

NEVADA COMMISSION ON ECONOMIC DEVELOPMENT

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BRIAN K. KROLICKI  
Lt. Governor and Chair

MICHAEL E. SKAGGS  
Executive Director

**ANNOUNCEMENT NO. GBD 11-01**

**RELEASE DATE: AUGUST 2, 2010**

**RESPONSES DUE: OCTOBER 4, 2010, 2:00 P.M.**

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**INTERNATIONAL REPRESENTATIVE—CHINA, BEIJING**

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The Nevada Commission on Economic Development (Commission), Office of Global Business Development (hereafter called the Department) is **IMMEDIATELY** seeking a professional services contractor (International Representative, hereafter called the Rep) to provide export promotion and attraction of inbound investment services to Nevada companies and the Commission for the purpose of expanding exports of Nevada products and services to and expanding foreign direct investment from **China-Beijing (including the areas and Provinces of: Hebei (including Beijing and Tianjin), Shandong, Jilin, Shanxi, Heilongjiang, Shaanxi, Ningxia, Nei Mongol, Gansu, Liaoning, Qinghai, Henan, Xinjiang, Tibet (Xizang))**. The emphasis of the resultant Agreement will be on export promotion assistance to Nevada companies exporting to China, Beijing. There may be additional Nevada state or local agencies that will also support this effort.

All firms submitting proposals in response to ANNOUNCEMENT are referred to as “Rep” in this document; after negotiations, the awarded Rep will be designated as “International Representative.”

The Department, under the policy guidance of the Commission, currently operates foreign offices (by representatives) in the People’s Republic of China, Europe (Italy and Germany), and Brazil. These offices provide an array of services designed to assist Nevada companies that enter or expand existing exports to the markets, and serve as an information source for solving trade issues related to the export of products and services. These offices also work to recruit inbound investment to Nevada. Proposals are sought from qualified Reps to provide these services in China, Beijing.

As a result of this ANNOUNCEMENT process, the Commission anticipates entering into the Agreement with the selected Rep providing for services beginning in November 2010 and running for one year. The Agreement is automatically renewed for successive one-year terms unless cancelled by either party with a 30-day notice. Reps are asked to submit proposals describing the extent of China, Beijing trade promotion and inbound investment recruitment services they are willing to provide during the term of the Agreement. The Department seeks expanded export sales in China, Beijing by Nevada companies assisted by the Rep and increased inbound investments in Nevada by companies in China, Beijing.

The first major focus of the resultant Agreement is in promoting Nevada industries; offering in-country business assistance to the Department’s clients; conducting agent/distributor searches, and product market viability studies in China, Beijing. In addition to these activities, the successful Rep will also assist with trade related issues relating to product market barriers; keep the Commission and companies up to date on marketing changes and opportunities; and advise companies on regulations, licensing,

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labeling and other requirements related to exporting products in China, Beijing

The second major focus of the resultant Agreement is promoting Nevada as a place for foreign investment; offering in-country assistance to the Department and its economic development partners in Nevada to recruit companies to directly invest in Nevada. Special emphasis in this effort will be given to companies in the clean technology/renewable energy industries and associated supply chains.

The Department operates its International Representative programs on the basis of very high quality services. Its foreign Reps are expected to take the necessary time with each Nevada company to ensure that the opportunity for exporting is created or that each company meets its objective. Its foreign Reps are expected to demonstrate a similar high quality in the assistance to companies considering investing in Nevada.

## 1.2 DESCRIPTION OF NEEDED SERVICES

The following provides a summary of the services sought:

1) Rep's two primary areas of the Agreement work are:

**A.) Assisting Nevada companies**, especially in key industries, to locate suitable opportunities to facilitate export sales. This category requires Rep's proactive networking effort with businesses, industry associations, and government agencies in China, Beijing upon selected Nevada industry focuses.

