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Over \$2 Billion and Counting for our Schools

GOVERNOR Christopher T. Sununu  
CHAIRMAN Debra M. Douglas  
COMMISSIONER Paul J. Holloway  
COMMISSIONER J. Christopher Williams  
EXECUTIVE DIRECTOR Charles R. McIntyre

May 19, 2020

His Excellency, Governor Christopher T. Sununu  
And the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the New Hampshire Lottery Commission (Lottery) to enter into a contract with McLane Middleton P.A., (vendor #71891) Manchester, New Hampshire for a price not to exceed \$15,000 for legal consulting services effective upon Governor and Executive Council approval for the period July 1, 2020, through June 30, 2022 with the option to renew with Governor and Executive Council approval, for two additional years. **100% Lottery Funds.**

Funding is available in account, 06-083-083-830013-20280000 – Lottery Operating Cost Account

	<u>FY 2021</u>	<u>FY 2022</u>
046-500460 Consultants Class	\$7,500	\$7,500

**EXPLANATION**

The Lottery Commission seeks to engage an experienced and qualified intellectual property attorney to provide legal counsel and watch services in the areas of patents, copyright, service mark and trademark matters. As the holder of several registered service marks and frequent developer of new products, the protection of such services ensures that the Lottery’s products are constantly monitored against infringement. Additionally, the Commission requires services to file any necessary Powers of Attorney to continue use and renewal of filings for service mark registrations.

The New Hampshire Lottery, in concert with the Tri-State Lotto Commission and the New Hampshire Department of Justice released a Request for Proposals (“RFP”) on March 9, 2020 on the New Hampshire Lottery and New Hampshire Division of Purchase and Property websites; Union Leader and Concord Monitor newspapers, and the New Hampshire Bar Association.



The Lottery Commission's selection committee was comprised of the following individuals:

- Charles McIntyre, Executive Director: Mr. McIntyre has served as Executive Director of the Lottery since June of 2010. Prior to accepting that position, Mr. McIntyre served as Assistant Executive Director and General Counsel for the Massachusetts Lottery for seven years. Prior to that, he was a senior prosecutor in the Special Investigations Unit of the Norfolk District Attorney's office.
- Maura McCann, Marketing Director: Ms. McCann has been with the New Hampshire Lottery for more than three decades and has managed all aspects of public relations and marketing activities for both New Hampshire and the Tri-State Lotto Commission

Four submissions were made to the Lottery from law firms in New Hampshire, Ohio, and Illinois. Proposals were scrutinized for several criteria, but were scored based on each firm's breadth of knowledge and overall cost, for which the Commission encouraged a discounted government rate. Of the four proposals, one was disqualified; and two were found to have reasonable experience and knowledge, but did not score well for cost. It was determined that McLane Middleton Professional Association of Manchester, New Hampshire has the requisite experience and knowledge, and respects the constraints of the agency's budget to provide the reduced rate. Additionally, McLane Middleton P.A. is the agency's current representation: over the course of the previous contract periods, they have developed and maintained a thorough understanding of the Commission's products and needs to provide excellent service in proactive watch functions and representing the agency in filing for intellectual property protection.

McLane Middleton P.A. has proven to be a trusted and reliable partner, and based on the quality of their service and their sensitivity to the agency's economic needs, New Hampshire Lottery Commission respectfully requests approval of the requested action.

Respectfully submitted,



Charles R. McIntyre  
Executive Director



## LOT 2020-03 Legal Services

New Hampshire Lottery Commission

### SCORING SUMMARY

<u>Legal Firm/Service</u>	<u>Qualifications</u>	<u>Cost</u>	<u>Total Points</u>
McAndrews, Held & Malloy, Ltd, Chicago, IL	60	15	<b>75</b>
Wood, Herron & Evans, LLP, Cincinnati, OH	52	18	<b>70</b>
PretiFlaherty, Concord, NH	N/A	Disqualified <sup>1</sup>	<b>0</b>
McLane Middleton, PA, Manchester, NH	75	25	<b>100</b>

Scoring is based on two criteria with a possible total of 100 points:

Criteria 1: Prior Experience, Knowledge and Qualifications 75

Criteria 2: Cost, submitted as a combined hourly rate and scored by this formula:

(Lowest Proposal Cost / Proposer's Cost) \* 25 points = Score 25

New Hampshire Lottery Commission's selection committee was comprised of Charles McIntyre, Executive Director, and Maura McCann, Marketing Director.

The RFP states that the New Hampshire Lottery Commission (NHLC) reserves the right to:

- a. Consider any source of information in evaluating the proposals.
- b. Omit any planned evaluation step, if [at] the NHLC's discretion, the step is not needed; and
- c. Notwithstanding any provision of the RFP to the contrary, the NHLC reserves the right to: reject any and all proposals at its discretion and at any time; reject any parts of proposals; not award a contract; re-advertise the RFP; postpone or cancel this RFP at any time; waive any irregularities or inconsistencies in the RFP or proposals; and take whatever action is in the NHLC's best interest as determined by the NHLC in its sole discretion.

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<sup>1</sup> As a result of failure to submit Cost as a combined hourly rate, PretiFlaherty's submission was disqualified.

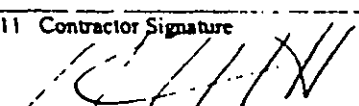

**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

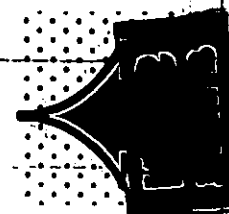
**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**I. IDENTIFICATION.**

1.1 State Agency Name New Hampshire Lottery Commission		1.2 State Agency Address 14 Integra Drive Concord NH 03301	
1.3 Contractor Name McLane Middleton Professional Association		1.4 Contractor Address 900 Elm Street Manchester NH 03105	
1.5 Contractor Phone Number 603-625-6464	1.6 Account Number 06-083-083-830013- 20280000-046-500460	1.7 Completion Date June 30, 2022	1.8 Price Limitation \$15,000
1.9 Contracting Officer for State Agency Charles R. McIntyre, Executive Director		1.10 State Agency Telephone Number 603-271-3391	
1.11 Contractor Signature  Date: 5/20/20		1.12 Name and Title of Contractor Signatory Mark A. Wright, Director and Chair of Intellectual Property Practice Group	
1.13 State Agency Signature  Date: 6/1/2020		1.14 Name and Title of State Agency Signatory Charles R. McIntyre Executive Director	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: Erik Bal On: 6/1/2020			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			



Contractor Initials MAW  
Date 5/20/20

**2. SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provide in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

## 8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

## 9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

## 10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulac, surveys, maps; charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

## 12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

#### 14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

#### 15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

17. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

**EXHIBIT A**  
**SCOPE OF SERVICES**

- I. The scope of services is set forth in the following documents, which are hereby incorporated by reference into this Agreement:
  - A. The "Request for Proposal for Legal Consulting Services" (hereinafter "RFP"), issued by New Hampshire Lottery Commission (hereinafter "NHLC" or "Commission") on March 9, 2020.
  - B. The Proposal, dated April 20, 2020, submitted by McLane Middleton, PA (hereinafter "Contractor") in response to the RFP. A copy of the Proposal is on file with NHLC.
  
- II. Contractor agrees to perform the following services for the Commission:
  - A. Perform an annual trademark watch service for federally registered service marks owned now or in the future by the Commission. The Contractor shall review all watch notices, provide the Commission with an analysis of any potential infringement and provide recommendations on proceeding.
  - B. Prepare and file any Powers of Attorney as needed to continue use and renewal of filings for service mark registrations.
  - C. To the extent the contract permits, provide assistance, counseling and litigation support pertaining to other intellectual property law related issues and matters including, but not limited to pending or threatened litigation, web site domain issues, and patent registration and infringement matters.

**EXHIBIT B**  
**PAYMENT SCHEDULE**

- I. The maximum amount of the two year contract is \$15,000.
- II. All invoices are to be sent to the New Hampshire Lottery Commission, 14 Integra Drive, Concord NH 03301.

**EXHIBIT C**  
**SPECIAL PROVISIONS**

- I. The Commission reserves the right to renew this contract for up to one period of two years, subject to continued availability of funds, satisfactory performance of services, and approval by the Governor and Executive Council. The Commission shall notify the Contractor no later than February 28, 2022 whether or not the Commission intends to exercise the one two-year option.
- II. In lieu of Commercial General Liability Insurance, the Commission accepts the Contractor's coverage by their maintaining Professional Liability Insurance and Professional Indemnity Insurance.

