Works approval. The purchase price will be subject to a net asset adjustment at closing to reflect receivables, payables, inventory, payroll, and other expenses.

4.2.3.6.4 Operating History and Service/Supply/Lease Agreements – The Resort is subject to the service agreements, supply contracts, and leases provided in Appendix J (available on the website). The Awardee must make acceptable arrangements for the termination or assumption of all service agreements, supply contracts, and leases. Appendix N, also available on the website, contains the audited financial statements of the Resort for fiscal years 2008, 2009, and 2010 as well as management prepared financial statements through April 2011 and the fiscal 2011 operating budget.

Exhibit 4A



Exhibit 4B
Summary of Applicant's Financial Proposal

1. Purchase of Rocky Gap Lodge and Golf Resort:

A. Cash \$_____ OR

B. Cash \$_____ and Equity _____

2. Construction/Renovation of VLT Facility:

Direct Investment \$_____

3. Annual Ground Rent (to DNR) – minimum \$275,000:

\$_____ with annual adjustment of _____

4. Proposed Changes to Ground Lease (list below and on separate pages as necessary)

4.2.3.7 Other Requirements

The Applicant shall consider and address the following:

1. **Setback Requirement** – A Facility may be located no closer than the Lodge and Resort's closest proximity to the Lake shoreline at normal lake level within the approved 18 acre area. The buffer area between the Facility location and the shoreline shall be vegetated. Landscaping and walkway design in the buffer area shall be submitted to DNR for review and approval.
2. **Landscaping** – Landscaping shall be provided and shall be consistent with the natural biological features of the Park and landscaping of the Resort and Conference Center.
3. **Signage** – Applicant shall submit a plan for any signage to be located on State-owned property and shall identify any such locations. DNR shall review and approve all external Facility signage on leasehold premises. Signage on Rocky Gap State Park property outside of the leasehold shall be subject to separate agreement with DNR.
4. **Green energy/LEED certification** – Any new Facility shall be certified to LEED silver standards and include green energy systems.
5. **Reforestation plan** - While any required mitigation may be satisfied in part through off-site mitigation, on-site mitigation is preferred. It is preferred that any required mitigation be directed to the establishment of a stand of genetically improved American Chestnut trees. DNR will work with the Licensee to identify an appropriate area for mitigation.
6. **Aviary** – If the Applicant/Licensee proposes to alter ingress and egress or make other site improvements that would impact the aviary, which is located outside of the 18-acre area approved by the Board of Public Works for the Facility, the Licensee shall agree to minimize any adverse impacts on the aviary.

4.2.3.8 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.

4.3 GENERAL FACILITY REQUIREMENTS

The Operation Licensee shall:

- Provide secure office space (at least 300 square feet) immediately adjacent to the gaming floor for the Lottery Commission staff, to include all typical office equipment and telecommunications equipment and connections;
- 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 contractors, at no cost, storage area for spare equipment;
- Provide all necessary bases and high-back chairs for each VLT;
- Provide all necessary wiring for the gaming floor that is needed for the Licensee's operations, except for such wiring that may be performed by the Central System or VLT contractors of the Lottery Commission;
- Provide areas where the Maryland Lottery games will be sold at the Facility;
- If utilizing a temporary Facility, work with GTECH, the Central Computer System provider, to determine:
 - The cost of wiring, infrastructure equipment and communication equipment and associated costs necessary to connect the VLTs to the GTECH Central Computer System.
 - What equipment installed in the temporary Facility will be able to be reused in the permanent Facility.
 - The cost of moving this equipment from the temporary Facility to the permanent 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; and
- Provide for the costs of paper used for validation in the VLTs.

SECTION 5. EVALUATION AND SELECTION PROCEDURE

5.1 EVALUATION PROCESS

All Proposals shall be evaluated by the Location Commission. Applicants will 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 sessions 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 5.2, the Location Commission shall conduct its evaluation of the merits of the Proposals in accordance with the Factors for Evaluation set forth in Section 5.3. If at any time in the evaluation process an Applicant is determined by the Location Commission to be not qualified or a Proposal is determined to be unacceptable, the Proposal will be rejected.

5.2 QUALIFYING PROPOSAL

5.2.1 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, including submission of a signed Appendix D-1 – Applicant's Acknowledgement of MBE Requirements. An Applicant or Proposal not meeting the Minimum Requirements will be determined to be unacceptable and the Proposal will not be further considered.

5.2.2 The Location Commission shall refer to the Lottery Commission the name and all relevant information concerning an Applicant that submits a Proposal and Background Investigation Application for a License. On receipt of this information, the Lottery Commission shall determine whether an Applicant is qualified to hold an Operation License (under the VLT Law and the Lottery Commission's regulations). 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 by the Lottery Commission. Therefore, for any Applicant determined by the Lottery Commission to be not qualified to hold an Operation License, the Applicant's Proposal shall be rejected.

5.3 FACTORS FOR EVALUATION

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

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

- (1) The highest potential benefit and highest prospective total revenues to be derived by the State;
- (2) The proposed revenues from a proposed location based on a market analysis;
- (3) The extent to which the proposed location encourages Maryland gaming participants to remain in the State;
- (4) The extent to which the proposed location demonstrates that the Facility will be a substantial regional and national tourist destination;
- (5) The proposed Facility capital construction plans and competitiveness of the proposed Facility;
- (6) The amount of gross revenues to be allocated to the operator over the term of the Operation License;
- (7) 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;
- (8) The extent to which the proposed location will preserve existing Maryland jobs and the number of net new jobs to be created; and
- (9) The contents of the Applicant's plan to achieve Minority Business participation goals.

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

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

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

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

5.4 DISCUSSIONS AND NEGOTIATIONS

The Location Commission may engage in discussions and negotiations with some or all Applicants, at its sole discretion. Discussions and negotiations, however, need not occur. Applicants may be asked to participate in face to face discussions or negotiations with the Location Commission or other State representatives concerning their Proposals. Discussions and negotiations may be conducted by telephone, may be in the form of written questions to be answered by the Applicants, or may be conducted by mail, e-mail, or facsimile transmission at the sole discretion of the Location Commission.

