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3770:2-2-01 Definition of certain terms used in division 3770:2 of the Administrative Code.

- (A) "Administrative Procedure Act" means Chapter 119. of the Revised Code, and all amendments thereto.
- (B) "Associated equipment" means hardware and software that is utilized in connection with the video lottery, but does not include telecommunication facilities and equipment of a public utility.
- (C) "Capital Investment" means costs related to demolition, engineering, architecture, design, site preparation, construction, infrastructure improvements, land acquisitions, furniture, fixtures, equipment, insurance related to construction, capitalized interest and other financing costs, leasehold improvements, video lottery terminal acquisition and related technology, surveillance and security equipment, and such other costs as approved by the director which are usual and customary for the industry.
- (D) "Commission" and "Ohio lottery commission" and "lottery" mean the state lottery commission created by the Lottery Act.
- (E) "Commissioners" means a member of the commission.
- (F) "Credit" means the value remaining to a video lottery participant usually denoted in units of play that may be used to continue to play video lottery games or may be redeemed for cash, or its monetary equivalent, or other prizes. Credit balances are increased by cash inserted, credit vouchers inserted, and/or video lottery prize winnings and may be increased by value credits.
- (G) "Credit voucher" means a bearer instrument issued from a video lottery terminal for redemption of credit in accordance with the requirements of the Lottery Act and the commission's rules and regulations.
- (H) "Director" means the executive director of the state lottery appointed in accordance with the Lottery Act.
- (I) "Electronic display" means the presentation of elements of video lottery games including but not limited to prize determination which are visible on a video lottery terminal and which may include but are not limited to mechanical spinning reels and/or video displays.
- (J) "Game" means a lottery game offered by the state lottery for sale to the public.
- (K) "Gaming employee" means any employee employed in the operation of a facility whose duties primarily involve the maintenance or operation of gaming activity or equipment or who comes in contact with gaming related cash, tokens, credit vouchers,

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or other financial instruments or who performs security and surveillance activities, but who are not key gaming employees.

- (L) “Institutional investor” means any of the following entities: a corporation, bank, insurance company, pension fund or pension fund trust, retirement fund, including funds administered by a public agency, employees’ profit-sharing fund or employees’ profit-sharing trust, any association engaged, as a substantial part of its business or operations, in purchasing or holding securities, including a hedge fund, mutual fund, or private equity fund or any trust in respect of which a bank is trustee or cotrustee, investment company registered under the “Investment Company Act of 1940,” 15 U.S.C. 80a-1 et seq., collective investment trust organized by banks under Part Nine of the Rules of the Comptroller of the Currency, closed-end investment trust, chartered or licensed life insurance company or property and casualty insurance company, investment advisor registered under the “Investment Advisors Act of 1940,” 15 U.S.C. 80 b-1 et seq., and such other persons as the commission may reasonably determine to qualify as an institutional investor for reasons consistent with this chapter.
- (M) “Key Gaming Employees” include managers, supervisors or other employees who have authority to develop or administer policy, long-range plans, or to make discretionary decisions regulating gaming operations and managers, supervisors or other employees responsible for major areas of the property, even if no gaming is conducted in the area.
- (N) "Licensing fee" means the fee to be paid by an applicant that is approved for a video lottery license which shall be in an amount set forth in rules promulgated by the commission under division 3770:2 of the Administrative Code.
- (O) "Lottery Act" means Chapter 3770. of the Revised Code, and all amendments thereto.
- (P) "Lottery fund" means the various lottery funds established in section 3770.06 of the Revised Code.
- (Q) “Non-Gaming Employee” means any person who works for a video lottery sales agent, whose duties do not involve the maintenance or operation of gaming activity or equipment or who does not come in contact with gaming related cash, tokens, credit vouchers, or other financial instruments or who does not perform security and surveillance activities, and who is not a Key Gaming Employee.
- (R) "Permit holder" means an entity authorized by the state racing commission to conduct one or more horse racing meetings under Chapter 3769 of the Revised Code.
- (S) "Person" means any person, persons, association, corporation, limited liability company, partnership, club, trust, estate, society, receiver, trustee, hedge fund, mutual fund, private equity fund, person acting in a fiduciary or representative capacity, instrumentality of the state or any of its political subdivisions, or any other

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combination of individuals meeting the requirements established by rule or order of the commission.

- (T) "Settlement date" means each date specified by the director on which video lottery sales agents are to settle their transactions through deposits in accordance with procedures established by the director.
- (U) "Technology provider" means a video lottery terminal manufacturer, distributor or provider who contracts with video lottery sales agents. A technology provider also means an independent test lab licensed by the Lottery.
- (V) "Ticket" means a lottery ticket issued by the state lottery for sale to the public.
- (W) "Unclaimed credit vouchers" means credit vouchers for cash or its monetary equivalent not redeemed within the redemption period set forth in rule 3770:2-7-02 of the Administrative Code.
- (X) "United States gaming jurisdiction" or "Another United States gaming jurisdiction" as used in these rules shall mean the gaming jurisdiction of any state and shall include the Ohio Casino Control Commission and the Ohio State Racing Commission.
- (Y) "Value" means the United States monetary equivalent.
- (Z) "Value credit" means a free play(s) on a video lottery terminal that is provided to a video lottery participant by a video lottery agent, as authorized by the director.
- (AA) "Video lottery" means the operation of video lottery games through the use of video lottery terminals, central monitoring systems, control systems, communications processes and/or associated equipment and activities connected and/or associated therewith.
- (BB) "Video lottery applicant" means a person who is a permit holder and who applies for a video lottery license in accordance with the Lottery Act and division 3770:2 of the Administrative Code.
- (CC) "Video lottery central monitoring system" means a system that may be operated by or under the control of the lottery commission for the purpose of providing the following functions relating to the sale of video lottery games: security, auditing, data and information retrieval, and other purposes deemed necessary and authorized by the lottery commission.
- (DD) "Video lottery central system provider" means the person that contracts with the lottery commission to provide the video lottery central system and its component parts and equipment and activities connected and/or associated therewith.