1. **In-country business assistance** may include business meeting set-ups, interpreter and lodging arrangements, and China, Beijing general economic and business practice briefing assistance upon the client's request.
2. **Agent/distributor searches** involve finding and pre-qualifying potential and interested agents and distributors who would normally buy from Nevada manufacturers and resell to customers in China, Beijing. Where necessary, this work will include setting up appointments for Nevada companies with qualified and interested distributors and agents in China, Beijing.
3. **Product market viability studies** involve researching the market to determine whether the product can be sold in the market, at which price level, to which customer groups, and etc. This also includes evaluation of existing suppliers/manufacturers, determining the extent of competition, price points, potential sales volumes and market barriers.

**B.) Recruitment of foreign direct investment** in Nevada. Rep should be focused on companies in the clean technology/renewable energy industries and associated supply chains as well as the mining sector, commercial infrastructure projects and general manufacturing.

1. This work will include assisting the Department and its partners to refine the China, Beijing foreign direct investment strategy;
2. Rep will assist the Department with a variety of trade promotion activities in China, Beijing which may include in-coming purchasing missions and outgoing trade missions and trade shows;
3. Rep will assist Nevada businesses to resolve general trade issues in China, Beijing, which may include ongoing advice on market change, regulations, licensing, labeling, and other requirements related to exporting products to China, Beijing;
4. Rep will act as primary point of contact for all matters related to the activities concerning trade relations between the State of Nevada and China, Beijing on behalf of the Department in China, Beijing;
5. Rep will provide on-going communication with the Department Director, Global Business Development and Diplomatic Liaison and Chief of Protocol via e-mail and telephone;
6. Rep will provide monthly, quarterly, annual, and end of Agreement reports to the Department summarizing Nevada related Export Promotion and Inbound Investment Attraction activities which should include a brief market summary, list of companies worked for, trade issues and other matters. Performance reports on export sales by companies assisted and inbound investment recruitment of targeted companies should be provided on the same schedule as part of or separate from the regular reports;
7. This is a non-exclusive Agreement. The Rep may have other clients in addition to the Department upon written approval by the Commission.

### 1.2.1 COMPENSATION

This position is not compensated by the State of Nevada. The representative is a “voluntary” representative and as such would be compensated by the fees that they can charge Nevada companies, or clients in the countries where they represent Nevada, for the services that they provide as described in Section 1.2. There is no limit on the amount of compensation that the Rep can receive and the Rep is free to negotiate their fee structure with the client companies.

### **1.3 PROPOSAL INFORMATION REQUIRED**

Rep’s written response must include information on **each** of the following categories:

#### **Rep’s Qualifications:**

1. Proven ability in promoting U.S. industries and/or marketing a U.S. company’s products in the China, Beijing market. Demonstrated success with specific examples;
2. Experience in assisting U.S. federal, state, or local government agencies or U.S. companies conducting export promotion or inbound investment attraction activities in China, Beijing. Preference will be given to Reps that have representation experience with U.S. federal, state, or local government agencies or authorities;
3. Knowledge and experience in conducting market research relevant to exporting to China, Beijing and attracting foreign direct investment from companies in China, Beijing;
4. Knowledge and experience in the area of export sales promotion, including trade mission organization and trade show participation in China, Beijing;
5. Knowledge of key companies, trade associations, chambers of commerce, government agencies, and other groups relevant to conducting business in China, Beijing;
6. Experience with U.S. and China, Beijing business practices and country customs;
7. Knowledge of and experience with China, Beijing’s trade policies and regulations;
8. Knowledge of one or more of the following industries which will be key for Nevada: clean technology/renewable energy, mining, advanced manufacturing, and commercial infrastructure development;
9. Knowledge of site selection process for attracting inbound investment;
10. Professional skills, experience, characteristics, or approaches to export promotion and/or inbound investment attraction (not described above) that make Rep exceptional and well qualified; and,
11. Proficiency in English and local languages/dialects as necessary.
12. The Rep must have an office based in China. Special consideration will be given to those reps that have multiple offices in China, Beijing and/or Nevada.

#### **In addition, please attach the following to the Proposal:**

1. Three professional references including description of the nature of the relationship with the reference, examples of work done for client, and client’s complete contact information (names/titles/address/telephone/fax/website/e-mail addresses);
2. Resumes (1-2 pages) for each of the primary individuals expected to provide services under the Agreement;
3. Rep’s organizational chart if Rep will use multiple staff;
4. Statement of Rep’s legal status in Country of primary residence, including company registration, legal working status of key personnel, and financial status;
5. Financial statement regarding the financial stability of the Rep and status of legal actions, if any, pending against the Rep.

