

**REQUEST FOR PROPOSAL (RFP)**

**RFP # 24-024**

**NEW YORK STATE EDUCATION DEPARTMENT**

**Title: Tuition Rate Setting Methodology Redesign Consulting Services**

The New York State Education Department (NYSED) is seeking proposals for a consultant to conduct a comprehensive study of alternative tuition rate-setting methodologies for approved school age and preschool special education service providers for the purpose of developing a new tuition rate-setting methodology.

Subcontracting will be limited to thirty percent (30%) of the total contract budget. Subcontracting is defined as non-employee direct personal services and those non-employee's related incidental expenses, including travel.

NYSED will award **one (1)** contract pursuant to this RFP. The contract(s) resulting from this RFP will be for a term anticipated to begin **December 1, 2024** and to end **March 31, 2028**.

Bidders are required to comply with NYSED's Minority and Women-Owned Business Enterprises (M/WBE) participation goals for this RFP through one of three methods. Compliance methods are discussed in detail in the Minority/Women-Owned Business Enterprise (M/WBE) Participation Goals section below.

**Components contained in RFP # 24-024 are as follows:**

- 1.) Description of Services to Be Performed
- 2.) Submission
- 3.) Evaluation Criteria and Method of Award
- 4.) Assurances
- 5.) Submission Documents (separate document)

Questions regarding the request must be submitted by email to [RateSettingRFP@nysed.gov](mailto:RateSettingRFP@nysed.gov) no later than the close of business May 24, 2024. Questions regarding this request should be identified as Program, Fiscal or M/WBE. A Questions and Answers Summary will be posted to the [P-12 Competitive Procurement Contract website](#) no later than June 5, 2024. The following are the designated contacts for this procurement:

**Program Matters**

Jamie DiGaudio  
[RateSettingRFP@nysed.gov](mailto:RateSettingRFP@nysed.gov)

**Fiscal Matters**

Jessica Hartjen  
[RateSettingRFP@nysed.gov](mailto:RateSettingRFP@nysed.gov)

**M/WBE Matters**

Brian Hackett  
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Bidders are requested to submit their bids electronically. The following documents should be submitted by email as detailed in the Submission section of the RFP, and must be received at NYSED no later than **July 1, 2024 by 3:00 PM Eastern Time**:

1. Submission Documents labeled **[name of bidder] Submission Documents RFP # 24-024**
2. Technical Proposal labeled **[name of bidder] Technical Proposal RFP # 24-024**

3. Cost Proposal labeled **[name of bidder] Cost Proposal RFP # 24-024**
4. M/WBE Documents labeled **[name of bidder] M/WBE Documents RFP # 24-024**

The email address for all the documentation is [cau@nysed.gov](mailto:cau@nysed.gov).

Instructions for Submitting an Electronic Bid:

1. The technical and cost proposal documents should be submitted in Microsoft Office. PDF files that are editable and Optical Character Recognition (OCR) searchable are acceptable. Please do not submit the technical or cost proposal as a scanned PDF.
2. Submission documents requiring a signature must be signed using one of the methods listed below and may be submitted as a Microsoft Office, PDF, or JPG document. A scanned PDF is acceptable for these documents.
3. The following forms of e-signatures are acceptable:
  - a. handwritten signatures on faxed or scanned documents
  - b. e-signatures that have been authenticated by a third-party digital software, such as DocuSign and Adobe Sign
  - c. stored copies of the images of signatures that are placed on a document by copying and pasting or otherwise inserting them into the documents
4. Unacceptable forms of e-signatures include:
  - a. a typed name, including a signature created by selecting a script or calligraphy font for the typed name of the person "signing"
5. To identify the signer and indicate that the signer understood and intended to agree to the terms of the signed document, the signer will sign beside or provide by email the following attestation: "I agree, and it is my intent, to sign this document by [describe the signature solution used] and by electronically submitting this document to [name of recipient individual or entity]. I understand that my signing and submitting this document is the legal equivalent of having placed my handwritten signature on the submitted document and this attestation. I understand and agree that by electronically signing and submitting this document I am affirming to the truth of the information contained therein."
6. In order to ensure the timely receipt of your bid, please use the subject line "BID SUBMISSION RFP 24-024" - failure to appropriately label your bid or submitting a bid to any email address other than the one identified above may result in the bid not being received by the deadline or considered for award.
7. **Bids must be received by 3:00 pm Eastern Time on the due date.**

## 1.) Description of Services to be Performed

### Work Statement and Specifications

This section of the bid package details the services and products to be acquired. Please note that the contract process also includes general New York State administrative terms and conditions, as well as terms and conditions required by New York State law. These terms and conditions address issues related to both the submission of bids and any subsequent contract; they are included separately in this bid package for your information. Please review all terms and conditions.

### **Minority and Women-Owned Business Enterprise (M/WBE) Participation Goals Pursuant to Article 15-A of the New York State Executive Law**

For purposes of this procurement, NYS Education Department hereby establishes an overall goal of 30% of the total contract amount for M/WBE participation, 17% for Minority-Owned Business Enterprises (“MBE”) participation and 13% for Women-Owned Business Enterprises (“WBE”) participation based on the current availability of qualified MBEs and WBEs. All bidders must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. Minority and Women-Owned Business Enterprise (M/WBE) participation includes any and all services, materials or supplies purchased from New York State certified minority and women-owned firms. Utilization of certified Minority and Women-Owned firms will be applied toward the goals. Bidders can achieve compliance with NYSED’s Minority and Women-Owned Business Enterprise goals as described below.

#### **ACHIEVE FULL COMPLIANCE WITH PARTICIPATION GOALS (PREFERRED)**

Bidders should submit subcontracting/supplier forms that meet or exceed NYSED’s participation goals for this procurement. All subcontracting/supplier forms must be submitted with the bid proposal. In addition, bidders must complete and submit M/WBE 100: Utilization Plan, M/WBE 102: Notice of Intent to Participate and EEO 100: Staffing Plan. Instructions and copies of these forms are located in the Submission Documents. All firms utilized must be certified with the NYS Division of Minority and Women Business Development before beginning any work on this contract. For additional information and a listing of currently certified M/WBEs, see the [NYS Directory of Certified Minority and Women-Owned Business Enterprises](#).

