Submission of Comments on February 13, 2023 to the
NYS Office of Cannabis Management Proposed Regulations for Adult Use Cannabis
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INTRODUCTION

This document was created by CannaBronx, in partnership with CUNY School of Law's Community and Economic Development Clinic and Mothers on the Move (Madres en Movimiento), in response to the New York State Office of Cannabis Management's Proposed Regulations for Adult Use Cannabis, which were published in the State Register on December 13, 2022. Here, we provide a high-level assessment of select provisions of the regulations. Our input is formulated on the basis of over 100 interviews in the last several years of legacy operators in the Bronx, cannabis business owners, regulators, academics, policymakers, cooperative development and industry experts and others in New York State and legal markets around the country.

In 2021, New York State legalized the growth, distribution, and sale of cannabis and cannabis products through the Marihuana Regulation and Taxation Act (MRTA). At the time, New York became the latest in a line of states, including California, Colorado, New Jersey, and others, to legalize cannabis - except with one critically important distinction.

New York's law broke ground on a new political, legal, and socioeconomic frontier in the United States. The law didn't simply legalize the sale and use of cannabis; it made clear in its very first Article that its clear intent was to empower and enrich those communities - Black and Brown communities - who had suffered tremendous harm over the decades-long "War on Drugs" perpetrated by federal, state, and local governments.

Through the MRTA, the New York State Legislature did not simply seek to create a long-overdue legal market for an otherwise universal product, it sought to right a deep historical wrong - and not simply as a by-product of the law, but rather its very essence.

It is in this context that our comments to the currently-proposed regulations by the State's Office of Cannabis Management (OCM) are submitted. As lawmakers, policymakers, bureaucrats, advocates, and even community members know, within legal doctrine, regulations exist to further clarify statute, provide clear guidance to the regulated as to the parameters of operation, provide guard rails to the regulator in terms of the implementation of law and relevant discretion, and must always - always - be completely consistent with the intent of the law to which they are attached.

We recognize the extensive efforts of the OCM, the Cannabis Control Board (CCB), and the Governor's Office in crafting the proposed regulations, and we maintain faith in the genuine consideration of feedback, particularly from disproportionately impacted communities.

In our joint analysis of OCM's 282 pages of proposed regulations regarding licensing for the growth, distribution, processing, and sale of cannabis in New York State, we have found that the Agency is clearly seeking to construct a regulatory framework that balances the needs of government, businesses, and communities. It accomplishes these goals in many ways, and at the same time, there are places where the regulations could create fairer, easier access to for "communities disproportionately impacted" - the communities that will most acutely feel the numerous hurdles that will need to be crossed and for whom the MRTA was designed to ensure will have access to the new, emerging cannabis market in the state.

In these comments, we present **representative examples** of regulations that are onerous, vague, or simply so difficult to comply with that they would severely exacerbate the already staggeringly high barriers to entry into this market. These examples are not meant to be exhaustive, but rather illustrative, and are meant to draw OCM's attention to aspects of the regulations that threaten to undermine our shared hopes for justice.

Our comments reflect an analysis of **tiering, vetting and eligibility requirements, Agency discretion,** and more.

With respect to **cultivation categorization and tiering,** we generally applaud, for example, the establishment of various tiers, as such an approach creates more equitable access to the market, but calls attention to necessary nuances in the ways in which the tiers are defined and differentiated.

With respect to **vetting and eligibility requirements**, we wholeheartedly support the notion that a fair and equitable market relies on all participants being transparent and ethical actors, and we recognize that in order to regulate this brand new market efficiently and effectively, OCM is going to need a tremendous amount of data from licensees. That said, we find that several of the vetting and eligibility requirements are onerous and burdensome; in some cases such that the intent of the law itself is undermined.

With respect to **Agency discretion**, we recognize that regulatory agencies do, in fact, need a degree of discretion in terms of license issuance, denial, enforcement, and the like. It is true that "bad actors" are very often able to stay a step ahead of the law, and the law is often playing "catch-up." That said, a balance must always be struck. For example, leaving a term such as "good moral character" of an applicant undefined with respect to how OCM might assess this quality raises serious questions about the types of conscious or unconscious biases that might be applied.