Contractor Initials MAW  
Date 5/29/20



# MCLANE MIDDLETON

MICHAEL B. TULE  
Direct Dial: 603.628.1290  
Email: michael.tule@mcLane.com  
Admitted in NH, MA and VT  
900 Elm Street, P.O. Box 326  
Manchester, NH 03105-0326  
T 603.625.6464  
F 603.625.5650

May 14, 2020

Maura McCann  
Director of Marketing  
NH Lottery Commission  
14 Integra Drive  
Concord, NH 03301

**Re: NH Lottery Contract**

Dear Ms. McCann:

I, Michael B. Tule, am the Secretary of McLane Middleton, Professional Association. This letter is confirmation that Mark A. Wright is a Vice President and Director of McLane Middleton and that Mr. Wright's signature on a contract with the State of New Hampshire will have the effect of binding McLane Middleton on said contract.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

*Michael B. Tule*

Michael B. Tule

MBT:afs

McLane Middleton, Professional Association  
Manchester, Concord, Portsmouth, NH | Woburn, Boston, MA

McLane.com

# State of New Hampshire

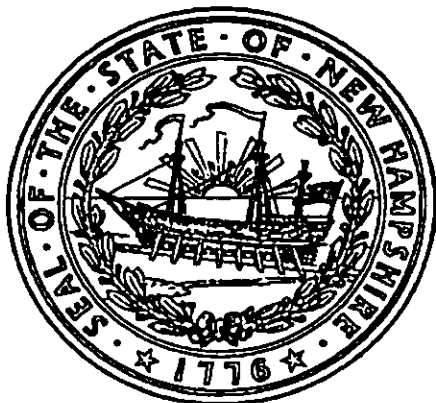
## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that MCLANE MIDDLETON, PROFESSIONAL ASSOCIATION is a New Hampshire Professional Profit Corporation registered to transact business in New Hampshire on December 30, 1975. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 16197

Certificate Number: 0004913052



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 12th day of May A.D. 2020.

A handwritten signature in black ink, appearing to read "William M. Gardner".

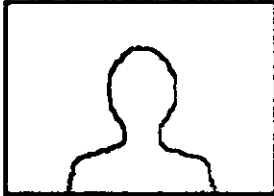
William M. Gardner  
Secretary of State

# Signature Certificate

Document Reference: G6DF4WJCM3C7B6K8S89UBY

# RightSignature

Easy Online Document Signing



Michael B. Tule  
Party ID: CW45EYIWKLCBBGVUHKP5CZ  
IP Address: 185.187.30.13

VERIFIED EMAIL: mike.tule@mclane.com

Electronic Signature

*Michael B. Tule*

Multi-Factor  
Digital Fingerprint Checksum

594bedf4cf721130a99f6df230fa38278bdc8205



## Timestamp

2020-05-14 10:18:07 -0700

2020-05-14 10:18:06 -0700

2020-05-14 10:12:03 -0700

2020-05-14 09:28:40 -0700

## Audit

All parties have signed document. Signed copies sent to: Anmarie Sullivan, Michael B. Tule, and David Eaton.

Document signed by Michael B. Tule (mike.tule@mclane.com) with drawn signature. - 75.67.250.13

Document viewed by Michael B. Tule (mike.tule@mclane.com). - 185.187.30.13

Document created by David Eaton (david.eaton@mclane.com). - 38.142.177.90



This signature page provides a record of the online activity executing this contract.



Preferred Follow Form Policy  
(the "Policy")

**Policy Number:** MKLV7PL0003736 **Premium:** US\$ 59,000

**Name of Assured/ Insured:** MCLANE MIDDLETON, PROFESSIONAL ASSOCIATION and others as more fully described in the **Primary Policy**

**Address:** 900 Elm St  
Manchester, NH 03101

**Period of Insurance/ Policy Period:** 12:01 a.m. July 01, 2019 to 12:01 a.m. July 01, 2020

**Sum Insured/Limit of Indemnity:** (Including costs, charges and expenses as more fully described in the **Primary Policy**)  
US\$ 5,000,000  
Excess of the underlying limits/sum(s) insured of: (As more fully described in the underlying policies)  
US\$ 5,000,000

**Coverage Description:** Professional Indemnity Insurance

**Particulars of Insurance:** As per attached

**Endorsements:** MDIL 1001 08 11 Forms Schedule

**Primary Policy:** Indian Harbor Insurance Company Policy No. LPN 9039064

**Hereto:** 100.000% part of 100.000%; i.e. US \$1.000000 of each dollar of the **Sum Insured/Limit of Indemnity** and Premium expressed hereon and of payments hereunder.

**Insured with:** Evanston Insurance Company (the "Company")

Signature of Authorized Representative of the Company

July 23, 2019

Date



Policy No. LPN 9039064

**SCHEDULE**

<b>Type</b>	Lawyers Professional Liability Insurance
<b>Form</b>	APSG Preferred Lawyers Wording 2015
<b>Name of the Assured</b>	McLane Middleton, Professional Association and any associated or subsidiary entities, sole proprietorships, partnerships that are owned and operated by one or more partners of the FIRM which are required to be established by law or local regulations for the sole purpose of conducting business by or on behalf of the FIRM in the FIRM's professional capacity as attorneys, counselors at law or notaries, and others as more fully described in the Policy.
<b>Predecessors in Business</b>	All predecessor firms
<b>Mailing Address of the Assured Firm</b>	900 Elm Street Manchester, NH 03101  and all other offices of the FIRM
<b>Policy Period</b>	From: July 01, 2019 To: July 01, 2020  Both days at 12:01 a.m. Standard Time at the Address of the ASSURED
<b>Sum Insured</b>	USD 5,000,000 each claim and in the aggregate including reasonable costs, charges and expenses
<b>Round The Clock Reinstatement Purchased</b>	N/A
<b>Retention (a)</b>	USD 150,000 each and every claim including reasonable costs, charges and expenses
<b>Supplemental Clauses</b>	PN CW 05 0519 – U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") Controlled Enterprise Exclusion Amendatory Endorsement – McLane Government & Public Strategies LLC ("McLane GPS") Amendment of Section I. Coverage Endorsement
<b>Extended Reporting Period</b>	100% of the last annual PREMIUM if INSURERS refuse to renew or the FIRM declines to renew for a 12-calendar-month EXTENDED REPORTING PERIOD  175% of the last annual PREMIUM if INSURERS refuse to renew or the FIRM declines to renew for a 24-calendar-month EXTENDED REPORTING PERIOD  225% of the last annual PREMIUM if INSURERS refuse to renew or the FIRM declines to renew for a 36-calendar-month EXTENDED REPORTING PERIOD



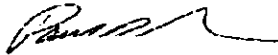
Policy No. LPN 9039064

**SCHEDULE**

<b>Type</b>	Lawyers Professional Liability Insurance
<b>Form</b>	APSG Preferred Lawyers Wording 2015
<b>Name of the Assured</b>	McLane Middleton, Professional Association and any associated or subsidiary entities, sole proprietorships, partnerships that are owned and operated by one or more partners of the FIRM which are required to be established by law or local regulations for the sole purpose of conducting business by or on behalf of the FIRM in the FIRM's professional capacity as attorneys, counselors at law or notaries, and others as more fully described in the Policy.
<b>Predecessors in Business</b>	All predecessor firms
<b>Mailing Address of the Assured Firm</b>	900 Elm Street Manchester, NH 03101  and all other offices of the FIRM
<b>Policy Period</b>	From: July 01, 2019 To: July 01, 2020  Both days at 12:01 a.m. Standard Time at the Address of the ASSURED
<b>Sum Insured</b>	USD 5,000,000 each claim and in the aggregate including reasonable costs, charges and expenses
<b>Round The Clock Reinstatement Purchased</b>	N/A
<b>Retention (a)</b>	USD 150,000 each and every claim including reasonable costs, charges and expenses
<b>Supplemental Clauses</b>	PN CW 05 0519 – U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") Controlled Enterprise Exclusion Amendatory Endorsement – McLane Government & Public Strategies LLC ("McLane GPS") Amendment of Section I. Coverage Endorsement
<b>Extended Reporting Period</b>	100% of the last annual PREMIUM if INSURERS refuse to renew or the FIRM declines to renew for a 12-calendar-month EXTENDED REPORTING PERIOD  175% of the last annual PREMIUM if INSURERS refuse to renew or the FIRM declines to renew for a 24-calendar-month EXTENDED REPORTING PERIOD  225% of the last annual PREMIUM if INSURERS refuse to renew or the FIRM declines to renew for a 36-calendar-month EXTENDED REPORTING PERIOD

