

## SERVICES AGREEMENT

**THIS SERVICES AGREEMENT** (this “**Agreement**”) is made as of August 27, 2024 (the “**Effective Date**”) and entered into by and between THE NEW YORK RACING ASSOCIATION, INC., a corporation duly organized and existing under the laws of the State of New York, located at Aqueduct Racetrack, 110-00 Rockaway Boulevard, Jamaica, New York 11417, (“**NYRA**”), and V GROUP INC., a duly organized corporation with a place of business located at 379 Princeton-Hightstown Rd Building 3, Suite 2A, East Windsor, NJ 08520 (“**Contractor**” together with NYRA, the “**Parties**” and each a “**Party**”).

### RECITALS

WHEREAS, NYRA is the operator of Belmont Park located in Elmont, New York and Aqueduct Racetrack located in Jamaica, New York and Saratoga Race Course locates in Saratoga, New York (collectively, the “**Premises**”) and is engaged in the business of thoroughbred horse racing and wagering;

WHEREAS, NYRA issued a Request for Proposal #2024-0032 soliciting proposals from qualified and experienced recruitment firms to provide non-exclusive recruitment services in order to expedite the hiring process for any open position within any department across NYRA (the “**RFP**”) as more specifically states therein and attached hereto and made a part hereof as Schedule A; and

WHEREAS, Contractor is in the business of providing services described in the RFP, and it was one of the successful bidders in the competitive process conducted by NYRA.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereto agree as follows:

1. Services. Subject to all other terms and conditions of this Agreement and the RFP, Contractor shall provide the services as fully set out in the RFP (the “**Services**”). Contractor shall furnish all labor, materials, services, tools, equipment, and all other things necessary to complete the Services in a workmanlike manner, and to the satisfaction and acceptance of NYRA. In the event of a conflict between this Agreement and anything attached hereto as an exhibit or schedule, this Agreement shall govern. No terms or conditions endorsed upon, delivered with or contained in Contractor’s quotation, acknowledgement or acceptance of order, specification or similar document shall form part of this Agreement and Contractor waives any right that it otherwise might have to rely on such terms and conditions.

2. Compensation.

(a) In full consideration for the Services, NYRA agrees to pay Contractor as set forth in Schedule B attached (the “**Fee**”). Except for any amounts that NYRA disputes in good faith, NYRA shall pay Contractor the Fee within thirty (30) days receipt of an invoice therefor after completion of the Services.

(b) If applicable, if an employee identified by Contractor is hired by NYRA directly without working temporarily with NYRA and such employee does not remain under NYRA's direct employment for any reason (or is terminated for cause) within the timeframe set below, Contractor shall refund NYRA the fees paid for the placement of the employee:

- (i) 0-30 days 100% refund;
- (ii) 31-60 days 50% refund; or
- (iii) 61-90 days 25% refund.

If NYRA desires, in its sole discretion, instead of refunding the fees paid by NYRA as set forth hereinabove Contractor shall provide a free replacement guarantee with a comparable person if termination should occur within 90 days.

3. Term. The term of this Agreement shall commence on execution of this Agreement and, unless earlier terminated as provided herein, shall expire on September 30, 2033 (the "**Term**").

4. Termination. In addition to any other remedies available to it, NYRA, in its sole discretion, may terminate this Agreement at any time without cause, by providing at least five (5) business days prior written notice to Contractor. Following the termination of this Agreement, Contractor will promptly invoice NYRA for any outstanding amounts due and owing under this Agreement. If NYRA terminates this Agreement, Contractor shall (a) promptly deliver to NYRA all documents, data, work product and other materials that were prepared by or on behalf of Contractor in the course of performing the Services, if applicable, ("**Deliverables**") (whether complete or incomplete), for which NYRA has paid, (b) provide reasonable cooperation and assistance to NYRA in transitioning the Services to an alternate vendor, and (c) on a pro rata basis, repay all fees and expenses paid in advance for any Services or Deliverables that have not been provided, if any. No termination of this Agreement, whether it occurs by the expiration of its full term or for any other reason whatsoever, will prevent or interfere with the recovery by NYRA from Contractor of any monies due or any damages for any breach of the terms of this Agreement by Contractor.

5. Deliverables.

(a) NYRA is, and shall be, the sole and exclusive owner of all rights, title and interest in and to the Deliverables, including all intellectual property rights therein. Contractor agrees, and shall cause its personnel to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a "work made for hire" for NYRA. To the extent that any of the Deliverables do not constitute a "work made for hire," Contractor hereby irrevocably assigns, and shall cause its personnel to irrevocably assign to NYRA, in each case without additional consideration, all rights, title and interest throughout the world in and to the Deliverables, including all intellectual property rights therein. At NYRA's request, Contractor shall, and shall cause its personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as

may be necessary to assist NYRA in prosecuting, registering, perfecting or recording its rights in or to any Deliverables.

6. Personnel. Contractor shall promptly notify NYRA of each employee that Contractor contracts or hires, or proposes to contract or hire, to perform the Services. At NYRA's written request, Contractor shall provide NYRA with the resume of, and any relevant background information pertaining to, any employee specified by NYRA. If NYRA notifies Contractor that any of its employees are unacceptable to NYRA, Contractor shall promptly reassign those employees and replace them with more suitable employees.

7. Safety.

(a) Contractor acknowledges that personal safety in performance of the Services is essential, and Contractor shall cause its personnel and the personnel of its subcontractors, if any, to act accordingly.

(b) If applicable, Contractor shall inform NYRA in writing regarding the types, quantities, and use of any hazardous materials brought onto the Premises by Contractor's employees; the types and quantities of any hazardous wastes generated in performance of the Services; and Contractor's program for properly storing, handling, and disposing of any such materials. Contractor hereby agrees to handle and dispose of any and all hazardous wastes pursuant to the New York State Department of Environmental Conservation and comply with all other such municipal, state, and federal guidelines, rules, and regulations pertaining thereto.

(c) If applicable, Contractor shall promptly inform NYRA of any regulatory safety, health, and environmental inspections, citations, and penalties arising from Contractor's performance of the Services. Contractor shall provide NYRA with copies of all communications submitted to Contractor by, or submitted by Contractor to, any government entity or insurance company in connection with the Services.

(d) While on the Premises, all personnel and equipment of Contractor, its employees and subcontractors, if any, are subject to inspections by NYRA.

(e) If any unsafe condition in the performance of the Services causes imminent danger to persons or property, NYRA may instruct Contractor and/or Contractor's employee to cease performing the Services immediately.

(f) Upon the execution of this Agreement, Contractor acknowledges that Contractor has examined the Premises, that no apparent dangerous or defective condition exists, and that Contractor accepts such Premises in an "as is" condition. In the event that Contractor and/or Contractor's employee, at any time, discovers a dangerous or defective condition of any kind, Contractor agrees to immediately inform NYRA of the same and cease conducting work in the area of such defective or dangerous condition until the danger or defect is corrected.

8. Treatment of the Public. Contractor acknowledges that parts of the Premises are open to the public. Contractor shall cause its personnel and the personnel of its subcontractors, if any, to treat with courtesy all members of the public with whom they come in contact while on the Premises.

9. No Interference. Contractor acknowledges that thoroughbred racehorses are stabled in the barn areas of the Premises and that racing and training of these horses occurs throughout the Premises each day. Contractor's employees and/or subcontractors shall not interfere with any racing, training or other activities taking place on the Premises and shall not cause any loud noises on the Premises, if the position allows for access to the Premises and the horses.

10. NYRA Supervision. Contractor shall cause its personnel and personnel of its subcontractors, if any, to comply, with all instructions of NYRA's facility manager or any other person designated by NYRA while they are on the Premises.

11. Prevailing Wages and Hours. Pursuant to Article 9 of the New York State Labor Law ("**Labor Law**") regulating building service contracts, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the New York State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the New York State Labor Department in accordance with the Labor Law. It is Contractor's responsibility to confirm the rate with the Department of Labor. Contractor understands that the filing of payroll in a manner consistent with the Labor Law shall be a condition precedent to payment by NYRA of any approved sums due and owing for work performed.

12. Quality Assurance Standards. Contractor's performance of the Services shall be in a workmanlike manner consistent with the best industry practices.

13. No Subcontractors. Contractor shall not appoint any subcontractors to perform any of its obligations under this Agreement without NYRA's prior written consent. Contractor shall furnish NYRA with any information requested by NYRA regarding the proposed subcontractor, along with the agreed upon requirements the subcontractor would perform.

14. Ethics Policy. Contractor represents that it has read and understands NYRA's ethics policy, which is posted on its website at [www.nyra.com](http://www.nyra.com), and that it did not and has not caused any NYRA officer, director, or employee of NYRA to violate this policy. Contractor acknowledges that NYRA's ethics policy prohibits NYRA employees and their immediate family members from receiving incentives, gifts, gratuities or favors from anyone doing business or seeking to do business with NYRA.

15. Labor Relations. Contractor shall maintain, to the satisfaction of NYRA, harmonious labor relations during the performance of the Services. If Contractor interferes with NYRA's operations due to a labor dispute, strike, picketing, or work stoppage by Contractor's or its subcontractor's employees, NYRA may employ a substitute contractor and Contractor shall be liable for and promptly pay to NYRA any additional expenses incurred by NYRA in employing such substitute.