Critically, we recognize that many requirements with respect to documentation of all types (business arrangements; tax histories; leases; cultivation, sales, or inventory records) will be necessary to furnish or maintain. There is simply no way, however, that "social equity" applicants would be able to meet the vast and stringent requirements of entering and operating in the market without substantial assistance.

Urgently-needed Financial and Technical Assistance

The MRTA recognizes this. In fact, the MRTA requires the CCB, in consultation with OCM's Chief Equity Officer and the Cannabis Advisory Board, to create **an incubator program.** There has been no public announcement of this plan, despite the proposed licensing scheme being rolled out. The currently proposed regulations are **silent** on this matter. If this market is to be truly accessible to the communities that have suffered the most as a result of the War on Drugs, then it is incumbent upon the CCB, working with the the Governor and the Legislature through this year's budget process, to create this program and through it, provide **very significant financial, and ongoing technical assistance**, to social equity applicants - **and do so at the very launch of the market, not later, when it will simply be too late** for these applicants to get a foothold into what will be as established market. Though the price tag is likely in the tens of millions, the creation of an incubator program is required by law, and it is imperative that regulations be promulgated to hasten this process well **before** applications open.

Finally, it is critical that our submission, and OCM's entire regulatory approach, be placed in the context of the incredibly high financial barrier to entry that exists for this market. New Yorkers will need a minimum of **hundreds of thousands of dollars** to even consider the possibility of applying for a license, particularly in the retail or cultivation contexts.

The State might not be able to single-handedly change this reality for all those who seek to enter - but it can ensure that not a single regulation it puts into place makes that entry more difficult for anyone - especially those the law is designed to prioritize, empower, and enrich.

Outreach and Education

As part of the process of collecting feedback on these comments, CannaBronx has conducted community outreach directly with individuals, including those with prior marijuana convictions, from impacted communities in The Bronx. Through our many sessions, and our partnerships with organizations that have deep organizing roots in The Bronx, one fact is clear: **communities are deeply in the dark about even the basics of how the cannabis industry is being created and how they can participate.**

Broadly speaking, the majority of participants in our discussions had no insight or awareness of the State's licensing approach, including the fact that the public has an opportunity to provide comment on proposed licensing regulations, which are the very rules that will govern access to the market, especially for communities disproportionately impacted by the War on Drugs.

While we recognize that OCM has conducted outreach utilizing its in-house team, this outreach - as is true of the large majority of government outreach (this is not unique to OCM) - has resulted in engagement with "grasstops," highly engaged stakeholders, such as elected officials and their staff, community boards, and select attorneys and advocates. Unfortunately, organizations with deep community organizing expertise, some of which have been engaged by OCM, often lack the sufficient resources to be able to interpret, translate (literally and figuratively), and then disseminate the complex (and critically important) information that OCM has released, resulting in those who need the most help being in the position of receiving the least amount of information.

As such, it is critical that the State look to more recent models of publicly-funded, culturally competent and intensive outreach to **engage communities, including immigrant communities, *now***, before the market evolves to a point where marginalized individuals no longer have an opportunity to participate. New York City's efforts around Paid Sick Leave and the Fair Workweek laws, as well as Action NYC and IDNYC, and the City and California's mobilizations around the 2020 Census are examples of **publicly-funded, community-driven models** that have been incredibly effective in engaging communities that often don't trust government or government finds hard to reach.

In addition to providing **immediate access to loans and grants** for communities disproportionately impacted, CannaBronx urges the State to provide sufficient funding - and implement a responsive, well-designed plan - to engage the very New Yorkers whom the MRTA is designed to prioritize in the creation of the legal cannabis market.

COMMENTS - REPRESENTATIVE EXAMPLES

A. General Licensing Requirements

I. Issue: The extensive documentation requirements as laid out are going to be too challenging for individuals from "communities disproportionately impacted" to comply with. In addition, the general requirement of demonstrating "good moral character" is currently undefined, raising questions and concerns about the interpretation and application of this standard.

Discussion:

Article I of the MRTA makes clear that individuals from those communities disproportionately impacted by the multi-decade War on Drugs are meant to be given priority in terms of access to this new cannabis market that the State is creating. New York State's law is groundbreaking and unique in this respect - which means that the intent of the law must be followed in the implementation of the regulations.

