

REQUEST FOR PROPOSALS

by
New York Corn & Soybean Growers Association, Inc.
from Qualified Consultants
for
the services outlined in the Consulting Agreement attached hereto as
EXHIBIT A

SUBMISSION DEADLINE: February 12, 2021 by 5:00pm EST

RFP CONTACT:

Colleen Klein, Executive Director, New York Corn & Soybean Growers Association
cklein@nycornsoy.com

A. OVERVIEW

The New York Corn & Soybean Growers Association (the “Association”) is a grass-roots membership organization representing corn and soybean producers’ interests that work to enhance public policy for corn and soybean growers in New York State and through its Policy Division engages in the sponsorship of research on corn production, utilization and marketing, and hosts educational programs on management, production, and marketing of corn. In addition, the Association is a Qualified State Soybean Board and through its Checkoff Division administers New York’s soybean checkoff pursuant to the Soybean Promotion, Research and Consumer Information Act, 7 USCA §§6301-6311 (1999) and the Soybean Promotion, Research, and Consumer Information Order 7 CFR Part 1220 (2000) and thereunder the Association:

1. Works to develop and expand markets for soybeans;
2. Educate and inform farmers, consumers, and other interested stakeholders about soybeans; and
3. Engages in sponsorship of research related to the production, utilization, and marketing of soybeans

The Association is seeking proposals for a Consultant to provide the services set forth in the Consulting Agreement attached as **EXHIBIT A**. In submitting a proposal to this RFP, Proposer acknowledges its acceptance of the terms and conditions set forth in **EXHIBIT A** and by submitting its proposal affirms its willingness to enter into and be bound by the said Consulting Agreement, if selected. In addition, by submitting a proposal, the Proposer acknowledges and confirms that its proposal is irrevocable and available for acceptance by the Association through and including March 31, 2021.

RFP Process Timeline:

RFP released for consulting firm review and response	on or about January 15, 2021
RFP submission deadline	<u>February 12, 2021</u>
Selection Process (potential interviews)	through February 27, 2021
Consultant selection	on or about March 1, 2021

B. PROPOSAL GUIDELINES

Proposal deadline: February 12, 2021, by 5:00pm EST

Submit proposals via email to: Colleen Klein at cklein@nycornsoy.com with the following subject line: **NYCSGA Legislative Affairs Proposal – *with the Firm’s Name***

Proposals are to be submitted as a Portable Document File (pdf) not to exceed 10 single-sided pages, with font no smaller than 10pt. If the file is too large for email, a link to the file should be provided. Late arrivals will not be accepted. Mail submissions will not be accepted. It is the responsibility of the Proposer to ensure that the response is received by the Association by the submission due date. A response may be excluded from further consideration if it is not received by the deadline, does not comply with the RFP requirements, or does not follow the specified format.

Proposals should include the following information:

- A thorough description of the approach to providing the services set out in **EXHIBIT A** and a proposed schedule and budget
- A summary of relevant qualifications, capacity and experience with examples of similar projects completed within the last 1-2 years (specific examples of working with other membership organizations to achieve the types of objectives set out in **EXHIBIT A** are highly encouraged.)
- A copy of the most current Statement of Registration and the most current bi-monthly report filed by Proposer with New York State
- A thorough work plan that includes milestone dates, with periodic written and oral reports to the Association’s Executive Director and its Board of Directors. The work plan should include proposed metrics to be used to measure performance relative to the deliverables
- A listing of the members of the team, each person’s role(s), and relevant experience
- A detailed budget including all projected expenses
- Three (3) client references that can attest to the experience, capacity, and capabilities of the Proposer in connection with similar work

C. QUALIFICATIONS

Proposer must demonstrate the capacity to successfully perform the services set out in **EXHIBIT A** in a timely and cost-effective manner. Experience with agricultural marketing non-profit organizations, particularly those that receive funds from sources including farmers' commodity checkoffs, the USDA Commodity Credit Corporation (CCC) and USDA Foreign Agricultural Service (FAS) and from members, is desired. Firms demonstrating capacity and experience with innovative approaches to performing the services requested by this RFP are desired.