16. Contractor's Representations and Warranties. Contractor represents and warrants as follows:

(a) Contractor is an entity duly organized, validly existing, and in good standing under the laws of the state which it is organized, with all power and authority necessary to own or use its assets and conduct its business as it is now being conducted;

(b) Contractor has the full power and authority to enter into this Agreement and to perform its duties and obligations hereunder, and that on the Effective Date, Contractor has the consent or authorization of any person, including any permit issued by any government body and the consent of any party to any contract to which Contractor is party, that it requires in connection with its entry into this Agreement and its performance of its duties and obligations under this Agreement;

(c) Contractor is qualified to do business in all jurisdictions in which the nature of the business that it conducts makes qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform its obligations under this Agreement;

(d) this Agreement constitutes the valid and binding obligation of Contractor, enforceable in accordance with its terms;

(e) Contractor's entry into this Agreement and its performance of its obligations under this Agreement do not (i) violate any provision of Contractor's organizational documents as currently in effect or (ii) conflict with or violate any law or court order to which Contractor is subject;

(f) no proceeding is pending or, to Contractor's knowledge, threatened against Contractor, except for any proceeding that would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Contractor's ability to perform its obligations under this Agreement, and Contractor is not aware of any facts that would be reasonably likely to result in any such proceeding;

(g) Contractor shall perform its Services in compliance with 1. all applicable laws, and 2. any standards generally accepted in the trade or industry involved; and

(h) Notwithstanding anything to the contrary, Contractor's performance of the Services shall be in a professional and efficient manner consistent with the best industry practices.

17. Licensing and Compliance. Contractor, and its employees and/or subcontractors, if applicable, shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Contractor shall comply with and shall cause each of its employees and/or subcontractors to comply with, all applicable federal and state statutes, rules, regulations, directives and New York State Gaming Commission licensing requirements, if applicable. It is the responsibility of Contractor to confirm its licensing requirements with the New York State Gaming Commission. It is hereby understood and agreed that NYRA shall reserve the right to remove from the Premises any Contractor personnel for any violation of or refusal to obey such rule, regulation, directive or applicable licensing requirement, or any misconduct whatsoever. All Services shall be performed in a professional, workmanlike, efficient and safe manner and shall conform to standards generally accepted in the trade or industry involved.

18. Confidential Information. For the purposes of this Agreement, “**Confidential Information**” means any information not generally known to the public, whether oral or written, that each Party may receive regarding the other Party’s business strategies, financial information, customer data, and other proprietary information. The Parties shall, to the extent practical, identify to the other Party the information it deems to be confidential. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, reports, product information; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Parties deem confidential. Confidential Information of a Party hereto (“**Disclosing Party**”) shall be held in confidence by the other Party (“**Recipient**”) and shall not be disclosed to any third party or otherwise made public without the Disclosing Party’s prior written consent or as expressly provided in this Agreement.

Confidential Information of either Party may be disclosed only by the Recipient to Recipient’s employees, agents, or representatives who have a need to know such information and who have agreed to be bound by the provisions set forth herein. The Recipient of Confidential Information shall disclose any Confidential Information in response to a valid court order or other applicable legal or regulatory process, only to the extent required by such order or process and, if practical and permitted by applicable law, only after the Recipient has given the Disclosing Party notice of such court order or other legal process promptly after receipt thereof and the opportunity for the Disclosing Party to seek a protective order or confidential treatment of such Confidential Information (with the reasonable assistance of Recipient, if the Disclosing Party so requests). These confidentiality obligations shall survive the termination or expiration of this Agreement.

(a) Confidential Information does not include information that, at the time of disclosure to Recipient:

- (i) is already in the public domain or becomes publicly known through no act of Recipient;
- (ii) is already known by Recipient free of any confidentiality obligations;
- (iii) is information that the Disclosing Party has approved in writing for disclosure; or
- (iv) is information that Recipient can objectively demonstrate was developed independently by Recipient.

(b) The Parties may use Confidential Information solely for the activities contemplated in this Agreement. A Party shall not make copies of any Confidential Information without the express written permission of the other Party. The Disclosing Party’s disclosure of Confidential Information to Recipient shall not convey to Recipient any right to or interest in such Confidential Information and the Disclosing Party shall retain all right and title to such Confidential Information at all times.

(c) Each Party shall hold Confidential Information confidential to the maximum extent permitted by law. Each Party shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices, and procedures that each Party uses to maintain its own confidential information. Upon

written request by the Disclosing Party, Recipient shall return all Confidential Information or certify in writing that it has destroyed the same.

19. Insurance.

(a) Contractor shall procure and maintain in force, at its own cost, with duly licensed admitted insurance carriers in New York State with A-:VII or better rating with A. M. Best and reasonably satisfactory to NYRA, the following occurrence-based insurance during the Term:

- (i) Commercial General Liability Insurance written on a per project/location basis with the following limits:
  - 1) \$2,000,000 General Aggregate
  - 2) \$2,000,000 Products Completed Operations Aggregate
  - 3) \$1,000,000 Per Occurrence
  - 4) \$1,000,000 Personal & Advertising Injury
  - 5) \$300,000 Fire Damage Liability
  - 6) \$5,000 Medical Liability

Products completed/operations insurance shall be maintained for a minimum period of three (3) years after final payment and Contractor shall continue to provide evidence of such coverage to NYRA on an annual basis during the aforementioned period.

General Liability policy to be written on a per location/project basis.

- (ii) Automobile Liability Insurance (in a combined single limit, covering Owned, Non-owned, Leased, or Hired vehicles for each occurrence for Bodily Injury or death of persons and/or loss of or damage to property): \$1,000,000 each occurrence. Auto Liability Insurance shall include coverage for Auto Physical Damage.
- (iii) Miscellaneous Professional Liability Insurance covering the applicable scope of services provided in the bid document with a minimum limit of liability of \$1,000,000. If coverage is written on a Claims made policy, the Bidder warrants that any applicable retroactive date precedes the effective date of the agreement and that continuous coverage will be maintained, or an extended discovery period exercised for a period of not less than two years from the time work under this agreement is completed.
- (iv) Umbrella Liability Policy: written on a follow form basis in excess over the limits specified for Employers Liability, Commercial General Liability Pollution Liability, and Business Automobile Liability required hereunder, with minimum limits of \$5,000,000 each occurrence and \$5,000,000 aggregate per policy year. There shall be no

exclusion or limitation that conflicts with any duties of the Parties hereunder contained in any insurance policy procured or maintained hereunder.

- (v) Cyber Liability or equivalent Professional Liability Insurance, including Privacy and Network Security Liability coverage, for claims arising out of or connected with the professional services contemplated in this agreement with minimum limits of \$5,000,000 for Each Claim. If written on a claims-made basis, Bidder shall maintain such insurance for three (3) years after termination of the agreement, and Bidder shall continue to provide NYRA with evidence of such insurance on an annual basis during the three (3) year period.
- (vi) Statutory Workers' Compensation Insurance and Employer's Liability Coverage with minimum limits of \$1,000,000 each accident, \$1,000,000 disease – each employee, \$1,000,000 disease – policy limit.
- (vii) Disability Insurance Benefits Coverage per New York State requirements.
- (viii) Any other insurance coverage appropriate to Contractor's operations hereunder.

(b) Any insurance coverage obtained under any agreement that may arise hereunder, except Employers' Liability Insurance Coverage and Worker's Compensation Coverage, shall be required to designate NYRA, its directors, officers, employees, contractors, agents, affiliates and servants as additional insureds ("**NYRA Additional Insureds**"). Additional insured coverage shall be extended to include products-completed operations coverage. Contractor's Commercial General Liability and Umbrella Liability policies shall provide cross liability coverage (separation of insured or severability of interest provisions) and shall not include any exclusions for third-party over actions. This Agreement shall require each subcontractor employed by Contractor, if approved by NYRA, to purchase and maintain insurance of the types specified with equivalent terms, including additional insured and primary/non-contributory coverage for the NYRA Additional Insureds and to provide copies of certificates evidencing coverage for each subcontractor. Contractor shall be required to furnish NYRA with a certificate evidencing all coverage and further providing not less than thirty (30) days prior written notice to NYRA of any change in or termination of insurance coverage. General conditions applying to all policies are that 1. no policy shall include a self-insured retention; 2. no policy shall include a deductible in excess of \$25,000 and 3. Contractor shall remain solely liable for the satisfaction of any deductibles. Contractor's liability policies shall provide cross liability coverage (separation of insureds or severability of interest provisions) and shall not include any exclusions for third-party over actions. All policies, except for NY Statutory Disability, shall be endorsed to include a waiver of subrogation in favor of NYRA, its directors, officers, employees, contractors, agents, and affiliates.



(c) In no event shall this Agreement commence, be maintained, or continue in the absence of the insurance described herein or prior to the receipt of evidence of such insurance. Any certificate of insurance shall specifically cover the use by Contractor and any subcontractor, if applicable, of the designated areas of the Premises, the means of ingress and egress to these areas, and any other areas to be so utilized.

(d) The Parties agree that the insurance specified in this Agreement shall be primary coverage and shall be primary over any insurance or self-insured program maintained by NYRA, and that any insurance effected or procured by Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend NYRA for claims made or suits brought that result or arise from, or are in connection with, this Agreement.

(e) The maintenance of the insurance described herein shall not be construed or interpreted as relieving Contractor of any responsibility or absolving Contractor of any liability under this Agreement.

(f) Contractor shall be solely responsible for maintaining limits of liability beyond those referenced above, or for any insurance not described above that Contractor requires for its own protection or that is required by law to maintain.

(g) Any failure of Contractor to comply with this insurance section shall be considered a material breach of this Agreement and shall give rise to NYRA's right to immediately terminate this Agreement. The termination of this Agreement shall not effect or constitute a waiver of any remedies NYRA would have been entitled to demand in the absence of this insurance section, whether by way of damages, termination, or otherwise.

(h) The provisions of this insurance section shall survive the termination of this Agreement.