Policy No. LPN 9039064

<b>Choice of Law in the event of a Policy Dispute</b>	On the instructions of the Assured, no specific Choice of Law is specified.
<b>Choice of Jurisdiction in the event of a Policy Dispute</b>	USA as per Service of Suit Clause
<b>Premium</b>	USD 139,000
<b>Payment Terms</b>	30 Days
<b>Date of Proposal</b>	June 13, 2019
<b>Arbitrator or Arbitration Association Referred to in Clause IV Conditions 5e</b>	American Arbitration Association
<b>Territorial Limits</b>	Worldwide
<b>Service of Suit Nominees</b>	AXA XL c/o ACS, Inc. P.O. Box 614002 Orlando, FL 32861-4002 proclaimnewnotices@axaxl.com
<b>Insurers' Representatives</b>	None
<b>Assured's Representatives</b>	Aon Risk Services Northeast, Inc. One Liberty Plaza 165 Broadway, Suite 3201 New York, NY 10006
<b>Insurer(s)</b>	Indian Harbor Insurance Company - 100.00% part of each dollar limit and premium expressed hereon and of payment thereunder



Authorized Representative

Date: July 22, 2019  
Policy No. LPN 9039064



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/27/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Richards Robinson Sheppard An Optisure Risk Partner 152 Conant St Suite 304 Beverly MA 01915	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (617) 284-5260 E-MAIL ADDRESS: certificates@rrsins.com FAX (A/C, No): (617) 654-9040																				
	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A:</td> <td>Allmerica Financial Benefit</td> <td>41840</td> </tr> <tr> <td>INSURER B:</td> <td></td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Allmerica Financial Benefit	41840	INSURER B:			INSURER C:			INSURER D:			INSURER E:			INSURER F:	
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INSURER D:																					
INSURER E:																					
INSURER F:																					
<b>INSURED</b> McLane Middleton, Professional Association 900 Elm Street P.O. Box 326 Manchester NH 03105																					

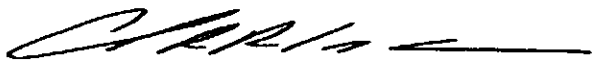
**COVERAGES**      **CERTIFICATE NUMBER:** 20-21 WC Only      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPIOP AGG \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	W2VD902784	05/01/2020	05/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Evidence of Workers' Compensation Coverage

<b>CERTIFICATE HOLDER</b>  New Hampshire Lottery Commission 14 Integra Drive  Concord NH 03301	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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# MCLANE MIDDLETON

McLane.com

**New Hampshire Lottery Commission/  
Tri-State Lotto Commission  
Response to RFP  
Legal Consultant Services**

April 2020

**Presented by:**

**Mark A. Wright**  
(603) 628-1311  
mark.wright@mclane.com

McLane Middleton Professional Association  
900 Elm Street  
Manchester, NH 03101

# MCLANE MIDDLETON

MARK A. WRIGHT  
Direct Dial: 603-628-1311  
Email: mark.wright@mdlane.com  
Admitted in NH and MA  
900 Elm Street, P.O. Box 326  
Manchester, NH 03105-0326  
T 603.625.6464  
F 603.625.5650

April 20, 2020

**VIA FEDERAL EXPRESS**

Maura McCann, Director of Marketing  
New Hampshire Lottery Commission  
14 Integra Drive  
Concord, NH 03301

**RE: Response to RFP Legal Consultant Services**

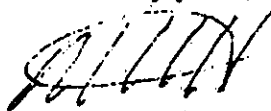
Dear Maura:

McLane Middleton, Professional Association is pleased to provide a response to the New Hampshire Lottery Commission's ("NHLC") and Tri-State Lotto Commission ("TSLC") in connection with the request for legal consultant services for intellectual property/trademark matters. We have very much enjoyed working with both the NHLC and TSLC and look forward to the opportunity to continue our relationship.

I have also enclosed draft engagement/conflict waiver letters that will need to be executed should we be selected for legal services. These letters are similar to the letters we have had signed for our prior contracts with NHLC and TSLC. These letters address any conflict issues relative to the various persons and entities that this firm represents, or may represent, who have or may have interests adverse to the various states and their agencies (of course, excluding NHLC and TSLC).

Should you have questions, please do not hesitate to call me directly at (603) 628-1311 or our Marketing Director, Susan de Mari, at (603) 628-1396. We look forward to hearing from you.

Sincerely yours,



Mark A. Wright

MAW:afs  
Enclosures  
cc: Susan de Mari

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### **Executive Summary**

We are pleased to have this opportunity to present McLane Middleton's capabilities to the New Hampshire Lottery Commission (NHLC) and Tri-State Lotto Commission (TSLC) in partnership with the Department of Justice. We envision that this proposal will serve as a basis from which we can continue to work together closely to create and execute a customized intellectual property protection strategy that will prove both innovative and cost-effective for the NHLC and TSLC. We are confident that the relationship with McLane Middleton will continue to help you meet and even exceed your intellectual property objectives.

### ***Extensive Intellectual Properties Practice***

In today's business environment, intellectual property rights are a top priority. Intellectual property, including patent, trademark, copyright and trade secret rights, is a powerful tool that can create or maintain a competitive advantage in the marketplace. At McLane Middleton, we have extensive experience in all aspects of intellectual property counseling and litigation. We assist clients in developing intellectual property strategies and portfolios, identifying and protecting rights and enforcing these rights against third parties. Particularly relevant to NHLC and TSLC is our significant experience in the following areas: trademark clearance and availability; trademark registration and maintenance; trademark watch/protection; litigation and enforcement of rights; patent and copyright counseling; licensing and e-commerce.

### ***Existing Relationship***

Lawyers at McLane Middleton have been assisting NHLC and TSLC with intellectual property matters for many years. The firm also continues to serve as general trademark counsel to TSLC, following successful registration of the TRI STATE MEGABUCKS mark 10 years ago. McLane Middleton initially assisted TSLC in a successful domain arbitration proceeding against a cybersquatter who registered the domain "nhlottery.com." McLane Middleton efforts on behalf of TSLC have also included trademark registration and maintenance efforts, consultation on software licensing and development agreement relating to the "NHlotteryreplay.com" game, trademark watch/protection efforts on registered marks and general advice on intellectual property matters.

### ***First-Hand Experience at the USPTO***

Scott Rand, who is a member of McLane Middleton's Intellectual Property Practice Group, spent six years in Washington, D.C. as an Examiner in the United States Patent & Trademark Office. Scott's experience, knowledge, and insight into the inner workings of the USPTO have proven invaluable. As a result of advanced degrees in intellectual property law and USPTO experience, our attorneys give us the ability to work more effectively and efficiently for our clients in all areas of intellectual property law. In addition, Mark Wright, director and chair of the firm's Intellectual Property Practice Group, has vast experience in assisting clients both in the United States as well as foreign countries.

### ***Partnering Approach to Client Representation***

Recognizing that each of our clients has unique concerns, we strive to acquire a high level of understanding of our clients' individual objectives and goals. In response to these needs, we assemble interdisciplinary teams of lawyers with expertise in relevant areas to help our clients achieve their objectives in the most strategic and comprehensive manner possible. The firm's

mission statement emphasizes excellent service to clients. We seek to provide this service in a cost-effective and efficient manner. In the intellectual property area, our efforts include:

- Rules-based IP docketing system to track and maintain trademark and patent registrations
- Utilizing email and fax to communicate with clients in ways that fit into the client's schedule
- Delegation of tasks to attorneys or paralegals where experience and billing rates match the clients' particular needs

Again, thank you for this opportunity. We look forward to the opportunity to partner with you to develop an effective and resourceful approach to the management of NHLC's and TSLC's intellectual property rights.

### **About McLane Middleton**

McLane Middleton combines legal excellence and quality client service to create innovative and winning strategies for our clients. Founded in 1919, McLane Middleton is the largest and most diverse law firm in the state of New Hampshire with offices in Manchester, Concord, and Portsmouth, and Woburn and Boston, Massachusetts. Our progressive approach has enabled us to work with all types of clients throughout New England and the United States to deliver solutions that are customized and cost-effective. The firm's business practice has tremendous depth and experience in offering analysis of legal combinations and mergers.

### *How We Compare*

The most recent listing of Woodward & White's The Best Lawyers in America recognizes 42 of our attorneys, most of whom have been recognized for many years. McLane Middleton carries the highest legal ability rating in Martindale Hubbell, with many of our attorneys also individually recognized through their rating system.

Chambers USA: America's Leading Business Lawyers has recognized McLane Middleton with five practice area rankings and 20 distinct attorney rankings.

Our attorneys have drafted large portions of legislation, including the New Hampshire Business Corporation, Limited Liability Company, and Uniform Trust Acts and are the authors of the State of New Hampshire's Environmental Law Handbook. We count among our attorneys Fellows of the American College of Tax Counsel, The American College of Trust & Estates Counsel, The American College of Real Estate Lawyers, The American College of Trial Lawyers, and the American College of Environmental Lawyers. In addition, the firm's Intellectual Property Practice Group was recently recognized with a "Best of Business" award from New Hampshire Business Review.