This, in turn, means that the regulations have to facilitate, not block, access, all while ensuring that they are also creating an appropriately level playing field.

Generally, the OCM has a lot of discretion which could benefit social equity applicants who may not meet formal criteria such as MWBE certification, because discretion allows the agency to consider and weigh a broader range of criteria outside of pre-existing frameworks, but a lack of clarity in terms of *how* this discretion can or will be exercised could result in disproportionately negative impacts on applicants who will generally struggle to meet the State's high level of vetting and eligibility criteria.

The Fix:

- **Reduce the documentation burden** so that social equity applicants / those from "disproportionately impacted communities" are able to participate in the licensing process and enter the market.
- **Limit OCM's ability to take action** arising from sworn declarations submitted to the agency that include false statements to being license denial.
- **Clearly and specifically define "Good Moral Character**," as the vagueness of the term could easily frustrate the Legislature's intent to address the collateral consequences of criminalization because criminalization itself is

commonly understood as an indication of an individual's moral character generally and, therefore, creates a chilling effect among otherwise law-abiding citizens in the (formerly) illicit market.

Regulations:

- *121.1(d)(2) Qualifications for a Social and Economic Equity Applicant - Individuals from Communities Disproportionately Impacted*
- *120.2(a)(3)(iii) Application for an Adult-Use Cannabis License - Criminal History and Legal Proceedings; 120.9(b)(4) Issuance of a License; 120.12(a)(7) License Denials*
- *121.1(f)(2)(ii)(b),121.1(g)(2)(ii)(b), §121.1(j)(2)(i), §121.1(h)(3)(ii) – Minority-owned Business / Women-owned Business Distressed Farmer / Small Business Qualification, respectively.*

II. Issue: In general, all application fees are exorbitant, and there is no clarity on the criteria for how fees would be reduced or waived for social equity applicants.

Discussion:

One recognizes that the creation, management, and regulation of a brand new market is incredibly resource-intensive (particularly if it is to be done correctly), and that those participating and benefitting from the market should appropriately contribute to its functioning.

Establishing license application fees that align with this concept is reasonable; however, the proposed fees are simply unreasonable. Fees stretching into the multiple thousands of dollars far outstrip licensing or permitting fees for other business activities, further increasing the already incredibly high financial barrier to entry into this market. The MRTA is clear in its intent in creating an accessible, diverse market, and the proposed fees run directly *contra* to this goal.

Further, additional consideration needs to be given to the differences between distributor and cultivator license fees. It has been reported in California that distributors' margins tend to be higher, percentage-wise, than those of cultivators. This stands to reason, as cultivators are typically responsible for a much broader and deeper set of inputs (land, soil, water, energy, testing, trimming costs, extensive physical labor, and more) as compared to distributors, whose costs are comparatively lower (storage facilities, drivers, some marketing). In general, all the fees need to be carefully reassessed to ensure that they are appropriate to the

activity, responsive to the input costs and the profit margins for each type of activity, and of course, never so high such that they become prohibitive.

Lastly, while it is recognized that social equity applicants will be able to pay reduced fees or have them waived altogether, the regulations do not describe the criteria by which fee reductions or eliminations will be assessed, which raises questions about how OCM will exercise its discretion in these matters. Regulations are meant to further define and clarify how a law is to be implemented, not obfuscate the procedure, which this provision of the regulations does.

The Fix:

- **Reduce all fees** for all applications to make the market accessible, in line with the intent of the law.
- **Reassess all fees,** including the fees to be paid by "distressed farmers," for application types to ensure they are appropriate to each category and responsive to input costs and presumed profit margins.
- **Clearly define criteria** for how fees for social and economic equity applicants would be reduced, waived, or deferred, with fee waiver priority considered for those who are from communities disproportionately impacted and who have incomes at or under 80 percent of the county's Area Median Income (or a similar income-based assessment).
- **Eliminate fees for amending or changing an application**.