#### **Rep’s Project Approach**

1. Description of the proposed methodology for promoting Nevada industries and marketing Nevada companies’ products in the China, Beijing market;
2. Description of the proposed methodology for conducting agent/distributor searches in China, Beijing for Nevada companies;
3. Description of the methodology for conducting product market research reports in China, Beijing for Nevada companies;
4. Description of the methodology for recruiting foreign direct investment in Nevada by companies from China, Beijing;

5. Proposed office coverage for China, Beijing. (Reps may have multiple offices throughout China, Beijing, a network of affiliated companies in China, a plan to cover Beijing from one office with travel, or through a combination of these or other options be able to cover China, Beijing.)
6. Provide a description of three recent searches completed for any of the services listed in this section, including client name, time taken to complete, and outcome of the search;
7. Proposed report format preferred for regular reports and methodology for performance reporting on export sales by companies assisted and inbound investment recruitment, including suggested future actions. **Attach sample report;** and,
8. Proposed schedule with Agreement milestones, report completion, travel within China, Beijing and to Nevada. Travel expenses within China, Beijing are the responsibility of the Rep. Upon Agreement award, the Rep will be expected to make a one-week orientation visit to Nevada within a month of the date the Agreement is signed at Rep's expense.

**Mandatory Rep Requirements:**

1. Rep must have an existing office in China as a primary business location. The office(s) should be equipped with the necessary communications equipment (phone, fax) as well as copy machines, computers, and other support equipment. The Rep must have the ability to communicate via e-mail and phone and to send and receive attachments with large amounts of data.
2. Rep's principal and key staff member(s) must either not need a U.S. non-immigrant visa to visit the U.S. or have the ability to obtain a U.S. non-immigrant visa for traveling to the U.S. as needed;
3. Rep's principal and key staff member(s) must be fully bilingual with the ability to read, write and compose business correspondence in English and languages appropriate to the clients with which they interact;
4. Rep's principal and key staff member(s) must be familiar with U.S. and China, Beijing business practices and culture; and,
5. Rep must have an established business in consulting, marketing, sales, distribution or other areas that provide services to international companies.

**Oral Presentation**

Top scoring Reps based on an evaluation of the written proposal may be required to participate in interviews to support and clarify their proposals, if requested by the Department. The Department will make every reasonable attempt to schedule each presentation at a time and location that is agreeable to the Rep. Failure of a Rep to interview on the date scheduled may result in rejection of the Rep's proposal.

**1.4 QUESTIONS AND CLARIFICATIONS**

**1.4.1 REP QUESTIONS**

All inquiries regarding this ANNOUNCEMENT, whether relating to process administration, deadline or award, or to the content or technical aspects of the ANNOUNCEMENT, must be submitted in writing to the Specialist identified in Section 1.6.1. (mail, fax or e-mail is acceptable). **All questions must be received not later than 72 hours prior to proposal deadline.**

Substantive questions and answers and when appropriate, revisions, modifications, or clarifications of the ANNOUNCEMENT or terms and conditions of the Agreement, will be issued as official addenda to this ANNOUNCEMENT (refer to section 1.4.3.). Changes or modifications to this ANNOUNCEMENT shall be binding on Commission only if in the form of written addenda issued by the Commission.

**1.4.2 COMMISSION**

**QUESTIONS**

The Commission may request additional clarification from Reps for any portion of their proposals. If a proposal is unclear, the Rep may be asked to provide clarification. No new information or documentation may be submitted, however, and clarifications may not be used to rehabilitate a nonresponsive proposal. Reps shall remain available during the evaluation period to respond to requests for additional clarification. Reps shall submit written signed clarification within 48 hours following receipt of a request for clarification. Failure to provide clarification may result in a lower score

### 1.4.3 ADDENDA

The Commission shall issue addenda by email to all firms solicited by the Commission.

