



# Empire State Development

**Andrew Cuomo**  
*Governor*

**Kenneth Adams**  
*ESD CEO*

**NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT**

## **REQUEST FOR PROPOSALS**

**TRADEMARK LICENSING AGENCY  
RFP NUMBER 15-6102**

**PROPOSAL DUE DATE FEBRUARY 18, 2015, 3:00 P.M. EST  
(LATE PROPOSALS CANNOT BE ACCEPTED)**

Release Date: January 20, 2014

**Request For Proposal (RFP) Response Form**

**RFP # 15-6102**

**Please review this RFP. Complete the following information and mail this form or if submitting a proposal, this form together with your entire proposal, to the address at the bottom of this page. Late proposals cannot be accepted.**

/ / **Attached is our proposal**

/ / **We do not intend to submit a proposal for the following reason(s):**

\_\_\_\_\_  
\_\_\_\_\_

**Name of Organization:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

- Is this address your company's principal place of business?      Yes \_\_\_\_\_ No \_\_\_\_\_

The term "principal place of business" is defined as follows:

A company's principal place of business is generally considered to be the enterprise's main office, where the regular meetings of its board of directors occurs, and where a company's business is managed, conducted and directed, regardless of where the administrative departments or the physical property of the business are located. For purposes of determining the principal place of business, a foreign business enterprise's principal place of business is not necessarily the same as its state of incorporation. In sum, the determinate is where the actual "business" of the corporation takes place.

If the above address is not your principal place of business, please indicate the full address of your principal place of business on the following two lines:

\_\_\_\_\_  
\_\_\_\_\_

- Will this product or service be substantially produced in NYS: Yes \_\_\_\_\_ No \_\_\_\_\_
- Subject to the "Conditions Governing Proposals" article stated in this RFP, proposals must be in agreement with all terms and conditions of this RFP.

**Phone #:** \_\_\_\_\_ **Fax #:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Type or Print Name and Title:** \_\_\_\_\_

**By checking this box, we request that you remove our name from your bidders' list**     

Mail this as the first page of your proposal. If not submitting a proposal, please mail this form to: Lisa Sutton, NYS Department of Economic Development, Office of Fiscal Management, 625 Broadway, Albany, NY 12245

NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT  
REQUEST FOR PROPOSAL 15-6102

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## SECTION I - ADMINISTRATIVE INFORMATION

### 1.0 PURPOSE

The New York State Department of Economic Development (hereafter referred to as NYSDED or the Department) requires the services of a qualified licensing agency to facilitate full domestic and international licensing support of the Department's copyrights, trademarks and service marks, including the Department's registered **I♥NY** trademark and service mark and the marks pictured in section 4.18 of this RFP. In addition to pictures of the marks, please see section 4.18 for certain definitions used throughout this RFP.

This Scope of Services for this RFP contains requirements that the successful bidder (also referred to herein as the Contractor) prepare Licensing Agreements, Property Agreements, and issue cease and desist orders.

### 1.1 DESIGNATED CONTACTS

For the purpose of the Procurement Lobbying requirements of this RFP (see section 3.7 and Appendix D), the Department's designated contacts shall be Ms. Lisa Sutton, and employees designated by the Department as part of the Department's Contract Management Unit and all staff designated by the Department to have responsibilities and duties in the Department's Administration and Counsel's Office.

### 1.2 INQUIRES

All questions must be submitted in writing via email to [rfpfaq@esd.ny.gov](mailto:rfpfaq@esd.ny.gov) with **“Trademark Licensing Agency” in the subject line. Please do not contact the Department by telephone. Questions must be received by the Department no later than January 28, 2015, 3:00 PM.** All inquiries must cite the particular RFP section in the questions. Answers to all questions of a substantive nature will be provided to all known recipients of the RFP.

### 1.3 SCHEDULE OF PERTINENT DATES

Release of RFP	<b>January 20, 2015</b>
Deadline for Receipt of Questions	<b>January 28, 2015 by 3:00 PM EST</b>
Submission of Proposals	<b>February 18, 2015 by 3:00 PM EST</b> <b>Late proposals cannot be accepted.</b>
Oral Presentations/Interviews	By appointment at the discretion of NYSDED
Award of Contract	March (estimated)

### 1.4 PRE-BID CONFERENCE

There is no pre-bid conference for this project.

## 1.5 SUBMISSION OF PROPOSALS

Interested individuals or firms must submit their **hard copy** proposals no later than **3:00 P.M. U.S. Eastern Standard Time**, on February 18, 2015. Submit five (5) copies of the proposal to the following address:

NYS Department of Economic Development  
Office of Fiscal Management  
625 Broadway – 8<sup>th</sup> floor  
Albany, NY 12245  
Attention: Lisa Sutton

**Please note:** Your budget must be separately bound from the rest of your proposal to allow for the cost evaluation to be completed independent of the technical evaluation.

**In addition to the hard copies**, the Applicant must submit an identical electronic version of the full proposal in MS Word/Excel or compatible editable format to [rfpinfo@esd.ny.gov](mailto:rfpinfo@esd.ny.gov) with “**Trademark Licensing Agency – your company name**” in the subject line. **Electronic copies are used for administrative purposes and DO NOT fulfill the requirement to submit the hard copies by the deadline.**

It is the responsibility of each individual or firm to ensure timely submission of its hard copy proposal. Proposals received after the scheduled date and time cannot be accepted.

## 1.6 ORAL PRESENTATIONS/INTERVIEWS (if required)

Oral Presentation/Interviews of finalists may be conducted at the discretion of the Department. Finalists will be selected from bidders receiving the highest scores, based on the selection criteria identified in section 2.4 of this RFP. The Department will select the highest scoring Finalists from proposals that receive a minimum score of 60 points. If fewer than three proposals are received or if fewer than three (3) proposals receive a score of 60 points, the number of Finalists selected shall be reduced accordingly. The purpose of the oral presentation/interview is to provide the Department’s Evaluation Committee with the opportunity to obtain a detailed understanding of:

- 1.6.1. The extent of the Finalist’s knowledge of the RFP subject matter and understanding of the project requirements; and
- 1.6.2 Whether the methods and resources used by the Finalist are necessary, cost effective, and appropriate.

The oral presentation/interview will allow Finalists to elaborate on information included in their proposal. Finalists are advised to be mindful that the Evaluation Committee is interested in how well the Finalist communicates information described in section 2.1, Scope of Services, of this RFP.

Based on information provided at the oral presentations/interviews, the Department’s Evaluation Committee will reevaluate and rescore Finalist proposals. The Finalist receiving the greatest number of total points (section 2.4.1 through 2.4.3), will be declared the successful bidder. If the optional oral presentation/interview is not required by the Department, the bidder receiving the greatest number of total points, will be declared the successful bidder.

The Department reserves the right to determine whether oral presentations/interviews will be necessary. If the Department decides to conduct oral presentations/interviews, such oral presentations/interviews will occur as follows:

- 1.6.2.1 Following the evaluation of proposals as provided for in section 2.4., the Evaluation Committee will

determine the Finalists to be interviewed as those having the highest combined technical and cost scores. The Department anticipates that three (3) proposers will be selected as Finalists. Prior to the oral presentations/interviews, the Evaluation Committee may be provided with each Finalist's financial proposal (Appendix B) for the purpose of assessing the adequacy and reasonableness of the resources to be put forth by the bidders in performing the project.

1.6.2.2 Each Finalist will be notified of the date, place and time of their oral presentation/interview to be held in either Albany or NYC, NY or via telephone/video conference. The oral presentation/interview should further document the proposer's ability to provide the required services. Key personnel directly responsible for the project should be present and participate in the oral presentation/interview. The purpose of the oral presentation/interview is to impart to the Evaluation Committee an understanding of how specific services will be furnished and clarify other information included in the proposal. Further information with regard to the format of this stage of the evaluation may be provided to the Finalists prior to their interview.

## SECTION II – PROGRAM BACKGROUND AND SCOPE OF SERVICES

### 2.0 BACKGROUND

In May 2013, Governor Cuomo held the first ever Tourism Summit. It was there he made a historic commitment of \$60M to the New York State Department of Economic Development (hereafter referred to as NYSDDED or the Department) Division of Tourism for the I LOVE NEW YORK campaign. Prior to Governor Cuomo taking office, the program had remained essentially dormant due to reallocation of budget funding in the previous years. However, this monumental move by Governor Cuomo re-launched the iconic I LOVE NEW YORK campaign – one of the world’s most identifiable and celebrated brands – to reposition New York State Tourism as a leader in world travel. The campaign was originally developed in 1977 in response to a widespread economic crisis throughout the city and the state and was extremely successful in harnessing travel and tourism as a driver of economic development. The campaign almost 40 years later still delivers an impressive economic impact as a tourism imitative that creates jobs, increases direct spending and prosperity that is felt statewide. Tourism is critically important to the State. Travel and tourism represents of \$95.4 billion industry in New York State and accounts for over 832,000 direct and indirect jobs. As tourism remains an integral part of the New York State economy, the I LOVE NEW YORK campaign represents a vital link to one of the most tested and resilient vehicles for continued economic growth. Last year, state and local taxes conferred from the tourism industry were enough to pay for the salaries of every police officer and fire fighter in the State of New York. Now more than ever, the Division of Tourism is making a significant impact in the lives of every New Yorker in the State.

NYSDDED is the New York State Agency tasked with creating private-sector job opportunities for New Yorkers by enhancing the State’s economic growth. The Division of Tourism takes the lead in carrying out this mission through the tourism industry, by promoting New York State as the premier location to vacation and visit. The Department’s primary resource is the world renowned and celebrated I LOVE NEW YORK brand. In the last year, there have been several I LOVE NEW YORK campaigns highlighting each travel season such as “Get Outta Town”, “There’s More to New York, Than NY”, “And You Thought You Knew New York” and the most recent celebrity commercial campaigns “There’s No Place Like It In The World”; “There’s Something For Everyone;” and "Come And Discover Your Favorite Part of New York".