Regulation:

- *120.4 Fees, including 120.4(c) - Reduced, Waived, or Deferred Fees*

III. Issue: The proposed regulations prohibit licensees with the same category of licenses (i.e. in the same business) from contracting with each other, meaning they can't ever work together. This is not the norm in other states where cannabis has been legalized, and will likely not be *able* to be complied with.

Discussion:

The proposed regulations prohibit any cultivator, distributor, retailer, etc. from being able to contract with any other licensee in the same category for any reason. Not only is the intent of this unclear, given the ways in which the cannabis industry functions around the country, but it also seems implausible that this regulation as written can be complied with. For example, it is common for cultivators to hire other

cultivators to advise on best cultivation methods and practices, and certain cultivators might find themselves in positions where they need to hire others to assist with harvesting or any other aspect or crop management. The regulation as written suggests that this might not be possible. If this is not the State's intent, the regulation must be clarified.

Also, given that this is a brand new market in the State and that less-resourced licensees might need assistance from better-resourced ones, or better-resourced ones might need to work with less-resourced ones to handle growth, distribution, or sale of larger amounts of product, one could argue that this prohibition could really stymie the growth of the industry and partnerships among licensees where they could be really valuable or necessary. This is especially true for social equity licensees, who are more likely to need access to as much capital and technical and compliance assistance as possible; assistance that might only really be available from other licensees in their category (and assistance they might need to pay for).

The lack of clarity in this regulation could also create challenges for mentorship and training opportunities, even if there isn't an exchange of funds. There is no clear reason why the State should find it beneficial to stymie growth by restricting contractual relationships between licensees in the same category.

Fix:

- **Remove entirely the prohibition** on licensees of a given type being able to contract with licensees within the same license category, *or alternatively, if this prohibition isn't the State's intent,* **clarify this regulation.**

Regulation:

- *124.5 Contracting Limitations*

IV. Issue: Some causes for license denials might be overly broad or irrelevant.

Discussion:

It is recognized that the State wants to create a set of regulations that will ensure that all licensees are "good actors" in the broadest sense of the term. There are certain regulations, however, that might overreach.

The regulation in question here implies that too many unpaid parking tickets (debt to a municipality) could be grounds for license denial. Particularly in the context of New York City, where car owners nearly universally consider receiving multiple

parking tickets as a basic cost of owning a car, this seems excessive. In addition, what is the relevance of unpaid parking tickets to seeking this type of license?

This regulation is also vague with respect to the "indebtedness" it references. In what ways might tax debt factor in? There are several New Yorkers who pay their taxes in installments over time. Does that count as a "debt" that could result in license denial?

If an applicant is a year behind in taxes, how is that person assessed as compared to someone who might be several years behind? What consideration is given to the fact that individuals from disproportionately impacted communities might have more complex financial histories than others, especially given high rates of poverty and incarceration?

This regulation requires further clarification and specificity.

Fix:

- **Reassess and further clarify this regulation** to ensure that "picayune" debts to municipalities, such as unpaid parking tickets, are not grounds for license denial, and make clear how and what types of indebtedness will be truly assessed as part of a license application.

Regulation:

- *120.12 License Denials, subsections (a)(1-8), 8 being: the applicant, or any true party of interest of the applicant, has outstanding violations, fines, fees, payments or other indebtedness assessed against them by state, or federal regulatory authorities or any local municipalities;*

B. <u>Retail Licensing</u>

I. **Issue: There's a lack of clarity on the type of technical or financial assistance that retailers are going to receive regarding extensive inventory and sales tracking requirements. There is no way in which independent retailers will be able to comply with such requirements absent significant assistance from the State or other private (and likely expensive) entities.**

Discussion:

It is perfectly reasonable that the State is seeking to create a market that is

appropriately regulated and one in which data is collected and tracked. That is ultimately what will enable it to understand how this brand-new market is evolving and responsively regulate it into the future.

Achieving this important goal, however, cannot come at the expense of implementing regulations that would render *entering* the market in the first place nearly impossible, especially absent significant technical assistance and/or financial
assistance (particularly in the case of social equity applicants), for those seeking to enter the market. The current inventory and sales tracking requirements in the regulations, if maintained as written, will unfortunately serve to do just that.