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- (EE) "Video lottery game" means any game that is played on a video lottery terminal.
- (FF) "Video lottery participant" means an individual who purchases a video lottery ticket.
- (GG) "Video lottery principal" means (1) an officer or director of a video lottery applicant or licensee; (2) a shareholder, general partner of a partnership, individual proprietor of a proprietorship, or any other form of association, entity, organization, or group of owners, having, directly or indirectly an ownership interest of five percent or more in a video lottery applicant or licensee; (3) an institutional investor as defined in section (L) of this rule having an ownership interest in a video lottery applicant or licensee of five percent or more, except as otherwise provided in section 3770:2-3-01(A)(7).
- (HH) "Video lottery sales agent" and/or "sales agent" is a permit holder which conducts live racing in accordance with Chapter 3769 of the Revised Code, and which is licensed by the director to sell video lottery games through video lottery terminals, and who continues to be a permit holder while authorized by the director to sell video lottery games.
- (II) "Video lottery ticket" means an electronic or virtual instrument to enable a video lottery participant to play a video lottery game.
- (JJ) "Video lottery prize payment" means the payment, by the commission or a video lottery sales agent, of prizes won by a video lottery participant while engaged in play on a video lottery terminal.
- (KK) "Video lottery winnings" means the value of credits awarded that can be redeemed for cash or other designated prizes as a result of a video lottery winning game outcome.
- (LL) "Video lottery license" means the specific privilege granted to a video lottery applicant by the director to sell video lottery games.
- (MM) "Video lottery terminal or VLT" is a device used by a video lottery sales agent in connection with the sale of video lottery games.
- (NN) "Video lottery terminal income" means credit(s) played, less value credits, less video lottery prize winnings.

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3770:2-3-02 **Video lottery licenses; application review process.**

(A) Upon receiving a video lottery application, the director or the director's designees shall evaluate the video lottery applicant to determine if the video lottery applicant meets the requirements of the Lottery Act and the commission's rules and regulations pertaining to video lottery. In addition to consideration of factors set forth in section 3770.05 of the Revised Code and Chapter 3770-2 of the Administrative Code pertaining to lottery sales agents the following factors may be considered during the application review process for determining whether an application for a video lottery license shall be granted or denied:

- (1) The financial responsibility and security of the video lottery applicant, including the extent to which a video lottery applicant has demonstrated its ability to financially sustain video lottery at its facility, as well as the source of such financing;
- (2) The accessibility of the video lottery applicant's place of business to the public;
- (3) The volume of expected sales by the video lottery applicant;
- (4) The results of any background checks;
- (5) Whether a video lottery applicant has failed to comply with a commission rule, regulation, policy, directive or order;
- (6) Whether a video lottery applicant has failed to comply another jurisdiction's lottery or gaming laws, rules, regulations, policies directives or orders;
- (7) Whether the video lottery applicant or persons who will be involved in video lottery at the video lottery applicant's facility is affiliated with a technology provider to be engaged in the operation of video lottery in the state, and if so affiliated, the nature of the affiliation;
- (8) The extent to which a video lottery applicant has cooperated with the commission in the application process including but not limited to cooperation with criminal and financial background checks and reviews;
- (9) The completeness and adequacy of a video lottery applicant's business plan and security and surveillance plan(s), including but not limited to, the manner in which the plans reflect on a video lottery applicant's ability to offer video lottery games for sale in accordance with the Lottery Act, rules, regulations, policies, directives and orders pertaining to video lottery; and
- (10) Any other information that the director deems relevant to a determination regarding a video lottery applicant's ability to offer video lottery games for sale

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in accordance with the Lottery Act, rules, regulations, policies, directives and orders pertaining to video lottery gaming operations.

- (B) If an applicant has been licensed by another United States gaming jurisdiction for the operation of video lottery, the director may, but is not required to, consider and rely upon any certifications obtained in connection with an application submitted to another United States gaming jurisdiction in connection with operation of video lottery.

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3770:2-3-03 Video lottery licenses; issuance of license.

- (A) If after a review of an application and consideration of factors deemed relevant to the efficient and proper administration of video lottery, and provided that the director determines that a video lottery applicant has met the requirements for issuance of a video lottery license, the director may license a video lottery applicant as a video lottery sales agent on such terms and conditions, and for such length of time, deemed appropriate, including issuance of a temporary license.
- (B) No video lottery license shall be issued until licensing fees are paid in accordance with and in the amount set forth in rules promulgated by the commission under division 3770:2-11 of the Administrative Code.
- (C) No video lottery license shall be issued to an entity that is not a permit holder.
- (D) Video lottery licenses are subject to suspension, modification, revocation or fines as authorized by the Lottery Act, rule, regulation, policy order or directive of the commission or director. Further, as necessary for reasons related to public safety, convenience or trust which require immediate action, the director may order the immediate and indefinite disabling of all or a portion of the video lottery operations and/or removal of video lottery equipment at a video lottery sales agent's video lottery facility. In the event of such action, the director must continue to comply with the requirements of the Administrative Procedure Act in affording the video lottery sales agent a subsequent opportunity for an adjudication hearing.
- (E) License Transfer. A video lottery license is not transferable for five years after the initial issuance of a license except that the sale of a holding company, of which the video lottery facility is less than ten percent of the holding company's value, shall not be considered a transfer of a license. If control of a video lottery sales agent location changes, the new owner may apply to the director for a license pursuant to applicable rules and regulations.
- (F) The relationship between the lottery and a video lottery sales agent is one of trust and a video lottery sales agent collects funds as a fiduciary on behalf of and in trust for the lottery through the sale of video lottery tickets for which a video lottery sales agent receives compensation.
- (G) Video lottery games sold and video lottery terminals operated by a licensed video lottery sales agent must be approved by the director, commission or commissioners, as applicable.
- (H) A video lottery license shall authorize a video lottery sales agent to offer video lottery games for sale and engage in authorized video lottery activity.
- (I) Upon issuance of a video lottery license, a video lottery sales agent shall be obligated to comply with the applicable provisions of the Lottery Act, all rules, regulations,