Since the inception of the campaign all promotional efforts have highlighted the campaign logo, I♥NY. (the “Mark”). The terms Mark, mark, marks and logo are used interchangeable throughout this RFP. These terms primarily refer to the I♥NY. trademark and service mark however other current and future trade and/or service marks are also included under the terms and conditions of this RFP. The Department has owned trademark rights to the logo since the early formative stages of the I♥NY. advertising campaign.

The campaign currently enjoys high levels of consumer awareness. Over the years, the logo itself has received significant worldwide distribution and publicity.

In general, the Department selectively grants domestic and international licenses for commercial use of the marks on a royalty/fee basis and for other uses without royalty or fee. Since 1990, the Department has contracted with licensing agencies for worldwide use of the Mark. In the event that a new licensing agency is selected as a result of this RFP, any License Agreement still in effect when the new licensing agency’s contract begins will continue with the current licensing agency.

The goals of the licensing program are to enhance the specialness of the I LOVE NEW YORK brand, using the mark for a signal for how special New York State (NYS) is, particularly the surprise and magic one will experience when traveling in NYS. Additionally, to pursue, evaluate and present potential partnerships that will help encourage travel to New York State, to communicate that I♥NY. is a travel and tourism brand for all of New York State and to create revenues available to the Department and the State to further our marketing and advertising efforts. The I♥NY. mark

is one of the most revered logos in the world. The Department wants the Licensing program to communicate the brand's specialness and make meaningful, relevant, and important reminders to travelers of their visit to New York State. The Department feels New York State is the best state in the country with its diverse travel regions and world class vacation assets – your trip here is a surprisingly, delightful trip that puts a smile on all who experienced it and an I♥NY product is the perfect reminder to create emotional attachment of that trip. However, our challenge is people do not understand I♥NY is more than New York City. It is a statewide brand. The overall objectives for the I♥NY Licensing Program are to:

1. Enhance the overall awareness of the New York State brand as a travel destination leveraging the strength of the I♥NY logo.
2. To align any licensing experience with a) positive memories from a NYS vacation and/or b) encourage travel to NYS through relevant relationships requiring all licensing opportunities meet quality and class of a state brand offering.
3. Ensure licensing helps convey that I♥NY is aligned with entire state not just New York City.
4. Ensure revenue opportunities build brand revenue optimization while building value.

## 2.1 SCOPE OF SERVICES

The licensing agency is required to have full service capabilities in key areas. The primary functions of the licensing agency selected will include, but not be limited to:

- 2.1.1 Work with the Department to develop a comprehensive plan to maximize the brand value (both brand value and financial value) of the Department's copyrights, trademarks and service marks, including the I♥NY registered trademark/service mark, and revenues from licensed uses of the marks based upon mutually agreed upon objectives which will be consistent with the goals of the Department. At the discretion of the Department, the plan may be modified to incorporate any copyrights, trademarks or service marks subsequently developed by the Department.
- 2.1.2. Evaluate our current License Agreements and recommend changes to be implemented in future License Agreements to make them consistent with our goals and objectives.
- 2.1.3. Identify and pursue new opportunities for licensing in domestic and international markets in existing and new product categories. Outline how you will handle domestic and international markets that make the connection between the I♥NY brand and New York State tourism. Provide a sample client list with case studies on successful licensing partnerships.
- 2.1.4. Seek out appropriate manufacturers (souvenir products, wearing apparel, decorative items, etc.), merchandise retailers and others. Attempt to match manufacturers and retailers of I♥NY merchandise.
- 2.1.6. Identify, negotiate, write and administer License Agreements on the Department's behalf (except as noted in section 2.0). Provide bios and background experience on the team servicing the I♥NY account.
- 2.1.7. Work with the Department on enforcement of the brand upholding its integrity and position of ownership of the mark. The Contractor will notify said violators through cease and desist orders, assess damages and collect, ultimately recommend that they enter into a License Agreement for past and future use of the Mark or face possible legal action. Unless otherwise agreed to in writing between the Contractor and the Department, the Contractor shall not take legal action against violators of the Mark.

- 2.1.8. Gain the Department's approval for all new licensee concepts and gain pre-approval of art for all items containing the Mark; especially in proposals from licensees with multiple items.
- 2.1.9. Gain the Department's approval in all phases of licensing, including product development, packaging, advertising, promotion, and license negotiations. The Department must approve all License Agreements and the intermediate components thereof. The Department may reject any proposed License Agreement.
- 2.1.10. Monitor all programs with the licensee and coordinate with the Department to insure a consistent image and quality control across all aspects of the program.
- 2.1.11. Identify unauthorized users of the Department's Marks. As part of your proposal you must outline a system for identifying unauthorized use of Department's Marks. Provide best practices to fight counterfeiting. Present how you would provide enforcement opportunities to our law enforcement partners. Present an idea on an incentive program that would help curtail counterfeiters. The Marks are frequently used without permission of the Department requiring that the successful bidder provide strong attention to this issue.
- 2.1.12. The Contractor shall require that all licensed goods/services conform to the quality standards acceptable to the Department. The Contractor shall obtain from the licensee a sample of the goods produced and report back to the Department on the quality of the goods. The Department may, at its discretion, request that the sample be sent to the Department for inspection. The Contractor may, at its discretion, perform field inspections.
- 2.1.13. If requested, provide legal advice to or secure legal advice on behalf of the Department regarding intellectual property issues.
- 2.1.14. At the Contractor's discretion, perform financial audits of the licensee to determine if the licensee has accurately reported sales activity.
- 2.1.15. Determine an appropriate level of product liability insurance and mandate that the licensee obtain the insurance.
- 2.1.16. Develop and implement a monthly royalty reporting and payment system.
- 2.1.17. Provide weekly activity status reports of all projects (see section 4.3.6.4).
- 2.1.18. Provide additional reports as detailed in the RFP.
- 2.1.19. At the discretion of the Department, provide the above listed services with regard to the following existing copyrights, trademarks or service marks as illustrated in section 4.18 of this RFP and those subsequently developed if any, by the Department.
- 2.1.20. The Contractor shall negotiate, prepare and execute Settlement and Release Agreements. Said Agreements shall be at the recommendation of the Contractor with written approval from the Department or at the request of the Department who in either case shall be signatory thereto.
- 2.1.21. The licensing agency will undertake a program of identifying new licensees, approval of products and

negotiating and administering the License Agreements. For Licensing Agreements, the compensation for the licensing agency will be based upon a percentage of the gross receipts actually received. This compensation shall be determined on a three-tier basis, correlating to the level of contractor license development, administration and oversight. However, as revenue milestones are achieved additional compensation can be earned. The three basic tiers are as follows:

- 2.1.21.1 Licensing agency identifies the licensee, negotiates the terms of the License Agreement, writes the License Agreement and administers the License Agreement;
- 2.1.21.2 The Department identifies the licensee, and the licensing agency negotiates the terms of the License Agreement, writes the License Agreement and administers the License Agreement;
- 2.1.31.3 The Department assigns to the licensing agency a License Agreement, and administers the License Agreement.

2.1.22 The Department will retain the option to issue and administer its own licenses, cooperative advertising programs and sponsorships. This will include approval of products, negotiating of licensing terms, as well as collection and retention of any and all applicable fees and royalties associated therewith. In such an occurrence, the licensing agency will not receive any compensation. In certain circumstances the Department may consider waiving royalty payments for License Agreements. Royalty free License Agreements are considered by the Department to be a form of Property Agreements (see section 4.18.4 of this RFP for a definition of Property Agreements). When royalty payments are waived and the Contractor is asked to identify licensee, negotiate terms, administer the License Agreement or provide such other services as may be requested, upon prior written approval of the Department, the Contractor shall be reimbursed at the blended hourly rate discussed in section 4.3.5 of this RFP.

Local tourism promotion agencies and local governments, which are required to utilize the Mark in tourism promotion executions under the State's Matching Funds Program as well as those that receive approval directly from the Department through the Market NY grant program, are excluded from the payment of royalty fees for such use of the Mark.

2.1.23 Any contract resulting from this RFP is nonexclusive.

2.1.24 In addition, the licensing agency will be responsible for designating one staff person to be the point of contact to the Department regarding royalty fee base reporting and licensing issues. The licensing agency will be required to meet with the Department upon request.

## 2.2. DELIVERABLES

The deliverables for this project are consistent with the Scope of Services discussed above. Include in your proposal why your agency should represent the I LOVE NEW YORK brand for licensing services.

## 2.3 MINIMUM QUALIFICATION REQUIREMENTS

2.3.1 Prior to the proposal due date for this RFP, your company must be in business for a minimum of five (5) years and demonstrate substantial knowledge of copyrights, trademarks and service marks in performing services similar to those described in section 2.1 (Scope of Services) of this RFP. 2.1.5. As part of your proposal, present one (1) domestic and one (1) international partnership opportunity idea that your agency has the ability to develop and deliver.

2.3.2. You must provide as part of your proposal, the name and address of at least three business references that can substantiate that your company has been in business for at least five years, performing services essentially similar to those described in section 2.1 of this RFP.

- 2.3.3 This section 2.3 of the RFP is not intended to itemize all requirements for an award of this project.
- 2.3.4 Your agency should have international representation abroad with an additional office or an extensive network of international partners.
- 2.3.5 Contractor must have the ability to maintain an inventory of samples from every licensee in the program.

2.4 **SELECTION CRITERIA**

Proposals, which meet all the requirements of this RFP, will be evaluated by Department, based on the Selection Criteria stated in this section.

Proposals will be scored based on the following criteria:

2.4.1 **Experience** **(30 points)**

How well the bidder meets the minimum qualification requirements addressed in section 2.3 of this RFP.

2.4.2. **Ability to Perform Proposal** **(50 points)**

Evaluation of the approach proposed by you to accomplish the Scope of Services (section 2.1) of this RFP. Your proposal must address each item listed in section 2.1. Limit your response to section 2.1 to ten (10) 8 1/2" x 11" pages, 12-point font.

2.4.3 **Cost** **(20 points)**

Please complete Appendix B Budget in full. Please DO NOT substitute your own budget format. Your budget must be separately bound from the rest of your proposal.