When it is deemed in the best interest of the State, the Location Commission may permit a qualified Applicant to submit a revised Proposal that reflects discussions and negotiations. As a result of discussions and negotiations, in the sole discretion of the Location Commission, a revised Proposal deemed in the best interest of the State may be requested of the Applicant. Any revised Proposal submitted by an Applicant must, at the time of its submission, comply with all provisions of this RFP. The Location Commission may require more than one series of discussions or negotiations if the Location Commission determines that it is in the State's best interest to conduct additional discussions and negotiations.

5.5 CHANGE IN FINANCIAL CONDITION DURING EVALUATION PERIOD

If an Applicant or Principal Employee experiences a substantial change in its financial condition after submission of its Proposal, the Applicant shall immediately notify the Location Commission in writing of the change at the time the change occurs or is identified. Failure to notify the Location Commission of a substantial adverse change in financial condition may be sufficient grounds for rejecting the Proposal or canceling the award of an Operation License. Receipt of notification, however, does not constitute acceptance. Changes in an Applicant's ownership or proposed Facility financing and other such changes are not considered changes in financial condition and thus are not subject to the provisions of this section, but are subject to Section 5.4.

5.6 SELECTION FOR AWARD AND ISSUANCE OF LICENSE

5.6.1 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 the VLT law and this RFP.

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 and to the successful Applicant and any unsuccessful Applicant.

5.6.2 Issuance of License

Upon receipt of notification of award from the Location Commission as described in Section 5.6.1, the Lottery Commission will issue to the successful Awardee a Notice of License Award specifying the terms and conditions of the award. All terms and conditions contained in the RFP, Amendments to the RFP, the Applicant's Proposal, and the Location Commission's Decision Statement shall be incorporated into the Operation License. The Applicant must acknowledge receipt of the Notice of License Award and must formally agree to comply with the terms of the Notice, the Lottery Commission's regulations, and the conditions below before the Operation License may be issued by the Lottery Commission.

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 site have been obtained and submitted to the Lottery 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.

5.7 UNSUCCESSFUL APPLICANTS

5.7.1 Debriefing

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 awarded a License. Request for debriefings will be honored at the earliest feasible time after the request has been received.

5.7.2 Appeal

A. 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 award or rejection of the Operation License by the Location Commission. As held by the Court of Appeals of Maryland in *Laurel Racing Assoc., Inc. v. Maryland Video Lottery Location Comm'n, et al.*, 409 Md. 445 (2009), an appeal to the Board of Contract Appeals may be taken only upon award of the single Operation License for Allegany County. If no license is awarded in Allegany County, an appeal to the Board of Contract Appeals may be taken only after the Location Commission has rejected all Proposals for that operation license.

B The decision by the Location Commission to award or not award an

Operation License is reviewable solely by the Maryland State Board of Contract Appeals (the Board). Typically, the Board resolves issues related to State procurement contracts. Under the VLT Law, however, the Board has been given authority to review the award decisions of the Location Commission.

Certain regulations promulgated for the review of procurement contracts do not logically convey to the Location Commission's functions. Many procedures, however, can be utilized by simply substituting a few words with their logical equivalents in the VLT Law. As a general matter, Applicants who seek Board review should follow as closely as possible the regulatory procedures established by the Board for appeals from protests decisions under COMAR 21.10.07 and 21.10.02.10. As much as the context and a reasonable construction of the VLT Law will allow, for the purposes of interpretation of the Board's regulation, terms defined in this RFP such as "Applicant," "Awardee," "Location Commission," "Operation License," and "Operation Licensee" should be substituted in the regulations with similarly concepted terms such as "Bidder," "Contract," "Contracting Agency," "Contractor," "Offeror," or "Procurement Contract."

C. The VLT Law eliminates the applicability of some other terms and concepts found in the procurement regulations. Because it imbues the Location Commission with broad authority, the VLT Law does not allow for parallels to such things as the "Agency Head", "Procurement Officer," or "Reviewing Authority." As a consequence, a request for review of the Location Commission's decision to award or not award an Operation License should be filed directly with the Board in the same manner and subject to the same time frames that would apply to an appeal to the Board from the final decision of a procurement agency in a protest.

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SECTION 6 - REQUIREMENTS OF OPERATION LICENSE AND OPERATION LICENSEE

The following requirements shall apply to the Operation Licensee and shall be effective upon Notice of License Award and during the term of the Operation License.

6.1 PRECEDENCE OF DOCUMENTS

In the event of inconsistencies and/or ambiguities between the Operation License, the Location Commission's Decision Statement, the RFP, the Amendments modifying the RFP and the Operation Licensee's Proposal, the Operation Licensee's obligations are defined in order of precedence by (1) the Operation License; (2) the Decision Statement; (3) any Amendments modifying the RFP; (4) the RFP; and (5) the Operation Licensee's Proposal, to the extent that the Proposal does not conflict with the License, Decision Statement, RFP or Amendments to the RFP. The State shall not be bound by any part of the Operation Licensee's Proposal that contains information, options, exceptions, conditions, terms, or prices not requested or required in the RFP.

6.2 PAYMENT AND METHOD OF PAYMENT

6.2.1 Payments to the Operation Licensee will be at the percentage of VLT Proceeds established in the Proposal and accepted by the Location Commission.

All proceeds from the operation of VLTs shall be electronically transferred daily into the State Lottery Fund, except on days when State government is closed. On a properly approved transmittal prepared by the Lottery Commission, the Comptroller of Maryland shall pay from the proceeds of VLTs at the 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.

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

6.2.2 The stated percentage amount in the accepted Proposal shall be the full and only amount paid to the Licensee. 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.

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

The rights and remedies of the State under the Operation 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.

6.3 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 the Operation License, shall, during the pendency and term of the 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 contractor 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. Within the context of this prohibition, “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.

A member of the Location Commission may not:

- a) have an official relationship to a person who holds any kind of 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 any license under the VLT Law;

- c) hold any stocks, bonds, or other financial interest in a person holding any license under the VLT Law.

6.4 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 forum in the State of Maryland.

6.5 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 1., above, in any contract except a contract for standard commercial supplies or raw materials;
3. To post and to cause contractors 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 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 contracts. The Licensee has primary responsibility for enforcement of these provisions and for securing and maintaining the contractor's full compliance with both the letter and spirit of this clause.