The contact person on M/WBE matters is available throughout the application and procurement process to assist bidders in meeting the M/WBE goals. NYSED reserves the right to approve the addition or deletion of subcontractors or suppliers to enable bidders to comply with the M/WBE goals, provided such addition or deletion does not impact the technical proposal and/or increase the total cost of the bid proposal.

#### **DOCUMENTATION OF GOOD FAITH EFFORTS**

Bidders must undertake a good faith effort to solicit NYS Certified M/WBE firms as subcontractors and/or suppliers in fulfillment of this procurement. Means of solicitation may include but are not limited to: advertisements in minority centered publications; solicitation of vendors found in the [NYS Directory of Certified Minority and Women-Owned Business Enterprises](#); and the solicitation of minority and women-oriented trade and labor organizations. Bidders will be required to certify and attest to their good faith efforts by completing NYSED’s Certification of Good Faith Efforts (Form M/WBE 105). See the M/WBE Submission Documents for detailed examples of and required forms to document good faith efforts.

NYSED reserves the right to reject any bid for failure to document “good faith efforts” to comply with the stated M/WBE goals.

IN THE EVENT BIDDERS CANNOT COMPLY WITH NYSED DESIGNATED PARTICIPATION GOALS, SAID BIDDERS MUST DOCUMENT THEIR “GOOD FAITH EFFORTS” TO COMPLY AND SUBMIT ONE OF THE FOLLOWING REQUESTS:

**REQUEST A PARTIAL WAIVER OF PARTICIPATION GOALS**

In order to request a partial waiver of the participation goals for this procurement, Bidders must provide documentation of their good faith efforts to obtain the use of certified M/WBE enterprises along with their bid proposal forms. The subcontracting forms must include the participation percentage(s) for which they seek approval. Bidders will be required to certify and attest to their good faith efforts. Bidders should submit a request for a partial waiver (Form M/WBE 101) and document their Good Faith Efforts (Form M/WBE 105) at the same time as the bid is submitted. Bidders must also complete and submit M/WBE 100: Utilization Plan, M/WBE 102: Notice of Intent to Participate and EEO 100: Staffing Plan. The M/WBE Coordinator is available throughout the procurement process to assist in all areas of M/WBE compliance.

**REQUEST A COMPLETE WAIVER OF PARTICIPATION GOALS**

In order to request a complete waiver of the participation goals for this procurement, Bidders must provide documentation of their Good Faith Efforts to obtain the use of certified M/WBE enterprises along with their bid proposal forms. Bidders will be required to certify and attest to their good faith efforts. Bidders should submit a request for a complete waiver on Form M/WBE 101 and document their Good Faith Efforts (Form M/WBE 105) at the same time as they submit their bid. The M/WBE Coordinator is available throughout the procurement process to assist in all areas of M/WBE compliance.

All payments to Minority and Women-Owned Business Enterprise subcontractor(s) must be reported to NYSED M/WBE Program Unit using M/WBE 103 Quarterly M/WBE Compliance Report. This report must be submitted on a quarterly basis and can be found at NYSED’s [M/WBE Forms and Compliance Forms webpage](#).

**Service-Disabled Veteran-Owned Business (SDVOB) Participation Goals Pursuant to Article 3 of the Veterans’ Services Law**

[Article 3 of the Veterans’ Services Law](#) allows eligible Veteran business owners to get certified as a New York State Service-Disabled Veteran-Owned Business (SDVOB). The goal of Article 3 is to encourage and support eligible SDVOBs to play a greater role in the state's economy by increasing their participation in New York State's contracting opportunities. To this end, NYSED strongly encourages bidders to make maximum possible use of SDVOBs as subcontractors and/or suppliers under this contract, consistent with the requirements of State Finance Law and State procurement guidelines, as well as NYSED policies and procedures. Bidders should consider fulfilling the requirements of this contract through the participation of SDVOBs at a rate of 6%. For additional information about this program, including a list of SDVOBs, please visit the [Office of General Services, Division of Service-Disabled Veterans’ Business Development website](#).

## Glossary

**Approved special education program (ASEP) receiving reimbursement pursuant Article 81 and/or Article 89 of the New York State Education Law** includes nonpublic schools with approved special education programs (853 Schools), Special Act School Districts, approved preschool special class programs, special class in an integrated setting programs, special education itinerant teacher services, multidisciplinary evaluation program, and extended school year programs (July/August) serving preschool and/or school-age students with disabilities.

**Committee on preschool special education (CPSE)** means a multidisciplinary team established in accordance with the provisions of section 4410 of the Education Law.

**Committee on special education (CSE)** means a multidisciplinary team established in accordance with the provisions of section 4402 of the Education Law.

**Integrated services** are the provision of specially designed instruction and academic instruction provided to a group of students with disabilities and students without disabilities.

**Interpreting services** means oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services and transcription services, such as communication access real-time translation (CART), C-Print and TypeWell for students who are deaf or hard of hearing; and special interpreting services for students who are deaf-blind.

**Multidisciplinary evaluation (MDE) program** means an approved program with a multidisciplinary evaluation component to conduct an individual evaluation, which means procedures, tests or assessments used selectively with an individual student, including a physical examination in accordance with the provisions of sections 903, 904 and 905 of the Education Law, an individual psychological evaluation, a social history and other appropriate assessments or evaluations as may be necessary to determine whether a student has a disability and the extent of his/her special education needs.

**Per diem rate** means the tuition rate, as defined below, on a per care day basis. The per diem rate is calculated by dividing the total reimbursable costs by the total care days.

**Related services** means developmental, corrective, and other supportive services as are required to assist a student with a disability and includes speech-language pathology, audiology services, interpreting services, psychological services, physical therapy, occupational therapy, counseling services, including rehabilitation counseling services, orientation and mobility services, medical services as defined in this section, parent counseling and training, school health services, school nurse services, school social work, assistive technology services, appropriate access to recreation, including therapeutic recreation, other appropriate developmental or corrective support services, and other appropriate support services and includes the early identification and assessment of disabling conditions in students.

**School health services** means health services provided by either a qualified school nurse or other qualified person that are designed to enable a student with a disability to receive a free appropriate public education as described in the individualized education program of the student.