## 1.5 PROPOSAL SUBMISSION REQUIREMENTS

### 1.5.1 TERMS AND CONDITIONS

A copy of the Commission's Standard Agreement is attached as Attachment B to this ANNOUNCEMENT. Commission reserves the right to negotiate specific Agreement terms with any selected Rep.

### 1.6 DUE DATE AND TIME

**Proposals must be received by October 4, 2010, on or before 2:00 pm, Pacific Time to be included in this solicitation.** The Commission relies on the State of Nevada email system clock to determine the correct time and is not responsible for any delays or difficulties experienced in the transmission of any proposal. **Please do not wait until the last minute to e-mail your proposal.**

#### 1.6.1 PROPOSALS WILL BE RECEIVED ONLY AT THE FOLLOWING ADDRESS:

Kimberly Elliott  
Global Business Development and Diplomatic Liaison  
Nevada Commission on Economic Development  
808 West Nye Lane  
Carson City, NV 89703 USA  
e-mail: [kelliott@DiversifyNevada.com](mailto:kelliott@DiversifyNevada.com)

#### 1.6.2 PROPOSAL SUBMISSION

Submittals that are late, incomplete, or misdirected will be considered non-responsive, with no exceptions. Proposals must be submitted via email only. ***Fax submissions or hard copies will not be accepted.*** The email subject or reference line for all submittals must include the ANNOUNCEMENT Title and ANNOUNCEMENT #. Reps are encouraged to send a test email to the email address of the Specialist identified in paragraph 1.6.1 above prior to transmitting their proposals. Do not submit .zip, .exe or .com files.

#### 1.6.3 FORMAT FOR PROPOSAL SUBMISSIONS AND PAGE LENGTH LIMITATION:

Proposals must be organized in accordance with the list of scored criteria in Section 2.2. The narrative portion of a proposal must not exceed 10 pages, ***excluding*** cover sheet (Attachment A) and Section 1.2 Requested Attachments (organizational charts, references, resumes, legal status, etc.). The Rep may choose how to allocate pages among any sections within the overall page limit. **If a Rep submits a proposal exceeding these limits, Commission may consider the pages up to that allowable number for the narrative portion (10) and discard all subsequent pages.** One (1) page is defined as: one side of a single 8-1/2" x 11" page or equivalent, with 12-point minimum font size for the substantive text. Any page or partial page with substantive text, graphics, charts, resumes, etc., will be counted as one (1) page. Reps may use their discretion for the font size of other materials (e.g., graphics, charts).

#### 1.6.4 PUBLIC RECORDS

This ANNOUNCEMENT, and one copy of every proposal received in response to it, together with copies of all documents pertaining to the award of an Agreement, shall be kept by the Commission and made a part of its records. The Commission's business practice is to schedule requests for inspection of any solicitation file after Reps have been notified of their selection status. If a proposal contains any information that may be considered exempt from disclosure under a provision of the Nevada Revised Statutes (NRS) the Rep must clearly designate the portion of its proposal claimed as exempt, along with a justification and citation to the provision of the Nevada Public Records Law relied upon. Application of the Nevada Public Records Law shall determine whether any information is actually exempt from disclosure. *Identifying a proposal in whole as exempt from disclosure is not acceptable.* Failure to identify the specific portion of a Proposal claimed as exempt from disclosure, and the authority for such an exemption, shall be deemed a waiver of any future claim for disclosure of that information.

#### 1.6.5 COVER SHEET – PASS or FAIL

Each proposal must comply with the following Pass/Fail criteria. **Proposals not meeting ALL Pass/Fail criteria shall be rejected.**

PROPOSAL SUBMISSION CHECKLIST FOR USE BY REPS

- Due Date Met
- Proposal Format and Length Requirements Met
- Cover Sheet Included
- Authorized Signature Obtained

[This proposal submission checklist is provided only as a courtesy to Rep. Commission makes no representation as to the completeness or accuracy of this Rep checklist. Rep is solely responsible for reviewing and understanding the ANNOUNCEMENT and complying with all the requirements of this ANNOUNCEMENT, whether listed above or not.]