The qualified candidate will possess the following:

- Understanding and ability to facilitate innovative approaches to delivering the services set out in **EXHIBIT A**.
- Strong communication skills with organization leadership personnel.
- The ability to foster a collaborative, engaging, and inclusive environment with stakeholders.
- Experience at creating an environment for cooperation with other agricultural organizations.
- Competency at gathering, analyzing, and synthesizing data to inform the Association's Executive Director and its Board of Directors.
- Knowledge of legal and ethical rules that apply to the work to be done under the Consulting Agreement.
- Knowledge of the applicable New York State registration and report filing requirements for lobbyists.
- Knowledge of the filing requirements of the New York State Joint Commission on Public Ethics.

D. QUESTIONS

Direct questions regarding this RFP to Colleen Klein at cklein@nycornsoy.com. All questions must be in writing and submitted electronically to the stated email address.

E. PROPOSAL SUBMISSION INSTRUCTIONS

Proposals must contain at a minimum the specific criteria listed below:

1. Email the proposal to cklein@cornsoy.com so that it is received by 5:00pm EST on February 12, 2021.

2. A description of Proposer's capabilities, resources, and experience. Emphasis should be placed on experience related to the services outlined in **EXHIBIT A**.
3. A thorough proposal outlining planned work to achieve the services outlined in **EXHIBIT A** and the proposed timeline to complete the work.
4. A resume for each of the Proposer's personnel who will be assigned to work directly on providing the services outlined in **EXHIBIT A**.
5. Provide a minimum of three (3) references (including name, contact information, including telephone number and email address) for other similar clients.
6. Detailed Budget:
 - a All proposals for services must provide a breakout of how the fee was derived including but not limited to a breakdown of the hourly rate(s) and the amount of effort anticipated to perform the work outlined in **EXHIBIT A**.
7. Proposals should be no longer than **10 pages** (8 ½" x 11").
8. Proposals must be irrevocable and available for acceptance through and including March 31, 2021.

F. NOTES TO PROPOSERS

- Proposals will be duplicated and distributed for internal review only. Every effort will be made to maintain confidentiality of all information presented. The appropriate representatives from the Association's staff and legal counsel will review proposals.
- **The Association shall retain all proposals submitted. Proposals will not be returned. Submission of a proposal indicates acceptance by the Proposer of the conditions contained in this RFP and further indicates the Proposer's representation that its Proposal was prepared and submitted independently and without collusion with any other Proposer or potential Proposer.**
- Confidentiality - Without the Association's prior written consent, Proposers and their officers, employees, agents, representatives, affiliates, and subcontractors shall not disclose to any third party any documents, materials or information that the Proposers learn from or are provided in relation to this RFP that have not been made public by the Association.
- During the evaluation process, the Association, in its sole discretion, reserves the right to request additional information or clarifications from Proposers, or to allow corrections of errors and omissions in its sole discretion.
- The Association reserves the right to reject any proposal that is not in compliance with the requirements of this RFP. It also reserves the right to waive proposal defects or deficiencies, to request additional information, and/or to negotiate with a proposer regarding its proposal.

- Each Proposer understands and agrees that if successful it will be retained as an independent contractor under applicable federal and state law and that fees to be paid under an Agreement with the Association are in lieu of any and all other benefits or obligations, including, but not limited to, withholding taxes, FICA, Medicare, Social Security, or any other federal or state withholding taxes from payments by Proposer (as an Independent Contractor under an Agreement) to its employees or personnel or payments made by the Association to it under an Agreement
- Each Proposer understands and agrees that it will be solely responsible for unemployment compensation payments on behalf of its employees and personnel and that as an Independent Contractor it shall not be entitled to unemployment compensation in connection with services performed under an Agreement
- Each Proposer understands and agrees that it will be responsible for providing all workers' compensation insurance on behalf of its employees. If Proposer (as an Independent Contractor) hires employees to perform any work under an Agreement, it agrees to obtain workers' compensation coverage to the extent required by law. Upon request by the Association, it shall provide certificates of insurance evidencing such coverage at any time during the term of the Agreement
- Each Proposer understands and agrees that any income taxes, value added taxes or any other form of direct or indirect taxes on compensation paid under an Agreement shall be paid by it as an Independent Contractor and not by the Association.
- Non-Competition. Contractor shall not act as a lobbyist, agent, or representative for any product or service directly competitive with U.S. corn, corn products, soybeans, or soybean products for the length of the contract.
- The Association and Proposer agree to comply with all applicable law, regulations, and USDA Guidelines, including the provisions of applicable Equal Employment Opportunity law and regulations (EEO). The Association complies with EEO with respect to all employees and applicants for employment without regard to race, color, religion, gender, sexual orientation, gender identity or expression, national origin, age, disability, genetic information, marital status, amnesty, or status as a covered veteran in accordance with applicable federal, state and local laws.