**School nurse services** means services provided by a qualified school nurse pursuant to section 902(2)(b) of the Education Law that are designed to enable a student with a disability to receive a free appropriate public education as described in the individualized education program of the student.

**Special class (SC)** means a class consisting of students with disabilities who have been grouped together because of similar individual needs for the purpose of being provided specially designed instruction.

**Special class in an integrated setting (SCIS) program** means a class consisting of preschool students with disabilities, who have been grouped together because of similar individual needs for the purpose of being provided specially-designed instruction, and preschool students without disabilities receiving an early childhood education program.

**Special education itinerant services (SEIS)** as defined in section 4410(1)(k) of Education Law are services provided by a certified special education teacher of an approved program on an itinerant basis at a site determined by the board including but not limited to an approved or licensed prekindergarten or head start program, the student's home, a hospital, a State facility, or a child care location as defined in section 4410 of the Education Law.

**Supplementary aids and services** mean aids, services, and other supports that are provided in regular education classes, other education-related settings and in extracurricular and nonacademic settings to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment.

**Supplementary school personnel** mean a teacher aide or a teaching assistant as described in section 8 NYCRR 80-5.6(a) through (d).

**Trend factor** is the percentage increase from prior year's rate.

**Tuition rate** means the per pupil amount to be used for billing public tuition funding sources for full-time-equivalent students enrolled in an approved special education program.

## **Background**

Pursuant to §§4003, 4405, 4408, 4410 of the New York State Education Law, New York State Education Department (NYSED) Rate Setting Unit (RSU) establishes, and the NYS Division of Budget (DOB) approves, annual tuition rates for over 1,000 approved special education programs, educating students with disabilities ages 3 through 21 years old who have been enrolled pursuant to articles 81 and 89 of the Education Law. These approved programs are operated by private school providers, special act school districts, BOCES, state supported programs, and public school summer school age and preschool programs. They include programs that offer special class (SC), integrated special class (SCIS), and/or special education itinerant services (SEIS) for school age and/or preschool students. The preschool multidisciplinary evaluation (MDE) program provides initial evaluations and reevaluations to preschool students with disabilities.

Rates for all SC programs are initially set based on regional weighted average per diems and subsequent years' rates are set based on provider historical cost and enrollment data with a trend factor applied. Rates for SCIS are initially set based on a provider's budgeted cost and enrollment data with trend factor applied in subsequent years. SEIS, MDE, and 1:1 rates are regionally-based, meaning established based on average rates in the region or other relevant indexes. The tuition rate setting methodology includes cost containment parameters to restrict funding for executive compensation, limit reimbursement for facility and administrative expenses, and limit the trend factor to a percentage increase from a previous year's rate.

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In instances where the special class or integrated program funding containment measures place a hardship on a provider's ability to deliver mandated services and/or remain fiscally viable, a provider may submit a tuition rate appeal (also referred to as a waiver request) to NYSED to consider an adjustment to their tuition rate.

In recent years, the volume of tuition rate appeals and waivers has increased at an unsustainable rate. The methodology is too sensitive to variables that are difficult to predict and control. For example, a program's enrollment may temporarily decline for any number of reasons, causing their tuition reimbursement to also decline, while their staffing, property, and other costs remain the same. Further, there is no consistent index used for growing the rates from year-to-year. A variety of reforms have been introduced to address some of these issues, but they have complicated a methodology that is already overly complex and slowed down rate processing.

ASEPs receiving reimbursement pursuant to Article 81 and/or Article 89 have raised concerns that the existing methodology fails to reimburse appropriate and allowable costs for the provision of Individualized Education Plan (IEP)-mandated services. ASEPs have indicated that as reimbursement has not kept pace with program expenses, budgets have been adjusted by reducing staff; changing the services provided; delaying maintenance and repairs; reducing employee salaries, health insurance, pension, and fringe costs; eliminating social work staff; reducing school supplies and clerical supports; and other spending cuts to reduce expenses while maintaining essential core program operations. These measures have resulted in providers experiencing an inability to retain qualified staff. Increasingly, providers have raised fiscal viability concerns stating they are in jeopardy of closing without financial relief.

The high volume of tuition rate appeals and the variety of reforms have led to a backlog in RSU and delays in rate issuance, which threaten the viability of providers serving students with disabilities and create vulnerabilities in ensuring available placement options for such students.

For additional information, please see:

- Methodology letters found here that describe how each year's tuition rates were calculated: [https://www.oms.nysed.gov/rsu/Rates\\_Methodology/MethodLetters/home.html](https://www.oms.nysed.gov/rsu/Rates_Methodology/MethodLetters/home.html)
- Reimbursable Cost Manual (RCM): [https://www.oms.nysed.gov/rsu/Manuals\\_Forms/Manuals/RCM/home.html](https://www.oms.nysed.gov/rsu/Manuals_Forms/Manuals/RCM/home.html), which defines reimbursable costs for each school year
- Consolidated Fiscal Report (CFR) Manual: [https://www.oms.nysed.gov/rsu/Manuals\\_Forms/Manuals/CFRManual/home.html](https://www.oms.nysed.gov/rsu/Manuals_Forms/Manuals/CFRManual/home.html), which provides instructions to providers on completing annual cost reporting documentation.
- 8 NYCRR 200.9 Tuition rates for approved programs educating students with disabilities ages 3 to 21 years old who have been enrolled pursuant to articles 81 and 89 of the Education Law [https://govt.westlaw.com/nycrr/Document/I09aecc30c22211dda1bb852bdc84e3be?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default](https://govt.westlaw.com/nycrr/Document/I09aecc30c22211dda1bb852bdc84e3be?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)

## Comprehensive Study

Based on direction and input from NYSED, the contractor will conduct a comprehensive study of alternative tuition rate-setting methodologies to inform a final report to be issued by July 1, 2027 for the purpose of recommending a new tuition rate-setting methodology or methodologies for implementation by NYSED by the 2029-30 school year. The study will incorporate feedback from approved providers

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of special education services in New York State and from other stakeholders, including students' families, educators, school districts and counties and will be guided by the rate setting and special education experts in NYSED. The study will include but not be limited to:

- a comparative analysis of other New York State agencies' rate setting methodologies, including the methodology used for residential programs licensed by the Office of Children and Family Services;
- multiple options and alternative rate-setting methodologies, informed by ongoing consultation with NYSED, and with consideration given to:
  - intensity of need (e.g., student to teacher/paraprofessional ratio, frequency and duration of related services, 1:1 services, instructional, medical, security, etc.), driven by the CSE's/CPSE's recommendation for a free appropriate public education in the least restrictive environment pursuant to the requirements of the IDEA;
  - enrollment capacity, projected enrollment, and actual operating enrollment;
  - program quality metrics that are appropriate based on the students' needs and, which may include performance/outcome-based criteria based on the provision of programs and services; and
  - formula-based models.
- cost estimates for such alternative methodologies; and
- an analysis of current provider tuition rates compared to tuition rates that would be established under these alternative methodologies.