**2.0 PROPOSAL EVALUATION & AGREEMENT OR SELECTION**

**2.1 EVALUATION PROCESS**

Proposals received on time will be reviewed against the Pass/Fail criteria identified in Section 1.6.5. Proposals meeting those criteria will be forwarded to an evaluation committee that will score each proposal according to the scored criteria set forth in Section 2.2.

The evaluation committee shall score all Proposals using the quantity and quality of information described in this Section. Points assigned by each evaluation committee member shall be added together and divided by the total number of evaluation committee members to compute an average score.

The outcome of the evaluation process may, at Commission's sole discretion, result in: (a) notice to a Rep(s) of selection for tentative Agreement negotiation and possible award; (b) further steps to gather more information for evaluation, which often means a notice of placement on an interview list; (c) notice to a Rep of non-selection; or (d) notification to Reps that the ANNOUNCEMENT is cancelled and may be re-solicited or that Commission intends to take no further action with respect to the ANNOUNCEMENT.

Commission reserves the right to amend or cancel this ANNOUNCEMENT at any time if it is in the best interest of the State of Nevada to do so. The Commission reserves the right to award in part, or reject any or all proposals in whole or in part, and waive technical defects, irregularities and omissions of any proposal, if in its judgment, the best interest of the State of Nevada will be served. Commission reserves the right to determine the responsiveness of any proposal by reference to the proposal taken as a whole. Commission will determine which proposal offers the best means of serving the interest of the State of Nevada. Commission reserves the right to negotiate specific Agreement terms with any Rep that may be selected by Commission. Further, Commission reserves the right to correct any inaccurate awards resulting from clerical errors of Commission. The timing and sequence of the events under this ANNOUNCEMENT will ultimately be determined by Commission. Commission is not liable for any costs a Rep incurs while preparing or presenting its proposal or during further evaluation stages. If Commission, in its sole discretion, rejects any and all proposals or withdraws this ANNOUNCEMENT before or after proposals are received, the Reps will have no recourse against Commission for any expenses incurred or damages sustained. All proposals will become part of the public file.

**2.2 SCORING OF REQUESTED PROPOSAL CONTENTS (100 POINTS TOTAL):**

Were the mandatory Rep requirements in Section 1.3 met? Yes/No (if no, the proposal is rejected)

- 1) Qualifications - 50 points possible
- 2) Project Approach- 45 points possible
- 3) Quality of Proposal - 5 points possible

## Attachment A

### COMPLIANCE WITH TERMS AND CONDITIONS FOR INTERNATIONAL REPRESENTATIVE RECRUITMENT

Submitted proposals are confidential until the contract is awarded; following contract award, only specific parts of the proposal may be labeled a “trade secret.” There may be public discussion regarding the submitted proposals that will be in an open meeting format, the proposals will remain confidential.

This proposal contains proprietary information: Yes  No

By signing below, I understand it is my responsibility as the contractor to act in protection of the labeled information and agree to defend and indemnify the Nevada Commission on Economic Development for honoring such designation. I duly realize failure to so act will constitute a complete waiver and all submitted information will become public information; additionally, failure to label any information that is released by the Nevada Commission on Economic Development shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

I have read, understand and agree to comply with the terms and conditions specified in this solicitation. Checking “YES” indicates acceptance, while checking “NO” denotes non-acceptance and should be detailed below. Any exceptions **MUST** be documented.

YES  NO

SIGNATURE \_\_\_\_\_

Contractor

EXCEPTIONS: Attach additional sheets if necessary. Please use this format.

#### EXCEPTION SUMMARY FORM

SECTION NUMBER	PAGE NUMBER	PROPRIETARY INFORMATION AND/OR EXCEPTION (PROVIDE A DETAILED EXPLANATION)

**Attachment B**

**Agreement for Trade and Business Representation**

This Agreement for Trade and Business Representation (the "Agreement"), entered into on this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between \_\_\_\_\_, a \_\_\_\_\_, \_\_\_\_ corporation (hereinafter the "Representative"), and the **Nevada Commission on Economic Development** (hereinafter the "Commission"), is based on the following:

**I.  
Recitals**

WHEREAS, the Commission desires to retain a trade and business representative to assist in the Commission's relations with businesses from the United States of America (hereinafter the "United States") operating in \_\_\_\_\_ (hereinafter "\_\_\_\_\_") and businesses originating from \_\_\_\_\_ that conduct or seek to conduct business in the United States;

WHEREAS, the Representative conducts business in \_\_\_\_\_ and, pursuant to the terms of this Agreement, desires to provide the Commission with trade and business representation in \_\_\_\_\_ in the territory identified in Exhibit B; and

WHEREAS, in accordance with Nevada Revised Statute Chapter 333, the Commission has approved the terms of this Agreement and its execution. Upon execution, this Agreement shall constitute a binding agreement between the Representative and the Commission concerning the subject matter of this Agreement.