6.6 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.

6.7 FINANCIAL DISCLOSURE

The Operation 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.

6.8 POLITICAL CONTRIBUTION DISCLOSURE

The Operation 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.

6.9 COMPLIANCE WITH LAWS / WARRANTIES

The Operation Licensee represents, agrees, and warrants as a condition of its license 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.

6.10 ASSIGNMENT OF LICENSE

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.

6.11 INDEMNIFICATION AND RESPONSIBILITY FOR CLAIMS AND LIABILITY

1. As a condition of its Operation License, the Licensee shall indemnify and save and hold harmless the Location Commission, the Lottery Commission, the State of Maryland, its agents, and any individual member thereof, and 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 contractors under the License or in any manner related to the subject matter of the License. This Section 6.11 shall survive the termination or expiration of the 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 contractor(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 contractor(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 contractor(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 Operation 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 contractor(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 Operation 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 Operation Licensee or its subcontractors in the event that a suit, claim or action of any character is brought by any person against the Licensee or its contractors 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 Operation Licensee or its contractors as a result of or relating to the Licensee's obligations under this License.
6. The Operation Licensee shall immediately notify the Lottery Commission of any claim, suit or action made or filed against the Licensee or its contractors regarding any matter resulting from or relating to the Licensee's obligations or performance, 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. Neither the Licensee nor contractors 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 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 reserve the right to jointly participate in all such legal proceedings, as well as the settlement of any such claims.

6.12 CHANGE IN FINANCIAL CONDITION

In addition to the requirement in the VLT Law for the Operation 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 a substantial adverse change in financial condition may be sufficient grounds for suspending or terminating the License.

6.13 BANKRUPTCY

Upon the filing of any bankruptcy proceeding by or against the Operation 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.

6.14 TAXES

The Lottery Commission shall have no responsibility for the payment of any federal, State or local taxes which become payable by the Operation Licensee or its contractors.

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 an Operation Licensee is required to furnish and install material in the construction or improvement of real property in performance of its obligations in holding a license, the exemption does not apply, and the Licensee shall pay the tax. As clarified by Chapter 240 of 2011, the personal property tax does not apply to video lottery terminals or a person's interest in video lottery terminals, or any associated VLT equipment or software.

6.15 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 contractors, the Operation 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.

6.16 PROPERTY RIGHTS/USUFRUCT

If, for any reason, the Operation 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.

6.17 RIGHT TO REJECT OR SUBSTITUTE PERSONS PROPOSED FOR PROJECT

The Lottery Commission shall have the right to reject any person proposed by the Operation Licensee to work under 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.

Except as otherwise provided in this section, all principal employees described in the Operation Licensee's Proposal, or identified at License issuance, 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 principal employees, 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 principal employees 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.

6.18 CONFLICT OF INTEREST

The Operation Licensee shall ensure that there is no real or perceived conflict of interest at any time during the term of the License. If the Operation 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 Operation 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.

6.19 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.

6.20 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.

6.21 BOND REQUIREMENTS - LICENSEE

6.21.1 Fidelity Bond

The Licensee shall submit to the Lottery Commission, no later than ten (10) business days before opening a Facility, a Fidelity Bond in the amount of Five Hundred Thousand Dollars (\$500,000.00) covering any loss to the State due to any fraudulent or dishonest act on the part of the Licensee, and any officer, employee, or contractor of the Licensee. If coverage for contractors is not included in the Fidelity Bond, then Licensee shall require each contractor to provide the Lottery Commission sufficient evidence of its own coverage. The bond shall be in the form provided by the Lottery Commission. 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 contractor coverage, throughout the term of the License, and any Renewal Option Period, if exercised, will constitute an event of Default under the License.

6.21.2 Performance Bond

The Licensee shall submit to the Lottery Commission, no later than ten (10) business days before opening a Facility, 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 by the Lottery Commission 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 contractors. 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.

6.21.3 Payment Bond

The Lottery Commission may require the Licensee, within ten (10) business days after Notice of License Award, to provide 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 by the Lottery Commission 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 contractors 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 contractors or vendors up to an amount not to exceed the penal sum of the bond.

6.21.4 General Bond Information

6.21.4.1 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.

6.21.4.2 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

6.22 INSURANCE REQUIREMENTS

6.22.1 General 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 contractor 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 Awardee shall not commence work under the Operation License award until all the insurance required under this section has been obtained and approved by the Lottery Commission, nor shall the Awardee allow any contractor to commence work on its contract until the insurance required of the contractor 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 Awardee or Operation 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 Operation Licensee to see that any and all of its contractors carry insurance required herein to the extent Licensee wishes to impose on its contractor such liability insurance. The Operation 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 contractors.

The Operation Licensee shall require that the policies of insurance name the Lottery Commission as an additional insured and that each insurer 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 Operation 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 Operation 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 Operation Licensee or any contractor 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 Operation License or Award 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 Operation Licensee and agreed to by signature of any authorized Officer of the Operation Licensee.

6.22.2 Property Insurance

Insurance for extended coverage on all Operation 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. The Operation Licensee shall be responsible for insuring all State-owned equipment located in its Facility.

6.22.3 Liability Insurance

The Operation Licensee shall maintain Comprehensive General Liability Insurance covering the full scope of the Operation License with limits of at least One Million Five Hundred Thousand Dollars (\$1,500,000.00) for any one person, 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 Six Million Dollars (\$6,000,000.00).

6.22.4 Worker's Compensation

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

6.23 NEWS/PRESS RELEASES

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

6.24 ADVERSE INTEREST

The Operation 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 Operation Licensee further agrees that in the performance of this Operation License it will not knowingly employ, directly or indirectly, any person having such an interest.

6.25 COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

The Operation 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, the Licensee's facilities, services, and programs shall be accessible to persons with disabilities. The Operation Licensee shall bear sole responsibility for assuring that its activities under the Operation License conform to the ADA. The Operation 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 the Licensee, or of the Licensee's employees, agents, or contractors.