### *Firm Values and Culture*

McLane Middleton actively encourages its members to participate and hold leadership roles in the community and in professional organizations. McLane Middleton attorneys have been awarded honors such as Citizen of the Year and Business Leader of the Year, and members of our firm also hold active leadership roles in the American Bar Association, the New Hampshire Bar Association, the New Hampshire Women's Bar Association, the New England Bar Association, the Business and Industry Association, local Chambers of Commerce, and as directors on the boards of numerous charitable and educational institutions in New Hampshire and Massachusetts.

The firm is energized by widespread opportunity for professional development and enhancement. We have a culture of learning and training that encourages members of the firm to become experts in their fields and to share that expertise with others in the firm through client driven interdisciplinary practice and industry focus groups. We pride ourselves on the quality of the people who have chosen to make McLane Middleton a part of their lives, many of whom have been with the firm for more than 30 years.

## Information Required in Proposal

### 1. Experience and Qualifications:

- a. Our approach to client service is team-based. McLane Middleton has the breadth and depth to allow us to staff representations with those attorneys and paralegals who have the most relevant experience. As needs arise, other McLane Middleton attorneys may be called upon for their specific expertise. All attorneys, paralegals, and staff will be available to work on NHLC and TSLC matters. The talent and experience of the entire firm will always be available to respond to any situations or to address any issues. The team leader and primary contact for NHLC and TSLC will be Mark Wright, Director and Chair of McLane Middleton's Intellectual Property Practice Group. Details about Mark's background as well as other members likely to work on NHLC and TSLC matters follow.



**Mark A. Wright**  
(603) 628-1311  
mark.wright@mclane.com

Mark is a director and chair of the firm's Intellectual Property Practice Group. Mark focuses his practice on counseling clients and assisting them in protecting their intellectual property rights in the United States and foreign countries. His experience spans a wide range of intellectual property areas, including domestic and international trademarks, development agreements and licensing of software, trade secrets, domain name disputes and other Internet-related issues, copyrights, confidentiality agreements and litigation related to intellectual property rights. Mark is recognized as a leading intellectual property attorney with an extensive practice representing regional, national and international businesses, with a particular focus in trademark matters.

Mark is consistently recognized as one of the top intellectual property attorneys in the United States. Mark is recognized in Woodward/White's Best Lawyers in America, Chambers USA, and New England Super Lawyers for Intellectual Property Law. He was also recognized in Business NH Magazine's Best Lawyers in NH.

In addition to having prosecuted several hundred U.S. and international trademark registrations, recent and ongoing work includes:

- Assisted world's largest manufacturer of industrial valves and controls, heat-tracing solutions, and UL listed fire sprinklers with global trademark portfolio matters involving chain of title and ownership issues in over 30 foreign countries

- Trademark counsel to one of the world's leading brand research companies
- Trademark counsel to New Hampshire Sweepstakes Commission and Tri-State Lotto Commission
- Trademark counsel to nationally recognized prep school
- Successfully represented European based global manufacturer of footwear with ICANN domain name arbitration proceeding against cybersquatters in United States
- Negotiated and drafted numerous licensing and confidentiality agreements on behalf of German manufacturer in digital printing industry
- Successfully represented and negotiated settlements on behalf of several companies in connection with copyright infringement claims brought by Business Software Alliance (BSA), a national organization founded by country's top software and service providers to combat unlicensed use of software and software piracy
- Trademark counsel responsible for protecting and maintaining brand name of one of NH's largest amusement parks
- IP counsel to leading insurance and real estate company with offices in 170 communities throughout NH, VT, ME and MA, providing counseling relative to trademark/branding, copyright protection and Internet-related legal issues
- Trademark counsel to numerous clients in a wide-range of industries, including clothing/footwear, food/beverage, manufacturing, sporting goods and technology

Mark also is a member and past Chairman of the Corporate, Business and Banking Section of the New Hampshire Bar Association. He is also a member of the Intellectual Property Sections of the NH Bar Association and the American Bar Association. Mark serves as the Chairman of the Zoning Board of Adjustment for the Town of Auburn and is a 1997-1998 graduate of Leadership Greater Manchester.

Mark received his B.S. from the University of New Hampshire in 1987 and his J.D. from Detroit College of Law in 1991. He also earned his Master of Intellectual Property degree from the Franklin Pierce Law Center in 1997.



**Scott C. Rand**  
 (603) 628-1461  
[scott.rand@mclane.com](mailto:scott.rand@mclane.com)

Scott is a senior attorney in the firm's Intellectual Property Practice Group where he focuses his practice on patent preparation and prosecution in a variety of areas including chemical, mechanical, software, internet, e-commerce, and medical device. Prior to entering private practice, Scott spent six years as a Patent Examiner in the United States Patent & Trademark Office. Scott is involved with all phases of patent, trademark, copyright, and trade secret



law practice, including patent, trademark, and copyright preparation and prosecution, licensing and contract matters, patent opinion preparation, domain name disputes and other Internet-related issues, intellectual property counseling, and litigation relating to patent, trademark, copyright and other intellectual property matters.

Scott is admitted to practice in New Hampshire, the United States District Court for the District of New Hampshire, the United States Court of Appeals for the Federal Circuit, and the United States Patent & Trademark Office. He is a member of the New Hampshire Bar Association and American Intellectual Property Law Association.

Scott received his J.D. from Georgetown University Law Center (1996). He is a former Patent Examiner from the United States Patent & Trademark Office (1989-1995). Scott also received his B.S. from the University of Maryland (1988) and his B.S. from St. Mary's College of Maryland (1986).



**Catherine S. Yao**

(603) 628-1380  
catherine.yao@mclane.com

Catherine is an associate in the firm's Intellectual Property Practice Group, where she works to assist clients with all issues relating to the protection of their intellectual property.

Catherine is a registered patent attorney licensed to practice before the United States Patent and Trademark Office (USPTO).

Catherine received her J.D. from the University of New Hampshire School of Law (formerly Franklin Pierce Law Center), where she also completed the Intellectual Property Certificate. Her practical experiences throughout law school spanned a range of intellectual property areas, including patent prosecution and litigation, trademarks, copyrights, and Section 337 investigations before the U.S. International Trade Commission. She received her B.S. in Biology with a concentration in Biotechnology from Virginia Polytechnic Institute and State University.



**Deborah L. Jensen**

(603) 628-1419  
deborah.jensen@mclane.com

Deborah is a certified Paralegal working within the Corporate Department. As a member of McLane's Intellectual Property Practice Group, Deborah focuses on foreign trademark and patent matters. Under the supervision of McLane's intellectual property attorneys, Deborah provides direct support to clients,

assisting with application and registration maintenance filing requirements, website review, and proper trademark usage; performs in-house screening searches; prepares trademark and patent electronic filings; conducts domain name and IP title searches; and works directly with foreign agents to assist in international and patent trademark filings. In addition, Deborah is responsible for maintaining the trademark and patent dockets.

With over ten years of experience working as a paralegal, Deborah became a nationally Certified Paralegal in 2004. In September of 2004, Deborah completed the National Association of Legal Assistants/Paralegals' (NALA) Advanced Paralegal Certification Program in Intellectual Property. Deborah is one of the 157 certified IP specialists in the nation, and one of only two certified IP specialists in New Hampshire.

Deborah is a member of PANH, NALA, and the National Federation of Paralegal Associations (NFPA), and also serves as a Notary Public for the State of New Hampshire.

#### *Client Service*

To ensure that the team is functioning to meet NHLC's and TSLC's goals and objectives, we would seek continual feedback. Client service is of the utmost importance to all colleagues of the firm. Over the past few years, McLane Middleton has implemented a formal survey process to learn how we can improve each client's experience. We conduct live client interviews and gather information through mailed survey questionnaires. These informative surveys provide a forum for clients to let us know how we are serving them in all areas – from legal services, to billing practices, to secretarial responsiveness. We also have a client service committee, committed to making sure that client service is at the forefront of what we do.

- b. McLane Middleton's intellectual property group works diligently with companies seeking assistance with managing and executing intellectual property strategies.

Our attorneys offer expertise on intellectual property development, protection, licensing, and litigation. The intellectual property group primarily focus their practice on:

- U.S. and foreign trademark and copyright law
- Patent procurement
- E-commerce and Internet law
- Domain name/cyber-squatter disputes
- Technology development
- Trade secret protection
- Intellectual property due diligence in transactions
- Licensing agreements for all types of intellectual properties

### ***Trademark***

McLane Middleton's intellectual property group makes it their priority to understand its clients' goods and services, marketing strategies, and technology to provide effectual advice on matters affecting brands and related intellectual property rights.

We represent a wide and diverse variety of clients from start-ups and small businesses to large privately held corporations and publicly traded companies for their trademark legal services and consult.

Our attorneys prosecute and defend an array of trademark infringement and unfair competition actions in state and federal courts, as well as opposition/cancellation proceedings with the Trademark Trial and Appeals Board.

McLane Middleton is a member of Terralex and the International Trademark Association, and assists clients in over 50 foreign countries with trademark protection and maintenance matters.