G. SUPPLEMENTAL INFORMATION AND BACKGROUND

BUILDING A PREFERENCE FOR U.S. SOY

USB's Long Range Strategic Plan can be found here:

<http://unitedsoybean.org/aboutusb/strategic-planning/>

The Association's website:

<https://nycornsoy.org/>

EXHIBIT A

CONSULTING AGREEMENT

This **AGREEMENT** entered into as of this _____ day of March, 2021 (“Effective Date”) by and between the New York Corn & Soybean Growers Association, Inc., with a mailing address of PO Box 133, Silver Springs, New York 14550 (“Association”) and [Consultant], with a mailing address of _____ (“Consultant”). Association and Consultant may be known individually herein as “Party” and collectively herein as the “Parties”.

WHEREAS, Association is a grass-roots membership organization representing corn and soybean producers’ interests that works to enhance public policy for corn and soybean growers in New York State and through its Policy Division engages in the sponsorship of research on corn production, utilization and marketing, and hosts educational programs on management, production, and marketing of corn; and

WHEREAS, Association is a Qualified State Soybean Board and through its Checkoff Division administers New York’s soybean checkoff pursuant to the Soybean Promotion, Research and Consumer Information Act, 7 USCA §§6301-6311 (1999) and the Soybean Promotion, Research, and Consumer Information Order 7 CFR Part 1220 (2000); and

WHEREAS, the Association is composed of a Policy Division and a Checkoff Division and the Association is required by law to operate the Divisions independently of each other, including maintaining separate financial records; and

WHEREAS, Consultant possesses detailed knowledge and expertise in the areas related to Association’s goals and objectives and the services to be provided under this Agreement; and

WHEREAS, Consultant is established in the business of providing the services set forth herein; and

WHEREAS, Association desires to engage Consultant, and Consultant is willing, has sufficient capacity, and is qualified to perform in accordance with the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing mutual promises, covenants, and agreements set forth herein, the Parties agree as follows:

- 1. Consulting Services.** Consultant shall provide the Association with the following services (“Services”). All Services shall be performed by Consultant in a prompt, thorough, and professional manner:
 - A. Public policy monitoring, advice and guidance, and related services as requested by the Association including the preparation of drafts of written communication on behalf of the Policy Division of the Association promoting the interests of the Association. All lobby activities and scheduling will be

determined by consulting with the Association's Executive Director. Consultant acknowledges that no public policy advice or lobbying services shall be engaged in on behalf of the Checkoff Division because such activities are expressly prohibited by law.

- B. Coordination with other agriculture organizations to promote the policies of the Association.
 - C. Assistance with NYS Joint Commission on Public Ethics filings and compliance.
 - D. With the prior written approval of the Association's Executive Director, proactive monitoring of policy and other pertinent issues related to corn and soybeans, corn research, and corn educational opportunities by attending state and national meetings and other educational opportunities sufficient to gain insight necessary to educate and inform the Association's Board of Directors and soybean and corn growers in New York State.
 - E. With the prior written approval of the Association's Executive Director, proactive monitoring of research, educational, and other non-policy pertinent issues related to soybeans by attending state and national meetings and other educational opportunities to gain insight to further educate and inform the Association's Board of Directors and soybean growers in New York State on behalf of the Soybean Checkoff.
 - F. Provide both written and verbal updates to the Association and its Board of Directors on a regular basis and/or as requested, and provide written workplans and progress reports to the Association's Executive Director at least monthly, attend meetings when requested and maintain ongoing communication with the Association's Executive Director.
 - G. Other related services as requested by the Association's Executive Director to fulfill the obligations of this Agreement.
- 2. Maintenance of Records/Audit Provisions.** Consultant shall keep and maintain accurate records, books, documents and papers, including electronically stored records, if applicable (collectively, "Records"), involving transactions related to this Agreement and retain such Records for at least seven (7) years beyond the last fiscal year to which they apply. The Association, the Secretary of the U.S. Department of Agriculture ("USDA"), the United Soybean Board ("USB"), or their duly authorized representatives may inspect, copy and audit Records during regular business hours upon reasonable notice to Consultant. If prior to the end of the 7-year period any audit, investigation, litigation or other action is commenced for which the Records might reasonably be required, Consultant shall keep the Records until all issues arising out of the audit, investigation, litigation or other action are resolved to the satisfaction of the Association.