(i) This insurance section contains essential terms of this Agreement.

(j) None of the provisions of this Agreement shall be deemed waived or affected in any manner by the fact that NYRA does or does not presently, or may or may not in the future, carry insurance coverage for claims or losses caused by or arising from injuries resulting from or in connection with this Agreement.

(k) Contractor agrees that it shall not, at any time, subrogate any of its rights as to NYRA to any other party including any insurance carrier. Contractor, for themselves and their agents, employees, contractors, clients, patrons, guests, event participants, and other invitees, and any other personnel present upon the Premises in connection with this Agreement, hereby waives any right of subrogation it may have or that may arise in the future.

20. Indemnification; Hold Harmless. Contractor shall be fully liable for the actions of its employees, agents, partners, or subcontractors and shall fully indemnify and hold harmless NYRA and its directors, officers, employees, agents, affiliates, associates, contractors from suits, actions, damages, and costs of every kind and description relating to personal injury and damage

to real or personal tangible property arising out of the performance of the work, but only to the extent caused by the intentional act or negligence of Contractor, its employees, partners, or agents or subcontractors. Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of NYRA.

Contractor shall defend, indemnify and hold harmless NYRA, including its directors, officers, employees, contractors, agents and servants, from and against any and all liability, loss, cost, damages (including damages to real and personal property, including animals), expenses (including reasonable attorney's fees and court costs) or deficiency resulting from the breach of this Agreement or any breach of a representation, warranty or covenant by Contractor and all claims, charges, actions or proceedings ("**Claim(s)**") incident to or arising out of any of the foregoing, including the enforcement of this Agreement.

NYRA shall give prompt notice if any Claim shall be commenced or asserted that, if successful, would give rise to Claims for indemnification hereunder; provided however that the failure of NYRA to give such written notice shall not relieve Contractor of its obligations and liabilities for indemnification unless such failure shall prejudice the right or the authority of Contractor to offer a defense to such Claim. This provision is intended to be as broad and inclusive as permitted by the laws of the State of New York, it being the intention of the Parties that this provision shall survive any termination of this Agreement.

21. Waiver and Release. Contractor, for itself, its employees, contractors, agents, servants, volunteers, participants, and invitees, represents, warrants and agrees that it shall release, waive against and discharge NYRA, its directors, officers, contractors, agents, employees and servants to the fullest extent permitted under the laws of the State of New York, from any claims, demands, losses, obligations, costs and expenses (including attorney's fees) arising from or due to personal injuries or property damages of any kind or description to the person, employees, agents, property or horses as a result of, or in connection with, the negligence or willful misconduct of Contractor.

Contractor agrees that all risks of loss, injury, damage or destruction to persons or property or horses, on the Premises at the direction or permission of Contractor, its agents or employees, arising from, due to, caused by, resulting from or in any way, directly or indirectly, related to any cause, including but not limited to accident, theft, fire or otherwise, whether or not caused by or contributed to by or related to any fault or negligence of NYRA or the condition of the Premises, are assumed in full by Contractor except as to acts or conditions caused by the intentional, willful, gross or reckless conduct of NYRA. This provision is intended to be as broad and inclusive as permitted by the laws of the State of New York, it being the intention of the Parties that this provision shall survive any termination of this Agreement. These provisions shall not be deemed waived or affected in any way by the fact that NYRA does or does not presently, or may or may not in the future, carry insurance coverage against claims or losses caused by or resulting from damage or injury to property or persons at Premises.

22. Limitation of Liability. IN NO EVENT SHALL NYRA BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE OR COULD

HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED UPON OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

23. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours, and on the next business day if sent after normal business hours; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses set forth in the preamble to this Agreement (or at such other address for a Party as shall be specified in a notice given in accordance with this section).

24. Amendments. No amendment to this Agreement shall be effective unless it is in writing and signed by both Parties.

25. No Assignment. Contractor may not assign any of its rights or delegate any of its duties or obligations under this Agreement to another entity without NYRA's prior written consent. Any purported assignment or delegation in breach of this section shall be void.

26. Recovery of Expenses. The prevailing Party in any legal suit, action, or proceeding between the Parties arising out of this Agreement or the transactions contemplated hereby it shall be entitled to recover, in addition to any other relief awarded, all expenses incurred in that legal suit, action, or proceeding.

27. Non-Exclusive Remedies. No right or remedy available to NYRA under this Agreement or by law shall be exclusive. NYRA's exercise or enforcement of any such right or remedy shall not constitute election or waiver by NYRA of any right or remedy, nor shall any delay or omission by NYRA in exercising or enforcing any such right or remedy constitute a waiver of that right or remedy. No single or partial exercise of any right or remedy shall preclude any future or other exercise of that right or remedy, nor shall any failure by NYRA to object to the mode of any offered performance by Contractor operate as a waiver of any right or remedy by NYRA.

28. Force Majeure. A force majeure occurrence is an event of effect that cannot be reasonably anticipated or controlled, and includes but is not limited to acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods or other similar events beyond the control of Contractor or NYRA in the performance of the terms of this Agreement, which non-performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide NYRA with written notice of any force majeure event as soon as the delay is known or reasonably should be known.

Neither Contractor nor NYRA shall be liable to the other for any delay in or failure of performance under the Agreement due to a force majeure event. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such events

or failure shall extend the period for performance to such extent as determined by the Parties to be necessary to enable complete performance by Contractor if reasonable diligence is exercised after the cause of the delay or failure has been removed.

29. Entire Agreement. This Agreement, including Schedule A, constitutes the entire understanding between the Parties with respect to the subject matter of this Agreement and supersedes all other agreements, whether written or oral, between the Parties. In the event of any inconsistency between this Agreement and any document attached hereto, this Agreement shall control. This Agreement will be deemed drafted jointly by the Parties, and no ambiguity is to be construed against one Party over the other.

30. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

31. Relationship of the Parties. Nothing herein shall be construed to create a joint venture or partnership between the Parties hereto or an employee/employer relationship. Contractor shall be an independent contractor pursuant to this Agreement. Neither Party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.

32. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

33. Governing Law. All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any conflict of laws provisions or rules. The Parties hereby consent and shall be required to consent, under any agreement that may arise herein, to the personal jurisdiction of the Courts of the State of New York and of the Federal Courts in the State of New York and hereby waive access to any other court that may have concurrent jurisdiction within or outside of New York.

34. Survival. Any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement shall survive termination or expiration of this Agreement and continue in full force and effect.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the date first written above.


**THE NEW YORK RACING ASSOCIATION,  
INC.**

Sign: *Tatiana Torres*

Print: Tatiana Torres

Title: SVP, Chief Human Resources Officer

**V GROUP INC.**

Sign: 

Print: Monika Rohila

Title: President

**Schedule A**

**RFP # 2024-0032**

**REQUEST FOR PROPOSAL  
(REBID) RECRUITMENT SERVICES  
RFP # 2024-0032**

**I. INTRODUCTION**

**A) Purpose of the Request for Proposal**

The New York Racing Association, Inc. (“NYRA”) is seeking proposals from qualified and experienced recruitment firms to provide non-exclusive recruitment services in order to expedite the hiring process for any open position within any department across the organization. NYRA seeks to develop partnerships with several recruitment firms who may be utilized on an on-call basis to locate and recruit qualified candidates.

Open positions may be for regular full-time or regular part-time employees and professionals, as well as part-time and full-time seasonal or temporary employees and professionals.

The locations will be South Ozone Park, NY (Aqueduct Racetrack), Elmont, NY (Belmont Park) and Saratoga Springs, NY (Saratoga Race Course), although at times there may be an isolated opportunity for an individual to work in one of NYRA’s approved locations: KY, NJ, NY, CT, CA or OR.

Hiring Needs-Departments who may have hiring needs may include, but are not be limited to:

- Executive positions,
- Security,
- Legal and Paralegal,
- Internal Audit,
- Mutuels,
- TV Broadcast Operations,
- Sales and Hospitality,
- Marketing,
- Communications,
- Information Technology,
- Facilities and Capital Projects,
- Cleaning and Racing.

- Employee Definitions are further described within Exhibit 1 of the Scope of Services.

All information requested should be included in the Proposal, plus any additional materials or information that may help NYRA evaluate the respondent's qualifications for this RFP (the "Bidder" or "Vendor").

The term of this agreement shall expire upon September 30, 2033 with no renewals.

NYRA makes no representation, promise, or warranty that a contract to provide services will result from participating in this RFP. All expenses and/or costs incurred by the Bidder for developing the Proposals are entirely the responsibility of the Bidders and will not be paid by NYRA. Any contract award(s) issued as a result of this RFP will be non-exclusive.

### **B) Authorized Contact Person**

Bidders are advised that the Authorized Contact Person for all matters concerning this RFP is:

Name: Allan Howell – Sr. Director of Procurement  
Mailing Address: Aqueduct Racetrack, 110-00 Rockaway Boulevard  
So. Ozone Park, NY 11417  
Telephone #: 718-659-2257  
E-Mail Address: ahowell@nyrainc.com

**ALL BIDDERS RESPONDING TO THIS RFP AND ALL COMMUNICATIONS CONCERNING THIS PROCUREMENT MUST BE ADDRESSED TO THE CONTACT PERSON NOTED ABOVE.**

### **C) No Obligation by NYRA**

By submitting a Proposal, the Bidder agrees to be bound by all terms and conditions herein (the "Terms and Conditions"). Notwithstanding anything to the contrary contained herein, NYRA shall have no obligation to the winner of the bid, should any be selected, ("Successful Bidder") until such time as a final written agreement has been executed by both parties. NYRA shall have no liability to any Bidder and none of the Bidders shall have any recourse of any sort against NYRA in this matter.