Our trademark services include:

- Searching state, federal and foreign registers for clearance of marks
- Rendering opinions on ability to use and register, and infringement matters
- National and global brand protection strategies
- Preparing and securing registration applications
- Maintenance filings
- Electronic filing capabilities
- Litigation and enforcement of rights
- Watch/protection service

### ***Intellectual Property Litigation***

The firm possesses notable experience in handling disputes and litigation involving patent, trademark, copyright, trade secret and unfair competition.

Intellectual property infringement claims present complex legal and factual issues, and demand thorough understanding of both the law and science applicable to a case.

McLane Middleton's intellectual property practitioners and trial lawyers possess the experience it takes to distill issues related to the case to their fundamental basics, and to meticulously identify the factors that help lead to a successful result.

### *Patent*

McLane Middleton's intellectual property group is made up of reliable counsel, including a former patent examiner at the U.S. Patent and Trademark Office.

We provide sophisticated patent services to clients in many industries, with numerous in a wide variety of technologies, such as chemistry, medical devices, computer science, and mechanical and electrical arts.

McLane Middleton works closely with inventors to acquire strong patent rights when preparing and filing patent applications. And, our patent attorneys are extensively experienced in prosecuting patents. McLane Middleton's patent law services include:

- Patentability assessment
- Patent and prior art searching
- Patent procurement in the U.S. and foreign countries
- Validity, infringement and enforceability assessments
- Reissue and reexamination applications
- Electronic filing capabilities
- Patent due diligence and portfolio assessments
- IP transfers, licensing and invention assignment agreements

### *Copyright*

McLane Middleton copyright attorneys are experts at advising clients with the development and execution of copyright protection strategies.

McLane Middleton handles numerous areas related to copyright, including software; literary works; advertising and marketing collateral; character designs/logos; photographs; audiovisual works, music; and paintings.

Our well-established copyright practice counsels clients on "fair use," policing and enforcement of rights, and an array of matters with great emphasis on the following:

- U.S. registration and foreign protection of copyrighted works
- Protection of computer software
- Licensing of copyrighted works
- Work-for-hire agreements
- Development agreements
- Negotiation and handling copyright infringement or ownership disputes/litigation

McLane Middleton has represented successful settlement negotiations on behalf of companies and individuals in connection with copyright infringement claims brought by the Business Software Alliance (BSA), a national organization founded by the country's top software and service providers to combat unlicensed

use of software and software piracy, and claims brought by the music industry in connection with illegal music downloads, and various other copyright claims relative to infringement of images and video rights.

#### *Trade Secrets*

McLane Middleton's intellectual property practice group is astute in assisting its clients with determining whether trade secret protection is appropriate given the nature of the rights at issue.

We counsel clients on establishing effective procedures to secure and protect valuable trade secret information, such as drafting and enforcing non-disclosure agreements; creating internal trade secret protection procedures; negotiating trade secret licenses; and litigating trade secret rights.

- c. McLane Middleton has extensive experience with engagements similar to the request put forth by NHLC and TSLC. Please see Appendix A for a complete list of similar work.

#### 2. *References:*

See Appendix B for a complete list of references.

#### 3. *Fees:*

McLane Middleton works with many companies – each with their own unique requirements. All our clients, however, do have one thing in common – the desire to keep costs down without sacrificing quality, depth or expertise. To this end, we engage in a number of different types of billing arrangements with our clients depending on their specific budgetary needs. As with our past agreement, we have arranged for a discounted government rate with NHLC and TSLC.

In addition, should litigation strike, McLane Middleton will work closely with NHLC and TSLC to prepare a detailed budgetary estimate for each stage of the litigation and arbitration. The firm also uses individual codes for particular tasks, and all billing statements include a breakdown by task code. We pay close attention to legal budgetary constraints and cycles. We carefully monitor staffing, pay attention to line item expenses like research, and invest in cutting edge technology to produce faster results. We will work with NHLC and TSLC to provide cost containment and management strategies.

We are able to be very competitive with a budget due to our low overhead relative to larger firms. We realize that we do not have offices located throughout the country, but stand by the fact that large offices throughout the country is not a requirement of managing litigation. We firmly believe that we can offer NHLC and TSLC a much better budget with better or comparable legal services than other firms. Our litigation experience and understanding of efficient, focused case management is second to none.

**Hourly Rates**

As described more fully above, McLane Middleton initially proposes a team of lawyers and paralegals to manage and coordinate NHLC's and TSLC's intellectual property needs. Our team approach ensures a focused group of professionals dedicated to the project. McLane Middleton recognizes NHLC's and TSLC's desire to keep costs as low as possible, therefore we have significantly reduced rates to meet your expectations. Mark Wright will be the contact attorney for NHLC and TSLC and will provide the daily oversight of the Commissions' representation with additional support handled largely by the team outlined below. When appropriate, Attorney Wright will delegate specific tasks to those attorneys or paralegals who will best fulfill NHLC's and TSLC's needs in the most cost-effective, efficient manner. As set forth below, McLane Middleton is willing to provide NHLC and TSLC with a significant hourly rate discount in connection with the intellectual property services hereunder.

<b>Team Members</b>	<b>Staffing Level</b>	<b>2020 Hourly Rate</b>	<b>*NHLC and TSLC Discounted Rate</b>
<b>Team Leader:</b>			
Mark A. Wright	Director, Chair of IP Practice Group	\$475	\$300
<b>Attorneys:</b>			
Scott C. Rand	Counsel	\$375	\$250
Catherine S. Yao	Associate	\$275	\$250
<b>Paralegals:</b>			
Deborah L. Jensen	Paralegal	\$235	\$200

*\*Hourly rates are inclusive of all administrative charges, including telephone calls, file review, copying/printing charges, facsimile transmissions, messenger services and travel.*

**4. Conflicts of Interest/Disciplinary Proceedings:**

- a. See appendix C for the firm's pending litigation against the State of New Hampshire, State of Maine, and State of Vermont.
- b. McLane Middleton does not have any pending complaints or investigations.
- c. McLane Middleton does not have any actual or potential conflicts.

**5. Transmittal Letter:**

The firm's original, signed transmittal letter is included in a separate envelope with this submission.

**Appendix A  
Similar Engagements**

<b>Company</b>	<b>Contact</b>	<b>Nature of Representation</b>
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]

<b>Appendix A</b>		
<b>Similar Engagements</b>		
<b>Company</b>	<b>Contact</b>	<b>Nature of Representation</b>
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]



**Appendix B  
Government References**

<b>Agency</b>	<b>Contact</b>	<b>Nature of Representation</b>	<b>Date</b>
Tri-State Lotto Commission	Charlie McIntyre New Hampshire Lottery Commission 14 Integra Drive Concord, NH 03301 603-271-3391	Intellectual Property matters, including Trademark Protection	On-going
New Hampshire Department of Resources & Economic Development	Karen Wyman International Trade Office Office of International Commerce 17 New Hampshire Avenue Portsmouth, NH 03801 Karen.wyman@dred.state.nh.us	Copyright protection, registration	Completed
New Hampshire State Troopers Association	Louis Caponi New Hampshire State Troopers Association 107 North State Street Concord, NH 03301	Intellectual Property Litigation; Trademark Protection	On-going
University System of New Hampshire	Ronald Rodgers, Esq. University System of NH Myers Center 27 Concord Road Durham, NH 03824-0346 (603) 862-0960 ron.rodgers@unh.edu	Advise University of New Hampshire regarding issues regarding interconnection of new gas fired generator with PSNH electric system. Represent UNH regarding billing dispute with PSNH.	On-going
Town of Littleton	Timothy Vaughn, Esq. 125 Main Street Suite 200 Littleton, NH 03561	Advise Town regarding local property tax implications of restructuring of electric industry.	On-going
Town of Claremont	Guy Sanbagate City Manager City of Claremont 58 Opera House Square Claremont, NH 03743 (603) 542-7002	Represent City in numerous issues regarding electric restructuring, including litigation at NH Public Utilities Commission, Federal Energy Regulatory Commission and negotiation of settlement involving purchase of Connecticut Valley Electric Company by PSNH.	On-going
City of Dover	Michael Joyal 288 Central Avenue Dover, NH 03820 (603) 743-6000	Advise City on legal issues relating to potential municipalization of electric service in City.	On-going
Manchester Water Works	Tom Bowen, Director Manchester Water Works (603) 624-6590 TBOWEN@ci.manchester.nh.us	Conservation easement	On-going

**Appendix B  
Government References**

<b>Agency</b>	<b>Contact:</b>	<b>Nature of Representation</b>	<b>Date</b>
Town of Farmington	Paula Proulx Chair & Acting Administrator Town of Farmington (603) 755-2208 pproulx@worldpath.net	Environmental matters Bankruptcy claim	On-going
City of Manchester	Tom R. Clark City of Manchester Office of the City Solicitor One City Hall Plaza Manchester, NH 03101 (603) 624-6523	Environmental counsel	Complete
City of Portsmouth	Bob Sullivan, City Attorney Robert P. Sullivan, Esquire City Attorney 1 Junkins Avenue Portsmouth, NH 03801 (603) 610-7203 rpsullivan@ch.cityofportsmouth.com	General Counsel	Complete
Town of Ashland Electric Department and Sewer and Water Department	Lee Nichols, Superintendent RR1 Box 385 2 Collins Street Ashland, NH 03217 (603) 968-3083 ashlandutilities@yahoo.com	Utilities work	On-going
Manchester Retirement System	Gerald E. Fleury Manchester ECRS Executive Director 1045 Elm Street, Suite 403 Manchester, NH 03101-1824 (603) 624-6506 gfleury@manchesterretirement.org	Tax matters; Erisa	On-going
Town of Rye	Town of Rye c/o Alan Gould, Town Manager N. Central Road Rye, NH 03878 (603) 964-5523	Defense Counsel – pension lawsuit	Complete
Rockingham County	James "Dan" Linehan High Sheriff Rockingham County 101 North Road Brentwood, NH 03833 (603) 679-9476 dlinehan@rockso.org	Contract Negotiations	

**Appendix C: Pending Cases Against the States of NH, ME and VT**  
(open as of April 2020)

We understand that NHLC and TSLC anticipates being made aware of conflicts of interest. McLane Middleton is not representing any clients in matters adverse to NHLC or TSLC. However, we do have cases open against the state of New Hampshire, state of Vermont, and state of Maine. The following report was generated using the firm's conflict system. This extensive search for the previous five years, for open files, generated all representation against the three states including their respective agencies, departments, divisions etc with the search criteria: New Hampshire", "NH", "N.H.", "Vermont", "VT", "V.T.", "Maine", "ME", and "M.E."

We have included an engagement/waiver letter as a condition of our engagement with the NHLC and TSLC. Please see Appendix D.

*State of Maine:*

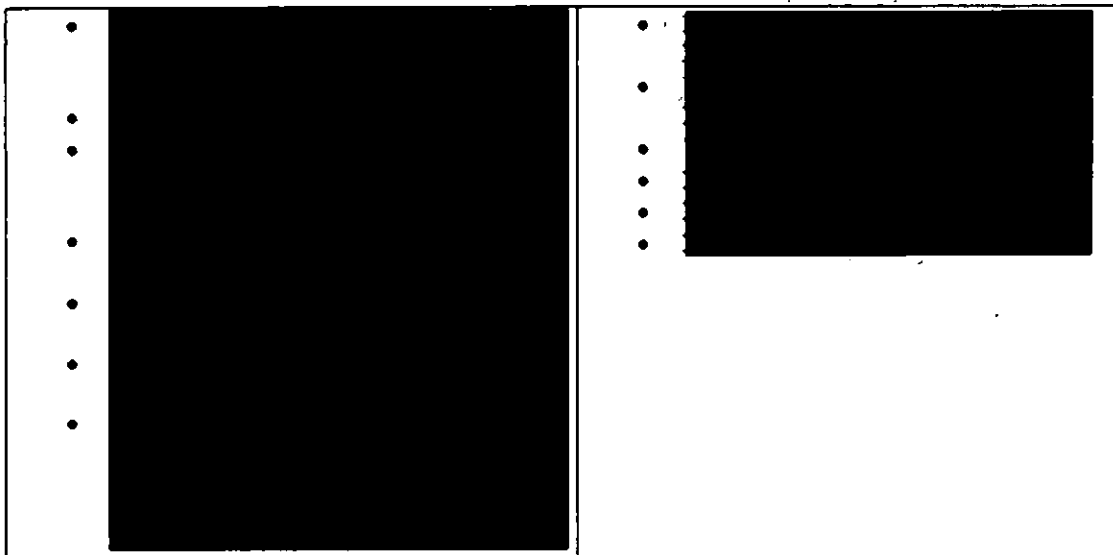
No cases open.

*State of Vermont:*

- [REDACTED]
- [REDACTED]

*State of New Hampshire:*

<ul style="list-style-type: none"><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li></ul>	<ul style="list-style-type: none"><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li></ul>
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MARK A. WRIGHT  
Direct Dial: 603-628-1311  
Email: mark.wright@mcclane.com  
Admitted in NH and MA  
900 Elm Street, P.O. Box 326  
Manchester, NH 03105-0326  
T 603.625.6464  
F 603.625.5650

April 20, 2020

Maura McCann, Director of Marketing  
NH Lottery Commission  
14 Integra Drive  
Concord, NH 03301

Erik Bal, Esq.  
State of New Hampshire  
Attorney Generals Office  
214 N. Main Street  
P.O. Box 1415  
Concord, NH 03301

**RE: New Hampshire Lottery Commission – Trademark Maintenance/Protection  
Legal Services**

Dear Ms. McCann and Attorney Bal:

I am pleased that you have elected to continue using McLane Middleton, Professional Association, to represent the State of New Hampshire and the New Hampshire Lottery Commission ("NH Lottery Commission") with regards to trademark maintenance/protection services. Despite an increase in my hourly billable rate to \$475.00, we have agreed to continue providing the Commission with discounted hourly rates as follows: Directors = \$300, Attorney = \$250, and Paralegal = \$200.

This letter will describe the basis on which our firm will provide legal services to you and how we will be compensated for those services. I will be the attorney responsible for your representation but I will utilize other attorneys and legal assistants in our firm as necessary to meet our agreed upon objectives. If, at any time, you have questions, concerns, or criticisms concerning these choices or our performance, please contact me at once.

We will take into account many factors in billing for services rendered, and I will review all statements before they are issued to be sure the amount charged is appropriate. Generally, our statements for services are the product of the hours worked multiplied by the hourly rates for the attorneys and legal assistants who did the work. The hourly rates we have discussed include the

Maura McCann, Director of Marketing  
NH Lottery Commission  
Erik Bal, Assistant Attorney General  
State of New Hampshire  
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support services that the firm provides. We will, however, bill and expect payment for out-of-pocket expenses related to travel, filing fees, proprietary data base access, and any other costs which are not an ordinary part of our services to clients such as long-distance phone calls, FAX transmissions or printing costs. As discussed in my prior email, my hourly rate will be discounted to \$300/hour (my current rate is \$475/hour).

Our statements will generally be prepared and mailed during the month following the month in which services are rendered. We rely upon and expect our clients to pay their bills upon receipt, and we are not in the business of providing credit to our clients. If we have not received payment of our statement within 30 days, you will be contacted by a member of our accounting staff. If the matter cannot be resolved as a result of this contact, you should expect that it may impact our willingness to continue to serve your needs. Statements that are not paid within 30 days of the date on which they are mailed to you are subject to a monthly late charge of 1.5% on the unpaid balance. If a collection action is necessary to obtain payment, the Company will also be responsible for all costs of collection, including attorneys' fees.

We reserve the right to withdraw from the representation described in this letter at any time, but, barring unusual circumstances, we will discuss such withdrawal with you before doing so and expect to do so only if there are good reasons for such withdrawal, such as nonpayment of fees, significant differences between our professional judgment and your judgment, or concerns which may arise under the ethical rules by which we are bound. If the matters for which you have retained us have been completed, you should consider our representation to be ongoing or continuing only if we have had a specific discussion of that and it is confirmed in a letter or other writing.

Our firm can provide communications in various forms, depending upon your requirements. In addition to the telephone and fax numbers listed on the letterhead, each attorney has an electronic mail address, such as mine shown above, that may be accessed from mail accounts on Internet and other electronic networks. These communications services, including fax, are used with your understanding that while our firm will use appropriate measures to protect confidentiality, these mediums may be subject to security risks. Should you not wish our firm to use any or all of the above methods, you agree to immediately advise us of such in writing, and our firm will use the communication services you specify.

McLane Middleton very much appreciates the opportunity to represent the State of NH Lottery Commission with respect to trademark maintenance/protection issues. As I have explained, McLane Middleton could only represent the NH Lottery Commission if the NH Lottery Commission and the State of New Hampshire waive current and future conflicts of interest with respect to the various persons and entities that this firm represents, or may represent, who have

Maura McCann, Director of Marketing  
NH Lottery Commission  
Erik Bal, Assistant Attorney General  
State of New Hampshire  
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or may have interests adverse to the NH Lottery Commission specifically or the State of New Hampshire, including any agency, body or department.