3. Ownership, Releases, and Consents.

- A. The Association shall own all title, rights and interest in and to any trademarks, patents, goods, processes, materials, inventions, discoveries or information, and all associated intellectual property rights, developed as a result of this Agreement ("New Materials"). Consultant shall maintain all records necessary to establish the Association's proprietary rights in New Materials. Consultant shall promptly disclose to the Association any New Materials.
 - B. Each Party shall retain all title, rights and interest in and to preexisting trademarks, patents, goods, processes, materials or information and associated intellectual property rights ("Proprietary Materials") that it owns and that are incorporated into New Materials. Each Party agrees not to challenge the other Party's ownership or control of any Proprietary Materials.
 - C. Consultant hereby grants to the Association a perpetual, irrevocable, worldwide, non-exclusive, royalty-free license to use any of Consultant's Proprietary Materials in connection with the Services provided under this Agreement. Consultant hereby grants the Association a perpetual, irrevocable, worldwide, non-exclusive, royalty-free license to use any Proprietary Materials incorporated into New Materials.
 - D. Consultant shall not disclose any New Materials except as permitted by this Agreement or as directed in writing by the Association. Consultant shall submit New Materials to the Association no less than thirty (30) days prior to any proposed disclosure permitted by this Agreement.
 - E. Consultant shall secure for the Association all rights in any third party's Proprietary Materials, including, without limitation, all necessary consents and releases for artwork, photography, footage, talent, trademarks, names, slogans, materials or information used by Consultant or incorporated into New Materials in accordance with this Agreement. The Association shall secure the rights to any third party's Proprietary Materials included in any materials or information that the Association furnishes to Consultant under this Agreement. Consultant shall make reasonable inquiries, including, without limitation, conducting trademark searches, prior to using any Proprietary Materials that the Association does not provide.
- 4. Insurance.** Consultant shall carry and maintain at his own expense at all times during the term of this Agreement commercial general liability insurance covering Consultant with a minimum liability of not less than One Million Dollars (\$1,000,000) each occurrence for bodily injury and property damage and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property

damage. Consultant shall also maintain automobile insurance with minimum liability limits of Five Hundred Thousand Dollars (\$500,000). Upon execution of this Agreement, Consultant shall provide the Association with certificates of insurance. Should any insurance policy be terminated or reduced below the limits set forth herein, Consultant shall notify the Association in writing thirty (30) days prior to the termination or reduction, and the Association may, in its sole discretion, immediately terminate this Agreement. All liability insurance policies shall name Association as an Additional Insured on a Primary and Non-contributory basis

- 5. Independent Discretion.** It is specifically agreed that Consultant shall be responsible for exercising independent discretion and judgment to achieve the objectives and results specified above, and no officer, agent or employee of Association shall have the authority to direct Consultant as to the manner or means employed to achieve such objectives and/or results.
- 6. Payment to Consultant.** As full and complete compensation for Services performed in accordance with this Agreement, Consultant shall be paid as set forth in a TBD **Appendix A** to this Agreement *[TBD but must include the submission of monthly workplans, coordination of effort with the Association's Executive Director, and pre-authorization of maximum monthly cost.]*
- 7. Term and Termination.** The term of this Agreement shall commence on the Effective Date and shall continue to and including December 31, 2021. This Agreement may be renewed by mutual consent in writing of the Parties. Either Party may terminate this Agreement without cause by providing thirty (30) days prior written notice to the other. In the event of termination, the Consultant shall be entitled to payment for work and services properly performed up to the termination date. This Agreement may be terminated immediately in the sole discretion of the Association upon the occurrence of any one of the events set forth below, and in such event, the Consultant shall be entitled to payment for work and services properly performed up to the termination date:

 - A. Consultant engages in fraud, dishonesty, misrepresentation, misappropriation of funds, embezzlement, or other misconduct, including failure to comply with the applicable registration and filing requirements for a lobbyist in New York State; or
 - B. Consultant fails or refuses to faithfully or diligently perform any of the services set forth in this Agreement or violates the provisions of same; or
 - C. Consultant's death; or
 - D. The inability of Consultant to perform hereunder for any reason which persists for a period of at least thirty (30) days.