2.4.4. **References** **(0 points)**

Bidders must supply a minimum of three (3) references that can substantiate the quality of the bidder's work to be considered for an award of this project. Points are not awarded for references, however references must be provided with your proposal. Two of the business references described in section 2.3.2 of this RFP may be substituted for two of the three references described here.

2.5 **EVALUATION PROCESS**

Initial evaluation of proposals will be done in two parts – Technical Evaluation and Cost Evaluation. NYSDDED's Evaluation Committee will review the technical portion of each proposal based on the technical criteria listed above. NYSDDED's Evaluation Committee will not be advised of the costs proposed or cost scores (points awarded for cost) prior to the selection of the Finalists. However, the Evaluation Committee may be advised of information contained in each bidder's budget (Appendix B) if such information is deemed by the Department to be pertinent in assessing the level of effort to be put forth by the bidders in performing the project. Then cost scores, computed by NYSDDED's Contract Management Unit based on a weighted average formula, will be added to the technical score resulting in the total score for the written proposal.

NYSDDED reserves the right to determine whether oral presentations/interviews will be necessary. If NYSDDED decides to conduct oral presentations/interviews, such oral presentations/interviews will occur as follows:

2.5.1 Following the evaluation of proposals as provided above, the Evaluation Committee will determine the Finalists to be interviewed as those having the highest combined technical and cost scores. NYSDDED anticipates that three (3) proposers will be selected as Finalists.

2.5.2 Each Finalist will be notified of the date, place and time of their oral presentation/interview to be held, either in Albany or in New York City or via telephone/video conference. The oral presentation/interview should further document the proposer's ability to provide the required services. Key personnel directly responsible for the project including the Senior Project Consultant should be present and participate in the oral presentation/interview. The purpose of the oral presentation/interview is to impart to the Evaluation Committee an understanding of how specific services will be furnished and clarify other information included in the proposal. Further information with regard to the format of this stage of the evaluation may be provided to the finalists prior to their oral presentations/interview.

## 2.6 CONTRACT AWARD

Following the oral presentation/interviews, if any, the Evaluation Committee members will re-score each proposer interviewed on the technical criteria listed above. NYSDDED anticipates that the Evaluation Committee will make an award recommendation of one proposer based upon its determination of the best value for NYSDDED as the highest total scores (technical and cost).

Upon selection, negotiations will be commenced with the successful proposer to enter into a contract setting forth the general terms that would govern any subsequent contract for services contemplated by this RFP. The Department will not enter into protracted negotiation with the successful bidder over contract terms and conditions or wait an unreasonable amount of time for the return of a signed contract. If the successful bidder does not sign and return to the Department the proposed contract including any draft of the proposed contract, within thirty (30) calendar days of receipt by the Contractor, the Department reserves the right to declare the award of the project to the Contractor null (null award). The Department will not be responsible for any cost incurred by the Contractor as a result of a null award. An award will then be made to the next highest scoring proposer.

## SECTION III - PROPOSAL CONTENT AND CONDITIONS

### 3.0 GENERAL INFORMATION

In preparing proposals, individuals and firms should follow the guidelines within this RFP.

### 3.1 COMPLETE PROPOSAL

Each participating bidder must submit a complete proposal with each element of the Selection Criteria, Section 2.4, addressed. In addition, all proposals must include the following information. Bidders supplying incomplete responses may be deemed non-compliant. Please follow the format listed below:

#### 3.1.1 Title page, indicating:

Name, address (both mail and email) phone & fax number, contact person, and federal ID number. It must also include a statement that the offer shall be firm and not revocable for a period of 60 days unless withdrawn in writing.

#### 3.1.2. An overview of your company. Please limit to two pages.

#### 3.1.3. A discussion of the relevant experience of your company and your staff proposed to provide the Scope of Services. This shall include a demonstration of how your company and staff meet the experience requirements in Section 2.3. Please limit to three pages.

#### 3.1.4 Resumes of the company's key personnel and other staff proposed to provide the Scope of Services.

#### 3.1.5 A discussion on how your company proposes to accomplish the Scope of Services. If any of the tasks associated with the project will be completed by non-company employees, qualifications and experience of those individual must to be specified.

#### 3.1.6 References as described in Section 2.3.

#### 3.1.7 Budget Requirements.

Appendix B (Budget) of this RFP must be completed and submitted as part of your proposal.  
**DO NOT USE AN ALTERNATIVE BUDGET FORMAT.**

#### 3.1.8. Other.

Please complete and include Appendix D (Procurement Lobbying Disclosure Pursuant to Sections 139-j and 139-k of State Finance Law respectively), Appendix E (Non-Collusive Bidding Certification), Appendix F (MacBride Fair Employment Principles), Appendix G (Responsibility Questionnaire) and Appendix H (General Questionnaire).

The successful bidder must also complete the following but their inclusion is not required at the time of proposal: NYS tax forms ST-220-CA and ST-220-TD.

The ST-220-CA may be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf).

The ST-220-TD may be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

### 3.2 CONDITIONS GOVERNING PROPOSALS

#### 3.2.1. Only those bidders that have supplied complete information will be considered.

#### 3.2.2. FOIL: Any patented or proprietary information included in the proposal must be clearly identified in the proposal and in a cover letter submitted with the proposal (see section 3.4 below).

3.2.3. The Department reserves the following prerogatives:

- 3.2.3.1. to accept or reject any or all proposals;
- 3.2.3.2. to decline to award a contract resulting from this RFP;
- 3.2.3.3. to require clarification from any bidder for the purposes of assuring a full understanding of responsiveness to the requirements of the RFP;
- 3.2.3.4. to waive or modify minor irregularities in proposals received;
- 3.2.3.5. to eliminate mandatory requirements unmet by all bidders;
- 3.2.3.6. to negotiate with any or all bidders, within the proposal requirements, to best serve the interests of the State of New York;
- 3.2.3.7. to amend the specifications contained in this RFP after its release, with due notice given to all potential bidders known to the Department to reflect the changed specifications;
- 3.2.3.8. to utilize any or all ideas submitted in the proposals received unless those ideas are covered by legal patent or proprietary rights and the bidder has so advised the Department in statements contained in the bidders proposal and in a cover letter annexed thereto;
- 3.2.3.9. to award contract(s) for any or all parts of a proposal; and
- 3.2.3.10. to elect to award contract(s) to one or more responsive and responsible offerers, provided that the basis for the election among multiple contracts at the time of award shall be the most practical and economical alternative and shall be in the best interest of the State.

3.2.4. By submitting a proposal, the bidder agrees that it will not make any claim for or have any right to damages because of any lack of information or misinterpretation of the information provided in this RFP.

### 3.3 FREEDOM OF INFORMATION LAW

The Department is subject to the Freedom of Information Law (FOIL), which governs the process for the public disclosure of certain records maintained by the Department (See Public Officers Law, Sections 87 and 89).

Individuals or firms which submit proposals to the Department may request that the Department except all or part of such proposal from public disclosure, pursuant to Section 87(a)(d) of the Public Officers Law, on the grounds that the proposal contains trade secrets, proprietary information, or that the information, if disclosed, would cause substantial injury to the competitive position of the firm submitting the information. Such exception may extend to information contained in the request itself, if public disclosure would defeat the purpose for which the exception is sought. The request for such an exception must be in writing and should state the reasons for the requested exception. It must also specify the proposal or portions thereof for which the exception is requested.

If the Department grants the firm's request for exception from disclosure, the Department shall keep such proposal in secure facilities and shall notify the firm of any request the Department receives for disclosure of the proposal.

### 3.4 NOTIFICATION OF AWARD

The Department will notify the successful proposer verbally, followed by written confirmation. The Department will notify, in writing, each bidder (companies and individuals who submitted a proposal) whose proposal is not selected for the award of this project.

### 3.5 COST OF PROPOSAL

The Department is not liable for any and all costs incurred by the bidder or any individual or firm associated with the bidder, for work performed to prepare, explain and submit the bidder's proposal. In addition, the Department is not liable for any and all costs incurred by the bidder or any individual or firm associated with the

bidder to discuss, propose, negotiate or otherwise address in any way whatsoever, terms and conditions of any contract resulting from this RFP. Further, the Department is not liable for any costs incurred until the contract has been approved by the Attorney General and the State Comptroller's Office.

### 3.6 PROCUREMENT LOBBYING

Please note the following and complete the forms provided in Appendix D. Please note that Form 4 of Appendix D must be submitted to the Department whenever you contact us. Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal includes and imposes certain restrictions on communications between the Department and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Department and Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified in Section 1.4 of this solicitation. To avoid conflicts and other issues concerning statutory exceptions, the Department requires that Offerers contact only Department staff identified in the aforementioned section of this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspl> or by calling the New York State Office of General Services; Ms. Anne Phillips, OGS Legal Services, Empire State Plaza, 41<sup>st</sup> Floor Tower Building, Empire State Plaza, Albany NY 12242. Telephone: (518) 474-5607. E-mail: [Anne.Phillips@OGS.State.NY.US](mailto:Anne.Phillips@OGS.State.NY.US). State Finance Law Sections 139-j and 139-k may be viewed at:

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/sfl139-j.htm> and  
<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/sfl139-k.htm>

## SECTION IV - CONTRACTUAL INFORMATION

### 4.0 CONTRACT PREPARATION

A contract defining all terms and conditions of the parties will be drafted by the Department. The contract may incorporate any or all of this RFP, Standard Clauses for All New York State Contracts (attached hereto as APPENDIX A), and as much of the successful bidder's final proposal as may be appropriate, and other documents as may be deemed suitable by the Department.

After the Department and the successful bidder execute the Contract, it must be submitted for approval to the Attorney General's Office (AG) and the Office of the State Comptroller (OSC) before it will become effective. The Contract will not be considered fully executed until approved by both the AG and OSC.