6.26 RELATIONSHIP OF THE PARTIES

6.26.1 IN GENERAL

During the course of the Operation License, the Operation Licensee may enter into agreements with third parties in order for the Licensee to fulfill its obligations and responsibilities under the License. The Operation Licensee fully understands and agrees that the relationship between the Location Commission, the Lottery, and the Lottery Commission (collectively, the State) and the Operation Licensee is that of governmental licensing entity 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 Operation Licensee or any of its contractors shall be or shall be deemed to be an employee, agent, or

servant of the State for any reason. The Operation Licensee shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and contractors during the performance of the Operation License, including that period of time after the award but before the issuance of the Operation License.

From any amount due the Operation Licensee, there will be no deductions for federal income tax or FICA payments, any State income tax, or 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 Operation 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 contractors.

6.26.2 LIABILITY TO THIRD PARTIES

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 Operation Licensee for work related to the Operation License. The Operation 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, the Location Commission, the Lottery, the State, or any employee or official thereof (collectively, the State), 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 State to any liability if the Licensee fails to pay any contractor or other third-party vendor. All agreements into which the Operation Licensee enters with contractors and other third-party vendors for work to be performed under the Operation License shall be in the Licensee's name only and shall not name the State as a party to the agreement.

6.27 MINORITY BUSINESS ENTERPRISE (MBE) SUBCONTRACT PARTICIPATION

In this section Awardee and Licensee are used interchangeably.

6.27.1 General Requirements

- A. All MBE firms proposed must be certified by MDOT in order to be counted, except as set forth in Section 2.21.3 of the RFP. 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.

A 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.

B. Assistance in locating certified MBEs may be obtained by contacting:

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

A Maryland certified MBE Directory is published by:

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

and is available on the MDOT website at www.mdot.state.md.us.

C. To achieve the result specified in Sections 2.21.2 and 2.21.3 of the RFP, the Awardee/Licensee shall conduct the contractor/subcontractor solicitation process in such a manner as to not place MBE contractors or subcontractors at a disadvantage. In this process, the Awardee/Licensee shall:

1. Identify specific and meaningful work categories within the solicitation's scope of work that are appropriate for contracting and subcontracting;
2. Solicit diverse certified MBEs through written notice, describing the identified work categories under item (1) above and providing detailed instructions on how to submit a bid for the contracts or subcontracts (Make sure the MBEs are certified in the work category for which they are being solicited – carefully check the NAICS code);
3. Attempt to make personal contact with the certified MBEs solicited in item (2) above and document these attempts;
4. Assist certified MBEs to fulfill bonding requirements or to obtain a waiver of those requirements; and,
5. In order to publicize subcontracting opportunities to certified MBEs, conduct pre-Proposal conferences. Notify and encourage those MBEs solicited to attend the pre-Proposal conference.

6.27.2 Waiver

- A. If the Awardee believes a waiver of some or all of the MBE goal is necessary, including any sub-goal, then the Awardee must request a waiver by completing all documentation as directed by GOMA. The waiver request must clearly indicate what portion of the established goal the Awardee intends to meet. Documentation supporting any waiver request shall include, at minimum:
1. 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;
 2. 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;
 3. As to each certified MBE that placed a quotation or offer that the Awardee considered not to be acceptable, a detailed statement of the reasons for this conclusion; and,
 4. In the event certified minority subcontractors are found to be unavailable, a signed and notarized MBE Statement of Unavailability must be prepared by the Awardee, to include the names, addresses, dates, times, and telephone numbers of the certified MBEs contacted and the reason each MBE is unavailable.
- B. An Awardee 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 Awardee that (1) certified MBE participation was unable to be obtained or was unable to be obtained at a reasonable price, and (2) if GOMA, in consultation with the Lottery Commission, determines that the public interest is served by a waiver.
- C. The documentation shall be furnished within the time specified by the GOMA. If GOMA determines that the Awardee 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 Lottery Commission, in consultation with GOMA and upon review by the Office of the Attorney General, may determine not to issue the Operation License.

6.27.3 Amendment for Unforeseen Circumstances

If, at any time after award of the Operation License, the Awardee, or Licensee determines that a certified MBE listed on the MBE Participation Schedule (Appendix D-2) has become or will become unavailable or ineligible to perform the work, then the Awardee or Licensee shall notify GOMA within 72 hours of making the determination, as required by Chapter 254 of 2011. The notification shall indicate the Awardee's/Licensee's efforts to substitute another certified MBE subcontractor to perform the work. Within ten (10) working days from notification to GOMA, the Awardee/Licensee may request and submit an amendment to the MBE Participation Schedule (Appendix D-2) if applicable, and new Subcontractor Project Participation Statement (Appendix D-4) signed by both the Awardee/Licensee and the newly proposed certified MBE(s), which must be approved by GOMA. In the event that the Awardee/Licensee is unable to find one or more MBE replacements, the Awardee/Licensee shall document and submit in writing all efforts to find such replacements, including but not limited to seeking assistance from GOMA.

6.27.4 Compliance

GOMA shall monitor an Awardee's/Operation 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 Operation Licensees with these requirements. If GOMA reports that an Operation Licensee is not in compliance, the Lottery Commission may take immediate action to ensure the compliance of the Awardee/Operation 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 Awardee/Operation 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 fifteenth of each month, beginning the first month after the Notice of License Award, the Awardee/Operation Licensee shall submit to GOMA a Licensee'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 Operation Licensee 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 fifteenth of each month to GOMA a report, the MBE Subcontractor Payment Report (Appendix D-6), identifying the Licensee, and listing:
 - 1. All invoices submitted to the Operation Licensee during the reporting period;
 - 2. All payments received from the Operation 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 Operation 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 Notice of License Award until the last day of the Operation License shall be retained for three years after the License terminates or expires.)
- c. Upon notification by GOMA of the Operation Licensee's noncompliance, including failure to meet MBE reporting deadlines, the Lottery Commission shall notify the Operation Licensee in writing of its findings and shall specify what corrective actions are required. The Operation 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 Operation 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 Operation License
 - iii. Suspend the right of the Operation 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 Operation License
- vi. The Lottery Commission may use any other compliance mechanism available at law.
- e. GOMA may, upon termination or expiration of the Operation License, and before final payment or release of retainage or both by the Lottery Commission, require that the Operation 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 Operation Licensee has not complied with the MBE requirements, the Lottery Commission, upon review by the Office of the Attorney General, may determine the Operation 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 Operation Licensee.