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policies and directives of the commission or director and all terms and conditions of the license as set forth in the application, or any amendments or modifications thereto. Failure to comply with any and all obligations required of a video lottery sales agent may subject the video lottery sales agent's video lottery license to suspension or revocation as set forth in rule 3770:2-3-05 of the Administrative Code, or to imposition of monetary penalties as set forth in rule 3770:2-3-06 of the Administrative Code. A temporary video lottery license, if issued, does not guarantee the issuance of a video lottery license.

- (J) In addition to selling video lottery games, a video lottery sales agent shall be required to sell other lottery games authorized by the commission and allocated to the video lottery sales agent by the director.
- (K) There shall not be more than seven video lottery sales agent licenses issued to permit holders at any one time during the ten year period following the issuance of the first video lottery sales agent license.

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3770:2-3-01 **Video lottery licenses; application.**

(A) Application for a video lottery license shall be submitted in accordance with procedures and conditions set by the director and shall be made on a form approved by the director. At a minimum, and without limitation, an application for a video lottery license shall require compliance with licensing requirements for a lottery sales agent under section 3770.05 of the Revised Code and Chapter 3770-2 of the Administrative Code, and shall include the following requirements which a video lottery applicant must provide at the time of submission of the application or agree to comply with should a video lottery license be issued.

- (1) A video lottery applicant must submit the video lottery applicant's legal name, form of entity, the names, addresses, employer identification numbers or social security numbers (if applicable) and dates of birth (as applicable) of its video lottery principals. Disclosure of any criminal charges or convictions of all individuals or entities whose names must be provided must also be included in the application;
- (2) A video lottery applicant must submit to the commission an application fee in the amount set forth in rules promulgated by the commission under section 3770:2-11-01 of the Administrative Code;
- (3) A video lottery applicant must submit proof, in a form required by the director, that the video lottery applicant is a permit holder. If more than one permit holder conducted horseracing meetings at a track during the previous year, the permit holders shall designate, by a written agreement, to be submitted prior to issuance of a video lottery license, one permit holder to be the actual video lottery sales agent in the event a video lottery license is issued;
- (4) A video lottery applicant must submit, in a form acceptable to the director, its proposed business plan for video lottery at its facility, which may require the inclusion of documents relating to an applicant's borrowing or financing of video lottery operations including but not limited to the payment of licensing fees. A business plan may be deemed a trade secret under 1333.61(D) of the Revised Code and therefore may not be subject to disclosure under section 149.43 of the Revised Code;
- (5) A video lottery applicant must agree to provide, in a form and by a date acceptable to the director, its proposed security and surveillance plan for approval by the director or director's designee. A security and surveillance plan may be deemed an infrastructure record and/or security record as set forth in section 149.433 of the Revised Code and therefore may not be subject to disclosure under section 149.43 of the Revised Code;

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- (6) For the period of time established or required by the director, a video lottery applicant must provide a listing of any and all gaming licenses, registrations or certifications obtained by the video lottery applicant, including the type of license, registration, or certification, date of issuance, date of suspension, termination, expiration or cancellation, if suspended, terminated, expired or cancelled, and the reason for suspension, termination, expiration or cancellation, and the date of assessment, imposition or payment of any penalties or fines;
- (7) If and as required by the director, a video lottery applicant must agree to background checks and reviews of the video lottery applicant or its video lottery principals, or any other persons affiliated with the video lottery applicant or video lottery sales agent who the director determines should be required to submit to a full background check. Background checks and reviews or other documentation for institutional investors who are video lottery principals may be required as deemed necessary by the director;
- (a) The director may determine that an institutional investor having an ownership interest in a video lottery applicant or licensee, directly or indirectly, of five percent to fifteen percent is not a video lottery principal as defined in section 3770:2-2-01(GG) of the Administrative Code if the institutional investor submits to the director documentation sufficient to establish qualifications as an institutional investor and certifies in writing, all of the following:
- [1] The institutional investor owns, holds, or controls publicly traded securities issued by an applicant or licensee or holding, intermediate, or parent company of an applicant or licensee or in the ordinary course of business for investment purposes only.
- [2] The institutional investor does not exercise influence over the affairs of the issuer of such securities not over an licensed subsidiary of the issuer of such securities.
- [3] The institutional investor does not intend to exercise influence over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities, in the future, and that it agrees to notify the director in writing within thirty days if such intent changes. The exercise of voting privileges with regard to publicly traded securities shall not be deemed to constitute the exercise of influence over the affairs of a licensee.
- (b) The director may rescind the determination that an institutional investor is not a video lottery principal under this subsection at any time if the institutional investor exercises or intends to exercise influence or control over the affairs of the applicant or licensee.
- (c) This subsection shall not be construed to preclude the director from requiring background checks and conducting reviews if the director becomes aware of facts or information that may result in the institutional investor being considered a video lottery principal.
- (8) Within the time specified by the director, a video lottery applicant must, in a form acceptable to the director, obtain a dedicated non-revocable letter of credit, a