The Department will not enter into protracted negotiation with the successful bidder over contract terms and conditions or wait an unreasonable amount of time for the return of a signed contract. If the successful bidder does not sign and return to the Department the proposed contract including any draft of the proposed contract, within thirty (30) calendar days of receipt by the Contractor, the Department reserves the right to declare the award of the project to the Contractor null (null award). The Department will not be responsible for any cost incurred by the Contractor as a result of a null award. Moreover, the Department reserves the right to cancel for cause any proposed amendment to the original contract which is not signed and returned to the Department within thirty (30) calendar days of receipt by the Contractor.

### 4.1 CONTRACT TERM

The successful bidder shall perform the work and provide services set forth in this RFP for a period of two (2) years from the term start date, unless terminated early as provided for in section 4.2. Thereafter the contract may be renewed annually for three (3) additional one year terms. The total term of the contract shall not exceed five (5) years.

The Department reserves the right to cancel any contract resulting from this RFP as described in Section 4.2 below. Both parties agree that any contract resulting from this RFP shall end on the termination date unless terminated as described in section 4.2 Cancellation/Termination below.

### 4.2 CANCELLATION/TERMINATION

Once a contract or other agreement resulting from this RFP is fully executed and approved, the Department has the right to cancel it early, in whole or in part, for cause or unavailability of State funds at any time or for convenience on thirty (30) calendar days written notice to the Contractor. If cancelled for cause, payment to the Contractor for charges incurred will be made at the Department's sole discretion. If cancelled for convenience, the Department agrees to pay the Contractor for charges incurred in the performance of the Contract up to the time of cancellation. If cancelled for unavailability of State funds, the Department will not be liable for payment but will use its best efforts to pay outstanding charges previously approved by the Department to the extent permitted by New York State Law.

Additionally, the Department also reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

#### 4.2.1. Department Termination.

Once a contract or other agreement resulting from this RFP is fully executed and approved, the Department has the right to terminate it immediately for cause or for convenience at any time on

thirty (30) days written notice to the Contractor. Regardless of the reason for cancellation, (cause or convenience), the Contractor shall continue to pay the Department's percentage as discussed in section 4.3 below, of all gross receipts. If the contract is terminated for cause, the Contractor shall immediately turn over to the Department or the Department's designee, all agreements (licensing or otherwise) produced under the terms of the Contract. If terminated for cause, the Contractor shall immediately turn over any cash and all accounts receivables to the Department and shall not be entitled to any additional consideration from agreements produced under terms of the Contract. If normal termination (Contract term end) or terminated by the Department for convenience, the Contractor may continue to receive a percentage of gross receipts as discussed in section 4.3 of this RFP for Licensing Agreements and provide administrative services until such time as the Licensing Agreements themselves terminate. The Contractor shall not renew Licensing Agreements that terminate but shall notify the Department of the pending termination sixty (60) days in advance thereof. Alternatively if normal termination (Contract term end) or terminated by the Department for convenience, with the Department's consent the Contractor may turn over the administration of any or all License Agreement to the Department with no further consideration due the Contractor. No Licensing Agreement, Property Agreement or other Agreement issued by the Contractor shall be for a term greater than ten (10) years, unless separately agreed to in writing by the Department.

#### 4.2.2. Contractor Termination.

4.2.2.1 The Contractor has the right to terminate this Agreement, in whole for cause. In the event of a cause termination, the Contractor shall first give the Department a written Notice of Termination for Cause, therein specifying the reason(s) for termination (the event of default). The Department will then have sixty (60) days to correct the event of default, in which case the Contractor shall issue without delay, a notice to the Department rescinding the Notice of Termination for Cause. Late payment of funds by the Department shall not be considered a reason for a cause termination.

4.2.2.2. The Contractor may request termination of the Contract for reasons other than cause. Such termination will be at the discretion of the Department.

### 4.3 PAYMENT PROCESS

4.3.1. Each License Agreement shall be entered into by the Contractor on the Department's behalf, and shall provide for all payments there under to be made to the Contractor on the Department's behalf.

4.3.2. In complete and total consideration for all of the Contractor's services hereunder relative to the administering of the Property, and relative to License Agreements, performed in a manner satisfactory to the Department, the Contractor shall be entitled to the compensation set forth in subparagraph 4.3.3 of this section 4.3.

#### 4.3.3. Gross Receipts

4.3.3.1. With respect to gross receipts from any and all License Agreements pertaining to this RFP, the Contractor shall be entitled to retain percentages bid in Appendix B (Budget) of the Contractor's proposal, of said gross receipts actually received on the Department's behalf, with the remaining percentage (Department's percentage) of such gross receipts being remitted to the Department as follows:

4.3.3.1.1. Any License Agreement for which the Contractor identifies the licensee, negotiates the terms of the License Agreement and administers the License Agreement, the Contractor shall be entitled to the percent bid on line A of the Budget appearing in the Contractor's proposal, of gross receipts actually received under said License Agreement. Said budget shall be in the form of Appendix B attached hereto;

- 4.3.3.1.2. Any License Agreement for which the Department identifies the licensee and provides the name of and contact person for the licensee(s) to the Contractor, and the Contractor negotiates the terms of the License Agreement and administers the License Agreement, the Contractor shall be entitled to the percent bid on line B of the Budget appearing in the Contractors proposal, of gross receipts actually received under said License Agreement. Said budget shall be in the form of Appendix B attached hereto;
- 4.3.3.1.3 Any License Agreement for which the Department assigned the licensee to the Contractor, and the Contractor administers the License Agreement, the Contractor shall be entitled to the percent bid on line C of the Budget appearing in the Contractors proposal, of gross receipts actually received under said License Agreement. Said budget shall be in the form of Appendix B attached hereto.
- 4.3.3.2. For each License Agreement subject to sections 4.3.3.1.2 and 4.3.3.1.3 above, the Department and the Contractor shall execute a letter agreement setting forth the agreed upon percentage of gross receipts the Contractor shall be entitled to retain as set forth in Appendix B (Budget). Each such letter agreement shall be incorporated in this Agreement and in every respect made a part of the Agreement as if fully set forth herein.
- 4.3.3.3. The Department shall be under no obligation to threaten or bring suit against any licensee under a License Agreement to collect any sums of money due there under. To the extent that the Department makes claims or brings suit to collect such sums of money due, the Contractor's compensation for such License Agreement shall consist of the percentage of gross receipts realized if any to which the Contractor would otherwise be entitled pursuant to this section 4.3, after the Department has deducted all expenses required to collect such gross receipts, including, without limitation, all court costs, attorneys' fees and any other costs and expenses.
- 4.3.3.4. Notwithstanding anything contained in this Agreement to the contrary, the Contractor shall not be entitled to any compensation arising from or relating to orders for goods or services, by or on behalf of the Department primarily for its own use or resale, from licensees pursuant to License Agreements. The Contractor shall cause the licensees under the License Agreements to be bound by provisions which allow the Department to purchase quantities of goods covered by said License Agreements at a rate below the price charged by the licensee to its customer base. Said purchases shall be free from royalty fees or commissions. Rates shall be negotiated on a license by license basis. The use by the Department contemplated pursuant to this subdivision 4.3.3.4 is for promotional giveaways/value-added incentive items or for resale on its or others web sites or via catalog or retail sale via storefront or information center.
- 4.3.4. In consideration for all of the Contractor's services hereunder for assisting the Department relative to Property Agreements, performed in a manner satisfactory to the Department, the Contractor shall be entitled to the compensation set forth in subparagraph 4.3.5 of this section 4.3. In no event shall the Contractor be entitled to any portion of the gross receipts received, if any, by the Department from any Property Agreement. Furthermore, services relative to License Agreements are excluded from compensation under subparagraph 4.3.5 below and are covered in subparagraph 4.3.2 and 4.3.3 above.
- 4.3.5. For consulting and administrative services relative to Property Agreements (royalty free Licensing Agreements) which have been requested and pre-approved in writing by the Department, the Contractor shall be entitled to blended hourly rates as bid on lines D. and E. of the Budget appearing in the Contractor's proposal, said Budget shall be in the form of Appendix B attached hereto. The Contractor may be asked by the Department and must be willing to provide consulting and

administrative assistance (such as but not limited to legal counsel, registration of Marks, and opposition (defense) of Marks similar in design to the Department's), hereafter ancillary services, at the blended hourly rates for services in addition to Property Agreement. Specifically excluded from the aforesaid ancillary services are Licensing Agreements. A Property Agreement differs from a Licensing Agreement in that: no fee is charged to the user for whom the Property Agreement is prepared; the Contractor is not a party to it; the Contractor does not receive a fee. In payment for said ancillary services, the Contractor, upon written authorization from the Department, shall be entitled to retain a portion of the net receipts owed to the Department from receipts collected by the Contractor on the Department's behalf from License Agreements (there are no funds from users associated with Property Agreements) as follows:

- 4.3.5.1. In the event the Department requires the consulting and administrative services of the Contractor relative to a particular Property Agreement and/or ancillary services, the Department shall provide a written request to the Contractor outlining the specific services to be performed and the scope thereof. The Contractor shall then provide the Department with a written estimate of the requisite hours to perform the services. The Contractor shall not begin work on the project until it receives written approval of the estimate, or modifications thereof, from the Department. In the event the Contractor at any point anticipates exceeding the approved estimate, it must notify the Department and provide a proposed revised estimate of the additional hours needed to complete its tasks. The Contractor shall not perform any services on a project beyond the approved estimate until the revised estimate is approved by the Department in writing.
  - 4.3.5.2. The compensation due the Contractor for services provided as per section 4.3.5.1 above shall be equal to the number of hours that are pre-approved by the Department and actually performed by the contractor multiplied by the blended hourly rates itemized in the Budget appearing in the Contractor's proposal. The Contractor shall not be entitled to deduct such compensation from monies owed the Department until written approval of the same.
  - 4.3.5.3. In the event that the services rendered by the Contractor relative to Property Agreements and/or ancillary services in any given month exceed the net revenues owing to the Department, the remaining balance shall carry forward to the subsequent month to be offset against net revenues collected and owed by the Contractor to the Department. The Department may but is not obligated to compensate the Contractor for services relative to Property Agreements and/or ancillary services in excess of the net receipts (for the purposes of this section 4.3.5.3. "Charges") owing to the Department from License Agreements. In the event net revenues owing to the Department is insufficient to meet Charges for a period of two months, the Contractor may refuse to provide further services relating to Property Agreements and ancillary services, until such time as payment of the Charges are made through net revenue and/or payment by the Department. The Contractor shall however, continue to provide all services relating to Licensing Agreements Charges notwithstanding.
- 4.3.6. Administrative & Fiscal Requirements
- 4.3.6.1. Within thirty (30) days following the end of the month in which it actually receives gross receipts (gross revenue) under any License Agreement, the Contractor shall remit net revenue to the Department, having deducted the amount of its compensation as provided for in sections 4.3.3.1 of this RFP. For the purpose of this RFP net revenue is defined as, gross revenue constructively received by the Contractor less Licensing Agreement fees deducted by the Contractor based on the percentages bid in Appendix B (Budget) of the Contractor's proposal. In addition, the Contractor may deduct the amount of its compensation as provided for in section 4.3.5 of this RFP which has been approved for payment in writing

by the Department as follows: The Contractor shall, within thirty (30) days following the end of each month in which it provides services relative to Property Agreements and/or ancillary services, submit documentation to the Department Project Director (hereafter referred to as DPD) outlining the total number of hours of services performed, and when permitted (see note 3/ of Appendix B) travel, administrative and other necessary expenses, for the applicable month in agreement with written estimates (provided to and approved by the Department in advance), segregated by Property Agreement and ancillary services. The DPD shall review said documentation and provide the Contractor with a response outlining the number of hours approved. In the event of a dispute concerning the number of hours approved, the Contractor may only deduct from net revenues owed to the Department compensation relative to the number of hours actually approved for payment in writing by the DPD.

- 4.3.6.2. In the event that the Contractor fails to make said remittance to the Department within the period of time prescribed in section 4.3.6.1, the Contractor shall be liable and shall pay to the Department the remittance due, plus interest thereon at a rate of twelve percent (12%) per annum.
- 4.3.6.3. Together with said remittance, the Contractor shall furnish to the DPD and the Department's Finance Office a statement of all gross receipts actually received by the Contractor during the preceding month under any License Agreement.
- 4.3.6.4. On a weekly basis during the term of this Agreement, the Contractor shall furnish the DPD with an activity report, which shall include, but not be limited to, a discussion and analysis of the services and activities of the Contractor hereunder, including marketing efforts, License Agreements concluded or under development, services relative to Property Agreements, ancillary services including legal enforcement or other pending legal issues, and a discussion of the projected and recommended activities of the Contractor on behalf of the Department, and such further information, explanation or recommendations as the DPD may request.
- 4.3.6.5. On a monthly basis during the term of this Agreement, the Contractor shall furnish the DPD and the Department's Finance Office (Attn: Accounts Receivable) with a revenue report detailing all licensing receipts and distribution thereof for the reporting period, year-to-date, and inception-to-date for each licensee. Distribution information reported shall include a delineation of the sums retained by the Contractor pursuant to subparagraph 4.3.6.
- 4.3.6.6. On a quarterly basis after the expiration of this Agreement, the Contractor shall furnish the DPD and the Department's Finance Office with a revenue report, the same as is defined in paragraph 4.3.6.5 above. This paragraph 4.3.6.6 shall survive the expiration of this Agreement until such time as all License Agreements entered into under the terms of this Agreement expire. Alternatively with the Department's consent, the Contractor may turn over the administration of any or all License Agreements to the Department with no further consideration due the Contractor.
- 4.3.6.7. Upon receipt of the Department's occasional written request, and within thirty (30) days following the end of each fiscal year, the Contractor shall furnish to the DPD and the Department's Finance Office a detailed statement, certified by an officer of the Contractor, showing all gross receipts actually received by the Contractor during the preceding fiscal year and a delineation of the distribution of the same.
- 4.3.6.8. Within ninety (90) days following the effective date of termination of this Agreement, including the initial termination (see section 4.1), the Contractor shall furnish to the DPD and the Department's Finance Office a detailed financial statement certified by an independent certified public accountant, showing all gross receipts actually received by the Contractor during the term of this Agreement and any renewals thereof.
- 4.3.6.9. All statements of gross receipts actually received by the Contractor on behalf of the

Department hereunder shall be true, complete and accurate, and shall be calculated in accordance with generally accepted accounting principles applied on a consistent basis.

- 4.3.7. The following subsections of section 4.3 of this RFP shall survive termination of the contract; 4.3.3.1, 4.3.3.3, 4.3.3.4, 4.3.6.1 (excluding reference to 4.3.5 which shall not survive the contract), 4.3.6.2, 4.3.6.3, 4.3.6.4 (excluding marketing efforts and Property Agreements), 4.3.6.5, 4.3.6.6, 4.3.6.7, 4.3.6.8 (no more frequently than bi-annually), 4.3.6.9., as well as sections 4.4, 4.5, and 4.7.

#### 4.4 INTELLECTUAL PROPERTY/PERSONAL PROPERTY

The Department reserves the right to include intellectual/personal property provisions in the Contract, with regard to the ownership (exclusive and/or nonexclusive) of any property or work product created or purchased as a result of any agreement resulting from this RFP. The presumption is that, unless otherwise stated and agreed, all intellectual property is owned by Department, including works made or performed for hire. Specifically exempt from the provisions of this paragraph are property, plant, equipment and preexisting software provided by the Contractor to the Department, for the purpose of carrying out the provisions of this RFP. Property, plant, equipment and preexisting software may become subject to intellectual/personal property regulation when agreed to in writing by the parties.

#### 4.5 REPORTS

The successful bidder will provide revenue and activity reports as described in section 4.3.6 of this RFP. In addition to reports discussed here and elsewhere in this RFP, the Department reserves the right to request other reasonable programmatic and/or financial reports. When requested to do so, the successful bidder will provide the Department with reports in a reasonable period of time and in an acceptable format.

#### 4.6 SUBCONTRACTS

4.6.1. Subcontracting is permitted when required by the Contractor to fulfill the terms and conditions of this RFP. Your proposal must identify the name and address of the subcontracting firm or firms and explain which element(s) of the Scope of Service (section 2.1) and Budget (see Appendix B) the subcontractor(s) is responsible for. The Department is an equal opportunity Contractor and reserves the right to review and approve all subcontracting firms (see section 4.20 for details on Minority and Women-Owned Business Enterprise subcontracting).

4.6.2. After the contract resulting from this RFP, if any, is awarded, any subcontracts or purchases in excess of \$15,000 that were not originally identified in the bidder's proposal must adhere to the following:

4.6.2.1. For subcontracts or purchases which are competitively bid, Contractor must request proposals from a minimum of three qualified firms, and the lowest responsible bidder shall be accepted unless otherwise approved in writing by the Department.

4.6.2.2. Subcontracts or purchases that are sole or single source (entered into without submission to competitive bid) must be approved in writing by the Department prior to entering into the agreement.

#### 4.6.3. Sole/Single Source Contracts.

For purposes of this agreement, sole source contracts are defined as where only one vendor is capable of supplying the required services or properties because such service or property offered is so unique that it cannot be duplicated or obtained elsewhere, or involves creative artistry of a similar nature.

Single source contracts are defined as where, although more than one vendor can supply the required services or properties, circumstances of a material and substantial nature make the awarding of the contract

to one vendor over the others appropriate.

The requirement for competitive bidding may be waived upon prior written approval of the DPD provided that prior to the acceptance of such services or properties, the Contractor provides a detailed written statement to the Department which describes the sole or single source determination, the alternatives considered and the terms of the proposed contract. In addition, the Contractor must establish to the satisfaction of the Department, the reasonableness of the proposed expenditure. In general, the price charged to the Department should be no greater than the price charged in the private sector. Sole/single source contracts are to be avoided whenever possible.

#### 4.7 FIDELITY BOND

Within sixty (60) days of ratification of this Agreement by the Office of the State Comptroller, the Contractor will deliver to the Department a fidelity bond payable to the Department. Said bond shall remain payable during the term of the Contract, and shall survive the termination of the contract so long as payment for Licensing Agreements are due the Department. The bond will be payable in the amount of Three Hundred Thousand Dollars (\$300,000). Said bond must be maintained for the term of the Agreement including any extensions. On each anniversary of the contract including anniversaries that occur after termination, the Department may reassess the amount of the bond. The Department may direct the Contractor to increase the amount of the bond as necessary to protect the interests of the Department. The Parties agree that the Bond required pursuant to this section is not a performance bond. The bond required is for the protection of the Department against the fraud or negligence of the Contractor or Subcontractor(s) with respect to revenues generated relative to this Agreement. The Contractor shall be entitled to deduct the cost of the bond not to exceed one percent (1%) of the bonds face value, from Licensing Agreement gross receipts.

#### 4.8. PROCEDURE UPON CANCELLATION/TERMINATION

Upon the cancellation/termination of the Contract, the Contractor shall comply with all Department cancellation procedures including, but not limited to:

4.8.1 Submission within thirty (30) days of a final activity report, which report shall include a detailed evaluation of the Contractor's activities pursuant to the Contract;

4.8.2 Submission within ninety (90) days of a final financial statement of all gross receipts actually received by the Contractor pursuant to the Contract and any renewals thereof, together with distributions relative to same. Such statement shall be certified by an independent certified public accountant;

4.8.3 Not incurring any further obligations under the terms of the Contract beyond the cancellation date, except as provided for in section 4.3.7.;

4.8.4 The Contractor shall carry out all reasonable and appropriate written directions of the DPD with respect to the disposition of all goods bearing the Property; the originals of License Agreements and Property Agreements; the originals of payment records relating to License Agreements; logotype sheets and guidelines relating to the Property; designs relating to the Property; and any other books, records, accounts and documents relating to the performance of the Contractor hereunder; provided, however that nothing herein shall be construed as precluding the Contractor from maintaining business files relating to the subject hereof in the ordinary course of its business. All materials shall be maintained for a minimum period of seven (7) years after termination of the contract or termination of a License Agreement whichever is later;

4.8.5 Upon the written request of the Department's Deputy Commissioner and General Counsel or Assistant Director Office of Fiscal Management, the Contractor shall notify all licensees under License

Agreements by certified mail, returned receipt requested (with a copy of the same to the Department), that further remittances due pursuant to their License Agreements shall be made to the Department or such other party as the aforesaid individuals may designate; and

4.8.6 Upon the cancellation/termination of the Contract by the parties the Contractor and the Department shall be entitled to their respective percentages of the gross receipts actually received after the effective date of said cancellation under any License Agreement entered into and executed by all the parties concerned prior to the effective date of said cancellation. The Contractor's entitlement to such gross receipts shall include gross receipts actually received pursuant to the initial term of such License Agreements and any renewals, extensions or modifications thereof, whether prior to or after the effective date of said cancellation as more fully discussed in section 4.2.1.

#### 4.9 CONFIDENTIALITY; PRIVILEGE

4.9.1 The Contractor hereby agrees to maintain all material non-public information which it learns from the Department, other State employees or their contractors, subcontractors or agencies in the performance of the Contractor's duties hereunder as confidential information proprietary to the Department, and the Contractor shall have no right to assert any proprietary interest in such information either during the term of this Agreement or afterwards. The Contractor shall not use such information to the disadvantage of the Department. The Contractor shall not disclose or divulge such non-public information to any third party, or cause the same to be disclosed or divulged without the prior written approval of the DPD.

4.9.2 The Contractor shall invoke all applicable privileges to the greatest extent permitted by law in any proceedings or forum in which the disclosure of such communications is sought. Within two (2) business days of receiving notification that the disclosure of such communications may be demanded, ordered, or otherwise requested or compelled, the Contractor shall notify the Department in writing thereof, and shall seek, move, or otherwise support the motion, request, or other application of the Department or its legal representative to intervene or otherwise participate in such proceedings to protect against such disclosure, with all attorneys' fees and related costs arising from the State of New York's participation in such a motion to be borne by the State of New York in any such proceedings. The Contractor shall disclose such communications only upon asserting any applicable privilege; receiving a final order, from the court or other forum in which such disclosure is sought, compelling disclosure of such communications and specifying that the Contractor's failure to comply therewith is punishable by law; and after all appeals and reviews therefrom, have been exhausted.

4.9.3 The obligations contained in section 4.9 shall survive the expiration or cancellation of this Agreement.

#### 4.10 CONFLICTS OF INTEREST; RESTRICTIVE COVENANTS

In consideration of the compensation paid to the Contractor pursuant to sections 4.3 and in special consideration of the compensation paid to the Contractor pursuant to Paragraphs 4.8.6 hereof:

4.10.1 The Contractor hereby represents and warrants that it has completely and accurately disclosed to the Department in writing the nature and scope of any and all efforts it is currently undertaking which may constitute a Conflict of Interest.

4.10.2 During the term of this contract or any renewals thereof, and for a period commensurate with the survival provision of section 4.2.1 and 4.3.7 thereafter, regardless of the circumstances under which the contract had expired or was canceled (hereinafter called the "designated period"), the Contractor hereby agrees to completely and accurately disclose to the Department immediately in writing the nature and scope

of any and all efforts, which to the best of its knowledge, it proposes to undertake in the Territory which may constitute a Conflict of Interest. During the designated period, in no event shall the Contractor, directly or indirectly, engage in a Conflict of Interest in the Territory without notifying the Department in writing and obtaining its prior written consent, as set forth in subsection 4.10.2.1 of this section 4.10.

4.10.2.1 The Department shall advise the Contractor in writing of whether it consents to the proposed Conflict of Interest within ten (10) business days of receiving the Contractor's written notification of a potential Conflict of Interest. During the designated period, the Contractor hereby agrees that it shall not, directly or in directly, engage in a Conflict of Interest in the Territory in the event that the Department does not consent to the Conflict of Interest.

4.10.2.2 The Contractor hereby specifically acknowledges and agrees that the representations, warranties, covenants, and obligations described in this RFP and provided for in the Contractor's proposal are material provisions to be relied upon by the Department in entering into a contract. The Contractor specifically acknowledges that it is advised by the Department to review this entire RFP and the contract resulting from it if any, with its counsel, and that the Contractor has satisfied itself that the representations, warranties, covenants and obligations, terms and conditions set forth therein are reasonable in all respects, and that the same are valid and enforceable.

4.10.2.3 The Contractor hereby specifically acknowledges and agrees that a violation of any restrictive covenant or obligation contained in sections 4.9 or 4.10 hereof shall cause irreparable harm to the Department, and that the Department shall be entitled to an injunction without proof of special damages, together with the costs and reasonable attorneys' fees incurred by the Department in enforcing its rights under sections 4.9 and 4.10 hereof.

#### 4.11 REPRESENTATIONS AND WARRANTIES BY THE DEPARTMENT

The Department represents and warrants that:

4.11.1 it has the legal competence to grant the rights herein to the Contractor if and when a contract is entered into;

4.11.2 to the best of its knowledge and belief, the use of the Property as herein contemplated will not infringe upon the rights of any other person, firm or corporation in the United States.

#### 4.12 REPRESENTATIONS, WARRANTIES, AND COVENANTS BY THE CONTRACTOR

The Contractor represents warrants and covenants that:

4.12.1 It is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which its home office is located and is, duly authorized to conduct business in the State of New York;

4.12.2 It has the legal power and authority to execute and deliver any contract resulting from this RFP and to consummate the obligations and activities contemplated on its part hereby. The execution and delivery of any contract resulting from this RFP has been duly authorized by the Contractor, and no other proceedings by the Contractor are necessary to authorize the execution and delivery of a contract or the performance of the Contractor's obligations hereunder;

4.12.3 All statements of fact contained in the Contractor's proposal, are true, complete, and accurate and shall be true, complete, and accurate during the term of the Contract and any extension thereof; and neither it, nor any of its directors, officers, employees, consultants or subcontractors has or will give anything of value to anyone to procure a Contract between the parties or to influence any official act or the judgment of

any person in the negotiation of any of the terms of any Contract resulting from this RFP.

4.13 RIGHT OF THE DEPARTMENT TO USE THE PROPERTY

Nothing in this RFP or any Contract resulting from it, shall be construed to limit the right of the Department:

4.13.1 to make, use, sell or modify the Property in connection with any commercial or other activity for its own benefit, or

4.13.2 to grant Property Agreements, including, but not limited to, licenses granted pursuant to the Department's Tourism Matching Funds Program, cooperative advertising agreements, sponsorships, or agreements to promote various festivals, fairs, tournaments, or other tourist attractions in and around the State.

4.14 PRIOR APPROVAL OF LICENSE AGREEMENTS AND MATERIALS UNDER LICENSES

4.14.1 The Contractor shall obtain the prior written approval of the Department's Counsel's Office for all License Agreements proposed or negotiated by the Contractor hereunder. The Contractor hereby specifically agrees and acknowledges that the Department shall have the absolute right to disapprove, with or without cause and at its sole discretion, any program, person, firm, corporation, proposed or negotiated license, or License Agreement hereunder.

4.14.2 The content, form and substance of each such License Agreement shall be solely within the discretion of the Department. All License Agreements must provide the Department with complete control of the nature and quality of all licensed goods or services there under.

4.14.3 No License Agreement shall be entered into without the Department's written approval.

4.14.5 The Contractor shall promptly furnish to the Department's Counsel's Office three (3) true copies of each and every License Agreement negotiated on the Department's behalf for approval, after the same are executed by the Contractor and the Licensee. If the Department approves, it will forward two (2) fully executed copies to the Contractor, with one to be forward by the Contractor to the Licensee.

4.14.6 All License Agreements negotiated by the Contractor shall provide that the Licensee is to furnish the Department's DPD with art work, prototypes, and samples of all items manufactured, distributed or sold pursuant to the exercise of the rights therein licensed. All products, as well as advertising and promotional materials related thereto, shall be subject to the DPD's approval at the appropriate stages of their development. Whenever the Department is required to give or to render an approval hereunder, then the Contractor shall send written notice requesting such approval to the DPD. The DPD will then notify the Contractor as to its approval or disapproval. Moreover, with regard to Licensing Agreements, the Contractor shall also implement the approval process described in section 4.14.5.

4.15 APPROVAL OF AFFILIATE LICENSING AGENCY CONTRACTS

The Contractor shall obtain the prior written approval of the DPD for the appointment of an affiliate (subcontractor) licensing agency, if any, and any and all contracts, agreements or any other arrangements that the Contractor proposes to enter into with any affiliate licensing agency hereunder. Moreover, the Contractor shall also implement the approval process described in section 4.14.5. Upon the full execution thereof, the Contractor shall promptly furnish to the Department a true copy of each and every written contract or agreement with the affiliate licensing agency, if any.

4.16 OWNERSHIP OF PROPERTY

The Contractor hereby specifically agrees and acknowledges that it does not, nor shall it, have any proprietary rights in and to the Property (or any part thereof) whatsoever, nor shall it hold itself out as having any such rights or any other rights or powers inconsistent with the provisions of the Contract.

4.17 EXPENSES

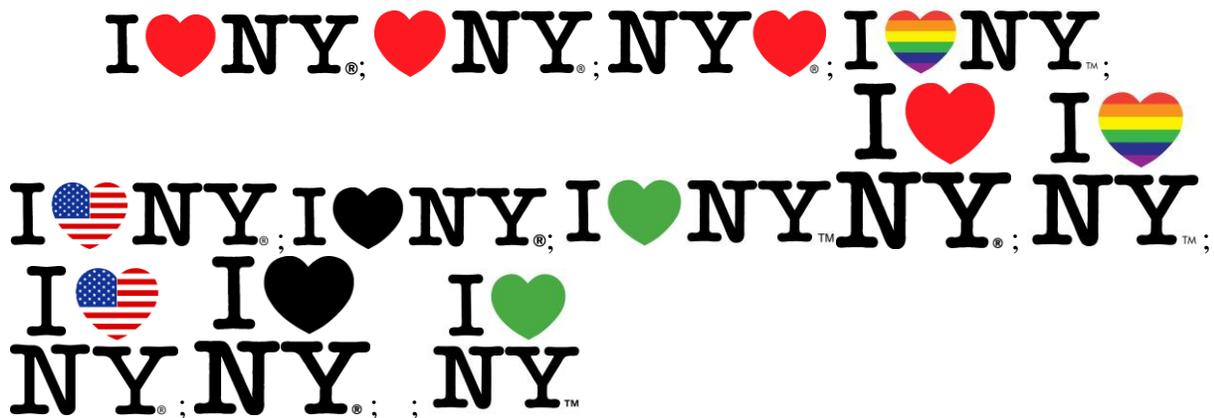
4.17.1 Unless otherwise specifically stated, the Contractor agrees to bear all promotional, service, operating, collection, overhead and other expenses and costs normally and customarily incurred by it in the general performance of its services hereunder.

4.17.2 The Department agrees that it will reimburse the Contractor for necessary charges approved in writing by the Department including but not limited to registration fees and filing fees incurred on behalf of the Department in connection with the establishment, maintenance, opposition and defense of the property, and for other ancillary services as provide for in section 4.3.5. If the Department decides to discontinue entering into License Agreements for any of the items set forth in section 4.18.1 hereof, the Department shall give the Contractor thirty (30) days prior written notice of such intention. Upon receipt of such notice, the Contractor agrees to cease all exploitation of the same. The Contractor agrees to cooperate fully with the Department in connection with the foregoing, including, but not limited to, cooperating with the Department in such trademark, service mark and copyright registrations as the Department, in its sole discretion and sole expense, may from time to time desire to make.

4.18 DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings:

4.18.1 "Property" shall mean the names, symbols, designs, logos, trademarks, trade names or service marks of the Department, which presently include the following trademarks, service marks and designs:



;and such other names, symbols, designs, logos, trademarks, trade names and service marks that the Department has, or may hereafter obtain, right, title and interest thereto.

4.18.2 "Territory" shall mean all places throughout the universe, in which the Department has or may obtain any proprietary rights in and to the Property.

4.18.3 "License Agreement" shall mean any agreement or arrangement, whether in the form of a license or otherwise, made during the term of the Contract in which the Contractor, on behalf of the Department, with the written approval of the Department and the written approval of the Department of Law and the Office of the State Comptroller where applicable, grants to a third party the right to make, use, sell, distribute,

advertise, promote, or otherwise commercially exploit goods or services bearing the Property in exchange for the payment of lawful currency or other compensation or consideration. License Agreement shall not include those agreements as defined in section 4.18.4 below.

4.18.4 "Property Agreement" shall mean any agreement or arrangement, whether in the form of a license or otherwise, in which the Department grants to a third party the right to make, use, sell, distribute, advertise, promote or otherwise exploit goods or services bearing the property on a lawful currency free basis and sometimes including a cooperative advertising agreement, sponsorship or other in-kind service.

4.18.5 "DPD" shall mean the Department's Project Manager, his/her designee or such other person as may be designated in writing by the Department.

4.18.6 "Conflict of Interest" shall mean any situation in which: (i) the representation or proposed representation of, or agreement to represent, for oneself or another, a person or entity and/or their literary, entertainment and similar properties, names, symbols, designs, logos, trademarks, trade names, service marks, or copyrights in the Territory would be competitive with promoting the State as a desirable tourist attraction or its economic development; or (ii) the solicitation or diversion of, attempt to solicit or divert, or agreements to solicit or divert, for oneself or another, any business of any nature from any third party in the Territory who has dealings with respect to License Agreements or Property Agreements. The Department and the Contractor hereby agree that any decision concerning the existence of an actual or potential Conflict of Interest shall be conclusively and reasonably made by the Department.

#### 4.19 APPOINTMENT

4.19.1 The Department will engage the Contractor to act as its non-employee representative throughout the Territory for all fields of use; (i) for the purpose of conceiving and establishing plans to enter into License Agreements in accordance with the Department's objectives; (ii) to seek out persons, firms or corporations to enter into License Agreements; and (iii) to solicit and negotiate License Agreements on the Department's behalf with any person, firm or corporation. The Department intends but does not guarantee that the terms and conditions of this section 4.19.1 be sole and exclusive to the successful bidder. This is particularly but not exclusively necessary to meet the terms and conditions of prior contracts and agreements.

4.19.2 The Department shall engage the Contractor to act, upon request, as its non-exclusive non-employee representative throughout the Territory for all fields of use, (i) for the purpose of assisting the Department with conceiving and establishing plans to enter into Property Agreements and provide ancillary services, in accordance with the Department's objectives; (ii) to assist the Department in seeking out persons, firms or corporations to enter into Property Agreements; and (iii) to assist the Department in the solicitation and negotiation of Property Agreements on the Department's behalf with any person, firm or corporation.

4.19.3 The Contractor, as an independent contractor, shall accept its appointments as such from the Department.

#### 4.20 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES ("MWBE") PARTICIPATION AND EQUAL EMPLOYMENT OPPORTUNITIES ("EEO")

##### 4.20.1 General Obligations:

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business in the performance of ESD contracts. For purposes of this Contract, however, goals will not be established due to the unavailability of minority and women-owned businesses for performance of this Contract.

## APPENDIX A

### STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is

subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law

concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development

Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by

State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

January 2014

**APPENDIX B - BUDGET  
TRADEMARK LICENSING AGENCY  
RFP 15-6102**

Applicant Company Name: \_\_\_\_\_

- A. License Agreement for which the Contractor identifies the licensee, negotiates the term of the License Agreement and administers the License Agreement. \_\_\_\_\_ % 1. 2.
- B. License Agreement for which the Department identifies the licensee and provides the name of and contact person for the licensee to the Contractor and the Contractor negotiates the term of the License Agreement and administers the License Agreement. \_\_\_\_\_ % 1. 2.
- C. License Agreement for which the Department identifies the licensee and negotiates the terms of the License Agreement and the Contractor administers the License Agreement. \_\_\_\_\_ % 1. 2.
- D. Blended hourly rate professional services. \$ \_\_\_\_\_ 3.
- E. Blended hourly rate administrative/clerical services. \$ \_\_\_\_\_ 3.

**Notes:**

- 1. Contractor's fee expressed as a percentage of gross revenue collected (constructively received) from Licensing Agreements.**
- 2. The percentages described above are inclusive of all Contractor expenses including travel and administrative.**
- 3. Contractor expenses including travel and administrative. For oppositions, defense of property and other ancillary services as discussed in section 4.17.2, travel (at rates permitted NYS employees, see Appendix C), administrative and other necessary expenses will be reimbursed to the Contractor at cost provided that such expense are approved in advance and in writing by the DPD.**

**DO NOT CHANGE THE FORMAT OF THIS BUDGET**  
(Attach additional pages if necessary, consistent with the format of this page)

## APPENDIX C

### NYS CONTRACTOR TRAVEL REIMBURSEMENT GUIDELINES

1. If travel is allowable for this program/services expenses will be reimbursed as outlined in this appendix. Allowance for lodging and meals have been set at the Federal Government allowances for their employees. The State allowance will change when the Federal allowances change. This usually occurs on an annual basis. Reimbursements will be made at the current published rates.

Receipts for lodging are mandatory. Receipts are not required for meals when the traveler is in overnight travel status. The Schedule which lists rates currently in effect for all destinations within the State is available at the New York State Office of the State Comptroller's website: <http://www.osc.state.ny.us/agencies/travel/travel.htm>.

The per diem allowances are based on the county of assignment, therefore, the traveler's destination, as noted on the claim for reimbursement, must include the county, as well as the city. The Schedule ends with the rate for all locations (counties) not listed on the Schedule.

Please note that all applicable taxes are included in the maximum lodging allowances. No reimbursement for taxes will be made separately.

Rates for areas outside of New York, the continental United States and foreign areas, are also available at the New York State Office of the State Comptroller's Website: <http://www.osc.state.ny.us/agencies/travel/travel.htm>

The maximum reimbursement for lodging and meal expenses may not exceed the lodging and meal allowances for the area of travel. If the cost of lodging exceeds the maximum allowance for lodging in the area of travel, the traveler's meal allowance must be used to offset the higher lodging rate.

2. No reimbursement will be allowed for lunch.
3. To be entitled to full meal allowances, traveler must be in travel status overnight and eligible for reimbursement for breakfast and dinner.
4. Meal Allowance for Non-Overnight Travel: When a traveler is in travel status for less than a day and lodging charges are not incurred, reimbursement will be made for breakfast and dinner with receipts, at the following maximum rates:

	Breakfast	Dinner
\$71 Meal Allowance	\$14	\$57
\$66 Meal Allowance	\$13	\$53
\$61 Meal Allowance	\$12	\$49
\$56 Meal Allowance	\$11	\$45
\$51 Meal Allowance	\$10	\$41
\$46 Meal Allowance	\$9	\$37

**Note: Incidental expenses such as tips to bellmen, porters, hotel maids, etc., continue to be included in the allowances.**

5. Transportation Costs: Any common carrier transportation costs incurred should be at coach rate unless extenuating circumstances prevent such, in which instance a justification must be submitted with the expense.

Receipts/air passenger coupons are required for reimbursement.

Transportation by personally owned automobiles will be reimbursed at the IRS rate in effect at the time of travel unless the Department agrees to an alternative rate.

All taxi charges must be substantiated by a receipt.

## APPENDIX D

### PROCUREMENT LOBBYING DISCLOSURE PURSUANT TO SECTIONS 139-J AND 139-K OF STATE FINANCE LAW (For Agreements of \$15,000 or more please complete this form.)

#### Statutory Summary

Changes to the New York State Finance Law (referred to as the “new State Finance Law”) effective January 1, 2006, significantly alter the administrative process for the development of State procurement contracts<sup>1</sup>. The procedures discussed herein are put in place to address the new State Finance Law. The New York State Department of Economic Development recognizes the considerable additional responsibility that the new State Finance Law places on potential bidders (“Offerers”) as well as on the Department and we regret any inconvenience. The Department assures you that we are interested in receiving a proposal from your company. Among other things, the new law:

- Makes the States lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by the Department.
- Requires the Department to record all contacts made by lobbyists and contractors (you) about a governmental procurement so that the public knows who is contacting the Department about procurements.
- Requires the Department to designate persons who generally may be the only staff contacted relative to the Department’s procurement in a restricted period.
- Authorizes the imposition of fines and penalties against persons/organizations engaging in impermissible contacts about a Department procurement and provides for the debarment of repeat violators.
- Directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website.
- Expands the definition of lobbying to include procurement contracts.

Generally speaking, two related aspects of procurements were affected: (i) activities by the business and lobbying community seeking procurement contracts and (ii) activities involving governmental agencies establishing procurement contracts. The obligations imposed by State Finance Law Sections 139-j and 139-k are collectively referred to as the “new State Finance Law”. State Finance Law Sections 139-j and 139-k may be viewed at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-j.htm> and at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-k.htm>

The following contains language and forms (these forms must be completed and returned as part of your proposal, and when indicated at other times during this procurement process) to be reviewed and completed by you the bidder (“Offerer”), in compliance with sections 139-J and 139-k of the State Finance Law.

#### NYS Department of Economic Development Policy Language

Pursuant to State Finance Law §§139-j and 139-k, this Invitation for Bid includes and imposes certain restrictions on communications between the Department and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Department and Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, are any member of the Department’s Contract Management or Publications Unit. To avoid conflicts and other issues concerning statutory exceptions, the Department requires that Offerers contact only Department staff identified in the aforementioned section of this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html> or by calling the New York State Office of General Services; Ms. Anne Phillips, OGS Legal Services, Empire State Plaza, 41<sup>st</sup> Floor Tower Building, Empire State Plaza, Albany NY 12242. Telephone: (518) 474-5607. E-mail: [Anne.Phillips@OGS.State.NY.US](mailto:Anne.Phillips@OGS.State.NY.US).

#### Termination Provisions

The Department also reserves the right to terminate any PO resulting from this IFB in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this contract.

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<sup>1</sup> “Procurement contract” shall mean any contract or other agreement for an article of procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars. Grants, article eleven-B state finance law contracts, program contracts between not-for-profit organizations, as defined in article X1-B of the state finance law, and the unified court system, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions shall not be deemed procurement contracts.

**Form 1 - Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)**

State Finance Law §139-j(6)(b) provides that: Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

The Department must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k.

Offerer affirms that it understands and agrees to comply with the procedures of the Department relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

**Form 2 - Offerer's Certification of Compliance with State Finance Law §139-k(5)**

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

The Department must obtain the required certification that the information is complete, true and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to the certification and provide it to the procuring Governmental Entity.

Offerer Certification:

I certify that all information provided to the Department with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

**Form 3 - Offerer Disclosure of Prior Non-Responsibility Determinations**

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

The Department must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

**Offerer Disclosure of Prior Non-Responsibility Determinations**

Name of Individual or Entity Seeking to Enter into the Procurement Contract: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_ Date: \_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.  
Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

OFFERER CERTIFIES THAT ALL INFORMATION PROVIDED TO THE GOVERNMENTAL ENTITY WITH RESPECT TO STATE FINANCE LAW §139-K IS COMPLETE, TRUE AND ACCURATE.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Form 4 - Report of Contact under State Finance Law §139-k(4)**

**THIS FORM TO BE COMPLETED AND RETURNED TO THE DEPARTMENT WHENEVER YOU CONTACT US DURING THE DESIGNATED PERIOD. ATTEMPTS TO CONTACT THE DEPARTMENT WILL NOT BE ACKNOWLEDGED UNLESS YOU PROVIDE THIS FORM. THIS INCLUDES THE SUBMISSION OF QUESTIONS REGARDING THIS IFB.**

New York State Finance Law §139-k(4) obligates every Governmental Entity during the Restricted Period of a Procurement Contract to make a written record of any Contacts made. The term "Contact" is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the Governmental Procurement. In addition to obtaining the required identifying information, the Governmental Entity must inquire and record whether the person or organization that made the Contact was the Offerer or was retained, employed or designated on behalf of the Offerer to appear before or Contact the Governmental Entity.

It should be noted that State Finance Law §139-k(6) provides: [a]ny communications received by a governmental entity from members of the state legislature, or legislative staffs, when acting in their official capacity, shall not be considered to be a "contact" within the meaning of this section and shall not be recorded by a governmental entity pursuant to this section.

Offerers and those designated, employed or retained by Offerers are hereby advised of the Department's intention to record all Contacts.

**Record of Contact Under State Finance Law §139-k(4)**

To: The New York state Department of Economic Development

Regarding Procurement Project No.: \_\_\_\_\_ (See first page of this document) Date: \_\_\_\_\_

From: \_\_\_\_\_  
(Name and title of Offerer)

Subject: Record of Contact under State Finance Law §139-k(4). In accordance with State Finance Law §139-k(4), the following information is provided).

Address of Offerer: \_\_\_\_\_

\_\_\_\_\_ Telephone Number: \_\_\_\_\_

Offerer's Place of Principal Employment (Name and Address of your Employer, may be different from the Offerer's name and address, if not state same as above).

\_\_\_\_\_  
Your Occupation: \_\_\_\_\_

1. Is the above named person or organization the "Offerer" in this governmental procurement? Please circle Yes or No

2. If no, was the above named person or organization retained, employed or designated by the "Offerer" to:

- Appear before the governmental entity about the governmental procurement? Please circle – Yes or No
- Contact the governmental entity about the governmental procurement? Please circle – Yes or No

**APPENDIX E**

NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW  
SECTION 139-D, Statement of Non-Collusion in bids to the State

**BY SUBMISSION OF THIS BID, BIDDERS AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:**

1. The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

**A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE 1, 2, 3 ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:**

**[BIDDERS AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT]**

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ as the act and deed of said individual, corporation or partnership.

**Person Legally Responsible for Binding Bidder**

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_

**Joint or combined bids must be certified on behalf of each participant**

\_\_\_\_\_  
Legal name of person, firm or corporation

\_\_\_\_\_  
Legal name of person, firm or corporation

**Person(s) Legally Responsible for Binding Participant**

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Business Address \_\_\_\_\_

Business Address \_\_\_\_\_

## APPENDIX F

### NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable),

- (1) has business operations in Northern Ireland;

Yes \_\_\_\_ or No \_\_\_\_

if yes:

- (2) shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes \_\_\_\_ or No \_\_\_\_

---

Signature

Date

## APPENDIX G

Vendor Name: \_\_\_\_\_

NYS Vendor ID # (If one has been assigned) \_\_\_\_\_

### Vendor Responsibility Information

Effective January 1, 2005, the Office of the State Comptroller has conveyed that all requests for NYS contract approval must include information regarding Vendor Responsibility for the Contractor. **In addition any subcontractor on a state contract receiving \$100,000 or more must also complete the Vendor Responsibility Questionnaire.** The NYS Department of Economic Development recommends that vendors file the required questionnaire online via the NYS VendRep System. To enroll in and use the system and complete the questionnaire, see the instructions available at:

[http://www.osc.state.ny.us/vendrep/info\\_vrsystem\\_vendor.htm](http://www.osc.state.ny.us/vendrep/info_vrsystem_vendor.htm) or go directly to the VendRep System online at <http://portal.osc.state.ny.us>.

Failure to submit a completed questionnaire may result in either a grant or designation being rescinded or delayed. In addition, the NYS Department of Economic Development reserves the right to rescind upon a finding that the recipient is deemed not responsible to receive funds.

Please check one of the following:

- A Vendor Responsibility Questionnaire has been filed online and has been certified/updated within the last six months. Date certified online: \_\_\_\_\_
- A Vendor Responsibility Questionnaire is attached hereto. (paper version can be found and printed at: <http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3290s.pdf>)

# APPENDIX H

## GENERAL QUESTIONNAIRE

### A. GENERAL INFORMATION

List your headquarters (City and State) and all other locations. If you have more than one office, indicate which office would be handling the business account.

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### B. INFORMATION ON OFFICE TO SERVICE ACCOUNT

1. Provide a functional organizational chart for your company (it is not necessary to indicate names).
2. In addition to traditional licensing agency services, what related services, such as marketing, legal and enforcement, does your company offer?
3. How many employees does your company have.

### C. ACCOUNT HISTORY

1. Submit a list of current and specific licensing assignments.
2. Are there properties that your company currently represents which may be in conflict with the Department's property, i.e. **I♥NY**? If so, how would your company resolve this conflict?

### D. PERSONNEL

What individuals would you anticipate working specifically on the Department's account? Please include a brief description of the experience of each staff member who will be involved with the Department's account and the role that each staff member shall play in accomplishing the Scope of Services. Provide resumes of all key personnel.

### E. BUSINESS PRACTICE

Provide one example of a particularly successful licensing/marketing agreement for which you believe your firm made major contributions to the success. When did these occur? On what basis do you judge them and your efforts successful?

### F. FINANCIAL INFORMATION

NOTE: Your Company must have the economic resources to pay expenses in advance of the receipt of gross revenue from Licensing Agreements (see section 4.3.3.1) and hourly consideration (see section 4.3.5) received from the Department. You must provide as part of your proposal, a letter from a Certified Public Accountant indicating that your company has sufficient working capital, positive net worth, and has or can obtain a line of credit.

1. What client reporting procedures does your company utilize? Provide an example.

### G. INTERNATIONAL CAPABILITIES

1. Separately list those clients you currently service in the international market, as well as domestically. How are they coordinated?
2. If you do not currently serve any clients internationally, how would you handle the administration of such an account?

### H. OTHER

You may include additional information that will help provide a concise picture of your company and its qualifications. Limit your additional information to three pages 8 1/2" x 11" pages, 12-point font. These three pages, if provided, are in addition to the pages described in section 2.4.