NOW, THEREFORE in consideration of the foregoing and the mutual covenants and agreements contained herein, the parties agree as follows:

**II.  
Appointment**

The Commission appoints the Representative, and the Representative accepts the appointment, to act for the Commission as the Commission's trade and business representative in \_\_\_\_\_.

**III.  
Trade and Business Representation**

**A. Generally.** The Representative agrees to actively promote the Commission and its trade and business interests in \_\_\_\_\_. In performing such services, the Representative shall engage in the activities listed on Exhibit A, attached hereto and incorporated herein by reference. Additionally, the Representative shall provide office space and the services of its staff to facilitate its representation of the Commission. Under no circumstances will the out of pocket cost to the Representative of performing services under this Agreement exceed US\$ annually.

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**B. Advertising and Promotional Material.** In performing its services for the Commission, the Representative will assist in the distribution of advertising and promotional material developed and provided by the Commission. The Representative shall not be responsible for the development or production of such material or the shipment of such material from the United States to \_\_\_\_\_. Furthermore, the Representative shall not be obligated to compensate or reimburse the Commission for the cost of the advertising and promotional material.

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**C. Reports.** The Representative shall make quarterly reports to the Commission providing available information relating to commercial conditions in \_\_\_\_\_, as reasonably requested by the Commission and outlined on Exhibit A.

**D. Consultation and Referrals.** The Commission may from time to time consult with the Representative as to market requirements in \_\_\_\_\_. In providing trade and business representation for the Commission, the Representative may refer the Commission to other businesses and consultants as the situation may require. The Representative shall not be liable for any acts or omissions committed by third-party businesses or consultants. The Commission has the sole right to establish and has exclusive control over all terms governing transactions it enters into with third parties.

**E. Representations and Warranties.** In performing its obligations under this Agreement, the Representative agrees not to make any representations or give any warranties or guarantees to any person with respect to the Commission or services it may provide, other than those representations, warranties, or guarantees that the Commission has specifically authorized to be given to that person.

**F. Reservation of Rights.** The Representative expressly reserves the right to perform services for third-parties and enter into third-party transactions during the term of this Agreement except that the third party cannot be another U.S. state unless prior approval is received from the Commission. The Representative shall not enter such a representative agreement with any other U.S. state or other jurisdiction without the prior written permission of the Commission. The Commission acknowledges that the Representative may engage in other activities and agrees that the Representative will devote efforts to representing the Commission only as the Commission's needs require and so as not to place an undue burden on the resources of the Representative

#### **IV. Relationship of the Parties**

The Commission and the Representative agree that each party is and will remain an independent Representative, and nothing contained in this Agreement shall be construed to constitute either party as a partner, agent, or employee of the other. The Representative's authority is limited to the solicitation of business, the distribution of advertising and promotional material, and the performance of other functions set forth in this Agreement and Exhibit A to this Agreement. In the Representative's dealings with third parties, it must not hold itself out as a partner, agent, or employee of the Commission. Neither party has authority to make any agreement or incur any liability on behalf of the other party, nor is either party liable for any acts, omissions to act, contracts, commitments, promises, or representations made by the other, except as specifically authorized in this Agreement or as the parties may otherwise agree.

#### **V. Consideration for Representation**

**A. Consideration.** For the Representative's services, described in Section III, "Trade and Business Representation," the Commission shall provide no financial consideration to the Representative.