At minimum, the recommended alternative rate-setting methodologies shall:

- be fiscally sustainable for programs, school districts, counties, and the state;
- substantially restrict or eliminate tuition rate appeals;
- establish predictable tuition rates that are calculated based on standardized parameters and criteria, including, but not limited to, defined program and staffing models, regional costs, and minimum required enrollment levels as a percentage of program operating capacities;
- include a schedule to phase in new tuition rates in accordance with the recommended methodology or methodologies; and
- ensure tuition rates for all programs can be calculated no later than the beginning of each school year (July 1<sup>st</sup>).

The contractor will use data from multiple sources to conduct the study, some provided by NYSED and other data obtained by the contractor. These data sources will include, but will not be limited to:

- Certified Financial Reports (CFR) and financial statements submitted by providers to NYSED annually via CFRS Web: <https://omh.ny.gov/omhweb/finance/cfrs.htm>. The contractor will be given access to NYSED's data in CFRS Web, which includes providers' expenses and revenues by category, enrollment data, and staffing levels by position.
- SEDFIN, NYSED's system for calculating, processing, tracking, and reporting tuition rates. This system is accessible via the internet and the contractor will have access to Cognos software for generating reports/data mining from the system. NYSED will give the contractor access to SEDFIN and corresponding data via Cognos.
- The STAC Online System called EFRT: The System to Track and Account for Children (STAC) Unit processes over 200,000 reimbursement requests each year utilizing EFRT. This EFRT system is online and can be accessed by representatives from school districts, municipalities, and special education providers. Authorized representatives from school districts and municipalities can access the system to submit placement records and update programs.
- SEDREF core institution data containing a listing of each ASEP site. This information may be supplemented by letters sent by NYSED's Office of Special Education (OSE) to special education providers to inform them that they have been approved to operate as State-funded



special education service providers. These letters contain approved staffing/student ratios, program locations/sites, and for school-age programs, disability categories of students served. EFRT contains approved staffing/student ratio data and SEDREF contains program locations sites. NYSED will give the contractor access to these letters and other pertinent information which may be accessed via the NYSED web, SEDREF, EFRT, and SEDFIN.

- Live birth, enrollment trend, and similar data to be provided by NYSED.
- Feedback from representatives of approved special education programs, parents, and families throughout New York State obtained by NYSED via one or two meetings prior to the contract period. NYSED will share recording(s) and/or documented feedback from these meetings.
- Quantitative and qualitative data/feedback from approved special education service providers, parents/families, educators, school districts, counties and other stakeholders, including recordings provided by NYSED to the contractor from twenty regional stakeholder meetings, three-hours each, conducted by NYSED in fall 2023. Additional data will be obtained by the contractor via topical surveys and through additional regional meetings (described in greater detail in the Stakeholder Engagement section of this RFP).
- Other New York State agencies, and if recommended by NYSED, State agencies outside of New York or other national data sets. The contractor will obtain this information.

## **Comprehensive Report**

The contractor's analysis and methodology recommendations will be documented in the format of a comprehensive report, the initial draft of which will be submitted to NYSED by November 1, 2026. The report will:

- describe each individual component of the methodologies proposed (e.g., individual formulas with summary explanation, data points and data origin, and expectation for how the components of the methodology will be implemented/adjusted based on relevant factors);
- outline the comparative costs of the methodologies proposed, as well as a comparison of other benefits or relevant considerations;
- include sample rate calculations using each of the proposed methodologies. The sample rate calculations may be embedded in the report, but must also be provided in Excel;
- identify which methodology represents the contractor's highest recommendation, of the alternatives considered, and the rationale for the selection;
- include a summary of feedback gathered from stakeholders and responsive elements of various methodologies;
- be suitable for distribution to stakeholders and NYS government leaders, and must be clear and comprehensive to a range of audiences; and
- contain an implementation plan that indicates the timelines for rolling out the proposed methodology through a phase-in approach.

NYSED will review the report and request that the contractor make any necessary changes before the contractor submits the second draft report to NYSED no later than April 1, 2027. NYSED will once again review the report and request that the contractor make any necessary changes by June 17, 2027, so that NYSED may submit the final draft to the governor, DOB, and the legislature by the deadline of July 1, 2027 – the contractor must provide NYSED with at least two weeks to review the final version prior to the July 1 deadline. The contractor must provide NYSED with sufficient documentation to enable accountants and finance specialists, with no previous experience with the methodologies proposed, to validate the conclusions presented by the contractor and to independently calculate rates according to the proposed methodologies. The contractor documentation must also enable Office of Special Education review to ensure the proposed methodology is aligned with regulatory expectations for providing a free appropriate public education to students with disabilities, including but not limited to,

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approved program staff qualifications, session day and length of school year requirements, health and safety requirements, and all relevant aspects of IEP implementation (e.g., CSE process and development of the IEP, where applicable, implementation of a behavior intervention plan, where applicable, progress monitoring, and the provision of all recommended programs and services).