Finally, it is obvious that social equity applicants, who are already likely to be significantly disadvantaged by having access to less capital, fewer legal and policy resources, and other challenges, might be displaced from the market entirely without the State making all tracking resources available for free – and providing ongoing, intensive technical assistance in terms of how to manage these processes.

The Fix:

- **Soften tracking requirements** for all categories of licensing.
- **Offer all initial software and hardware for free** to all social equity applicants, and at greatly reduced rates to other applicants.
- **Require OCM to provide ongoing technical assistance** to retailers with inventory and sales tracking software, hardware, processes, and procedures.

Regulations:

- *123.10(f)(1) Retail Dispensary Operations - Cannabis Product Sales Transactions Requirements;*
- *125.7 Inventory and Tracking*

C. <u>Cultivation Licensing</u>

I. Issue: The tiering for indoor and outdoor cultivation needs to be responsive to market realities, different cultivation methodologies, general equity goals, and anticipated carbon footprints. Equating cultivation types irrespective of the carbon footprint of the operation runs *contra* to the MRTA's stated climate resiliency

goals. This approach is simply not grounded in the realities of cultivation methods, and as such, must be amended significantly.

Discussion:

Establishing and maintaining an even playing field for all market participants is naturally central to OCM's mission, and the regulations for every license category must reflect this.

Currently, the regulations' current fee structure *and* the tier sizes don't sufficiently differentiate between different cultivation methodologies. Every methodology, indoor or outdoor, has a different carbon footprint based on a wide range of factors: the types of light exposure used, the heating and cooling methods, whether or not a cultivator is using a carbon dioxide generator, for example (among others). Each unique combination of these factors can have vastly different input costs, and will have vastly different carbon footprints.

In addition, indoor cultivation by its very nature almost always results in a much higher yield than outdoor, square foot to square foot. Indoor cultivators are generally able to reap four (4) harvests annually, whereas it's typically a maximum of one (1) for outdoor cultivators, meaning that indoor cultivators generally produce much more product per square foot than do outdoor cultivators. A 5,000 square foot indoor operation might be able to produce in a year what a 20,000 square foot outdoor operation could, whereas a 5,000 square foot outdoor operation can only produce 5,000 square feet worth of product. Indoor products are also considered more valuable in the retail market.

Both maximum and minimum tier sizes and requisite fees need to reflect these cultivation realities - and, we would posit, that in order to meet climate-related goals in the MRTA, as well as those enacted by the Legislature and by referendum, that methodologies with larger carbon footprints should at the very least pay more in licensing fees, and be limited in their maximum size.

Examples of different types of light usage:

"Light deprivation" or "mixed light" are very different methods. Light deprivation doesn't use any additional lighting besides the sun, whereas mixed lighting does (and is typically more resource-intensive). There is another type of lighting usage known as "light assist," which uses a combination of heating, ventilation, light from the sun, and artificial light and can be very expensive to operate. Grouping all of

these methods together, given the vast differences in input cost, creates problematic advantages and disadvantages for cultivators employing them, and strikes at the heart of creating a market that is accessible and equitable, a clear goal of the MRTA.

The Fix:

- **Differentiate square footage entry points and fees for indoor and outdoor cultivation**, recognizing that their inputs and yields are vastly different.
- **Differentiate regulations pertaining to different types of light usage methods**, again, recognizing that their inputs and yields are vastly different.

Regulations:

- *120.4(b)(1)&(2)&(3) Fees;*
- *120.3 License Specific Tiers and Options (a)&(b)&(c)&(e)*

II. Issue: The proposed regulations are brimming with examples of unrealistic and extremely onerous record-keeping regarding certain cultivation activities; requirements that simply will not be possible for cultivators to comply with. Among many items, this includes the ways in which the regulations contemplate pest management activities.

Discussion:

There is no question that the use of pesticides in all agricultural activities can and should be kept to an absolute minimum; it is appreciated that the proposed regulations adopt an aggressive approach to pest management. Some regulations, however, would seem impossible to comply with or enforce.