- 8. Independent Businesses.** Each of the Parties is an independent business or entity offering services different in nature and scope from the other. As such, neither shall be considered to be an agent, distributor or representative of the other. Neither Party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other. As an independent business enterprise, Consultant shall have the sole right and obligation, exercising its/his/her own independent discretion and judgment, to supervise, manage, direct, procure, perform or cause to be performed all Services to be provided under this Agreement. No officer, agent or employee of the Association shall have the authority to direct Consultant as to the manner or means employed to perform the Services, including, by way of example, prescribing hours of work, when to take breaks, or other details of performance. This Agreement does not create an employer/employee relationship for any purpose. Accordingly, the Consultant shall be responsible for payment of all taxes including Federal, State and local taxes arising out of the Consultant's Services, including by way of illustration but not limitation, Federal and State income tax and any other taxes or business license fee as required. Consultant, at its own expense, shall supply its/his/her own computer, cell phone, and any other equipment and supplies necessary for the performance of the Services.
- 9. Non-Exclusive Agreement.** It is understood and agreed that this is a non-exclusive Agreement and that during the term of this Agreement either Consultant or Association may enter into other agreements for similar services with other parties, except during the term of this Agreement, Consultant shall not act as a lobbyist, agent, or representative for any product or service directly competitive with U.S. corn, corn products, soybeans, or soybean products.
- 10. Nondisclosure.** Contemporaneous to the execution of this Agreement, Consultant shall execute the Nondisclosure Agreement related to the Services and attached hereto as **Appendix B**.
- 11. Notice.** All notices, requests, demands, and other communications hereunder shall be made in writing and sent by overnight mail to the address set forth above, unless another address shall be furnished to the other party in writing. Notice shall be deemed provided one day after overnight mailing.
- 12. Compliance with Laws.** Consultant shall comply with all applicable Federal, State and local laws, rules, regulations, and ordinances, including but not limited to applicable lobbying registration and filing requirements.
- 13. Indemnification.** Consultant agrees to indemnify, save harmless and defend Association, its successors, directors, officers, employees, affiliates, agents, and members from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto, (including costs of defense, settlement and reasonable attorneys' fees), which it may hereafter incur, become responsible for or pay as a result of death or bodily injuries to any person, destruction or damage to any property, or any violation of governmental laws, regulations or orders, to the

extent caused by (i) Consultant's breach of any term or provision of this Agreement; or (ii) any negligent act or omission or willful misconduct of Consultant.

14. Governing Law. This Agreement shall be governed according to the Laws of the State of New York without regard for principles of conflict of law.

15. Representations and Warranties of Consultant. Consultant acknowledges, represents, and warrants the following:

- A. Consultant represents and warrants that no funds advanced or paid by the Association on behalf of the Checkoff Division to the Consultant shall be used in any manner for the purposes of influencing governmental policy or action. In the event Consultant breaches this representation and warranty, the Association may immediately terminate this Agreement, report the Consultant's breach as the Association deems appropriate or as required by law, and pursue all available legal and equitable remedies against the Consultant.
- B. Consultant understands and acknowledges that the Association consists of two separate divisions: the Policy Division and the Checkoff Division and further understands and acknowledges that all financial affairs of the Policy Division and the Checkoff Division must be accounted for separately, including but not limited to, the time and efforts spent by the Consultant on matters related to each division. Therefore, Consultant is required to keep and submit a log of its/his/her time in fifteen-minute intervals so that the Association's Executive Director can allocate such time to the appropriate division.
- C. Consultant understands and acknowledges that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 {voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S.

Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410; (2) fax: (202) 690-7442; or (3) [email:program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.