**B. Additional Benefits.** The Commission shall provide the Representative the following benefits in connection with the services the Representative provides: (i) the Commission shall send all inquiries regarding \_\_\_\_\_ businesses, from the territory and areas indicated in Exhibit B, interested in doing business in the United States and businesses from the United States interested in conducting business in \_\_\_\_\_ to the Representative; (ii) the Representative shall have free access to all advertising and promotional material provided by the Commission; (iii) the Representative may pursue any and all commercial or profitable endeavors it discovers while performing services for the Commission; and (iv) the Representative and its representatives and consultants may work with the Commission to develop additional commercial or profitable endeavors.

#### **VI. Warranties and Indemnification**

The Representative and the Commission agree that each is solely responsible for performing its duties, and each agrees to indemnify the other and hold the other harmless for its actions, and to defend the

other and its agents and employees from and against any claim, demand, cause of action, damage, loss, cost, expense, or recovery arising from or in connection with its actions or failures to act. The Representative expressly indemnifies and holds the Commission harmless for any liability arising from or associated with the office maintained by the Representative pursuant to Section III, A, of this Agreement.

## **VII. Termination and/or Suspension of Agreement**

This Agreement will be in effect for one year from the date first indicated in this Agreement. This Agreement will automatically renew for successive one-year periods unless terminated according to the conditions indicated in this paragraph. This Agreement may be terminated by either the Representative or the Commission upon **thirty (30)** days' written notice to the other party, with or without cause. In the event that the Representative shall discontinue operating its business in \_\_\_\_\_, then this Agreement will terminate as of the last day of the month in which the Representative ceases operations in \_\_\_\_\_. Upon termination of this Agreement, the Representative shall promptly return any remaining advertising and promotional material previously provided by the Commission, as well as any additional documents provided by the Commission in connection with this Agreement. This Agreement may also be temporarily suspended by the Commission, for a period not to exceed 90 days, in order for the Commission to investigate any possible violations of this Agreement. Any such suspension will comply with the Notices provision in Section VIII.

## **VIII. Miscellaneous Terms**

**A. Section Headings.** The section headings contained in this Agreement are inserted for conveniences of reference only and shall not affect the meaning or interpretation of this Agreement.

**B. Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the subject matter discussed herein and replaces any and all prior negotiations, representations or agreements between the parties, whether oral, electronic or written. The parties acknowledge that they have not relied on any promise, representation or warranty, express or implied, not contained in this Agreement.

**C. Modification or Waiver.** This Agreement may not be amended, modified, or superseded, except for by written agreement between the parties. None of the terms, covenants, representations, warranties or conditions hereof may be waived, except for by a written instrument executed by the party waiving compliance. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same.

**D. Successors and Assigns.** This Agreement shall be binding on, and shall inure to the benefit of, the parties to this Agreement and their respective heirs, legal representatives, successors and assigns.

**E. Severability and Regulatory Compliance.** If any clause, sentence, provision, or any other portion of this Agreement is or becomes illegal, null, void or unenforceable for any reason, or is held by any court of competent jurisdiction to be so, the remaining portions shall remain in full force and effect. It is the intent of the parties to comply with all governmental regulations. In the event all or any portion of this Agreement shall violate any existing or future regulation, the parties hereby agree to attempt to revise the applicable term, clause or section of this Agreement in order to comply with such regulations.

**F. Compliance with Law.** The Representative agrees that in rendering services and in carrying out its other duties under this Agreement, it will neither undertake nor cause or permit to be undertaken any activity which is illegal under the laws of \_\_\_\_\_ or the laws of the United States and the State of Nevada.

**G. Representative Background Check.** The Commission reserves the right to inquire in to the background of its Representatives in the areas of, but not limited to, work history, finances and unlawful activities.

**H. Notices.** Any notice or payment required or permitted to be given under this Agreement shall be written communication by way of return receipt email, or signature required delivery and shall be directed by one party to the other at its respective address as follows unless otherwise provided for in this Agreement. Such method of notice or payment shall be deemed effective upon the date entered on the return receipt. Any party may change its address to which notices shall be directed by written notice to the other party by means of proper notice given to the other party or parties, as the case may be, pursuant to the method of notice as provided in this paragraph.