We now understand the following to be true: McLane Middleton, Professional Association has no current or anticipated conflicts of interest with the NH Lottery Commission. However, given the reduced rate agreed to herein, the State of New Hampshire and the NH Lottery Commission waive any current or future conflicts where this Firm represents a client with any interest that is or may be adverse to the State of New Hampshire or to any agency, board or department thereof except for matters related to the scope of this representation or which pertain directly to the NH Lottery Commission. McLane Middleton, Professional Association will obtain the consent of the State of New Hampshire and the NH Lottery Commission before representing clients who may have any such adverse legal interests to the NH Lottery Commission.

In order to memorialize the consent of the State of New Hampshire and the NH Lottery Commission to our representation in the terms outlined in this letter, I ask that both of you sign this letter and return it to me.

Please process the letters and send it back to me at your earliest convenience.

Sincerely yours,

Mark A. Wright

ACCEPTED AND AGREED TO:

NEW HAMPSHIRE LOTTERY  
COMMISSION

STATE OF NEW HAMPSHIRE

\_\_\_\_\_  
Charles McIntyre, Executive Director  
on behalf of the New Hampshire Lottery  
Commission

\_\_\_\_\_  
Erik Bal, Assistant Attorney General  
On behalf of the State of New Hampshire

Date: \_\_\_\_\_, 2020

Date: \_\_\_\_\_, 2020

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**LOT 2020-03 Legal Services**

**New Hampshire Lottery Commission/Tri-State Lotto Commission  
Legal Consultant Services RFP**

**Request for Proposal for Legal Consulting Services Issued March 9, 2020**

**I. GENERAL DESCRIPTION**

The New Hampshire Lottery Commission ("NHLC") and Tri-State Lotto Commission ("TSLC"), in partnership with the Department of Justice ("DOJ") is soliciting proposals from qualified intellectual property attorneys and/or law firms ("Proposers") for assistance and counsel by a legal consultant(s) that possesses extensive experience in patents, copyright and trademark matters. Litigation support in those areas is desirable.

The objective of this Request for Proposal ("RFP") is to engage qualified Proposer(s) to assist and counsel the NHLC and TSLC, under the supervision and direction of the DOJ, in the area of intellectual property service mark watch service, protection of service marks owned by the NHLC and TSLC, filing of documents needed to obtain additional trademarks as needed and litigation support. Detailed information is provided in the Statement of Work herein (Section II).

The NHLC and the TSLC intend to engage one Proposer that can provide the NHLC and TSLC with the overall best value. The NHLC and TSLC intend to enter into a not to exceed contract with a selected Proposer in which all payments to the Proposer cannot exceed total price limitation. A contract resulting from the RFP shall remain in effect for a period of two (2) years with the NHLC and TSLC retaining sole option to extend the contract, at its discretion, for one period of two (2) years each at the same hourly price as the initial two (2) years.

The available funding for the initial two-year engagement (excluding the contract extension) is estimated to total \$15,000 (\$7,500 per year) for NHLC and \$10,000 (\$5,000 per year) for TSLC. The cost shall include trademark watch expenses, continued use and renewal declaration filings, USPTO filings and legal fees. To the extent that the contract funding allows, action against an infringing mark shall also be performed under the terms of the contract.

**II. STATEMENT OF WORK**

1. Perform an annual trademark watch service for the federally registered U.S. service marks owned by the NHLC and TSLC (see Appendix D). Future service marks may be needed as the lottery's game portfolio changes. The vendor will review any watch notices, provide the NHLC and TSLC with an analysis of any potential infringement and provide recommendations of proceeding.
2. Prepare and file any Powers of Attorney as needed to continue use and renewal of filings for service mark registrations.



3. The Proposer, at the request of NHLC or TSLC, must be available to provide assistance and counseling on other intellectual property law related issues and matters including, but not limited to, pending or threatened litigation.

### III. INFORMATION REQUIRED IN PROPOSAL

#### 1. Experience and Qualifications:

- a. Provide a description of how the Proposer will staff this engagement, included but not limited to, the identity of the attorney that will act as lead counsel and such other attorney(s) as are required to accomplish the goals of this engagement. Describe in detail their individual professional experience, qualifications, relevant background, education, training, special knowledge, skills and abilities, and anticipated duties.
- b. Provide a practice group profile in the case of a firm, or any other written statement that clearly and concisely sets forth the Proposer's relevant experience and qualifications.
- c. Provide a detailed description of other similar engagements undertaken by the Proposer and its proposed staff in the subject area with emphasis on activities relevant and related to the proposed engagement.

#### 2. References:

Identify all government clients, state or federal, including the name, address, telephone number, date of service and contact person's name, of clients to which the Proposer is providing or has provided similar legal services, including the name, address, telephone number, date of service and contact person's name, of clients to which the Proposer is providing or has provided similar legal services.

#### 3. Fees:

*Proposers are strongly encouraged to provide a significant government discount.* Include a blended hourly rate of work during the term, or any extensions thereof. The blended hourly rates must be inclusive of all administrative charges, if any, including but not limited to telephone calls, file review, copying, facsimile transmissions, messenger service and travel. All quoted rates shall remain in effect for the full term of the contract, and any extensions thereof, with no increases.

#### 4. Conflicts of Interest/Disciplinary Proceedings

Disclose any past or present accounts, relationships, other employment, or engagements that the Proposer or any partner, associate, member or employee of the Proposer has or has had that may create a conflict of interest or the appearance of a conflict of interest in performing legal services for the NHLC and TSLC.

- a. List any and all pending litigation in which the Proposer represents a client against the State of New Hampshire, State of Maine, State of Vermont and/or any of its

departments, boards, agencies, other state entities, or officers, employees or agents.

- b. Describe in detail any pending complaints or investigations, or any made or concluded within the past five years, or by regulatory body or court regarding the conduct of Proposer, or any of its present or former members, employees and associates.
- c. Identify any actual or potential conflict between the Proposer's or its identified staff's family business, or financial interests and the services provided under this RFP.

**5. Transmittal Letter:**

A completed and fully executed Transmittal Letter (see RFP Appendix B: *Transmittal Letter*) must be included in the proposal.

**IV. SELECTION PROCESS**

The NHLC and the TSLC will select a Proposer based upon criteria, standards contained in this RFP.

**1. Criteria**

**Criteria 1: Prior Experience, Knowledge and Qualifications**

The NHLC and the TSLC seek to engage a highly qualified Proposer with extensive experience in providing legal services to government entities, state or federal, in the area of intellectual property law including patents, copyright and trademark matters. The attorney(s) proposed to work on this engagement should have extensive work experience and educational background in the area of intellectual property law. Prior experience as general counsel or providing legal services under and engagement with state agencies strongly preferred. The NHLC and TSLC seek to engage Proposer with good client relations and excellent customer service record as evidenced by available references from current or former clients.

Up to 75 points will be awarded based on the elements set forth in criteria 1.

**Criteria 2: Cost**

The NHLC and the TSLC seek to retain Proposer to perform the work at *competitive government rates*. Proposer is strongly encouraged to provide a significant government discount from normal commercial rates charges to its clients. The NHLC and the TSLC will not pay additional charges outside of the proposed rates, thus, all proposed rates must be fully loaded.

Up to 25 points will be awarded based on the cost of the proposal as determined by the following formula:

$$(\text{Lowest Proposal Cost} / \text{Proposer's Cost}) * 25 \text{ points} = \text{Proposers Score}$$

The Lowest Proposal Cost will be determined by the lowest submitted cost in a compliant and responsive proposal.

**2. Planned Evaluation Steps**

**The NHLC and TSLC plan to use the following steps:**

- a. Perform initial evaluation of proposals
- b. The NHLC and TSLC may elect, at its sole discretion, to interview Proposer(s) to gain a fuller understanding on the proposals as it deems necessary, select a proposer without any discussion or interviews, and to request additional information. If the NHLC and TSLC elect to interview any Proposer(s), the official NHLC/TSLC Contact will contact prospective Proposer(s) to schedule the time and place of the interviews. Proposers selected by the NHLC/TSLC for interviews should send lead attorney that will be a primary contact with the NHLC and TSLC along with significant members of the legal team,
- c. Request best and final offer, as determined necessary by the NHLC and TSLC, and
- d. Perform final evaluation of proposals.

**The NHLC and TSLC reserve the right to:**

- a. Consider any source of information in evaluating proposals.
- b. Omit any planned evaluation step if, the NHLC/TSLC's discretion, the step is not needed; and
- c. Notwithstanding any provision of the RFP to the contrary, the NHLC and TSLC reserves the right to: reject any and all proposals at its discretion and at any time; reject any parts of proposals; not award a contract; re-advertise the RFP; postpone or cancel this RFP at any time; waive any irregularities or inconsistencies in the RFP or proposals; and take whatever action is in the NHLC and TSLC's best interest as determined by the NHLC and TSLC in its sole discretion.

**APPENDIX A: SCHEDULE OF EVENTS**

The following table provides the tentative schedule of events for this RFP through contract finalization and the NHLC and TSLC's issuance of a notice to proceed to the successful Proposer.