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surety bond, financial guarantee or other alternative form of credit approved by the director in an amount determined by the director. In addition, the director may require a video lottery applicant to submit evidence of the ability to obtain general liability insurance, workers compensation coverage, property insurance in amounts required by the director, and any other insurance or bonds deemed necessary by the director;

- (9) If required by the director, a video lottery applicant must submit a signed indemnification agreement in a form approved by the director;
- (10) An applicant must agree to provide, at times requested by the lottery, a written schedule that lists the installed cost of all fixtures and equipment supplied or to be supplied in connection with video lottery conducted at the video lottery sales agent's facility approved for video lottery sales;
- (11) A video lottery applicant must agree that video lottery terminals shall be located at the premises of the permit holder licensed by the racing commission to conduct live horse racing for profit at a racing meeting;
- (12) A video lottery applicant must agree to purchase or lease, maintain and timely repair video lottery terminals, and a video lottery applicant must agree that video lottery terminals will only be purchased or leased from a technology provider licensed by the director;
- (13) A video lottery applicant must agree to provide for a clearly identifiable separation between the video lottery area and the racing wagering area;
- (14) An applicant must agree to make, maintain and repair necessary capital improvements for facilities at which video lottery terminals are located in accordance with standards set forth by the director;
- (15) A video lottery applicant must agree that any hardware or software installed to facilitate redemption of credit vouchers shall be the video lottery sales agent's responsibility;
- (16) A video lottery applicant must agree to be responsible for the costs associated with providing technology providers and other personnel designated by the director, sufficient space, as determined by the director, at the facility, where video lottery terminals are located, to allow technology providers and other personnel designated by the director to store equipment and conduct service, repairs and maintenance of video lottery terminals, video lottery central monitoring system and peripherals associated therewith necessary to ensure continued operation of the video lottery central monitoring system and video lottery terminals;

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- (17) A video lottery applicant must agree to timely report to the director, or the director's designee, any malfunction of the video lottery terminals or associated equipment, or failures of the technology providers to promptly service, repair or deliver video lottery terminals when such malfunctions or failures are reported to, made known to or observed by a video lottery sales agent;
 - (18) A video lottery applicant must agree to allow the lottery and its designated agents access to the video lottery facility and records for audits authorized under section 3770.06 of the Revised Code and for any other purposes deemed necessary by the director;
 - (19) A video lottery applicant must agree that all funds due to the lottery shall be transferred to the lottery by electronic fund transfer, or other method as approved by the director on the days and times set forth in the schedule or schedules issued by the director; and
 - (20) A video lottery applicant must agree that payments of video lottery winnings to video lottery participants, and required withholdings, if applicable, will be handled in accordance with procedures as approved by the director.
- (B) As deemed necessary by the director, the director may amend the application and require video lottery applicants and/or video lottery sales agents to supplement or complete an amended application. Further, all information required to be submitted as part of an application for a video lottery license pursuant to division 3770:2 of the Administrative Code must be updated or supplemented if updates or changes occur following the submission of an application. In the event that updated or supplemental information is required by or received by the lottery, the director maintains discretion to suspend, revoke or reconsider an application or otherwise modify the conditions of the issuance of a license. In the event that the director takes action in connection with any updated or supplemental information received by the lottery, the director will adhere to required notices and procedures regarding any suspensions, revocation, reconsideration or modification of an application or the issuance of a license.

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3770:2-5-01 Technology providers; licensing of independent test labs.

(A) Licensing of Independent Test Labs. The director shall establish and publish criteria and/or requirements that an interested independent test lab may be required to satisfy, submit or make available to the commission prior to consideration of licensing of independent test labs to provide certification or testing services in connection with video lottery terminals, video lottery games and/or associated equipment. One or more independent test labs may be licensed by the commission for selection by a technology provider or video lottery sales agent. Once licensed, the independent test lab shall be added to the list of licensed independent test labs which shall be published by the commission. The director may remove an independent test lab from the licensed list of independent test labs in accordance with the Ohio Administrative Procedures Act. Any required submissions shall be submitted on a form approved by the director. Such criteria or requirements may include but may not be limited to:

(1) An interested independent test lab may be required to provide the commission with access to its facility or facilities for inspection and review by the commission;

(2) An interested independent test lab may be required to agree that its video lottery principals, employees or other persons affiliated with the independent test lab will submit to background checks as required by the director. The results of any required background checks may be a factor in determining whether an independent test lab is eligible to provide certification services in connection with video lottery terminals, video lottery games and/or associated equipment.

(3) Payment of costs, if any, associated with a request to the commission to be licensed as an independent test lab to provide certification services in connection with video lottery terminals, video lottery games and/or associated equipment.

(4) Experience in testing video lottery terminals, video lottery games or substantially similar gaming systems and/or associated equipment.

(5) Submission of evidence of any certifications, accreditations or proof of compliance with industry standards as required by the director.

(6) Submission of proof that the independent test lab is not owned or controlled by, or has any interest in, a video lottery terminal manufacturer, distributor or provider or video lottery sales agent, or any other lottery or gaming related entity that the director determines would be an unacceptable affiliation.

(7) An agreement by the independent test lab to indemnify and hold the Ohio lottery commission harmless from acts or omissions of the independent test lab.

(B) Selection of Approved Independent Test Lab. A technology provider or video lottery sales agent may only utilize those test labs that are licensed and are included on the then current list of licensed independent test labs. The director may determine that

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the technology provider or video lottery sales agent is required to utilize more than one independent test lab to provide testing and certification services.