6.27.5 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.

6.28 UNCLAIMED WINNINGS

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

6.29 COOPERATION

The Operation Licensee shall work in cooperation with any subsequent licensee, the VLT manufacturers, Central System contractor, and any other Lottery Commission or Lottery contractors to insure smooth implementation of all systems and to accomplish the Lottery Commission's objectives.

6.30 HIRING PREFERENCE

Under the VLT law, the Operation Licensee shall give a preference to hiring qualified employees from the communities within 10 miles of the video lottery Facility.

6.31 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 the 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 the 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.

6.32 LICENSE TRANSFER

A. Except as provided in paragraph B. below, a License issued under the 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 the VLT Law; and
 - (iii) the transfer is consistent with the policies and intent of Section 6.31.
- (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.

6.33 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.

6.34 PROMPT PAYMENT

6.34.1 If the Operation Licensee withholds payment of an undisputed amount to one of its contractors, 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 Operation Licensee until payment to the contractor is verified;
- B. Pay or cause payment of the undisputed amount to the contractor from monies otherwise due or that may become due;
- C. Place a payment for an undisputed amount in an interest-bearing escrow account; or
- D. Take other or further actions as appropriate to resolve the withheld payment.

6.34.2 An “undisputed amount” means an amount owed by the Operation Licensee to a contractor 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.

6.34.3 An act, failure to act, or decision of the Lottery Commission concerning a withheld payment between the Operation Licensee and contractor 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 Operation Licensee in any other proceeding; or

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

6.34.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to the Minority Business Enterprise program.

6.34.5 To ensure compliance with certified MBE 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 Operation Licensee;

2. Inspecting the jobsite; and

3. Interviewing contractors, subcontractors and workers.

4. Verification shall include a review of:

(a) The Operation 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, which lists payments received from the Operation Licensee in the preceding 30 days and invoices for which the MBE has not been paid.

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

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

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

1. Revoke the Operation 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 Operation Licensee, including the specific remedies required by this Directive regarding the payment of undisputed amounts.

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

6.35 NONINTERFERENCE

Chapters 232 and 233 of 2011 provide that a Licensee may not directly or indirectly interfere with, hinder, obstruct, impede, or take any action to delay the implementation or establishment of a video lottery facility by any other Licensee or Applicant. To the fullest extent allowed by the First Amendment of the Constitution of the United States, regulations to be adopted by the Lottery Commission must include provisions that expressly prohibit (1) taking any of the actions previously described related to required State or local government approvals for the establishment of a video lottery facility or providing funds or material support to any of these actions; and (2) as unlawful indirect conduct, activity by an entity in which the Licensee, or an affiliate of the Licensee, owns a beneficial or proprietary interest.

SECTION 7. APPENDICES

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

APPENDIX B – Confirmatory Affidavit *This form is not required to be submitted with the Proposal, but must be completed by the successful Applicant and submitted to the Lottery 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 – Applicant's Acknowledgement of MBE Requirements Affidavit
This is the only form in Appendix D that must be completed and submitted with the Applicant's Proposal.

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 – Conflict of Interest Affidavit and Disclosure *This form must be completed and submitted with the Applicant's Proposal.*

APPENDIX F – Authorization for Release of Information *This form must be completed and submitted with the Applicant's Proposal.*

APPENDIX G – Litigation/Protest Bond *This form must be completed and submitted with the Applicant's Proposal.*

APPENDIX H – Index of VLT-Related Lottery Commission Regulations

The regulations can be downloaded at:

<http://slots.mdlottery.com/about-us/>

APPENDIX I – Summary of Rocky Gap Lodge and Resort Outstanding Debt

APPENDIX J – Services and Supply Agreements and Lease Schedule for the Rocky Gap Lodge and Resort

Available on website at: <http://slots.mdlottery.com/>

APPENDIX K - Ground Lease and First Amendment to Ground Lease between State of Maryland (Department of Natural Resources (DNR) and Maryland Economic Development Corporation(MEDCO))

Available on website at: <http://slots.mdlottery.com/>

APPENDIX L –2008 Trust Indenture between MEDCO and Manufacturers and Traders Trust Company (Trustee) and 2011 First Supplemental Trust Indenture
Available on website at: <http://slots.mdlottery.com/>

APPENDIX M –2008 Subordination Agreement and 2008 Cash Flow Sharing Agreement Between Trustee, MEDCO, Department of Business and Economic Development, DNR, and County Commissioners of Allegany County
Available on website at: <http://slots.mdlottery.com/>

APPENDIX N– Audited Financial Statements for the Rocky Gap Lodge and Golf Resort Fiscal Years 2007 through 2010 and Consolidated Profit and Loss Statement January through April 2011
Available on website at: <http://slots.mdlottery.com/>

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. ESTOPPEL

I FURTHER AFFIRM THAT:

Failure on my part to identify any conflict, discrepancy, omission, or other error or ambiguity in this RFP and request clarification regarding such from the Location Commission as soon as possible, but in any event prior to the Proposal due date shall estop review of such concerns by the Maryland State Board of Contract Appeals.

O. COMPLIANCE WITH VLT LAW, REGULATIONS, AND RFP

I FURTHER AFFIRM THAT:

I intend to comply with the terms, conditions and requirements of the VLT law, Lottery Commission regulations, and this RFP.

P. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Video Lottery Facility Location Commission 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)

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APPENDIX B

Page 1 of 2

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 _____, 2011, 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

APPENDIX C - Pre-Proposal Conference Response Form

**Project Title: VIDEO LOTTERY OPERATION LICENSE
IN ALLEGANY COUNTY
#2012-0102**

A Pre-Proposal Conference will be held at **10:00 a.m. (Local Time), on July 20, 2011,**
at:

**Maryland State Lottery Agency
Montgomery Park Business Center-Suite 330
1800 Washington Boulevard
Baltimore, Maryland 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 July 14, 2011 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.

_____ **No, we will not be in attendance.**

Company/Firm/Vendor Name

Telephone

Signature

Name/Title

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APPENDIX D

MINORITY BUSINESS ENTERPRISE (MBE) INSTRUCTIONS/FORMS

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.