### **D) Inclusion of RFP and Related Documents/Contract Negotiations**

All provisions of this RFP (including any clarifications, addendums, and questions/answers) and the contents of the successful Proposal are considered to be available for inclusion in the final contractual obligations that may arise hereunder. All Bidders are required to review and are requested to have legal counsel review, the Standard General Terms and Conditions for Bidding and Contracting with NYRA (the "T&Cs"), as the Successful Bidder must be willing to enter into a contract consistent with the material terms contained therein if selected for contract award.

NYRA will not negotiate material terms contained in the RFP or in the Scope of Services outlined herein.<sup>1</sup> Generally, material terms are terms that, if altered, may have resulted in different pricing or altered the responses of other Bidders (e.g., the time span of the Agreement, the scope of the project, etc.).<sup>2</sup> NYRA may, however, consider limited and reasonable modifications to terms and/or language to the final contract



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in alignment with industry standards, but has no obligation to accept any such proposed modifications and reserves all rights to reject such proposed changes, if any. **NYRA strongly prefers that all proposed modifications be submitted during the Question-and-Answer period** but will also consider proposed modifications that are submitted with the Proposal. If Bidders opt to submit proposed changes at the time they submit their Proposal, they may do so using Exhibit “A,” attached hereto, or submit a redlined version of the T&Cs. **NYRA reserves the right to reject any bid that proposes substantial or material changes that NYRA determines, in its sole discretion, would preclude it from successfully contracting for the goods or services it seeks.**

### **E) Joint Proposals**

Two or more vendors may join together to submit a Proposal in response to this RFP. If a joint Proposal is submitted, such a Proposal shall define the responsibilities that each vendor is proposing to undertake.

<sup>1</sup> This section does not preclude NYRA from negotiating for the best price available from the Successful Bidder.

<sup>2</sup> In the event only one proposal is received in response to a solicitation for bids, NYRA reserves the right to negotiate any and all terms with the sole Bidder, regardless of materiality, if NYRA determines, in its sole discretion, that it is in its best business interest to do so.

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One must be designated as the primary vendor of the vendors submitting a joint proposal. Any contract award issued as a result of this submission will be made exclusively to such a primary vendor. A joint Proposal must designate a single authorized official from one of the joint vendors to serve as the sole point of contact between NYRA and the responding joint vendors.

#### **F) Background of The New York Racing Association, Inc.**

NYRA tracks are the cornerstone of the State's horse-racing business, contributing more than \$3 billion annually to New York State's urban, suburban, and rural economy and generating over 17,000 full-time jobs. In 2018, more than 1.87 million people attended live races at NYRA tracks. Factoring in nationwide off-track wagering, the average daily betting handle totaled more than \$11 million with more than \$2.2 billion wagered on NYRA races.

#### **G) Non-Bidder Response**

In order to continuously improve its bidding process, NYRA encourages those declining to bid to fill out the "Non-Bidder Response" attached hereto as **Exhibit "B."**

### **II. SCOPE OF SERVICES**

NYRA is seeking recruitment firms to perform hiring duties across the organization. The successful bidders will post and recruit for various part-time and full-time roles and will be responsible for the following:

- Evaluate NYRA's requirements in order to develop an effective strategy to identify qualified candidates.
- Develop and execute an effective search
- Review and screen candidates for hiring managers
- Present a short list of prescreened and qualified candidates and recommend candidates for interview
- Coordinate and schedule interviews
- Schedule cadence calls to update hiring managers on search status
- Assist with offer and acceptance process
- Conduct background and reference checks

### **III. MINIMUM QUALIFICATIONS**

All Bidders must meet certain minimum qualifications. This section will NOT be graded as part of the bid evaluation. Rather, it is a "pass/fail," and the failure of any Bidder to meet the following minimum qualifications (the "Minimum Qualifications") will render the bid non-responsive, unless NYRA, in its sole discretion, waives any portion of the requirements for all Bidders:

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- Bidders must be duly organized and operating as a business entity for a minimum of Five **(5)** years.
  - Bidders must possess a minimum of Five **(5)** years' experience performing the same or similar services as contemplated in this RFP.
  - Bidders must possess all necessary licenses or certifications as required by law.
  - Bidders must provide Proof of Insurance by submitting the certificate of insurance as "evidence only."
  - Bidders must have company resources with the depth and breadth of qualified individuals to effectively complete work on a timely basis.
  - Bidders must disclose any possible conflicts they may have with NYRA's Board of Directors, NYRA's executive management, and other officers, operating, and racing officials. NYRA's current Board members are:

Marc Holliday; chairman  
David O'Rourke  
Joseph Appelbaum  
Michael Dubb  
C. Steven Duncker  
Stuart Janney III  
Earle Mack  
Timothy (Chris) Mara  
Georgeanna Nugent  
Ogden Phipps  
Andrew Rosen  
Stuart Subotnick  
Vincent Tese  
Najja Thompson  
Jerry Zaro  
Betty Leon

- Bidders must submit written proof of compliance with all Minimum Qualifications listed above to the extent such written proof exists (e.g., licenses, certifications, etc.). If there is no pre-existing documentation, Bidders must submit a brief written statement as to how they currently satisfy the requirement(s).

#### **IV. PROPOSAL REQUIREMENTS**

Each Bidder is expected to provide NYRA with information, evidence, and demonstrations that will make possible a contract award that best serves the stated interests of NYRA. Bidders should submit a proposal that clearly and concisely provides all of the information requested (the "Proposal"). Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in the Proposal responses. Bidders are advised

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to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

**A proposal that does not provide all the information requested below may be subject to rejection. A complete Proposal for this RFP is comprised of two (2) separate sealed proposals: Technical and Cost.** The Technical Proposal should specifically detail the Bidder's experience and qualifications in providing the services sought by NYRA. Each Technical Proposal shall include descriptive and technical matter only and must be appropriately labeled on the outside of the enclosure with the Bidder's name and address and the RFP name. **There should be no dollar unit or costs included in the Technical Proposal document.**

### **A) Technical Proposal**

The purpose of the Technical Proposal is to provide Bidders with an opportunity to demonstrate their qualifications, competence, and capacity to undertake the engagement described herein, in a manner that complies with applicable laws and regulations, and the requirements of the RFP. Below is a listing of the technical information to be provided by the Bidder.

- 1) Contact Information. The name, address, phone number, and website of the Bidder as well as a primary contact individual.
  - 2) Table of Contents. A table of contents listing each section of the RFP for easy reference.
  - 3) Executive Summary. An Executive Summary highlighting significant aspects of the Bidder's Technical Proposal should be provided. Bidders are reminded that cost should not be included in this section.
  - 4) Project Plan. The project plan should include:
    - A general background statement including ownership, philosophy, size, scope, national and regional expertise, and research capabilities.
    - A staffing plan that describes how the Bidder's personnel will be organized to perform the assignments, including the responsibilities of each individual proposed for the team.
    - A description of the methodology the Bidder will use; and
    - Any other information that may be used by NYRA in assessing the suitability of the Bidders' project plan.
    - Describe your candidate search and assessment processes and methods. Discuss the methods and networks used for outreach to potential candidates, credentials, fit for purpose and reference checking, expected timelines, reporting structures, quality assurance measures, performance monitoring and reporting, and engagement approach with stakeholders.
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- A description of the methodology the Bidder will use to find qualified employees and method of performing background checks;
  - A description of any training and/or education programs used to prepare employees who will be acting in a customer service capacity;

5) Bidder Experience and Qualifications. In this section of the Technical Proposal, the Bidder should demonstrate relevant experience by providing the following:

- A summary that describes the unique capabilities of the Bidder. The narrative should include a description of other entities comparable to NYRA (thoroughbred racing, the entertainment industry, and/or sports organizations) for whom the Bidder has provided the services required herein.
- A description of the direct prior experience of the Bidder comparable to those services detailed in Section II (Scope of Services), in the last five (5) years.
- A description of the Bidder's experience with high volume and/or seasonal recruitment, as well as examples of any prior on-site support;
- A summary of historical results and statistics of performance, such as fill rate and retention rate for temporary staff
- Provide examples of recent searches similar to those covered in this agreement
- Describe any of your firm's industry sector specializations

6) Bidder References. Bidders should list at least five (5) current references, including name, telephone number, physical address, and email address. References may be checked, and the relevancy and quality of the references will be considered in the scoring of the technical components of this RFP. NYRA may seek information from references regarding subjects that include but are not limited to, the quality of services provided, the anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement.

7) Bidder Presentations. NYRA reserves the right to invite Bidders that are on a "short list" to make a presentation as part of the Technical Proposal. The Procurement Department will contact Bidders to schedule a mutually agreeable date and time for the presentation. Bidder presentations may become part of the scoring of the Technical Proposals and NYRA reserves the right to re-score proposals based on information learned in such presentations. Bidders are reminded that cost and/or

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pricing should not be discussed at the presentation, and presentation materials should not include any cost and/or pricing information.

### **B) Cost Proposal**

Among the selection criteria is the fee the Bidder will charge NYRA for the services described in this RFP. The Cost Proposal must be submitted separately using the worksheet attached hereto as **Exhibit "C."** The Cost Proposal will remain sealed until after the Technical Proposal is evaluated and scored. Bidders are reminded that they **MUST** complete pricing AS requested, including the pricing for optional terms (**Add Alternate Pricing.**), if any are provided. Failure to submit pricing in accordance with the required format may, at NYRA's sole discretion, result in a rejection of your bid. The Cost Proposal should include:

The Cost Proposal is an integral component of a Bidder's submission. Bidders should take particular care to ensure the Cost Proposal is completed fully and in complete accordance with the above instructions.

### **C) Best and Final Offer (BAFO)**

In NYRA's sole discretion, price revisions may be permitted from all Bidders determined to be susceptible of being selected for contract award, prior to award. In the event that NYRA seeks a BAFO, all Bidders being considered for selection of award shall be accorded fair and equal treatment with respect to their opportunity for discussion and revision of offers.

### **D) Proposal Receipt and Distribution**

Upon receipt of a Proposal, the Cost Proposal will be secured by NYRA's Procurement Department and will remain secured and unopened until after the technical evaluation process is complete. Each Technical Proposal will be distributed to the Evaluation Committee members at the start of the evaluation process. A Proposal must be received by NYRA on or before the due date and time specified. The Bidder is responsible for the timely receipt of its Proposals and should plan for the delivery accordingly. Failure of a Bidder to submit a Proposal by the specified time will result in rejection or disqualification of such Proposal. Proposals rejected or disqualified for lateness may be returned unopened to the Bidder.

### **E) Clarification Process**

NYRA may request clarification from a Bidder for the purpose of resolving any ambiguity or questioning information presented in a Bidder's Proposal. Clarifications are an opportunity to explain, but not to enhance, a Proposal. Requests for clarification may occur throughout the Proposal submission review and/or the technical evaluation process. Clarification responses shall be in writing and shall address only the information requested. Responses shall be submitted to NYRA within the time stipulated at the time of the occasion of the request. As applicable, clarifications will be treated as addendums to the Bidder's Proposal.

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## **V. EVALUATION AND SELECTION PROCESS**

### **A) Introduction**

This section describes the evaluation process that will be used to determine which Proposal provides the greatest overall benefits to NYRA. The ability of NYRA to evaluate a Bidder's Proposal is dependent upon the completeness and proper submission of the Proposal. The failure of a Bidder to provide the information requested by this RFP, to submit the Proposal according to the required format, or to respond appropriately to a clarification request, may result in the rejection of the Bidder's Proposal or reduction in scoring during the evaluation.

### **B) Evaluation Methodology**

NYRA will conduct a comprehensive, fair, and impartial evaluation of Proposals received in response to this RFP. In making a selection, NYRA will be represented by an Evaluation Committee (the "Committee") composed of NYRA staff members. NYRA reserves the right to make changes in the Committee's membership as necessary and/or to use outside consultants as needed. The relative weight of technical to cost will be technical [80] % and cost [20] %. The technical and pricing scores will be combined to determine the final composite score for each Bidder. The Successful Bidder will be the Bidder who achieves the highest composite score and who is deemed to be a responsible Bidder.

#### **a. Technical Proposal Evaluation – 80%**

The scoring of the Technical Proposals will be by consensus of the Committee. NYRA will use an evaluation instrument that applies scoring criteria to the Technical Proposal as defined and agreed to by the evaluation team prior to receipt of the bids.

#### **b. Cost Proposal Evaluation – 20%**

The Bidder with the lowest price will be awarded the full points allocated to the pricing evaluation. The score for each of the remaining Bidders will be proportionate to the lowest bidder based on a pre-determined formula.

### **C) Notice of Award**

A contract award notification letter will be sent to the Successful Bidder and unsuccessful bidders indicating the award<sup>3</sup>. No public discussion or news releases relating to this RFP, or the resulting contract shall be made by any Bidder without the prior approval of NYRA.

### **D) Debriefings**

A debriefing may be requested by an unsuccessful bidder. Debriefings must be requested by the unsuccessful Bidder within fifteen (15) calendar days of notification that the Bidder is unsuccessful.

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<sup>3</sup> NYRA will determine the timing of notification to Bidders and NYRA makes no representation that all Bidders will be notified at the same time.

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NYRA, upon a request made within fifteen days of the release of the written notice, shall schedule the debriefing to occur within a reasonable time of such request. Personnel participating in the debriefing discussion will have been involved with and knowledgeable about the procurement and the evaluation and selection of the successful bidder(s). Debriefing requests must be made to the Director of Procurement.

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**STANDARD GENERAL TERMS AND CONDITIONS FOR BIDDING  
AND CONTRACTING WITH NYRA**

1. No Obligation by NYRA. This Request for Proposal does not commit NYRA to award an agreement, to pay any costs incurred in the preparation of a Proposal, or to contract for the goods and/or services offered. Notwithstanding anything to the contrary, NYRA reserves the right to accept any Proposal or reject any or all Proposals received as a result of this RFP. The decisions of NYRA hereunder are final. (See “NYRA’s Reserved Authority” herein for a full list of reserved rights).
2. Non-Collusive Bidding Requirement. By submitting a Proposal in response to this RFP, Bidders warrant that their Proposal was arrived at independently and without collusion aimed at restricting competition.
3. Agreement to Terms and Conditions. By submitting a Proposal, each Bidder is agreeing to be bound by these Terms and Conditions.
4. Conflict of Terms. Unless specifically outlined in the contract documents, the Terms and Conditions contained herein shall control.
5. Pricing and Term. The term of the Terms and Conditions and any agreement awarded pursuant to this RFP (the “Agreement”) shall be from the date of (a) Bidder’s execution of the Proposal (as it relates to the Terms and Conditions) and (b) the full execution of the Agreement (as it relates to the Agreement), and in each case, shall expire upon September 30, 2033. The pricing indicated in the Cost Proposal shall remain in effect for the entire period of the Initial Term
6. Payment Terms  
*NYRA’s standard payment terms are 2% 10 Net 30*
7. NYRA’s Reserved Authority.

In addition to any authority articulated elsewhere in this RFP, NYRA reserves the authority to:

- a. Award a contract for all, part, or none of the services requested by this RFP;
  - b. Waive any informality or technical defect if, in NYRA’s judgment, the best interest of NYRA will be so served;
  - c. Eliminate any non-material mandatory specification(s) that cannot be complied with by any of the prospective Bidders;
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- d. Amend the RFP and direct Bidders to submit Proposal modifications accordingly;
  - e. Change any of the scheduled dates stated herein;
  - f. Reject any or all Proposals received in response to this RFP, and reissue a modified version of this RFP;
  - g. Withdraw the RFP at any time, at its sole discretion;
  - h. Seek clarifications and revisions to Proposals;
  - i. Use Proposal information obtained through site visits, management interviews, and investigation of a Bidder's qualifications, experience, ability, or financial standing and any material or information submitted by the Bidder in response to NYRA's request for clarifying the information in the course of evaluation and/or selection under this RFP;
  - j. Disqualify any Bidder whose conduct and/or Proposal fail to conform to the requirements of this RFP;
  - k. Seek Best and Final Offers from all Bidders determined to be susceptible of being selected for contract award, prior to award. Bidders shall be accorded fair and equal treatment with respect to their opportunity for discussion and revision of offers;
  - l. Negotiate with the Successful Bidder within the scope of the RFP in the best interests of NYRA;
  - m. Set aside the original Successful Bidder if it is determined that such Bidder is non-responsible. NYRA may then award a contract to the responsible Bidder with the next highest total combined score;
  - n. Set aside a conditional award to the Successful Bidder should NYRA be unsuccessful in finalizing the Agreement with such Bidder within a time frame acceptable to NYRA; such time frame is to be determined solely by NYRA based on its best interests. NYRA may then award a contract to the Bidder with the next highest total combined evaluation score.
8. Bidder Responsibility. The Successful Bidder shall be duly organized and in good standing; be technically qualified to perform the proposed work; be of sound financial status and ability to secure adequate financial resources necessary to perform the proposed work; be able to comply with a delivery or performance schedule as required by this RFP; have a satisfactory record of past performance; present no conflicts of interest as regards to other clients, work performed or employees, staff or ownership of Bidder's organization; present no conflicts of interest with NYRA officers, employees or directors as determined by NYRA in its reasonable judgment.
9. Background Review of Successful Bidder.
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- The acceptance by NYRA of Proposals and the award of an agreement in this matter is further conditioned upon the satisfactory completion and submission, together with the requisite \$850.00 fee (if applicable), of a Bidders Qualification Statement (“BQS”) (if the value of Bid exceeds \$100,000), and NYRA’s approval of the results.
  - The BQS is a self-reporting statement designed to assist the Successful Bidder in collecting and summarizing information that is necessary to qualify as an approved Vendor for NYRA. All information is kept confidential and is used solely for that purpose.
  - The Successful Bidder will be sent an application by NYRA or a designated third-party integrity service provider. Such application requests information concerning, among other things: any history of criminal convictions or investigations by government agencies; any history of collusion, bankruptcy filings, adverse claims, or liens; any declarations of ineligibility to Bid; or any relationship of the Successful Bidder to NYRA employees which may violate NYRA’s ethics or Procurement policies (“the Report”).
  - The Successful Bidder will be obligated to timely return the completed application to NYRA or a designated third-party integrity service provider. No final agreement will be signed until such time as NYRA receives the finalized Report and it is approved by NYRA.
  - Public companies traded on recognized stock exchanges are exempt from this requirement but must instead submit to NYRA their 10K/Q reports for review.
  - NYRA hereby reserves the right, in its sole and absolute discretion, to disqualify otherwise Successful Bidders herein based upon NYRA’s review of the relevant background Report. The final agreement herein, if any, will require the Successful Bidder to keep NYRA apprised of any changes in the Successful Bidder’s background status.
  - NYRA will reserve the right to terminate the final agreement herein, if any, under circumstances reasonably giving rise to such termination, including the involvement of the Successful Bidder and/or its principals or owners in circumstances involving moral turpitude.
10. Independent Contractor. It is understood and agreed that the legal status of the Successful Bidder, its agents, officers, and employees under these Terms and Conditions and the Agreement is that of an independent contractor, and in no manner shall they be deemed employees of NYRA, and therefore are not entitled to any of the benefits associated with such employment. The Successful Bidder agrees, during the term of any contract that may be entered into with NYRA, to maintain at Successful Bidder's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability, and unemployment insurance, and to provide NYRA with a certification of such insurance upon request. The Successful Bidder remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.
11. Subcontractors. NYRA must be informed in each Proposal of any Bidder’s desire to subcontract
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any portion of the requirements of the Agreement that may be awarded hereunder, which subcontracting will be subject to NYRA's sole and absolute discretion. NYRA should be furnished with information regarding any proposed subcontractor(s), including the identity of ownership and senior management, location(s) of primary place of business and/or facilities in which NYRA work is to be performed, employee education and training, and details regarding the specific portion(s) of the agreement requirements the proposed subcontractor would perform. Under no circumstances will any Bidder be permitted to subcontract any portion of the agreement requirements without first obtaining NYRA's prior written consent, which consent may be withheld at NYRA's sole and absolute discretion. All subcontractor(s) will be bound to all Terms and Conditions and may be subject to review by NYRA's third-party integrity service.

12. Mandatory Meetings. All interested Bidders must attend all mandatory meetings that may be conducted in this matter. Any Proposals received from Bidders who fail to attend all mandatory meetings will be considered to be null and void.
13. Non-Responsive Proposals. NYRA shall not be obligated to evaluate, consider, or accept any Proposal that it considers to be non-responsive to the requirements of this RFP. Notwithstanding anything to the contrary contained herein, NYRA shall have no obligation to the Successful Bidder, if any is selected by NYRA until a final written agreement has been executed by both parties. NYRA shall have no liability to any Bidder and none of the Bidders shall have any recourse of any sort against NYRA in this matter. While NYRA will protect confidential information to the extent permitted by law (as outlined in Section 15 below), NYRA shall not be liable to any Bidder for NYRA's, or any third party's use of any information contained in Bidder's Proposals.
14. Prior Information. Any information in this matter that may have been released either orally or in writing prior to the issuance of this RFP is null and void and should be disregarded.
15. Confidentiality and Non-Disclosure. For the purposes of any agreement that may arise from this RFP:
  - (a) "Confidential Information" means any information not generally known to the public, whether oral or written, that each party may receive regarding the other party's business strategies, financial information, customer data, and other proprietary information. The parties shall, to the extent practical, identify to the other party the information it deems to be confidential. Confidential Information may include, but is not limited to, operational and infrastructure information relating to bidding documents, plans, drawings, specifications, reports, product information; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures, and designs; and such other data, information, and images that the parties deem confidential. Confidential Information of a party ("Disclosing Party") shall be held in confidence by the other party ("Recipient") and shall not be disclosed to any third party or otherwise made public without the Disclosing Party's prior written consent or as expressly provided in the Agreement. Confidential Information of either party may be disclosed only by the Recipient to the Recipient's employees, agents, or representatives who have a need to know such information and who have agreed to be bound by the provisions set forth herein. The Recipient may disclose any Confidential Information in response to a valid court

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order or other applicable legal or regulatory process, only to the extent required by such order or process and, if practical and permitted by applicable law, only after the Recipient has given the Disclosing Party notice of such court order or other legal processes promptly after receipt thereof and the opportunity for the Disclosing Party to seek a protective order or confidential treatment of such Confidential Information (with the reasonable assistance of Recipient of the Disclosing Party so requests). These confidentiality obligations shall survive the termination or expiration of the Agreement.

(b) Confidential Information does not include information that at the time of disclosure to Recipient is already in the public domain or becomes publicly known through no act of the Recipient; is already known by the Recipient free of any confidentiality obligations; is information that the Disclosing Party has approved in writing for disclosure; or is information that the Recipient can objectively demonstrate was developed independently by the Recipient.

(c) The parties may use Confidential Information solely for the activities contemplated in the Agreement. A party shall not make copies of any Confidential Information without the express written permission of the other party. The Disclosing Party's disclosure of Confidential Information to the Recipient shall not convey to the Recipient any right to or interest in such Confidential Information and the Disclosing Party shall retain all right and title to such Confidential Information at all times.

(d) Each party shall hold Confidential Information confidential to the maximum extent permitted by law. Each party shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices, and procedures that each party uses to maintain its confidential information.

(e) Upon written request by the Disclosing Party, the Recipient shall return all Confidential Information or certify in writing that it has been destroyed the same.

16. Adherence to Ethics and Procurement Policies. By submitting the Proposal to NYRA and participating in its procurement process, Bidder agrees to adhere to NYRA's Code of Ethics and Business Conduct and to its Procurement Policy and Procedures, both of which are posted on NYRA's website at HYPERLINK "<http://www.nyra.com/>" \h[www.nyra.com](http://www.nyra.com/). NYRA's ethics policies prohibit NYRA employees and their immediate family members from receiving any incentives, gifts, gratuities, or favors from Bidders seeking business or engaged in business transactions with NYRA. In addition, Bidders shall not attempt to influence NYRA employees or members of their immediate families in any way during the bid selection process. By signing this RFP, Bidder is expressly acknowledging and agreeing that he/she/it has read and understands the above and has neither given nor offered incentives, gifts, gratuities, or favors of any kind to any NYRA employee or members of their immediate family. Bidder further acknowledges, agrees, and understands that any failure to comply with NYRA's Code of Ethics and Business Conduct and Procurement Policy and Procedures may result in disqualification from NYRA's bidding and procurement processes.
17. Method of Award: In determining an award, NYRA will consider: the qualifications of the Bidder, the conformity with the specifications of services to be supplied, and the performance terms. The
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contract award will be based on “Best Value,” the evaluation method for awarding a contract to the Bidder whose Proposal optimizes quality, cost, and efficiency among responsible offers. The determination will be based on a scoring of Technical and Cost Proposals as defined in Part V of this RFP.

18. Estimated Insurance Requirements. The Successful Bidder, if any, will be required under any agreement that may arise therefrom, to procure and maintain an insurance policy or policies from admitted insurers with a rating of A- VII or better at its own expense setting forth itself as named insured for the following coverage lines:

Commercial General Liability Insurance with the following limits:

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Per Occurrence	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Fire Damage Liability	\$300,000
Medical Liability	\$5,000

General Liability policy to be written on a per location/project basis.

Automobile Liability Insurance

Owned, non-owned leased, or hired vehicles for each occurrence	\$1,000,000
Loss of or damage to property	\$1,000,000

Miscellaneous Professional Liability Insurance covering the applicable scope of services provided in the bid document with a minimum limit of liability of \$1,000,000. If coverage is written on a claims-made policy, the Bidder warrants that any applicable retroactive date precedes the effective date of the agreement and that continuous coverage will be maintained, or an extended discovery period exercised for a period of not less than two years from the time work under this agreement is completed.

Workers' Compensation Coverage according to statutory limits and Employers' Liability with limits no less than \$1,000,000 for Each Accident; \$1,000,000 Disease – Each Employee; \$1,000,000 Disease – Policy Limit.

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Disability Insurance per New York State requirements

Umbrella Liability Policy covering the excess over the limits specified for all employers' liability, commercial general liability, and business automobile liability required under the agreement with minimum limits of \$5,000,000 per occurrence / \$5,000,000 aggregate per policy year.

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Cyber Liability or equivalent Professional Liability Insurance, including Privacy and Network Security Liability coverage, for claims arising out of or connected with the professional services contemplated in this agreement with minimum limits of \$5,000,000 for Each Claim. If written on a claims-made basis, Bidder shall maintain such insurance for three (3) years after termination of the agreement, and Bidder shall continue to provide NYRA with evidence of such insurance on an annual basis during the three (3) year period.

All policies, where applicable, will be endorsed to have a waiver of subrogation in favor of NYRA, its directors, officers, employees, servants, contractors, agents, and affiliates collectively, the "NYRA Parties".

Any other insurance coverage appropriate to the Successful Bidder's business

Any insurance coverage acquired under any agreement that may arise hereunder will be required to designate the "NYRA Parties" its directors, officers, employees, servants, contractors, agents, and affiliates as additional insureds. Additional insured coverage shall be extended to include product-completed operations coverage. No policy shall contain self-insured retention or deductible in excess of \$25,000, and any/all deductibles shall be the sole responsibility of the Successful Bidder. The Successful Bidder will be required to acquire insurance that includes the first dollar, non-contributory coverage primary over any insurance or self-insured program maintained by NYRA (i.e., NYRA will not contribute to any losses). Any agreement that may be issued to the Successful Bidder hereunder, if any, will require each subcontractor if any to be approved by NYRA, employed by the Bidder to purchase and maintain insurance of the types specified and to provide copies of certificates evidencing coverage for each subcontractor. The Successful Bidder will be required to furnish NYRA with a certificate evidencing all coverage and further providing not less than thirty (30) days prior written notice to NYRA of any change in or termination of the insurance. The Successful Bidder shall also describe the ways if any that its insurance program fails to comply with the above-referenced requirements. The maintenance of the insurance described in this RFP shall in no way be interpreted as relieving Bidder of any responsibility or liability under any agreement that may be issued hereunder. Any increase of limits of liability beyond those referred to above or any type of insurance not described above which Bidder requires for its protection or which Bidder is required by law to carry shall be the responsibility of the Bidder.

19. Indemnification. The Successful Bidder shall be fully liable for the actions of its agents, employees, partners, or Subcontractors and shall fully indemnify and save harmless NYRA from suits, actions, damages, and costs of every name and description arising from third parties and relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Successful Bidder, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Successful Bidder shall not indemnify for that portion of any such claim, loss or damage arising hereunder due to the negligent act or failure to act of NYRA.
20. Indemnification Relating to Third-Party Intellectual Property Rights. The Successful Bidder will indemnify and hold NYRA harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs arising from third parties that



may be finally assessed against NYRA in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from NYRA gross negligence or willful misconduct, provided that NYRA shall give Successful Bidder: (i) prompt written notice of any action, claim or threat of infringement suit, or other suits, (ii) the opportunity to take over, settle or defend such action, claim or suit at Successful Bidder's sole expense, and (iii) assistance in the defense of any such action at the expense of Successful Bidder.

If usage shall be enjoined for any reason or if Successful Bidder believes that it may be enjoined, Successful Bidder shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for NYRA the right to continue using (ii) to modify the service or product so that usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace said service or product or part(s) thereof, as applicable, with non-infringing service or product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Agreement, in whole or in part as necessary and applicable, provided NYRA is given a refund for any amounts paid for the period during which usage was not feasible.

The foregoing provisions as to protection from third-party intellectual property rights shall not apply to any infringement occasioned by modification by NYRA of any product without Successful Bidder's approval.

In the event that an action at law or in equity is commenced against NYRA arising out of a claim that NYRA's use of the service or product under the Agreement infringes any patent, copyright, or proprietary right, and Successful Bidder is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Agreement, Successful Bidder shall immediately notify NYRA and in writing and shall specify to what extent Successful Bidder believes it is obligated to defend and indemnify under the terms and conditions of the Agreement. Successful Bidder shall in such event protect the interests of NYRA and secure a continuance to permit NYRA to appear and defend its interests in cooperation with Successful Bidder, as is appropriate, including any jurisdictional defenses NYRA may have. This constitutes NYRA's sole and exclusive remedy for patent infringement or infringement of any other third-party intellectual property proprietary right.

21. Waiver and Release. The final agreement, if any, awarded to the Successful Bidder hereunder will require the Successful Bidder to represent, warrant, and covenant to forever release, waive, and discharge NYRA, its directors, officers, employees, contractors, agents, and servants from and against any and all losses, costs, damages, expenses (including attorneys' fees), suits, and judgments arising from any and all claims and demands for any injury whatsoever arising from, as a result of, or in connection with the Successful Bidder's work in the contemplated matters.

Additionally, the Successful Bidder, if any, will be required to agree that the indemnification, defense, hold harmless, release and waiver, and discharge provisions of the Agreement are intended to be as broad and inclusive as permitted by the laws of the State of New York and that any interpretation or construction of those provisions shall be governed by the laws of the State of New

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York and that these provisions shall not be deemed waived or affected in any way by the fact that NYRA does or does not presently, or may or may not in the future, carry insurance coverage against claims or losses caused by or resulting from damage or injury to property or persons at its premises.

22. Protection of NYRA's Interest. All Bidders must have and maintain contingency plans to protect NYRA during the term of any contract awarded hereunder; such plans must describe how NYRA's interests will be protected with respect to goods and/or services to be provided by Bidder, and what remedial and/or restorative actions may be taken by Bidder during any and all events that may cause the closure of, or reduction in capacity to, any facility in which NYRA's work is produced. Such contingency plans will protect NYRA in the event of a flood(s), fire, epidemics, pandemics, storm damage, power outage, labor strike, and any other force majeure that would interrupt the production of goods and/or services or threaten the timely delivery of goods and/or services during the entire term of any contract awarded by NYRA in connection with this RFP.
23. Termination
- a. For Cause: For a material breach that remains uncured for more than thirty (30) days or another specified period after written notice to the Successful Bidder, the Agreement or purchase order may be terminated by NYRA at the Successful Bidder's expense where the Successful Bidder becomes unable or incapable of performing or meeting any requirements or qualifications set forth in the Agreement, or for non-performance, or upon a determination that the Successful Bidder is non-responsible. Such termination shall be upon written notice to the Successful Bidder. In such an event, NYRA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
  - b. For Convenience: By written notice, the Agreement may be terminated at any time by NYRA for convenience upon sixty (60) days of written notice or another specified period without penalty or other early termination charges due. Such termination of the Agreement shall not affect any project or Purchase Order that has been issued under the Agreement prior to the date of such termination. If the Agreement is terminated pursuant to this subsection, NYRA shall remain liable for all accrued but unpaid charges incurred through the date of the termination. The Successful Bidder shall provide any outstanding deliverables.
  - c. For Violation of NYRA's Ethics or Procurement Policies: NYRA reserves the right to terminate the Agreement in the event it is found that the Successful Bidder violates NYRA's Ethics or Procurement Policies. Upon such finding, NYRA may exercise its termination right by providing written notification to the Successful Bidder in accordance with the written notification terms of the Agreement.
24. Force Majeure A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, pandemics or epidemics, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Successful Bidder or NYRA in the performance of the Contract which non-performance, by the exercise of reasonable diligence,
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cannot be prevented. Successful Bidder shall provide NYRA with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Successful Bidder nor NYRA shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute a default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Successful Bidder and NYRA to be necessary to enable complete performance by the Successful Bidder if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of NYRA where the delay or failure will significantly impair the value of the Contract, NYRA may:

- a. Accept allocated performance or deliveries from the Successful Bidder. The Successful Bidder, however, hereby agrees to grant preferential treatment to authorized users with respect to products subjected to allocation; and/or
  - b. Purchase from other sources (without recourse to and by the Successful Bidder for the costs and expenses thereof) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Agreement quantities without penalty or liability to NYRA; or
  - c. Terminate the Agreement or the portion thereof that is subject to delays, and thereby discharge any unexecuted portion of the Agreement or the relative part thereof.
25. Labor Relations. The final agreement that may arise hereunder, if any, will require the Successful Bidder to maintain, to the satisfaction of NYRA, harmonious labor relations during the performance of the services contemplated in this RFP.
26. Licensing and Compliance. Bidders must comply with all Federal and State statutes, rules, regulations, directives, and New York State Gaming Commission licensing requirements, if applicable. It is hereby understood and agreed that NYRA will reserve under any agreement that may arise herein the right to remove from NYRA-operated premises any Bidder for any violation of or refusal to obey any such rule, order, regulation, directive, or applicable licensing requirement, or for any misconduct whatsoever.
27. Anti-Sexual Harassment and Non-Discrimination. By submitting this bid, Bidder confirms that it will comply with NYRA's anti-sexual harassment policy, which can be found in its Code of Ethics and Business Conduct. Harassment on the basis of any protected characteristic is strictly prohibited. Unlawful harassment is defined as harassment based on any characteristic protected by applicable U.S. federal, state, or local laws including race, color, creed, religion, gender, sexual orientation, national origin, or age. If a Bidder or vendor has been found to have harassed or discriminated against a NYRA employee, such Bidder or vendor will be barred from future bidding or contracting with NYRA.
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28. Delegation and/or Assignment. No delegation of any duties under this contract to another entity shall be made unless NYRA has given written consent to such delegation; nor shall assignments of rights to sums of money due or to become due under this contract be permitted to any entity other than the Bidder selected by NYRA, except by express written consent of NYRA.
29. Governing Law. The terms and conditions contained herein and in any agreement that may arise herein shall be construed under and governed by the laws of the State of New York, without regard to its conflict of laws rules, and the Bidders hereby consent and will be required to consent, under any agreement that may arise herein, to the personal jurisdiction of the Courts of the State of New York and the Federal Courts in the State of New York. By submitting a Proposal, a Bidder is deemed to waive access to any other court that may have concurrent jurisdiction within or outside New York State.
30. **Dates of Importance/Submission Requirements/Site Visits or Pre-bid Meetings:**
- a. Mandatory Site Visit or Pre-bid Meeting are not required for this bid.

\*NOTE: Special consideration may be given to Bidders that have made arrangements to attend a Pre-Bid Meeting or Site Visit, and due to circumstances beyond the Bidder's control (such as a flight cancellation or some other force majeure event), are unable to attend. In the event that the Bidder is unable to attend under these circumstances, the Bidder must supply NYRA with written proof of such cancellation or other events. Upon submission of such proof, the Bidder may request an alternative Pre-Bid Meeting or Site Visit, which may be granted at the sole discretion of the Procurement Department. The request for an alternative Meeting or Site Visit must be made as soon as is practicable after the force majeure event, and the Bidder must be able to attend within a reasonable time frame (approximately 1-2 days from the original date of the Site Visit or Pre-Bid Meeting). No questions on the alternative site visit will be answered, as the other bidders are not in attendance. Any questions should be made in writing by the Bidder and submitted to NYRA. If an extension is required for the Q&A portion of the bid, NYRA will notify all bidders of the new date. The granting of an alternative date is a courtesy offered by NYRA, and NYRA is under no obligation to grant Bidders' request for an alternative Pre-Bid Meeting or Site Visit date.

NYRA reserves the right to exclude bidders that attend the Site Visit or Pre-bid Meeting that have acquired knowledge of such meeting through means other than through the Procurement Department. To participate in this bid solicitation, you must receive the official RFP from NYRA's Procurement Department.