(C) Certification. Prior to operation by the public at a video lottery sales agent's facility, all video lottery terminals that are purchased, leased or otherwise acquired from a video lottery technology provider licensee, all video lottery games and all associated equipment shall be certified by an independent test lab licensed by the director to provide testing and certification. In the event that there are modifications or updates to the software or hardware associated with a video lottery terminal, video lottery game or associated equipment, notification to the commission must be provided by the technology provider and/or a video lottery sales agent, and if required by the director, recertification of all or part of the software or hardware for that video lottery terminal, video lottery game or associated equipment will be required prior to continued operation by the public of that video lottery terminal. The director may authorize, without a requirement of recertification, disablement of a feature of the software or hardware for a video lottery terminal, video lottery game or associated equipment that has been modified or updated if certain features are not features available to the public. Testing, certification and recertification of video lottery terminals, video lottery games and associated equipment shall be conducted and provided in accordance with specifications and/or criteria approved by the director. The director may, but is not required to, establish standards for transfer of test results or certifications performed by an independent test lab in another gaming jurisdiction for a video lottery terminal, video lottery game and/or associated equipment being proposed for approval by the director and/or commission, as applicable. All test results must be submitted to the director by the licensed independent test lab.

(D) Prohibition. A licensed test lab may not be licensed by the lottery as a technology provider to manufacture, distribute, provide, maintain and/or repair video lottery terminals acquired by a video lottery sales agent.

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3770:2-5-02 **Technology providers licenses; application.**

(A) Application for a technology provider license. A video lottery terminal manufacturer, distributor or provider application for a technology provider license shall be submitted in accordance with procedures and/or conditions set by the director and shall be made on a form approved by the director. At a minimum, and without limitation, an application for a technology provider license shall include the following requirements which a video lottery terminal manufacturer, distributor, or provider must provide at the time of submission of the application or agree to comply with should a technology provider license be issued.

- (1) An applicant must submit its legal name, form of entity, the names, addresses, employer identification numbers or social security numbers (if applicable) and dates of birth (as applicable) of its video lottery principals. Disclosure of any criminal charges or convictions of all individuals or entities whose names must be provided must also be included in the application;
- (2) An applicant must submit to the commission an application fee in the amount set forth in rules promulgated by the commission under division 3770:2-11 of the Administrative Code.
- (3) An applicant must submit proof that it is registered to do business in Ohio, and shall provide the name and contact information for the principal contact for its business in Ohio;
- (4) For the period of time established or required by the director, a technology provider applicant must provide a listing of any and all gaming licenses, registrations or certifications obtained by the applicant, including the type of license, registration, or certification, date of issuance, date of suspension, termination, expiration or cancellation, if suspended, terminated, expired or cancelled, and the reason for suspension, termination, expiration or cancellation, and the date of assessment, imposition or payment of any penalties or fines;
- (5) If and as required by the director, an applicant must agree to submit to a full background check and review of the applicant or its video lottery principals, or any other persons affiliated with the applicant or licensee who the director determines should be required to submit to a background check. Individual licenses may be required of persons affiliated with the applicant or licensee who the director determines should be required to hold an individual license. Individual licenses would be required to be obtained in accordance with applicable provisions of the Administrative Code.
- (6) If required by the director, an applicant must submit a signed indemnification agreement in a form approved by the director;

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- (7) Prior to operation of video lottery terminals, video lottery games and/or associated equipment, the applicant must agree that the video lottery terminals, video lottery games and/or associated equipment will have obtained the required certifications and/or tests from an independent test lab that is licensed and included on the then current list of Ohio lottery commission licensed independent test labs.
 - (8) An applicant must agree that, it will provide test video lottery terminals and video lottery games to the video lottery central monitoring system provider with no additional costs to the lottery;
 - (9) An video lottery applicant must agree to allow the lottery and its designated agents access to its hardware and software, facilities and records for audits authorized under section 3770.06 of the Revised Code and for any other purposes deemed necessary by the director;
- (B) Amendments by the applicant prior to issuance. All information required to be submitted as part of an application for a technology provider license pursuant to division 3770:2-5 of the Administrative Code must be updated or supplemented if updates or changes occur prior to issuance of a license. In the event that updated or supplemental information is required by or received by the lottery, the director maintains discretion to suspend, revoke or reconsider an application or otherwise modify the conditions of the issuance of a license. In the event that the director takes action in connection with any updated or supplemental information received by the lottery, the director will adhere to required notices and procedures regarding any suspensions, revocation, reconsideration or modification of an application or the issuance of a license.

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Technology providers licenses; application review process.

- (A) Application review process. Upon receiving an application, the director shall review the application to determine if the applicant meets the requirements of the Lottery Act and the commission's rules and regulations pertaining to video lottery. The following factors may be considered during the application review process for determining whether an application for a technology provider license shall be granted or denied.
- (1) The financial responsibility and security of the applicant, including the extent to which an has demonstrated its ability to manufacturer, distribute or provide video lottery terminals and/or video lottery games.
 - (2) The results of any background checks;
 - (3) Whether an applicant has failed to comply with a commission rule, regulation, policy, directive or order;
 - (4) Whether an applicant has failed to comply with another jurisdiction's lottery or gaming laws, rules, regulations, policies directives or orders;
 - (5) Whether the applicant or persons who will be involved in the applicant's business is affiliated with a technology provider or video lottery sales agent to be engaged in the operation of video lottery in the state, and if so affiliated, the nature of the affiliation;
 - (6) The extent to which the applicant has cooperated with the commission in the application process including but not limited to cooperation with criminal and financial background checks and reviews;
 - (7) Any other information that the director deems relevant to a determination regarding the applicant's ability to offer video lottery games for sale in accordance with the Lottery Act, rules, regulations, policies, directives and orders adopted, promulgated or issued by the commission or the director pertaining to video lottery gaming operations.
- (B) Consideration of certification and/or licensure from other jurisdictions. If an applicant has been certified and/or licensed by another state lottery for the operation of video lottery, or another United States gaming jurisdiction, the director may, but is not required to, consider and rely upon any such certification and/or licensure.

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3770:2-5-04 **Technology providers licenses; issuance of license.**

- (A) Issuance of license. If after a review of an application and consideration of factors deemed relevant to the efficient and proper administration of video lottery, and provided that the director determines that an applicant has met the requirements for issuance of a technology provider license, the director may license an applicant as a technology provider on such terms and conditions, and for such length of time, deemed appropriate, including issuance of a temporary license.
- (B) Licensing fee. No technology provider license shall be issued until any required licensing fee is submitted in the amount set forth in rules promulgated by the commission under division 3770:2-11 of the Administrative Code.
- (C) Non-transferability of license. A technology provider license is not transferable. If ownership or majority control of the technology provider changes, unless the director determines that a new application is not required, the new owner may apply to the director for a license pursuant to applicable rules and regulations.
- (D) Approval of video lottery games and terminals. Video lottery games provided by or sold by and video lottery terminals provided by or sold by a technology provider licensee to a licensed video lottery sales agent must be approved by the director, commission or commissioners, as applicable.
- (E) Authority to sell. A technology provider license, once issued, authorizes the sale of video lottery games and video lottery terminals to licensed video lottery sales agents to be installed and operated in accordance with application provisions of the Lottery Act, all rules regulations, policies and directives of the commission or director.
- (F) Compliance with the Lottery Act. Upon issuance of a technology provider license, a licensee shall be obligated to comply with the applicable provisions of the Lottery Act, all rules, regulations, policies and directives of the commission or director and all terms and conditions of the license as set forth in the application, or any amendments or modifications thereto. Failure to comply with any and all obligations required of a licensee may subject the license to suspension or revocation as set forth in rule 3770:2-5-06 of the Administrative Code, or to imposition of monetary penalties as set forth in rule 3770:2-5-07 of the Administrative Code. A temporary license, if issued, does not guarantee the issuance of a technology provider license and may be suspended or revoked at any time and for any reason without further notice and opportunity to be heard.
- (G) Number of licenses. There shall be no limit on the number of technology provider licenses issued.

***** DRAFT – NOT FOR FILING *****

3770:2-5-05

Technology providers licenses; denial of license.

- (A) Denial of license. If after a review of a technology provider application and consideration of any other factors deemed relevant to the efficient and proper operation of video lottery, the director determines that an applicant has not met the requirements for issuance of a technology provider license, the director may deny the application, or may request that the application be revised and reviewed for further consideration.
- (B) Mandatory Refusal. In addition to the mandatory grounds for refusal in Divisions (C)(1) to (C)(5), (D)(1) to (D)(3) and (E)(1) to (E)(2) of Section 3770.05 of the Revised Code, and except as provided below in section 3770:2-5-05(C) of the Administrative Code, in the event any of the following are determined by the director, an application for a technology provider license shall be denied:
- (1) A determination that an applicant or persons who will be involved in video lottery terminal manufacture, distribution, or provision in the state is known to be affiliated with a video lottery sales agent or independent test lab licensed to provide testing services in the state which has been determined by the director to be an unacceptable affiliation and an applicant or a person who will be involved in video lottery in the state has refused to divest itself of the affiliation with the video lottery sales agent or independent test lab
 - (2) A determination that an applicant has made a misrepresentation regarding a fact material to an application or has failed to disclose information regarding a fact material to an application.
 - (3) A determination that an applicant or person who will be involved in video lottery operations in the state has been convicted of any other criminal violation which as determined by the director may negatively impact the integrity of the lottery.
- (C) Criminal Background Check. The director may require an applicant, or any of its video lottery principals or any person who the director has determined should be subjected to a criminal background check that have been convicted of any of the offenses set forth in divisions (C)(1) to (C)(5) and (E)(1) to (E)(2) of section 3770.05 of the Revised Code to obtain an order from a court of competent jurisdiction to have the record of such offense sealed. If such an order is not obtained during the time specified by the director, the director may deny the video lottery application. If the record of an applicant, or any of its video lottery principals or any person who the director has determined should be subjected to a criminal background check reveals an offense listed in divisions (C)(1) to (C)(5) and (E)(1) to (E)(2) of Section 3770.05 of the Revised Code which is at least ten years old, the director may disregard the offense and may license the applicant.

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- (D) Right to hearing. When required to do so by the Administrative Procedure Act, the director shall afford a hearing to an applicant affected by a decision to deny an application for a technology provider license. Such hearings shall be conducted by the director or a hearing examiner designated by the director and shall comply with the requirements for adjudication hearings established in the Administrative Procedure Act.

- (E) Reapplication. If an application is denied, an applicant may reapply, but any subsequent application shall require submission of a new application and payment of a separate application fee and licensing fee, as applicable, and shall only be submitted after any waiting period for reapplication, if any established by the director, has expired.