FORMS AND SUBMISSION REQUIREMENTS DURING RFP PROCESS

- ◆ An Applicant must include with its Proposal:
 - (1) A completed Applicant's Acknowledgement of MBE Requirements (Attachment D-1) whereby the Applicant acknowledges the certified MBE participation goal, commits to make a good faith effort to achieve the goal, and affirms that MBE contractors and subcontractors will be treated fairly in the solicitation process.

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

- ◆ Within ten (10) working days from the date of the License award, or other date specified by GOMA, the Awardee must provide the following documentation to GOMA:
 - (1) completed MBE Participation Schedule (Appendix D-2) whereby the Awardee 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. The Awardee shall specify the price and/or the percentage of License value associated with each MBE subcontractor identified on the MBE Participation Schedule.
 - (2) Outreach Efforts Compliance Statement (Appendix D-3)
 - (3) Subcontractor Project Participation Certification (Appendix D-4)
 - (4) If the Awardee has requested a waiver (in whole or in part) of the overall MBE goal or of any subgoal, it must submit documentation supporting the waiver request that complies with COMAR 21.11.03.11.
 - (5) Any other documentation required by GOMA to ascertain the Awardee's responsibility in connection with the certified MBE participation goal.

If the Awardee fails to return each completed document within the required time, GOMA in consultation with the Lottery Commission, may determine that the Awardee is not eligible for issuance of a License.

- Forms D-5, D-5a & D-6 are used for monthly reporting to GOMA after License award and will not be completed or submitted by the Applicant at this time. GOMA will notify Awardee/Licensee when to begin submitting these monthly reports.

LICENSE ADMINISTRATION REQUIREMENTS

The Awardee/Licensee shall:

1. Submit monthly to GOMA a report listing any unpaid invoices, over 30 days old, received from any certified MBE contractor or 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 Licensee 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.

APPENDIX D-1

APPLICANT'S ACKNOWLEDGEMENT OF MBE REQUIREMENTS

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

In conjunction with the Proposal submitted in response to RFP No. 2012-0102, I affirm the following:

1. I acknowledge the overall certified Minority Business Enterprise (MBE) participation goal of **25%** percent established for the Operation License to be awarded as a result of this RFP.
2. If I am awarded a License, I commit to making a good faith effort to achieve the established MBE goals.
3. I understand that if I am notified that I am the apparent Awardee, I must submit all additional documentation as required by GOMA within ten (10) working days, or other time period specified by GOMA, of receiving notice of the potential award.
4. I acknowledge that if I fail to return each completed document within the required time, the Lottery Commission in consultation with GOMA may determine that I am not eligible for issuance of a License.
5. In the solicitation of contract/subcontract quotations or offers, MBE contractors/subcontractors shall be provided not less than the same information and amount of time to respond as are non-MBE contractors/subcontractors.
6. The solicitation process shall be 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

APPENDIX D-2

MBE PARTICIPATION SCHEDULE

This document shall be completed and submitted with ten (10) working days of License award, or as directed by GOMA

Prime Contractor (Firm Name, Address, Phone)	Project Description: VLT OPERATION LICENSE- ALLEGANY COUNTY
Project Number #2012-0102	
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: _____

APPENDIX D-2

MBE PARTICIPATION SCHEDULE (continued)

Prime Contractor (Firm Name, Address, Phone)	Project Description VLT OPERATION LICENSE- ALLEGANY COUNTY
Project Number #2012-0102	
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	

List Additional MBE Subcontractors Or Provide Any
Additional Comments on Separate Paper.

APPENDIX D-3

OUTREACH EFFORTS COMPLIANCE STATEMENT

This document shall be completed and submitted within ten (10) working days of notification of License award, or as directed by GOMA

In conjunction with the bid or offer submitted in response to Solicitation No. 2012-0102, I state the following:

1. Awardee/Licensee 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. Awardee/Licensee made the following attempts to contact personally the solicited MBEs:

4. Select ONE of the following:
☐ This project does not involve bonding requirements.
OR
☐ Awardee/Licensee assisted MDOT certified MBEs to fulfill or to seek waiver of bonding requirements. (*DESCRIBE EFFORTS*)

5. Select ONE of the following:
☐ Awardee/Licensee did/did not attend the pre-bid/Proposal conference
OR
☐ No pre-bid/Proposal conference was held.

_____	By: _____
Awardee/Licensee Printed Name	Signature of Affiant
_____	_____
Address	Name, Title
_____	_____
	Date

APPENDIX D-4

SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION

Complete and submit one form for each MDOT certified MBE listed on Form D-2 within ten (10) working days of License award, or as directed by GOMA.

_____ (Awardee/Licensee) has entered into a contract with
_____ (contractor/subcontractor) to provide services in connection with
the project described below.

Prime Contractor Address and Phone	Project Description VLT OPERATION LICENSE-ALLEGANY COUNTY #2012-0102
Project Number	Total Contract Amount \$
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Percentage of Total Contract	

The undersigned Licensee and Subcontractor hereby certify and agree that they have fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or Proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified MBE to identify the certified MBE in its bid or Proposal;
- (2) fail to notify the certified MBE before execution of the contract of its inclusion of the bid or Proposal;
- (3) fail to use the certified MBE in the performance of the contract; or
- (4) pay the certified MBE solely for the use of its name in the bid or Proposal.

LICENSEE SIGNATURE

SUBCONTRACTOR SIGNATURE

By: _____
Name, Title
Date

By: _____
Name, Title
Date

APPENDIX D-5

VIDEO LOTTERY FACILITY LOCATION COMMISSION MINORITY BUSINESS ENTERPRISE PARTICIPATION LICENSEE'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 License termination.

LICENSEE: _____

LICENSEE'S LIAISON FOR MINORITY AFFAIRS: _____
Name
Signature _____ Date _____

MBE SUBCONTRACTOR NAME: _____

PROJECT NUMBER: 2012-0102

PROJECT TITLE: VLT OPERATION LICENSE - ALLEGANY COUNTY

MONTH REPORTING: _____, 20____

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

APPENDIX 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 _____

Report due by the 15th of following month.