The prohibition against *any* pesticide use “when any pollinators are present” is an example of such a regulation. First, easily knowing when or where pollinators are present, particularly for larger outdoor cultivators, is challenging. Additionally, cultivators are likely going to feel compelled to use various pest control methods if a pest threat is detected, irrespective of whether or not pollinators are present, making this regulation very difficult to comply with. Finally, how is this regulation to be enforced? Other than self-record keeping, there is no enforcement mechanism. In all likelihood, this regulation won’t be able to be enforced, thereby rendering it onerous.

The regulation requiring the submission of an Annual Cultivation Report by cultivators to the Office includes in it a requirement that cultivators maintain and submit "records of scouting or monitoring cannabis for pests and diseases." Nobody wants a pest or disease infestation in their crop, plain and simple. As such, this is the type of activity that cultivators and their teams would be engaged in on a constant, daily basis. Monitoring one's crop for pests or disease is simply inherent in the cultivation process - so much so that tracking this activity would require daily (perhaps hourly) entries of observations and basic cultivation activities. Compliance seems near impossible in this context.

Fix:

- **Significantly pare back the tracking of basic cultivation activities** so that cultivators can focus on compliance with those regulations that are to have the highest impact on the quality and yield of their product.
- **Reassess tracking and record-keeping requirements**, and move forward with implementing those that are likely to have an impact on product quality or yield *and* are subject to a workable enforcement mechanism.

Regulations:

- *123.4(f)(3)(v) Cultivator Operations - Agricultural Inputs*
- *123.4(k)(5) Cultivator Operations -Annual Cultivation Report*

D. <u>Cooperatives</u>

I. Issue: Exorbitant, unreasonably high square footage requirements and fees for cooperatives to enter the market.

The square footage "entry point" is 5 times higher for cooperative licensees than it is for cultivators, and the basic "entry point" fees are 15 times higher than they are for cultivators.

Discussion:

Requiring that a cooperative have a larger physical footprint than an independent cultivator might on its face seem reasonable and straightforward. After all, the more number of people involved in an effort, in theory, there are potentially more resources that are available. Once this concept is tested in reality, however, it begins to fall apart. First, consider the current socio-economic and physical landscapes of the state. Independent cultivators are likely to live in areas that are more rural, and in many cases, might have

much higher access to resources, and might face lower financial barriers to entry, as compared to New Yorkers in urban areas, and in particular, New York City.

Second, it stands to reason that it is individuals who have comparatively fewer resources who will need to pool them via a cooperative in order to gain access to this market. This will largely include "social equity" applicants from impacted communities, who are far less likely to have the money - and, in the case of urban areas and their immediate suburbs - the space to be able to cultivate.

It is therefore unreasonable and contra to the intent of the law to require that the square footage entry point for cooperatives be, in all cases, 5 times what it is for individual growers.

Once you layer on to this requirement a cooperative licensing fee that is **15 times** that for an individual cultivator, which is unreasonable and excessive on its face, you've essentially shut anyone out of the cooperative license that doesn't have access to a large amount of land or cash, effectively putting it out of reach from the very New Yorkers the MRTA is designed to empower.

It's not likely that 5 New Yorkers from the Bronx, Brooklyn, or Brookhaven could easily pull this off.

The Fix:

- **Create a lower square footage point of entry**:
    - in New York City;
    - in other densely populated areas ("municipalities or counties with a population of 1,000,000 or more" would cover Westchester, Nassau, Suffolk, for example); *and*
    - for all social equity applicants.
- **Lower the cooperative licensing fee** to be consistent with the number of people in the cooperative (e.g. 5 times as much as the cultivator fee if there are 5 members; 6 times as much if there are 6, etc.)
- **Waive the fee** for all social equity applicants.

Regulation:

- *120.4(b)(3) – Fees. (Licensing Fees – Adult Use Cooperative Cultivation License)*

II. **Issue: The proposed regulations restrict the ability for an entity to provide "management services" across different licensing tiers. While perhaps well-intended, this regulation could create a host of challenges and actually make accessing the market harder, not easier, particularly for cooperatives and social equity actors.**

Discussion:

This regulation appears to be an attempt to restrict large, well-capitalized businesses from potentially monopolizing the provision of "management services" (presumably strategic advice on staffing, business operations, inventory or sales tracking, labor compliance, etc.) to cannabis businesses. If, in fact, this is the intent, it could be considered noble.