### **Stakeholder Engagement**

Stakeholders in this effort include approved providers of special education services, their representatives (e.g., associations, attorneys, lobbyists, and certified public accountants), and the family members of the students they serve, as well as school districts and counties that reimburse providers for a portion of the tuition. The contractor will facilitate the following activities and ensure sufficient stakeholder involvement in the methodology redesign effort:

- Conduct approximately five topical surveys to obtain additional feedback from stakeholders, using NYSED's no cost survey tools, such as Survey Monkey or NYSED's Business Portal.
- Present and obtain feedback from stakeholders on proposed alternative methodologies in December 2026 through February 2027 via nine hybrid (virtual/in-person), regional full-day meetings in: Capital Region, Central/Mohawk Valley Region, Finger Lakes, Hudson Valley, Long Island, North Country, Southern Tier, Western, and New York City. NYSED will coordinate these meetings using spaces, such as BOCES and NYSED facilities. The contractor will conduct one additional meeting virtually for a statewide audience of stakeholders. NYSED will coordinate this virtual meeting as well.

### **Ongoing Reporting and Consultation with NYSED**

The contractor will consult with key NYSED staff in RSU and the Office of Special Education (OSE) throughout the contract term on a schedule to be determined by NYSED in consultation with the vendor, and at a minimum:

- Within one month of contract execution, submit to NYSED a work plan for developing the alternative rate setting methodology recommendations and analysis, including milestones and timeline for completion, to ensure the initial draft report is submitted to NYSED by November 1, 2026, the second draft report submitted to NYSED no later than April 1, 2027, and the final report is submitted by June 17, 2027.
- Meet weekly, from the start of the project through July 1, 2027, via Zoom, WebEx, or Microsoft Teams with key NYSED staff for approximately 1 to 4 hours to provide a status update, discuss progress and strategies for achieving the objectives of this study and timeline.
  - Provide relevant documents and data to discuss at these meetings, obtaining feedback from NYSED on analysis completed to date and obtain direction from NYSED to inform analysis going forward. These meetings will be web-based; however, the contractor may be asked to meet with NYSED in Albany, NY, once or twice during the contract term, with at least one week's notice.
  - Provide sufficient detail on methodology components to allow RSU and OSE to review materials and determine whether feedback is needed to ensure alignment with NYSED direction and programmatic regulatory requirements.
  - Provide project/timeline updates for all tasks associated with the contract.
- Prepare monthly reports, from the start of the project through June 2026, that summarize work completed, progress made toward objectives and in relation to timeline, and any challenges faced along with proposed resolutions.

### **Contractor Staffing**

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The contractor will dedicate a team of staff with the appropriate experience and credentials who will be working directly with NYSED staff on a consistent basis. The contractor will identify one individual to be the primary point of contact, a project coordinator. Staff must possess strong research, data analysis, project management, communication skills, and accounting experience. The project coordinator must be available daily via telephone and email. The contractor shall provide sufficient additional management and administrative support staff necessary to organize, prepare and carry out all administrative tasks associated with conducting the tasks and submitting resultant reports.

Staff should have knowledge of rate setting methodologies, special education services, and, preferably, knowledge of tuition rate setting methodologies for special education providers in New York State. They should have an understanding of the laws and regulations that impact tuition rate setting.

### Transition

The contractor will ensure that any transition of work to NYSED prior to the end of the contract will be done in a way that provides NYSED with the ability to use the information provided by the contractor to fully implement a new tuition rate setting methodology. This includes a complete and total transfer of all requested data, files, reports, and records generated from the inception of the contract through the end of the contract to NYSED during or upon expiration of its contract. The data, files, etc. will be transferred to NYSED by the contractor in the format requested by NYSED. The contractor will manage and maintain the appropriate number of staff to meet all requirements during the transition. All reporting and record requirements, security standards, and performance standards are still in effect until the last day of the contract. The contractor will provide sufficient documentation to enable accountants and finance specialists, with no previous experience with the methodologies proposed, to validate the conclusions presented by the contractor and to independently calculate rates according to the proposed methodologies. The contractor documentation must also enable Office of Special Education review to ensure the conclusions presented by the contractor are aligned with regulatory expectations for providing a free appropriate public education to students with disabilities, including but not limited to, approved program staff qualifications, session day and length of school year requirements, health and safety requirements, and all relevant aspects of IEP implementation (e.g., CSE process and development of the IEP, where applicable, implementation of a behavior intervention plan, where applicable, progress monitoring, and the provision of all recommended programs and services).

### Additional Support

The contractor will continue to provide NYSED with technical and business process support as needed, after June 17, 2027, through the remainder of the contract. This support may include development of additional materials, analyses and responses to questions or feedback received from DOB and other stakeholders.

### Estimated Timeline of Key Events

Kick-off meeting between NYSED and contractor	Week 1
Weekly meetings begin	Week 2
NYSED provides the contractor with access to data	Month 1
Contractor submits detailed work plan/timeline to NYSED	Month 1
Contractor submits first monthly report	Month 2

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Contractor conducts stakeholder surveys	Month 4 through March 2027
Contractor submits first draft report on study findings	November 1, 2026
Contractor facilitates nine regional meetings and one statewide meeting with stakeholders	December 2026 through February 2027
Contractor submits second draft report on study findings	April 1, 2027
Contractor submits final draft report on study findings	June 17, 2027
Contractor provides ongoing support as needed and implements transition plan	After June 17, 2027 through the remainder of the contract

### Payments

Payments will be made on a fixed-price, deliverables-basis upon satisfactory completion of tasks in accordance with the scope of work and budget for this project.

Upon the contractor's completion and NYSED's approval of each deliverable defined in the Cost Proposal Form, the contractor will submit an invoice for payment for those completed/approved deliverables. Payment will be made upon 100% satisfactory completion of each deliverable, as determined by NYSED.

After June 17, 2025, and the completion of all deliverables identified in the cost proposal, any additional services needed from the contractor by NYSED will be paid based on an all-inclusive, blended hourly rate as defined in the Cost Proposal Form, unless the services needed are to address errors or other deficiencies in the final report caused by the contractor, in which case the report will be corrected/edited by the contractor at no additional cost. Additional services may only be performed at NYSED's request.

Payments to the contractor will only be made in accordance with properly submitted invoices. All invoices submitted for payment must include dates of service and an itemized list of activities and costs consistent with the approved Cost Proposal and Work Plan contained in the executed contract. Invoices with incomplete information will be returned to the contractor. Payments to subcontractors should be listed on invoices. Payments to subcontractors should list the subcontractor's name, payment amount, and nature of services provided separately on the invoice submitted.