***** DRAFT – NOT FOR FILING *****

3770:2-11-01 Licensing Fees

- (A) Authority. The director shall collect licensing fees for the licenses issued to video lottery sales agents, gaming employees, or technology providers as set forth in these rules.
- (B) Video Lottery Sales Agent Licensing Fee. An entity submitting an initial application for a video lottery sales agent license as described in Section 3770:2-3-01 of the Administrative Code, shall pay the license fee of fifty (\$50) million according to the following schedule:
1. Ten million dollars payable with the submission of a completed initial application;
 2. Fifteen million dollars payable with the commencement of VLT sales at a facility.
 3. Twenty-five million dollars payable one year following commencement of VLT sales.
 4. In the event that an application is rejected or withdrawn, or the State of Ohio suspends or terminates the Video Lottery Terminal program prior to commencement of VLT sales, the initial licensing fee payment of ten million dollars shall be refunded minus any actual costs expended by the Lottery for investigation and processing of the license application, not to exceed \$250,000. Any licensing fees, or portion thereof, may be refunded for any other reason deemed appropriate by the Director.
- (C) Gaming Employee Licensing Fee. An individual shall submit an application for a gaming employee license as described in section 3770:2-4-01 of the Administrative Code for which the director shall collect fees sufficient to complete the background review. The categories are described in section 3770:2-4-01 of the Administrative Code as follows:
1. An application for a category one “Key Gaming Employee” license shall be accompanied by a licensing fee of two hundred and fifty (\$250) dollars.
 2. An application for a category two “Gaming Employee” license shall be accompanied by a licensing fee of one hundred (\$100) dollars.
 3. A category three “Non-Gaming Employee” shall not be licensed by the Lottery. If required, the Non-Gaming Employee shall submit an application and fees in accordance with the rules and regulations of the State Racing Commission as described in sections 3769-2-18 and 3769-12-18 of the Administrative Code.
 4. A category four “Temporary Employee” shall not be required to pay a temporary licensing fee.

- (D) Technology Provider Licensing Fee. An entity submitting an application for a technology provider license as described in section 3770:2-5-02 of the Administrative Code shall pay a license fee of two thousand five hundred dollars.
- (E) Technology Provider Individual License Fee. An applicant identified as requiring an individual license as described in section 3770:2-5-02 (A)(5) of the Administrative Code shall pay a license fee of one hundred (\$100) dollars.

3770:2-4-01 Video Lottery Sales Agent employee licensing.

(A) Video lottery sales agent employees may be required to obtain a license prior to being involved in any video lottery gaming licensed activity.

(B) Any individual who holds a license may perform the duties and responsibilities of any position within that category.

(C) Identification. A licensed employee shall have a photo taken for identification purposes and shall have all appropriate and necessary identification at all times while performing duties and responsibilities of any position that requires a license.

(D) Categories of employee licenses:

1. Category One: Key Gaming Employees as defined in section 3770-2-2-01 of the Administrative Code.
2. Category Two: Gaming Employees as defined in section 3770-2-2-01 of the Administrative Code.
3. Category Three: Non-Gaming Employees as defined in section 3770-2-2-01 of the Administrative Code. A Non-Gaming Employee may be subject to licensure of the State Racing Commission as described in sections 3769-2-18 and 3769-12-18 of the Administrative Code.
4. Category Four: Temporary Licenses may be granted to an applicant for a Key Gaming or Gaming Employee license until appropriate processing is completed. Temporary Licenses may also be granted to an employee of a video lottery sales agent who is performing short term duties in a facility. A temporary license may be valid for a term determined by the Director.

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3770:2-4-02

Video Lottery Sales Agent employee licenses; application.

(A) Applicant age requirement. An individual who is eighteen years of age or older may apply for a license.

(B) Application form. Application for a license shall be made on a form approved by the director for this purpose. Without limitation, an application for a license may include the following requirements which an applicant must provide at the time of submission of the application or agree to comply with should a license be issued.

(1) An applicant must provide the applicant's legal name, address, social security number, and date of birth. Disclosure of any criminal charges or convictions must also be included in application;

(2) An applicant must provide a listing of all prior or current affiliations or employment in the gaming industry, whether operated by a government or private entity, and the dates of said affiliation or employment;

(3) An applicant must provide a listing of all prior or current affiliations or employment with a technology provider, and the dates of said affiliation or employment;

(4) An applicant must agree to submit to background checks and reviews as required by the director and comply with any process or procedure necessary to conduct and complete the required background checks and review;

(5) An applicant must agree to comply with all applicable provisions of the Lottery Act, all lottery rules, regulations, policies and directives of the commission or director relating to video lottery gaming and must agree to cooperate with the submission of any other records or documents deemed necessary by the director and to submit to any other checks or reviews deemed necessary by the director.

(C) Application updates or changes. All information required to be submitted as part of an application for a license must be updated if changes occur following the submission of an application.

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3770:2-4-03

Video Lottery Sales Agent employee licenses; application review process.

(A) Application review. Upon receiving a proper application, the director shall determine if the applicant meets the requirements of the Lottery Act and the commission's rules and regulations pertaining to video lottery sales agent employees. The director shall consider the following:

- (1) The results of the criminal, financial, or other background investigations, if any, of the applicant;
- (2) Other information that the director deems relevant to a determination regarding an applicant's suitability for issuance of a license in accordance with applicable provisions of the Lottery Act, rules, regulations, policies and directives of the commission or director pertaining to video lottery gaming operations.

(B) Reciprocity. If an applicant has been licensed by another United States gaming jurisdiction, the State Racing Commission, or the Ohio Casino Control Commission as a gaming employee, or other similar designation in connection with the operation of gaming, the director may, but is not required to, consider and rely upon any certifications or licenses obtained in connection with an application submitted to another United States gaming jurisdiction, the State Racing Commission, or the Ohio Casino Control Commission.

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3770:2-4-04

Video Lottery Sales Agent employee licenses; issuance of license.

(A) Issuance of license. If after a review of an application and consideration of any other factors deemed relevant to the issuance of a license, the director determines that an applicant has met the requirements for issuance of a license, the director may issue the applicant a license on such terms and conditions deemed appropriate, including issuance of a temporary license.

(B) License term. Except for a temporary license, a license issued by the director shall be effective for a term of three years. Both a temporary license and an employee license are subject to suspension, modification, revocation or fine as required by the Lottery Act, rule, regulation, policy order or directive of the commission or director.