- b. Bidders' questions are to be submitted either via \ email to [Bidsubmissions@nyrainc.com](mailto:Bidsubmissions@nyrainc.com) **Deadline** for submission of questions is May 3rd, 2024 <mailto:Bidsubmissions@nyrainc.com>. **5:00 PM EST.**
- c. **Bidder's questions and NYRA's responses will be circulated to all eligible Bidders on May 7<sup>th</sup>, 2024 via email.**
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- d. Signed bids are due back to NYRA on **May 10, @024April 30<sup>th</sup>, 2024, by 5:00 PM EST.**
  - e. All Proposals must be submitted via email at HYPERLINK "mailto:BidSubmissions@nyrainc.com" \h[BidSubmissions@nyrainc.com](mailto:BidSubmissions@nyrainc.com) no later than **5:00 P.M. EST on the date set forth herein. (May 10<sup>th</sup>, 2024)**

**In addition, bidders have the option of submitting their bids manually (hard copy) to the following address:**

The New York Racing Association, Inc.  
Procurement Department  
11000 Rockaway Blvd., Suite 1  
So. Ozone Park, NY 11417

Any Proposal received after the time and date specified shall not be considered unless specifically approved by NYRA's Procurement Department. Only signed Proposals will be accepted. Faxes are not acceptable. Bidder agrees that all information contained in the Proposal may be relied upon by NYRA for 180 days from the date of receipt unless otherwise stated in the document.

**BIDDERS ARE RESPONSIBLE FOR SUBMITTING THEIR BIDS ON TIME.**

- f. Proposals must be accurate, complete, and address all items listed in the RFP. Proposals must include all supporting documents, exhibits, schedules, addenda, and other attachments. Any missing information may render the Proposal unresponsive and result in its disqualification from consideration.
  - g. All Bidders are responsible for the accuracy of their Proposals. If a Bidder discovers any discrepancy, conflict, omission, or other error in this RFP, notification should be sent immediately to NYRA (attention: Director of Procurement) requesting clarification or modification to the RFP. Should NYRA find it necessary, modification to the RFP will be made and all Bidders will be notified in writing. All clarifications regarding any element of this RFP, including those related to the Terms and Conditions should be resolved prior to the submission of a Proposal.
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**31. Mandatory Signature Requirement:**

Bidder \_\_\_\_\_ hereby offers to provide NYRA goods/services similar to the services described herein (as set forth in the Proposal) in consideration for the payment referenced in the Proposal.

Bidder \_\_\_\_\_ hereby accepts and agrees to each and every Term and Condition contained in this Request for Proposal except for those non-material modifications as noted in Exhibit A attached hereto.

Name of Bidder: \_\_\_\_\_

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

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

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

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**EXHIBIT A**  
**PROPOSED NON-MATERIAL MODIFICATIONS TO THE RFP**

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**EXHIBIT B**  
**NON-BIDDER'S RESPONSE**

**CONTRACTOR'S NAME/BID NUMBER:** \_\_\_\_\_

For the purpose of better understanding how we can improve our competitive bidding process, NYRA is interested in ascertaining the reasons for your decision not to submit a bid. If your company/firm is not responding to this bid, please indicate the reason(s) by checking any appropriate item(s) below and return this form, via email, to our Procurement Department to [HYPERLINK "mailto:BidSubmissions@nyrainc.com" \hBidSubmissions@nyrainc.com](mailto:BidSubmissions@nyrainc.com)

We are *not* responding to this "Request for Proposal" for the following reason(s):

\_\_\_\_\_ Our services and/or equipment do not meet specifications.

\_\_\_\_\_ Specifications not clearly understood or applicable (too vague, too rigid, etc.).

\_\_\_\_\_ The process for submitting a bid is too confusing/unclear and/or we were unable to obtain clarifications in time to submit the bid.

\_\_\_\_\_ Insufficient time allowed for preparation of bid.

\_\_\_\_\_ The bid was sent to the wrong branch/division/person. For future bids, the correct name and mailing address is:

\_\_\_\_\_ We are not able to hold pricing for the specified term.

\_\_\_\_\_ Other (Please give us a short explanation of why you did not bid if the reason was not covered above:



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**EXHIBIT C  
COST WORKSHEET  
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**Schedule B**

**FEE SCHEDULE / COST SHEET**

**RFP 2024-0032 Recruitment Services BAFO Annual Salary NYRA Direct Hire**

		FT Regular	PT Regular	FT Seasonal	PT Seasonal	FT Temporary	PT Temporary			% of Salary	% of Salary	% of Salary	% of Salary	% of Salary	% of Salary
	<b>EXEMPT ROLES</b>	% of Salary	% of Salary	% of Salary	% of Salary	% of Salary	% of Salary								
	1 Non-Exempt Senior							1	Non-Exempt Senior	10.0%	10.0%	10.5%	10.5%	11.0%	11.0%
1	EVP/SVP/VP	8.0%	8.5%	9.0%	9.0%	9.5%	9.5%	2	Non-Exempt Basic	10.0%	10.0%	10.5%	10.5%	11.0%	11.0%
2	General Managers	8.0%	8.5%	9.0%	9.0%	9.5%	9.5%	3	Non-Exempt Entry Level	10.0%	10.0%	10.5%	10.5%	11.0%	11.0%
3	Sr. Directors	8.0%	8.5%	9.0%	9.0%	9.5%	9.5%								
4	Director	8.0%	8.5%	9.0%	9.0%	9.5%	9.5%								
5	Sr. Manager/Subject Matter Expert	8.5%	9.0%	10.0%	10.0%	11.0%	11.0%								
6	Manager	8.5%	9.0%	10.0%	10.0%	11.0%	11.0%								
7	Mid-Level Professional	8.5%	9.0%	10.0%	10.0%	11.0%	11.0%								
8	Entry Professional	8.5%	9.0%	10.0%	10.0%	11.0%	11.0%								

**RFP 2024-0009 Recruitment Services Add Alt. Flat Rate (Hourly - NTE)**

		FT Regular	PT Regular	FT Seasonal	PT Seasonal	FT Temporary	PT Temporary
	<b>EXEMPT ROLES</b>	\$	\$	\$	\$	\$	\$
1	EVP/SVP/VP	\$275.00	\$275.00	\$288.75	\$303.19	\$318.35	\$334.26
2	General Managers	\$250.00	\$250.00	\$262.50	\$275.63	\$289.41	\$303.88
3	Sr. Directors	\$250.00	\$250.00	\$262.50	\$275.63	\$289.41	\$303.88
4	Director	\$200.00	\$200.00	\$210.00	\$220.50	\$231.53	\$243.10
5	Sr. Manager/Subject Matter Expert	\$175.00	\$175.00	\$183.75	\$192.94	\$202.58	\$212.71
6	Manager	\$150.00	\$150.00	\$157.50	\$165.38	\$173.64	\$182.33
7	Mid-Level Professional	\$125.00	\$125.00	\$131.25	\$137.81	\$144.70	\$151.94
8	Entry Professional	\$100.00	\$100.00	\$105.00	\$110.25	\$115.76	\$121.55
		\$	\$	\$	\$	\$	\$
	<b>NON-EXEMPT ROLES</b>						
9	Non-Exempt Senior	\$150.00	\$150.00	\$157.50	\$165.38	\$173.64	\$182.33
10	Non-Exempt Basic	\$125.00	\$125.00	\$131.25	\$137.81	\$144.70	\$151.94
11	Non-Exempt Entry Level	\$100.00	\$100.00	\$105.00	\$110.25	\$115.76	\$121.55

**RFP 2024-0009 Recruitment Services Add Alt. Flat Rate  
Flat Fixed Rate schedule (One time fee for a retained hiree)**

		FT Regular	PT Regular	FT Seasonal	PT Seasonal	FT Temporary	PT Temporary
	<b>EXEMPT ROLES</b>	\$	\$	\$	\$	\$	\$
1	EVP/SVP/VP	\$20,000.00	\$21,250.00	\$22,500.00	\$22,500.00	\$23,750.00	\$23,750.00
2	General Managers	\$14,000.00	\$14,875.00	\$15,750.00	\$15,750.00	\$16,625.00	\$16,625.00

3	Sr. Directors	\$18,000.00	\$19,125.00	\$20,250.00	\$20,250.00	\$21,375.00	\$21,375.00
4	Director	\$16,000.00	\$17,000.00	\$18,000.00	\$18,000.00	\$19,000.00	\$19,000.00
5	Sr. Manager/Subject Matter Expert	\$13,600.00	\$14,400.00	\$16,000.00	\$16,000.00	\$17,600.00	\$17,600.00
6	Manager	\$12,750.00	\$13,500.00	\$15,000.00	\$15,000.00	\$16,500.00	\$16,500.00
7	Mid-Level Professional	\$10,625.00	\$11,250.00	\$12,500.00	\$12,500.00	\$13,750.00	\$13,750.00
8	Entry Professional	\$6,800.00	\$7,200.00	\$8,000.00	\$8,000.00	\$8,800.00	\$8,800.00
		\$	\$	\$	\$	\$	\$
	<b>NON-EXEMPT ROLES</b>						
9	Non-Exempt Senior	\$10,000.00	\$10,000.00	\$10,500.00	\$10,500.00	\$11,000.00	\$11,000.00
10	Non-Exempt Basic	\$8,500.00	\$8,500.00	\$8,750.00	\$8,750.00	\$8,750.00	\$8,750.00
11	Non-Exempt Entry Level	\$5,000.00	\$5,500.00	\$5,500.00	\$5,500.00	\$6,000.00	\$6,000.00

FT Regular	Employee works 35 hours or more per week and works year-round
PT Regular	Employee works less than 35 hours per week and works year-round
FT Seasonal	Employee works 35 hours or more per week and works more than 6 months
PT Seasonal	Employee works fewer than 35 hours per week and works more than 6 months
FT Temporary	Employee works 35 hours or more per week and works 6 or fewer months
PT Temporary	Employee works fewer than 35 hours per week and works 6 or fewer months