### Conflicts of Interest

Organizations that are currently under contract with one or more approved special education providers as a certified public accountant, lobbyist, or other type of consultant, or that have other relationships, affiliations, or interests with one or more providers that may present a real or perceived conflict of interest, are only eligible for this opportunity if they can demonstrate that they have clear and separate governance and oversight structures in place to prevent any conflict of interest or the appearance of a conflict of interest. This includes having staff specifically dedicated to the comprehensive study/methodology reform analysis, distinct organizational units and reporting structures, as well as other policies and procedures that eliminate any potential conflicts of interest or the appearance thereof. If applicable, the bidder's technical proposal should detail the bidder's plans to eliminate or mitigate any potential conflict of interest.

### Requirements of Education Law Section 2-d

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The contractor agrees to comply with FERPA and New York State Education Law § 2-d. The NYS Education Department (NYSED) is required to ensure that all contracts with a third-party contractor that receives Personally Identifiable Information (PII) include a Data Privacy and Security Plan, pursuant to Education Law § 2-d and § 121.6 of the Regulations of the Commissioner of Education. For every contract, the contractor must complete the following or provide a plan that materially addresses its requirements, including alignment with the NIST Cybersecurity Framework, which is the standard for educational agency data privacy and security policies in New York state.

Pursuant to Education Law § 2-d and § 121.3 of the Regulations of the Commissioner of Education, the NYS Education Department (“NYSED”) is required to post information to its website about its contracts with third-party contractors that will receive Student PII and/or Teacher and/or Principal APPR data (“APPR Data”), collectively referred to as PII.

The New York State Education Department’s Data Privacy Appendix (Appendix R) is annexed to this RFP, the terms of which are incorporated herein by reference, and shall also be part of the contract.

Bidders should use the templates and instructions in Appendix R to submit the required DPA EXHIBIT 1 - Contractor’s Data Privacy and Security Plan and DPA EXHIBIT 2 - Education Law § 2-d Bill of Rights for Data Privacy and Security and Supplemental Information for Contracts that Utilize Personally Identifiable Information and return them with their proposal for review.

### **Accessibility of Web-Based Information and Applications**

Any documents, web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Education Department IT Policy NYSED-WEBACC-001, Web Accessibility Policy as such policy may be amended, modified or superseded, which requires that state agency web-based information, including documents, and applications are accessible to persons with disabilities. Documents, web-based information and applications must conform to NYSED-WEBACC-001 as determined by quality assurance testing. Such quality assurance testing will be conducted by NYSED employee or contractor and the results of such testing must be satisfactory to NYSED before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

### **Subcontracting Limit**

Subcontracting will be limited to 30% of the total contract budget. Subcontracting is defined as non-employee direct personal services and those non-employees’ related incidental expenses, including travel.

For vendors using subcontractors, a Vendor Responsibility Questionnaire and a NYSED vendor responsibility review are required for a subcontractor when:

- the subcontractor is known at the time of the contract award;
- the subcontractor is not an entity that is exempt from reporting by OSC; and
- the subcontract will equal or exceed \$100,000 over the life of the contract.

For additional information about Vendor Responsibility, see the **Vendor Responsibility** section contained in **3.) Evaluation Criteria and Method of Award** of this RFP.

If the vendor proposes to change subcontractors during the contract period, NYSED must be notified prior to the change. NYSED reserves the right to reject any replacement subcontractors proposed by

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the vendor and reserves the right to approve all changes in subcontractors. The Subcontracting Form located in the Submission Documents must be updated annually and submitted to NYSED. Using this form, the vendor must also report to NYSED, on an annual basis, actual expenditures incurred for all subcontractors and indicate which subcontracting costs are associated with M/WBE.

### **Staff Changes**

The contractor will maintain continuity of staff throughout the course of the contract. All changes in staff will be subject to NYSED approval. The replacement staff with comparable skills will be provided at the same or lower rates.

### **Contract Period**

NYSED will award one (1) contract pursuant to this RFP. The contract resulting from this RFP will be for a term anticipated to begin **December 1, 2024** and to end **March 31, 2028**.

### **Electronic Processing of Payments**

In accordance with a directive dated January 22, 2010, by the Director of State Operations - Office of Taxpayer Accountability, all state agency contracts, grants, and purchase orders executed after February 28, 2010, shall contain a provision requiring that contractors and grantees accept electronic payments.

### **M/WBE and Equal Employment Opportunities Requirements: Contractor Requirements and Obligations under New York State Executive Law, Article 15-A (Participation by Minority Group Members and Women with Respect to State Contracts)**

In an effort to eradicate barriers that have historically impeded access by minority group members and women in State contracting activities, Article 15-A, of the New York State Executive Law §310-318, (Participation By Minority Group Members and Women With Respect To State Contracts) was enacted to promote equality of economic opportunities for minority group members and women.

The New York State Education Department ("NYSED") has enacted its policies Equal Opportunity, Non-Discrimination and Affirmative Action and on Minority and Women-Owned Business Enterprise Procurements consistent with the requirements as set forth under the provisions of Article 15-A (the "Article") incorporated by reference, requiring Contracting Agencies to implement procedures to ensure that the "Contractor" (as defined under Article 15-A, §310.3 shall mean an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to a state contract, or a bidder in conjunction with the award of a state contract or a proposed party to a state contract, complies with requirements to ensure Equal Employment Opportunities for Minority Group Members and Women, in addition to providing Opportunities for Minority and Women-Owned Business Enterprises on all covered state contracts.

In keeping with the intent of the Law, it is the expectation of the Commissioner and the responsibility of all contractors participating in and/or selected for procurement opportunities with NYSED, to fulfill their obligations to comply with the requirements of the Article and its implementing regulations.

In accordance with these requirements, the contractor hereby agrees to make every good faith effort to promote and assist the participation of certified Minority and Women-Owned Business Enterprises ("M/WBE") as subcontractors and suppliers on this project for the provision of services and materials in

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an amount at least equal to the M/WBE goal (Included in the procurement document) as a percentage of the total dollar value of this project. In addition, the contractor shall ensure the following:

1. All state contracts and all documents soliciting bids or proposals for state contracts contain or make reference to the following provisions:

a. The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

For purposes of the Article, affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination and rate of pay or other forms of compensation.

b. The contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligation herein.

c. The contractor shall state in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status.