However noble it might be, this regulation fails to take into account a number of likely realities to emerge in this emerging industry. First, businesses that provide such services likely already specialize in doing so, and are also likely to be adapting the provision of such services to suit this emerging market, which would suggest that they would develop a certain level of expertise within the parameters of the MRTA and its regulations, as well as New York State's General Business Law, labor laws, and more.

While it is in no licensee's interest to be subject to potentially exorbitant fees if, say, one business or just a handful of businesses were to corner this market, it is at the same time in the interest of the overall growth of the industry that entities that can specialize in the provision of these services have access to licensees. With the many burdens (financial, legal, and certainly regulatory) that licensees have to contend with, why not allow for the development of a sub-market that allows for some of these burdens to be lessened?

Furthermore, this regulation does not take into account non-profit management services providers that routinely provide such services to cooperatives. Just in New York City, such entities include, but are not limited to those funded under the New York City Worker Cooperative Business Development Initiative, i.e. The ICA Group, NYC Network of Worker Cooperatives, Urban Upbound, Bronx Cooperative Development Initiative, The Working World, Green Worker Cooperatives, The Center for Family Life, CAMBA, and others.

Preventing these entities from being able to provide services across tiers would leave cooperatives, which are more likely to consist of lesser-resourced individuals, at a comparative disadvantage. Many cooperatives share management services on a not-for-profit basis as they are often under-capitalized. Exempting not-for-profit management service providers would allow cooperatives, especially in their early stages of development, to leverage much-needed resources thereby "incentiviz[ing] the use and licensure of cooperatives" as directed by § 70(6) of the NY Cannabis Law and furthering the purposes of generating significant new revenue, investing in communities and people most impacted by cannabis criminalization, reducing participation in the unlawful market, creating new industries, and increasing employment.

In short, perhaps an approach that is more "scalpel" than "hammer" is needed here.

The Fix:

- **Reassess the intent and feasibility** of this regulation, taking into account the needs that new businesses will have, and the large amount of assistance they will need to navigate starting up.
- **Allow in all cases non-profit management service providers** to provide these services across license categories.

The Regulation:

- *124.3(c)(1) – Goods and Services Agreements. (c) Management Services Agreement. under no circumstances shall a person operate management services agreements with licensees across licensing tiers, regardless of their status as a true party of interest."*

E. <u>Microbusinesses</u>

I. Issue: The regulations require microbusinesses to cultivate their own cannabis, which is simply not feasible, especially in New York City.

Discussion:

Requiring all microbusinesses to cultivate their own cannabis is simply not feasible. Cultivating cannabis requires an enormous amount of resources, including physical space, which is at both an actual and financial extreme premium in New York City.

This requirement would disenfranchise a significant number of social equity applicants. In order for this emerging market to offer access to as many New Yorkers as possible, which is the clear intent of the MRTA, microbusinesses need to have the freedom to operate in as many parts of the market / supply chain as possible. If there are businesses that simply want to or only have the capacity or capability to produce edibles, oils, etc. and sell them to retailers, they should have the freedom to do so. It stands to reason that especially in urban areas across the state, there will be many New Yorkers interested in entering the overall cannabis market through this door, and there is no reason why the State should prevent such entry.

A free, fair, democratized market is likely to be one where New Yorkers have the ability to participate in whatever capacity their resources and expertise allow, and the regulation of this market should encourage, not discourage, participation, especially for those New Yorkers disproportionately harmed by the over-criminalization of cannabis.

Regulation:

- *123.11(a) Microbusiness Ownership, Interests, Business Authorizations and Prohibitions*

F. Delivery Licenses

A general comment:

New York City's (and perhaps other areas of the State) market is predicted to favor delivery services. While a license for delivery services is not squarely covered in this round of regulations, there is a clear implication that these businesses will be expected to solely acquire product from dispensaries. They will not be able to acquire product from distributors, thus making them entirely dependent on dispensaries. This appears to be unnecessarily restrictive. Without being able to hold their own inventory, this service is relegated to simply delivering dispensary orders and sharply limits their profitability. These barriers should be removed and another tier of delivery licenses should be created to allow businesses to securely hold inventory in a small warehouse and deliver directly from a secure location.