<b>EVENT</b>	<b>ESTIMATED DATE</b>
1. RFP released to Proposers (on or about)	March 9, 2020
2. Proposer inquiry period (no later than)	March 23, 2020

- |  |                |
|--|----------------|
| 3. NHLC and TSLC responses to inquiries, by: | April 10, 2020 |
| 4. Final date for proposal submission        | April 24, 2020 |
| 5. Proposer interviews, if any               | TBD            |
| 6. Anticipated contract finalization         | TBD            |
| 7. Anticipated contact approval              | TBD            |

**1. Proposal Submission, Deadline and Location Instructions**

Proposals submitted in response to this RFP must be received by the NHLC/TSLC no later than the time and date specified in RFP Appendix A: *Schedule of Events*. Proposals must be addressed to:

New Hampshire Lottery Commission  
14 Integra Drive  
Concord, New Hampshire 03301  
c/o Maura McCann

Proposals must be clearly marked as follows:

New Hampshire Lottery Commission/Tri-State Lotto Commission  
Response to RFP  
Legal Consultant Services

Late submissions will not be accepted and will remain unopened. Delivery of the proposals shall be at the Proposer's sole expense. The time of receipt shall be considered when a proposal has been officially documented by the NHLC/TSLC as having been received at the location designated above. The NHLC and TSLC accept no responsibility for mislabeled mail. All proposals submitted in response to this RFP must consist of one (1) original and one clearly identified copy of the proposal, including all required attachments, accompanied by the transmittal letter described in RFP Appendix B: *Transmittal Letter*, herein. The original and copy shall be bound separately, delivered in a sealed containers, and permanently marked as indicated above. One (1) copy of the proposed Transmittal Letter shall be signed by the official authorized to legally bind the Proposer and shall be marked "ORIGINAL". A Proposer's disclosure or distribution of its proposal other than to the NHLC and TSLC will be grounds for disqualification.

**2. Proposal Inquiries**

All inquiries concerning this RFP, including but not limited to, requests for clarifications, questions and any changes to the RFP, shall be emailed, citing the RFP title, page, section and paragraph and submitted to the following RFP Point of Contact:

Maura McCann  
New Hampshire Lottery Commission  
14 Integra Drive  
Concord, New Hampshire 03301  
Telephone: (603) 271-7111  
maura.mccann@lottery.nh.gov

The NHLC and TSLC assume no liability for assuring accurate/complete e-mail transmission/receipt and is not responsible for acknowledging receipt. Inquiries must be received by the NHLC and TSLC's Point of Contact no later than the conclusion of the Proposer Inquiry Period (see RFP Appendix A: *Schedule of Events*). Inquiries received later than the conclusion of the Proposer Inquiry Period may not be considered properly submitted and not be considered at the discretion of the NHLC and TSLC. The NHLC and TSLC intend to issue official responses to properly submitted inquiries on or before the date specified in the RFP Appendix A: *Schedule of Events*; however, this date may be subject to change at the NHLC and TSLC's discretion. The NHLC and TSLC may consolidate and/or paraphrase questions for sufficiency and clarity. The NHLC and TSLC may, at its discretion, amend this RFP on its own initiative or in response to issues raised by inquiries, as it deems appropriate at any time. Official responses will be made by email and in writing.

### **3. Non-collusion**

The Proposer's signature on a proposal submitted in response to this RFP guarantees that the prices, terms and conditions, and services quoted have been established without collusion with other Proposers and without effort to preclude the NHLC and TSLC from obtaining the best possible competitive proposal.

### **4. Validity of Proposal**

Proposals must be valid for one hundred and eighty (180) days following the deadline for submission of proposals in RFP Appendix A: *Schedule of Events*, or until the effective date of any resulting contract, whichever is later.

### **5. Property of NHLC and TSLC**

All material received in response to this RFP shall become the property of the NHLC and TSLC and will not be returned to the Proposer.

### **6. Confidentiality of a Proposal**

A proposal must remain confidential until the effective date (for NHLC, date of approval by the New Hampshire Governor and Council, for the TSLC, date of approval by the Tri-State Lotto Commission) of any resulting contract as a result of this RFP.

**7. Public Disclosure**

Subject to applicable law or regulations governing confidentiality of State Records, including, but not limited to, the Right to Know Law, N.H. RSA Chapter 91-A, the content of all proposals shall become public information upon the effective date (for NHLC, date of approval by the New Hampshire Governor and Council, for the TSLC, date of approval by the Tri-State Lotto Commission) of any resulting contract.

**8. Proposal Preparation Cost**

By submitting a proposal, a Proposer agrees that in no event shall the NHLC or TSLC be either responsible for or held liable for any costs incurred by a Proposer in the preparation of or in connection with the proposal, or for work performed prior to the effective date of a resulting contract.

**9. Interviews**

The NHLC and TSLC reserve the right to require Proposers to be available for interviews. Any and all costs associated with interviews shall be borne entirely by the Proposer.

**10. Award**

The NHLC and TSLC plan to execute a not-to-exceed contract under which all payments by the NHLC and TSLC during the term, shall not exceed a total price limitation. If a contract is awarded, the Proposer must obtain written consent from both the NHLC and TSLC before any public announcement or news release is issued pertaining to any contract award. Such permission, at a minimum, will be dependent upon approval of the contract by the Governor and Executive Council of the State of New Hampshire and the Tri-State Lotto Commission.

**11. Contract Work**

The NHLC and TSLC make no guarantee that any services will be purchased from any contract resulting from this RFP.

**12. Proposal Selection**

Should the NHLC and TSLC be unable to reach agreement with a Proposer during contract discussions, the NHLC and TSLC may then undertake contract discussions with the second preferred Proposer and so on. Such discussions may continue at the sole option of the NHLC and TSLC with Proposers.

**13. State of New Hampshire Agreement Form Number P-37**

By submitting a proposal in response to this RFP, the Proposer agrees, if selected to enter into a contract with the NHLC, to the conditions and terms of this RFP and the State of New Hampshire Form P-37 (see Appendix C).

NEW HAMPSHIRE LOTTERY COMMISSION/TRI-STATE LOTTO COMMISSION  
LEGAL CONSULTANT SERVICES RFP

APPENDIX B: TRANSMITTAL LETTER

NEW HAMPSHIRE LOTTERY COMMISSION/TRI-STATE LOTTO COMMISSION TRANSMITTAL LETTER FORM:

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

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

To: NH Lottery Point of Contact Maura McCann  
Telephone (603) 271-7111  
Email: [maura.mccann@lottery.nh.gov](mailto:maura.mccann@lottery.nh.gov)

Dear Ms. McCann,

Proposer name: \_\_\_\_\_ hereby offers to provide to the New Hampshire Lottery Commission and Tri-State Lotto Commission the legal consultant services specified in the lottery's Legal Consultant Services RFP at an hourly rate of \$\_\_\_\_\_.

Proposer Signor: \_\_\_\_\_ is authorized to legally obligate.

Proposer Name: \_\_\_\_\_

We attest to the fact that:

The price quoted in the proposal was established without collusion with other eligible Proposers and without effort to preclude the NHLC and TSLC from obtaining the best possible competitive price; and the Proposer has read, signed, and included this RFP and any subsequent addendum.

Our official point of contact is \_\_\_\_\_, Title \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

Authorized Signature Printed \_\_\_\_\_

Authorized Signature \_\_\_\_\_

**FORM NUMBER P-37 (version 12/11/2019)**

**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name		1.2 State Agency Address	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature  <div style="text-align: right;">Date:</div>		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature  <div style="text-align: right;">Date:</div>		1.14 Name and Title of State Agency Signatory	
1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i>  By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i>  By: _____ On: _____			
1.17 Approval by the Governor and Executive Council <i>(if applicable)</i>  G&C Item number: _____ G&C Meeting Date: _____			

Contractor Initials \_\_\_\_\_  
Date \_\_\_\_\_



**2. SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

#### 8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

#### 9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing

in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

#### 10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

10.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

#### 12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which

shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**17. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

**18. CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**19. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

Contractor Initials \_\_\_\_\_  
Date \_\_\_\_\_

**APPENDIX D**

**LIST OF MARKS OWNED BY THE NEW HAMPSHIRE LOTTERY COMMISSION  
AND THE TRI-STATE LOTTO COMMISSION**

**New Hampshire Lottery Commission:**

NEW HAMPSHIRE LOTTERY  
NH LOTTERY (design)  
MONEY PUZZLE  
TINY HOUSE, BIG MONEY  
KENO 603

Serial Number: 76-354,890  
Serial Number: 76-689,144  
Serial Number: 76-708,256  
Serial Number: 87-162,277  
Serial Number: 87-845,608

**Tri-State Lotto Commission:**

Tri-State Megabucks (design)

Serial Number: 76-355,811