(C) License compliance. Upon issuance of a license, whether temporary or otherwise, a licensee shall be obligated to comply with all applicable provisions of the Lottery Act, rules, regulations, policies and directives of the commission or director and all the terms and conditions of the license agreement as set forth in the application, or any amendments or modifications thereto. Failure to comply with any and all obligations required may subject the license, whether temporary or otherwise, to suspension or revocation as set forth in section 3770:2-4-06 of the Administrative Code, or to imposition of monetary penalties as set forth in section 3770:2-4-07. Issuance of a temporary license does not guarantee the issuance of a license.

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3770:2-4-05

Video Lottery Sales Agent employee licenses; denial of license.

(A) Denial of application. If after a full review of an application and consideration of any other factors deemed relevant to the issuance of a license, the director determines that an applicant has not met the requirements for issuance of a license, the director may deny the application.

(B) Mandatory denial of application. Except as provided below in section 3770:2-4-05(C) of the Administrative Code, in the event any of the following are determined by the director, an application for a license shall be denied:

(1) An applicant has been convicted of any of the following offenses:

- (a) A felony, or a crime involving moral turpitude;
- (b) An offense involving illegal gambling; and
- (c) An offense involving fraud or misrepresentation.

(2) An applicant is affiliated with a technology provider or other vendor engaged in the operation of video lottery gaming in the state which has been determined by the director to be an unacceptable affiliation.

(C) Offense conviction. The director may require an applicant who has been convicted of any of any of the offenses set forth in subdivision (B) of this rule to obtain an order from a court of competent jurisdiction to have the record of such offense sealed. If such an order is not obtained during the time specified by the director, the director may refuse the application. However, if the record of an applicant contains an offense listed set forth in subdivision (B) of this rule which is at least ten years old, the director may disregard the offense and may license the applicant.

(D) Hearings. When required to do so by the Administrative Procedure Act, the director shall afford a hearing to an applicant for a license affected by a decision to deny an application for license. Such hearings shall be conducted by the director or a hearing officer designated by the director and shall comply with the requirements for adjudication hearings set out in the Administrative Procedure Act. Nothing contained herein shall require the director to afford the employer or potential employer of an applicant for a license a hearing or an opportunity to be heard on any decision relating specifically to an application for a license.

(E) Applicant denial and reapplication. If an application is denied, an applicant may reapply, but any subsequent application shall require submission of a new application and payment of a separate application fee, and shall only be submitted after any waiting period for reapplication, if any, established by the director, has expired.

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3770:2-12 Facility Requirements

- A) Capital Investment Plan. A master facility plan shall be submitted for review and approval by the racing commission and the director of the lottery. The plan must propose capital investments totaling a minimum of \$150 million in categories as defined at 3770:2-2-01(D).
 - 1) Up to \$25 million of the capital investment may be allocated for existing land and facilities.
 - 2) Capital investments made in a temporary facility which becomes part of the permanent master facility plan may be considered for inclusion in the minimum capital investment requirement.
- B) Schedule. The capital investment must be completed within three years from issuance of a license.
- C) Reporting. The video lottery sales agent shall provide status reports in a format and according to a schedule established by the racing commission and the lottery director. The video lottery sales agent shall maintain supporting records detailing actual expenditures and shall make those records available for inspection.
- D) Facility Requirements. A permit holder who has been licensed as a video lottery sales agent shall submit a facility plan which must meet the following requirements.
 - 1) The facility design must comply with applicable building and safety codes. If not already accessible, renovated and new facilities should meet the requirements of the Americans with Disabilities Act.
 - 2) The facility plan must include:
 - i) Computer space for the central monitoring and control system.
 - ii) A dedicated office for use by the lottery that is located adjacent to the gaming floor and equipped with work space, telephones, and access to office supplies and equipment.
 - iii) Security and Surveillance systems approved by the director as described in OAC 3770-2-6 including an area for the detention of individuals taken into custody by any law enforcement agent that has jurisdiction over the facility.
 - iv) A Gaming Floor plan detailing the placement of video lottery terminals, self-serve cashing equipment and automated teller machines.
 - v) A Restricted Access plan noting placement of the cashiers' cage; computer rooms; count room; VLT storage and repair; surveillance room; vault and armored car bay; and any other restricted areas.
 - vi) Identification of space dedicated exclusively to simulcasting and pari-mutuel operations.
 - vii) Identification of improvements to live racing facilities including the racetrack; grandstand; barn and stable areas;
 - viii) All other components set forth in Chapter 3769 of the Revised Code or any administrative rules promulgated in furtherance thereof.
- E) Temporary Facility Requirements.
 - 1) A video lottery sales agent may submit a proposal for review and approval of the racing commission and the director to operate at a temporary facility.

- 2) The temporary facility must comply with the requirements set forth in Section (G) of this rule.
 - 3) A video lottery sales agent may request a deviation from the facility plan requirements in writing for consideration and approval by the director and the state racing commission. No deviation may be undertaken without the express approval of the director and the state racing commission.
 - 4) The minimum capital investment in a temporary facility shall total \$5 million exclusive of the cost of acquisition of vide lottery terminals.
- F) Facility Relocation. The permit holder may submit to the state racing commission a proposal for the relocation of a facility pursuant to Section 3 of HB277 as enacted by the 129th General Assembly. Said application must be submitted by October 17, 2013 and must contain a facility plan meeting the requirements set forth in this rule.
- G) Relocation Costs. If the state racing commission approves a temporary facility, the permit holder shall be responsible for all costs associated with the transition from a temporary facility to a permanent facility including the cost of relocating the central monitoring system and components.