2. The contractor will include the provisions of subdivision one of this section in every subcontract as defined under §310.14, except as provided under §312.6 of the Article, in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the State contract.

3. Contractors or subcontractors shall comply with the requirements of any federal law concerning equal employment opportunity, which effectuates the purpose of this section.

4. Contractors and subcontractors shall undertake programs of affirmative action and equal employment opportunity as required by this section<sup>1</sup>. In accordance with the provision of the Article, the bidder will submit, with their proposal, Staffing Plan (EEO 100).

5. Certified businesses (as defined under Article 15-A, §310.1 means a business verified as a minority or women-owned business enterprise pursuant to §314 of the Article) shall be given the opportunity for meaningful participation in the performance of this contract, to actively and affirmatively promote and assist their participation in the performance of this contract, so as to facilitate the award of a fair share of this contract to such businesses.

6. Contractor shall make a good faith effort to solicit active participation by enterprises identified in the [Empire State Development \("ESD"\) directory of certified businesses](#). The contractor must document its

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<sup>1</sup> Notice – Contractors are provided with notice herein, NYSED may require a contractor to submit proof of an equal opportunity program after the proposal opening and prior to the award of any contract. In accordance with regulations set forth under Article 15-A §312.5, contractors and/or subcontractors will be required to submit compliance reports relating to the contractor's and/or subcontractor's program in effect as of the date the contract is executed.

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good faith efforts as set forth in 5 NYCRR 142.8. This document, Contractors Good Faith Efforts, can be found in the M/WBE Submission Documents.

7. Contractor shall agree, as a condition of entering into said contract, to be bound by the provisions of Article 15-A, §316.

8. Contractor shall include the provisions set forth in paragraphs (6) and (7) above in every subcontract in a manner that the provisions will be binding upon each subcontractor as to work in connection with this contract.

9. Contractor shall comply with the requirements of any federal law concerning opportunities for M/WBEs that effectuates the purpose of this section.

10. Contractor shall submit all necessary M/WBE documents and/or forms as described above as part of their proposal in response to NYSED procurement.

11. The percentage goals established for this RFP are based on the overall availability of M/WBEs certified in the particular areas of expertise identified under this RFP. These goals should not be construed as rigid and inflexible quotas that must be met, but as targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority and Women-Owned Business Program work.

12. Contractor shall ensure that enterprises have been identified (M/WBE 102) within the Utilization Plan, and the contractor shall attempt, in good faith, to utilize such enterprise(s) at least to the extent indicated in the plan, as to what measures and procedures contractor intends to take to comply with the provisions of the Article.

13. Upon written notification from NYSED M/WBE Program Unit as to any deficiencies and required remedies thereof, the contractor shall, within the period of time specified, submit compliance reports documenting remedial actions taken and other information relating to the operation and implementation of the Utilization Plan.

14. Where it appears that a contractor cannot, after a good faith effort, comply with the M/WBE participation requirements, contractor may file a written application with NYSED M/WBE Program Unit requesting a partial or total waiver (M/WBE 101) of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements, together with an explanation of the efforts undertaken by the contractor to obtain the required M/WBE participation.

For purposes of determining a contractor's good faith efforts to comply with the requirements of this section or be entitled to a waiver, NYSED shall consider at the least the following:

I. Whether the contractor has advertised in general circulation media, trade association publications and minority-focused and women-focused media and, in such event;

a. Whether or not the certified M/WBEs which have been solicited by the contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and

b. Whether certified businesses solicited by the contractor responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the contracting agency's deadline for submission of proposals.



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II. Whether there has been written notification to appropriate certified M/WBEs that appear in the [Empire State Development website](#).

All required Affirmative Action, EEO, and M/WBE forms to be submitted along with bids and/or proposals for NYSED procurements are attached hereto. Bidders must submit subcontracting forms that:

- 1) fully comply with the participation goals specified in the RFP; OR
- 2) partially comply with the participation goals specified in the RFP, and include a request for partial waiver, and document their good faith efforts to fully comply with the percentage goals specified in the RFP; OR
- 3) do not include certified M/WBE subcontractors or suppliers, and include a request for a complete waiver, and document their good faith efforts to fully comply with the participation goals specified in the RFP.

All M/WBE firms are required to be certified by Empire State Development (ESD). Online Certification can be found at the [New York State Contract System website](#).

**Failure to comply with the requirements of Article 15-A as set forth under this procurement and in conjunction with the corresponding contract, will result in the withholding of associated funds and other enforcement proceedings set forth under Article 15-A.**

## 2.) **Submission**

### **Documents to be submitted with this proposal**

This section details the submission document or documents that are expected to be transmitted by the respondent to the State Education Department in response to this RFP. New York State Education Department shall own all materials, processes, and products (software, code, documentation and other written materials) developed under this contract. Materials prepared under this contract shall be in a form that will be ready for copyright in the name of the New York State Education Department. Any subcontractor is also bound by these terms. The submission will become the basis on which NYSED will judge the respondent's ability to perform the required services as laid out in the RFP.

### **Project Submission**

The proposal submitted in response to this RFP must include the following documents submitted by email to [cau@nysed.gov](mailto:cau@nysed.gov) in Microsoft Office or editable PDF per the electronic proposal submission procedures outlined above, preferably with each of the following sets of documents attached as a single file (i.e. one email with four attachments):

1. Submission Documents bearing signature
2. Technical Proposal bearing signature
3. Cost Proposal bearing signature
4. M/WBE Documents bearing signature

The proposal must be received by **July 1, 2024 by 3:00 PM** by email to [cau@nysed.gov](mailto:cau@nysed.gov).

Proposals should be prepared simply and economically, avoiding the use of elaborate promotional materials beyond those sufficient to provide complete presentation. If supplemental materials are a necessary part of the proposal, the bidder should reference these materials in the technical proposal and cost proposal, identifying the document(s) and citing the appropriate section and page(s) to be reviewed.