Notices to the Commission:

**Nevada Commission on Economic  
Development  
808 W. Nye Lane  
Carson City, NV 89703 USA**

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Notices to the Representative:

Notice to Representative's counsel:

**I. Choice of Law.** The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of Nevada

**J. Choice of Forum.** In the event any dispute or litigation arises in relation to this Agreement, the parties agree that such dispute or litigation shall be resolved exclusively in a court of competent jurisdiction located in Carson City, Nevada. The parties acknowledge that this is a mandatory forum selection clause.

**K. Fees and Expenses.** If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recovery of reasonable attorneys' fees and costs incurred in connection with that action or proceeding.

**L. Inspection & Audit.**

a. Books and Records. Representative agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Representative agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Representative or its sub-representatives, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Representative where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by the Commission, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

**M. Limited Liability.** The Commission will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any Commission

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breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Representative, for the fiscal year budget in existence at the time of the breach. Damages for any Representative breach shall not exceed 150% of the contract maximum and not to exceed value. Representative's tort liability shall not be limited.

**N. Public Records.** Pursuant to NRS 239.010, information or documents received from Representative may be open to public inspection and copying. The Commission will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Representative may clearly label individual documents as a "trade secret" or "confidential" provided that Representative thereby agrees to indemnify and defend the Commission for honoring such a designation. The failure to so label any document that is released by the Commission shall constitute a complete waiver of any and all claims for damages caused by any release of the records. If a public records request for a labeled document is received by the Commission, the Commission will notify Representative of the request and delay access to the material until seven working days after notification to Representative. Within that time delay, it will be the duty of Representative to act in protection of its labeled record. Failure to so act shall constitute a complete waiver.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

_____	_____	_____
Independent Representative's Signature	Date	Independent's Representative's Title
_____	_____	_____
Signature	Date	Title
_____	_____	_____
Signature	Date	Title
_____	_____	_____
Signature	Date	Title
_____		APPROVED BY BOARD OF EXAMINERS
Signature - Board of Examiners		
		On _____
Approved as to form by:		(Date)
_____		On _____
Deputy Attorney General for Attorney General		(Date)

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**EXHIBIT A**

In performance of its obligations under the Agreement for Trade and Business Representation, \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Representative"), shall perform the following functions:

- (a) Identifying potential business opportunities, contacts and contracts;
- (b) Investigating inquiries received by the State of Nevada Commission on Economic Development (the "Commission") and referred to the Representative;
- (c) Making introductions to parties interested in conducting business in Nevada;
- (d) Assisting the Commission in the preparation and submission of presentations at the times and in the manner reasonably requested by the Commission;
- (e) Maintaining contact and liaison with government officials and assisting the Commission in obtaining necessary licenses, permits, and authorizations;
- (f) Advising and assisting the Commission in complying with the laws, regulations, business, and financial practices in effect in \_\_\_\_\_;
- (g) Providing logistical and support services in \_\_\_\_\_, including assisting the Commission to arrange and provide for necessary lodging, office space, translation, transportation, and communications facilities;
- (h) Recommending local subcontractors as needed; and
- (i) Providing other assistance as the Commission may from time to time reasonably request.
- (j) On business cards, stationery and any other document where the representative's name and title are used together for NCED representation, the only title that will be used is: "Independent Representative for the Nevada Commission on Economic Development".

The Representative shall **not**:

- (i) Indicate by statement or inference that they represent any other State of Nevada agency, department, commission, elected official, board, or division.
- (ii) Engage in any activity not mentioned in Performance section above without the express written permission of the State. This includes using the NCED logo on personal correspondence.
- (iii) Use the Nevada State Seal (NRS 235.010) on their official correspondence (business cards, letterhead, etc.). **THE LOGO OF THE COMMISSION SHOULD ONLY BE USED IN THIS REGARD.**
- (iv) Charge a client or other entity for information that the Commission, in its normal course of business, would provide at no charge.

Understood and agreed to by Representative:

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

\_\_\_\_\_  
Name of Individual (Print or Type)

\_\_\_\_\_  
Title

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

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**Exhibit B**

This Agreement applies to the following provinces, autonomous regions and municipalities in \_\_\_\_\_  
represented by the \_\_\_\_\_ office: