



ATTACHMENT ____: OWNERSHIP OF INTELLECTUAL PROPERTY, PRODUCTS, AND
COPYRIGHTS

1. The State shall be the owner of all rights, title, and interest in any and all intellectual property or other products or materials created or developed pursuant to this Agreement, whether or not published, produced, manufactured or distributed. The copyright and other intellectual property rights to any and all products created, provided, or developed under this Agreement, whether or not published, produced, manufactured or distributed belongs to the State from the moment of creation. If the Contractor should lose its ability to service the Agreement with the State, the State shall retain the right to use said products or materials without further compensation to the Contractor.
2. The State retains all rights to use, reproduce, distribute, or display any products or materials created, provided, developed, or produced under this Agreement and any derivative products based on Agreement products or materials, as well as all other rights, privileges, and remedies granted or reserved to a copyright, patent, service mark or trademark owner under statutory and common law.
3. Contractor agrees to cooperate with State and to execute any document or documents that may be found to be necessary to give the foregoing provisions full force and effect, including but not limited to, an assignment of copyright or patent rights. Contractor, subject to reasonable availability, agrees to give testimony and take all further acts necessary to acquire, transfer, maintain, and enforce the State's intellectual property rights and interest.
4. Contractor agrees not to incorporate into or make the works developed, dependent upon any original works of authorship or Intellectual Property Rights of third parties without first (a) obtaining State's prior written permission, and (b) granting to or obtaining for State, without additional compensation, a nonexclusive, royalty-free, paid-up, irrevocable, perpetual, world-wide license, to use, reproduce, sell, modify, publicly and privately display and distribute, for any purpose whatsoever, any such prior works.
5. If the case of copyrighted materials, all materials distributed under the terms of this Agreement, and any reproductions or derivative works thereof, shall include a notice of copyright in a place that can be visually perceived at the direction of the State. This notice shall be placed prominently on products or materials, and set apart from other matter on the page or medium where it appears. The notice "Copyright" or "©", the year in which the work was first created, and Department of [State Agency]", or other appropriate mark as directed by Department of [State Agency]", Information Technology Section, shall be included on any such products or materials.
6. Contractor represents and warrants that:
 - A. It is free to enter into and fully perform this Agreement.

OWNERSHIP OF INTELLECTUAL PROPERTY, PRODUCTS, AND COPYRIGHTS

- B. It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
 - C. Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or STATE and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any State, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
 - D. Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
 - E. It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real property, sites, locations, property or props that may be used or shown.
 - F. It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to STATE in this Agreement.
 - G. It has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - H. It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.
7. STATE MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.
8. Intellectual Property Indemnity
- A. Contractor shall indemnify, defend and hold harmless STATE and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action,

or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of STATE's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or STATE and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. STATE reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against STATE.

- B. Should any Intellectual Property licensed by the Contractor to STATE under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve STATE's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to STATE. State shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for STATE to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, STATE shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- C. Contractor agrees that damages alone would be inadequate to compensate STATE for breach of any term of this Intellectual Property attachment by Contractor. Contractor acknowledges STATE would suffer irreparable harm in the event of such breach and agrees STATE shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

I, the official named below, certify that I am duly authorized to legally bind the prospective Contractor to this certification.

By Authorized Signature

Print Name

Title

Date