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: _____

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

Subcontractor Payment Report

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

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

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: _____	1. Invoice #: _____ Date: _____
Payment Amount: \$ _____	Payment Amount: \$ _____
Services Provided: _____	Services Provided: _____
2. Invoice #: _____ Date: _____	2. Invoice #: _____ Date: _____
Payment Amount: \$ _____	Payment Amount: \$ _____
Services Provided: _____	Services Provided: _____
3. Invoice #: _____ Date: _____	3. Invoice #: _____ Date: _____
Payment Amount: \$ _____	Payment Amount: \$ _____
Services Provided: _____	Services Provided: _____
<u>Total Dollars Paid</u> \$ _____	<u>Total Dollars Unpaid</u> \$ _____

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

CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE **(THIS AFFIDAVIT IS REQUIRED TO BE SUBMITTED WITH THE APPLICANT'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)

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APPENDIX F
(THIS AUTHORIZATION IS REQUIRED TO BE SUBMITTED WITH THE PROPOSAL.)

AUTHORIZATION FOR RELEASE OF INFORMATION

(Name of Applicant) has submitted a Proposal in response to RFP #2012-0102 issued by the Video Lottery Facility Location Commission (“Location Commission”). As part of the Location Commission’s evaluation of the Proposal, the Location Commission and the Maryland State Lottery Commission (“Lottery 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 and Lottery Commissions 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 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 and Lottery Commissions unfettered access to discuss openly the performance of the Applicant related to the experiences set out in the RFP; and
4. Expressly authorize that any and all of the information conveyed to representatives of the Location or Lottery Commissions be kept in confidence 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: _____

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APPENDIX G
LITIGATION/PROTEST BOND
(THIS BOND IS REQUIRED TO BE SUBMITTED
WITH APPLICANT'S PROPOSAL.)

BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS THAT _____
having its principal office at _____ as
Principal and _____ authorized
to transact business in the State of Maryland, as Surety and held and firmly bound to
the State of Maryland, as obligee in the sum of Five Hundred Thousand and 00/100
Dollars (\$500,000.00). As a condition of the Maryland Video Lottery Facility Location
Commission's Request for Proposals #2012-0102, this bond must be supplied with the
Proposal with provision that a claim may be made upon this bond in accordance with
Section 2.30 of the Location Commission's RFP.

PRINCIPAL AND SURETY bind themselves, their heirs, assigns, executors and
administrator, jointly and severally, conditioned that this obligation shall remain in full
force and effect for a period of one (1) year from the Proposal submission date.
Provided, however, the Surety shall not be liable for the sum greater than the penal sum
of this bond.

IN WITNESS WHEREOF, the said Principal's hand and seal have been set hereunto
and the said Surety has caused these presents to be signed by its Attorney to become
effective on this, the _____ day of _____, 2011.

WITNESS: _____

BY: _____

TITLE: _____

SURETY: _____

WITNESS: _____

BY: _____

TITLE: _____

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APPENDIX H

Maryland State Lottery Commission Index of VLT-Related Regulations

Updated 4/26/11

Regulations can be downloaded at:

<http://slots.mdlottery.com/about-us/>

Chapter 01 Introduction

.....

.02 Definitions

.....

Chapter 02 General Regulations

.01 Powers of the Commission

.02 Powers of the Director

.....

Chapter 10 Video Lottery Terminals

.01 General

.02 Definitions

.03 Process

.04 Personal and Background Information

.05 Information for Background Investigation

.06 Consent for Investigation

.07 Organizational Documents

.08 Owners

.09 Directors, Officers, and Partners

.10 Controlling Entity

.11 Outside Interests

.12 Alternative Licensing Standards

.13 Video Lottery Employee Licenses

.14 Bonds

.15 Manufacturer Licenses

- .16 Principal Employee Licenses
- .17 Contractor Licenses
- .18 Hearings
- .19 Vendor Registration

Chapter 11 Video Lottery Facility Operation License

- .01 General
- .02 Definitions
- .03 Application
- .04 Qualification by the Commission
- .05 Issuance of License
- .06 Continuing Obligations
- .07 Automated Teller Machines
- .08 Predatory Marketing

Chapter 12 Video Lottery Terminal Machines

- .01 Definitions
- .02 Compliance with Federal Laws
- .03 Purchase or Lease of VLTs; Manufacturer Incentives
- .04 Transportation
- .05 Registration
- .06 Testing
- .07 Request for Authorization

Chapter 13 Facility Standards

- .01 Facility Standards
- .02 Hours of Operation
- .03 Facility Design Standards
- .04 Gaming Floor Plan
- .05 Issuance of an Operation License
- .06 Permanent Facility
- .07 Temporary Facility
- .08 Waiver

Chapter 14 Video Lottery Facility Minimum Internal Control Standards

- .01 Definitions
- .02 Accounting Records
- .03 Forms and Documents
- .04 Content of Internal Controls
- .05 Review of Internal Controls
- .06 Standard Financial and Statistical Reports
- .07 Annual Audit and Other Regulatory Reports
- .08 Record Retention
- .09 Complimentary Services
- .10 Table of Organization
- .11 Surveillance System Design Standards
- .12 Surveillance Department Operating Procedures
- .13 Surveillance Department Minimum Staffing
- .14 Security Department Operating Procedures
- .15 Security Department Minimum Staffing
- .16 Possession of a Weapon In A Facility
- .17 Access to Central Monitor and Control System Equipment
- .18 Cashiers' Cage Design Standards
- .19 Accounting Controls for a Cashiers' Cage
- .20 Player Checks
- .21 Wire Transfers
- .22 Cash Equivalents
- .23 Customer Deposits
- .24 Credit Authorization
- .25 Verification of Credit Application Information
- .26 Counter Check Issuance at The Cashiers' Cage
- .27 Counter Check Issuance at a Video Lottery Terminal
- .28 Counter Check Substitution, Consolidation And Redemption
- .29 Deposit of Counter Checks
- .30 Returned Checks
- .31 Accounting Controls in a Check Bank
- .32 Player Request for Suspension of Credit Privileges
- .33 Automated Teller Machine
- .34 Prohibition on the Use of Credit Cards and Debit Cards