- D. Consultant agrees that during its performance under this Agreement it will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age, disability, political beliefs, sexual orientation, marital or family status, parental status or protected genetic information. Consultant further agrees that it will fully comply with any and all applicable Federal, State and local equal employment opportunity statutes, ordinances and regulations, including, without limitation, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, and the Equal Pay Act of 1963. Nothing in this section shall require Consultant to comply with or become liable under any law, ordinance, regulation, or rule that does not otherwise apply to Consultant.
- 16. Assignment.** Neither Party may assign or transfer its rights under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Any assignment without prior written consent shall be void.
- 17. Nonwaiver.** Any delay or forbearance by either Party in enforcing any of its rights hereunder shall not be deemed to constitute a waiver thereof, nor shall either Party be thereby estopped from enforcing any or all of its rights thereafter.
- 18. Recitals.** The statements set forth above in the “Whereas” clauses are affirmed as true and correct and are made part of this Agreement as though more fully set forth herein.
- 19. Construction.** This Agreement shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the Party drafting this Agreement in construing or interpreting the provisions.
- 20. Severability.** Should any part of this Agreement for any reason be declared by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall continue in full force and effect as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may for any reason be hereafter declared invalid.
- 21. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall comprise one and the same Agreement.

22. Complete Agreement. This Agreement constitutes the entire understanding between the Parties and shall supersede any other agreements, oral or written. This Agreement shall not be modified unless in writing and signed by the Parties.

IN WITNESS WHEREOF, intending to be bound as of the Effective Date, the Parties have caused this Agreement to be executed by authorized representatives as set forth below.

New York Corn & Soybean Growers Association, Inc.

By: _____
Its: _____ Date _____

[*Consultant*]

By: _____
Its: _____ Date _____

APPENDIX B

NON-DISCLOSURE AGREEMENT

This **AGREEMENT** entered into as of this _____ day of March, 2021 (“Effective Date”) by and between the New York Corn & Soybean Growers Association, Inc., with a mailing address of PO Box 133, Silver Springs, New York 14550 (“Association”) and [Consultant], with a mailing address of _____ (“Consultant”). Association and Consultant may be known individually herein as “Party” and collectively herein as the “Parties”.

WHEREAS, the Association seeks to engage or has engaged the services of Consultant; and

WHEREAS, Consultant acknowledges and agrees that, in the course of providing services, he/she will become privy to Confidential, Proprietary or other Unique Business Information (“Confidential Information”) of Association and that he/she may be able to use such knowledge in a manner detrimental to Association; and

WHEREAS, Consultant acknowledges Association’s legitimate business interest in placing restrictions on Consultant’s use of Association’s Confidential Information as well as requiring that Consultant take all reasonable and prudent steps to prevent the disclosure of same; and

NOW, THEREFORE, for and in consideration of the foregoing mutual promises, covenants, and agreements set forth herein, the Parties agree as follows:

1. Confidential Information. Consultant covenants and agrees that during the term of the Consulting Agreement between Consultant and Association (to which this Agreement is attached as APPENDIX B) and at all times following the expiration or cancelation of the said Agreement, not to disclose to any person, firm, or other entity, any proprietary information or other confidential information relating to the Association acquired by Consultant in connection with the performance of Services under the Consulting Agreement.

A. Upon the Association's request, Consultant shall promptly return all documentation, promotional materials, display materials, and records of any nature and kind that Consultant has in its/his/her possession or under Consultant’s control concerning the Association, including but not limited to all materials that relate to the Association and its members which came into the Consultant’s possession during Contractor's relationship with the Association.

B. Contractor acknowledges that any remedy at law for any breach of any of the covenants contained in Paragraph 1 may be inadequate. Accordingly, the Association shall be entitled (without the necessity of showing any actual damage or posting a bond or furnishing other security) to specific performance or any other mode of injunctive and/or other equitable relief to

enforce its rights under Paragraph 1 or any other relief a court of competent jurisdiction might award, such rights to be cumulative with and not exclusive of any other remedy.

- C. Confidential, Proprietary or other Unique Business Information shall include but may not be limited to: (i) information or material proprietary to Association, whether written or oral, tangible or intangible, relating, but not limited to, Association's business, services, or prospective services; business methodologies and structures, (ii) information which relates to the business or affairs of Association, its members or suppliers and is confidential or proprietary to, about or created by Association, its members or suppliers; (iii) information designated by Association as Confidential or Proprietary; and (iv) Trade Secrets as defined by Federal and State law (collectively "Confidential Information"). The Parties further agree that any information shared concerning any contemplated business matters, transactions, or relationships, shall be deemed confidential.

2. Protection of Confidential Information. Consultant shall hold the Confidential Information in the strictest of confidences.

- A. **Nondisclosure.** Consultant agrees that it shall not reproduce, disclose, sell, assign, transfer, license, lease, use or convey in any manner, in whole or in part, such Confidential Information for any purpose other than that for which it was disclosed and shall not use such Confidential Information for its own benefit or the benefit of another without the prior written consent of Association. Consultant shall take all steps necessary to protect the Confidential Information from disclosure.
- B. **No Copying/Modifying.** Consultant will not copy or modify any Confidential Information without the express authorization of Association.
- C. **No Reverse Engineering.** In the event the Confidential Information is in the form of computer software code, the Consultant further agrees not to reverse engineer, disassemble or decompile the Confidential Information.
- D. **Unauthorized Use.** Consultant shall promptly advise Association if Consultant becomes aware of any possible unauthorized use or disclosure of Confidential Information.

3. Exceptions to Confidential Information. The following information shall not constitute Confidential Information and shall not be subject to the obligations/benefits regarding Confidential Information as set forth in this Agreement:

- A. information that is in the public domain at the time it is disclosed to Consultant or after such disclosure becomes part of the public domain by

publication or otherwise without violation of this Agreement by the Consultant;

- B. information that is known to the Consultant at the time of disclosure, or thereafter becomes known, provided such knowledge was or is derived from a source other than Association and was obtained without a breach of any obligation of confidentiality;
- C. information which the Consultant can show was independently developed by Consultant without use or reference to Confidential Information of Association;
- D. information approved for disclosure by the prior written approval of Association; or
- E. information disclosed in compliance with a valid judicial or governmental order, provided Consultant shall provide Association reasonable notice prior to such disclosure and shall comply with any applicable protective order.

4. Use of Confidential Information. Consultant shall only use the Confidential Information in the performance of its services to Association and not for its own use or the use of others. Consultant further agrees that it will not use the Confidential Information for any purpose that might be directly or indirectly detrimental to Association.

5. Return of Confidential Information. Unless otherwise agreed in writing by the Parties, at the conclusion of Consultant's services to Association, or upon demand of Association, whichever occurs first, all copies, in whole or in part, of Association's Confidential Information in the possession of Consultant shall be returned or destroyed as directed by Association. Consultant shall notify Association in writing when such return or destruction has been accomplished.

6. Injunctive Relief. Consultant acknowledges that a violation of this Agreement would cause irreparable harm to Association for which monetary damages may be difficult to ascertain or an inadequate remedy. Consultant therefore agrees that Association shall have the right, in addition to other rights and remedies, to seek injunctive relief for any violation of this Agreement.

7. Term. Consultant's obligations under this Agreement shall survive the termination of the Consulting Agreement between the Parties.

8. Independent Relationship. It is expressly intended by the Parties, and Consultant specifically warrants, represents, and agrees, that Consultant and Association are independent entities and the Consulting Agreement under which Consultant is to provide services to Association does not create an employer/employee relationship for any purpose.

9. Covenants. The Parties agree that the covenants, agreements, and restrictions contained herein are necessary to protect the business goodwill, business interests and proprietary rights of Association and that Consultant has had an opportunity to independently review and have legal counsel consider prior to execution.

10. Waiver. Any failure by Association to enforce Consultant's strict compliance with any provision of this Agreement will not constitute a waiver of Association's right to subsequently enforce such provision or any other provision of this Agreement.

11. Severability. If any provision of this Agreement should be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof and this Agreement shall be construed and enforced in all respects as if such invalid provisions were omitted. Without limiting the generality of the foregoing, if the covenant or covenants of any paragraph of this Agreement shall be deemed by a court of competent jurisdiction to create a restriction which is unreasonable as to duration, geographic area, or otherwise as to scope, the Parties agree to petition the court to enforce the provisions of said paragraph as to a reasonable duration, geographic area, and/or scope.

12. Entire Agreement and Governing Law. This Agreement constitutes the entire agreement with respect to the Non-Disclosure obligations set forth herein and supersedes all prior or contemporaneous oral or written agreements concerning same. This Agreement may not be modified or amended except by the written agreement signed by authorized representatives of both Parties. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard for conflict of law principles.

IN WITNESS WHEREOF, intending to be bound as of the Effective Date, the Parties have caused this Agreement to be executed by authorized representatives as set forth below.

New York Corn & Soybean Growers Association, Inc.

By: _____ Date _____
Its: _____

[Consultant]

By: _____ Date _____
Its: _____