.35	Player Tracking System
.36	Gaming Ticket
.37	Promotional Play
.38	Ticket Redemption Unit
.39	Jackpot Payout
.40	Annuity Jackpot
.41	Merchandise Jackpot
.42	Automated Jackpot Payout Machine
.43	Bill Validators and Cash Storage Boxes
.44	Collection of Cash Storage Boxes
.45	Count Room Design Standards
.46	Accounting Controls for a Count Room
.47	Signs
.48	Player Complaints
.49	Waiver

Chapter 15 Video Lottery Technical Standards

.01	Definitions
.02	Testing, Certification and Approval of Equipment, a System or Software
.03	Submission of Equipment, a System or Software for Testing and Certification
.04	Submission of a Video Lottery Terminal for Testing and Certification
.05	Abbreviated Testing and Certification
.06	Concatenated Binary Files and Related Documentation
.07	Emergency Modification of Equipment, a System or Software
.08	Notice of Known or Suspected Defect
.09	Revocation
.10	Communication Requirements
.11	Average Payout Percentage
.12	Maximum Bet
.13	Video Lottery Terminal Lock-up
.14	Random Number Generator
.15	Rules of Play
.16	Video Lottery Terminal Meters
.17	RAM Clear

- .18 Video Lottery Terminal Tower Lights and Error Conditions
- .19 Last Game Recall
- .20 Video Lottery Terminal Entry Logs
- .21 Video Lottery Terminal Security
- .22 Minimum Design Standards Applicable to Equipment, a System or Software
- .23 Video Lottery Terminal - Additional Requirements
- .24 Gaming Ticket System - Additional Requirements
- .25 Ticket Redemption Unit - Additional Requirements
- .26 External Bonusing System - Additional Requirements
- .27 Cashless Funds Transfer System - Additional Requirements
- .28 Progressive Video Lottery Terminals
- .29 Wide Area Progressive System
- .30 Progressive Proposal
- .31 Remote Access
- .32 Manufacturer Storage of Equipment, Systems and Software Outside a Facility
- .33 Waiver

Chapter 16 Voluntary Exclusion and Responsible Gaming

- .01 General
- .02 Definitions
- .03 Application for Voluntary Exclusion
- .04 Mandatory Surrender
- .05 Establishment of Voluntary Exclusion List
- .06 Removal from Voluntary Exclusion List
- .07 Access to Voluntary Exclusion List
- .08 Enforcement
- .09 Responsible Gaming Plan
- .10 Responsible Gaming Program

Chapter 17 Mandatory Exclusion

- .01 General
- .02 Definitions
- .03 Mandatory Exclusion List
- .04 Inclusion on Mandatory Exclusion List
- .05 Mandatory surrender

- .06 Removal from Mandatory Exclusion List
- .07 Judicial Review.
- .08 Enforcement
- .09 Facility Exclusion Plan

Chapter 18 Violations, Civil Penalties, and Sanctions

- .01 General
- .02 Definitions
- .03 Violations
- .04 Imposition of Civil Penalties and Sanctions
- .05 Notice of Violation; Appeal
- .06 Hearing; Judicial Review

Chapter 19 Collection of Taxes, Fees and Civil Penalties

- .01 General.
- .02 Definition.
- .03 Obligation to Pay
- .04 Collection and Deposit of Payments

Chapter 20 Unannounced Inspections

- .01 General
- .02 Definitions
- .03 Inspections
- .04 Records and Reports

APPENDIX I

SUMMARY OF ROCKY GAP LODGE AND RESORT OUTSTANDING DEBT

Outstanding Borrowed Debt

The Resort is subject to the following indebtedness in the following amounts:

- (1) MEDCO Seasonal Line of Credit. From time to time, MEDCO loans funds to the Resort in support of the Resort's working capital needs ("MEDCO Seasonal Line of Credit") from a \$650,000 seasonal line of credit. As of June 30, 2011, the approximate amount of MEDCO Seasonal Line of Credit, including interest due thereon, is \$579,692.
- (2) MEDCO Bonds. The Resort property and revenues currently secure MEDCO Bonds in the following Series and amounts:

<u>Series</u>	<u>Principal</u>	<u>Interest*</u>	<u>Interest Rate</u>	<u>Security</u>	<u>Maturity Date</u>
A	\$7,000,000	\$1,085,000	6%	First Lien	7/1/2048
B	17,000,000	0	6%, Accrued and unpaid interest (\$2,635,000 to date) is added to principal amount of Series C Bonds	Second Lien	7/1/2048
C	20,407,100	0	0%, Principal repayable to extent of available cash flow	Third Lien	7/1/2048
D	3,470,000	717,133	8%, Interest and	Fourth	7/1/2048

Principal	Lien
repayable to	
extent of	
available cash	
flow after full	
repayment of	
Series C, in	
conjunction	
with the	
Outstanding	
Accrued/Accruing	
Debt listed	
below.	

TOTAL \$46,857,100 \$2,822,133

* Accrued and unpaid interest through 6/30/2011

The MEDCO Bonds are owned by the State (Department of Business and Economic Development “DBED”), MEDCO, Davidson Kempner Partners and affiliates, and mutual funds managed by the Calvert Funds. The Series A Bonds are owned by the State and MEDCO and, notwithstanding the terms of the Series A Bonds, the State and MEDCO have agreed to subordinate their rights to payment until all of the Series B and C are repaid in full. The Series D Bonds are subordinate to the Series A, B and C Bonds, and to the MEDCO Seasonal Line of Credit.

Outstanding Accrued/Accruing Debt

In addition to the Series D Bonds, the following debts are subordinate to the Series A, B and C Bonds and to the MEDCO Seasonal Line of Credit in the following amounts as of June 30, 2011:

- (1) Ground Lease Rent to the Department of Natural Resources (“DNR”) in the amount of \$6,712,410;
- (2) Surcharge Revenues to DNR in the amount of \$482,296 (non-accruing);

(3) Host Community Fees to Allegany County in the amount of \$306,774 (non-accruing);

(4) MEDCO Service Fee to MEDCO in the amount of \$3,356,250;

(5) MEDCO Advances to MEDCO in the amount of \$608,145 (non-accruing);

(6) May 9, 1996 Loan from DBED (MEDAAF) in the amount of \$3,310,000; and

(7) November 1, 2001 interest-free Loan from DBED (MEDAAF) in the amount of \$1,500,000