The proposal must communicate an understanding of the deliverables of the RFP, describe how the tasks are to be performed and identify potential problems in the conduct of the deliverables and methods to identify and solve such problems.

Bidders should specify all details and dates required to evaluate the technical proposal and should limit aspects of the project plan that are to be determined only after the award of a contract. No optional deliverables to be provided only at an additional cost should be included and will not be considered in the evaluation of the technical proposal. Contractual terms, conditions and assumptions are inappropriate for inclusion in the proposal.

**Any proprietary material considered confidential by the bidder will specifically be so identified, and the basis for such confidentiality will be specifically set forth in the proposal by submitting the form "Request for Exemption from Disclosure Pursuant to the Freedom of Information Law," located in 5) Submission Documents.**

The completed Technical Proposal should be emailed and labeled **Technical Proposal – RFP #24-024 Do Not Open** and include the following:

**I. Experience, Qualifications, and Capacity (30 points)**

Describe the bidder's experience and staff qualifications to perform the work required under this contract, including:

1. The skills and qualifications of the project coordinator, the individual who will serve as the primary point of contact on this project and should have strong project management and communication skills.
2. The bidder's research and data analysis background, including experience with large and complex datasets from multiple sources.
3. The bidder's experience with large public outreach and communication efforts.
4. Any experience with financial data and accounting, and any experience with tuition rate setting.
5. Any experience with education policy or education research, preferably at the State level and with special education specifically.
6. The bidder's experience providing management and administrative support organize and carry out all administrative tasks associated with a project of this scale and scope.
7. Provide an organizational chart, identifying the staff who will be involved in this project and demonstrating that there will be sufficient capacity to fulfill all requirements.

**II. Implementation Plan and Approach (40 points)**

1. Describe how the bidder will approach the comprehensive study, specifically:
  - Describe how the bidder will review and consider all the required parameters and components, including those used in existing methodology.
  - Describe how the bidder will ensure the alternative methodologies strive to achieve the identified objectives, including how they will provide greater fiscal stability to special education providers.
  - Describe the software and other tools and equipment the bidder intends to use to analyze data and conduct the study.
  - Describe the bidder's quality control plan.
2. Describe the bidder's process for preparing a comprehensive report, based on the findings of the study, that includes comparative costs/benefits, sample formulas and rate calculations, and an implementation plan/timeline.
3. Describe how the bidder will provide NYSED with technical and business process support, as needed, after June 17, 2027, through the remainder of the contract, including developing additional materials, analyses and responses to questions or feedback received from DOB and other stakeholders.
4. Describe the bidder's approach to engaging stakeholders through regional in-person meetings, and surveys.
5. Describe how the bidder will consult with and report to NYSED throughout the contract period, through weekly meetings, at which the contractor will present and discuss data and analysis, and how the bidder will prepare monthly reports.
6. Describe the bidder's plan for ensuring that the work, data, files, reports, and other records are transitioned to NYSED seamlessly by the end of the contract.

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7. Provide a project timeline for ensuring that each deliverable is provided in a timely manner and all deadlines are met.

### III. Conflicts of Interest (not scored)

Describe how the bidder will ensure that all activities conducted pursuant to this RFP are carried out in a fair and objective manner, and that they have no real or perceived conflicts of interest in relation to this work. If the bidder is currently under contract with one or more approved special education providers as a certified public accountant, lobbyist, or other type of consultant, or has other relationships, affiliations, or interests with one or more providers that may present a real or perceived conflict of interest, the bidder shall clearly disclose those relationships in this section of the proposal and describe how they will ensure they have clear and separate governance and oversight structures in place. This includes having staff specifically dedicated to the comprehensive study/methodology reform analysis, distinct organizational units and reporting structures, as well as other policies and procedures that eliminate any potential conflicts of interest or the appearance thereof. If applicable, the proposal should detail the bidder's plans to eliminate or mitigate any potential conflict of interest.

## Cost Proposal (30 points)

The completed Cost Proposal should be emailed and labeled **Cost Proposal – RFP #24-024 Do Not Open** and include the following:

- 1) Detailed Budget, including deliverables, and Blended Hourly Rate/Cost Proposal Bid Form, **Signature Required**
- 2) 3) Subcontracting Form
- 3) 4) M/WBE Purchases Form

Budgets must be submitted using whole dollar numbers.

The Financial Criteria portion of the RFP will be scored based upon the grand total of the Detailed Budget (maximum of 27 points) and the all-inclusive, blended Hourly Rate (maximum of 3 points) submitted on the Cost Proposal Bid Form.

## M/WBE Documents

The original completed M/WBE Documents should be emailed and labeled **M/WBE Documents – RFP #24-024 Do Not Open**. Please return the documents listed for the compliance method bidder has achieved:

### Full Participation-No Request for Waiver

1. M/WBE Cover Letter, **Signatures Required**
2. **M/WBE 100** Utilization Plan
3. **M/WBE 102** Notice of Intent to Participate
4. **EEO 100** Staffing Plan

### Partial Participation-Request for Partial Waiver

1. M/WBE Cover Letter, **Signatures Required**
2. **M/WBE 100** Utilization Plan
3. **M/WBE 102** Notice of Intent to Participate

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4. **EEO 100** Staffing Plan
5. **M/WBE 101** Request for Waiver
6. **M/WBE 105** Contractor's Good Faith Efforts

**No Participation-Request for Complete Waiver**

1. M/WBE Cover Letter, **Signatures Required**
2. **EEO 100** Staffing Plan
3. **M/WBE 101** Request for Waiver
4. **M/WBE 105** Contractor's Good Faith Efforts

### **3.) Evaluation Criteria and Method of Award**

This section begins with the criteria the agency will use to evaluate bids and closes with the “method of award,” or how the contractor will be selected. This will be followed by various terms and conditions that reflect the specific needs of this project as well as New York State contract guidelines and requirements.

#### **Criteria for Evaluating Bids**

All eligible proposals received by the deadline will be reviewed using the following criteria and ratings. Applicants must ensure that all components of this application request have been addressed, the required number of copies has been provided, all forms and assurances have been completed, and the original signatures are included as required.

An evaluation committee will complete a review of all proposals submitted. The committee will review each proposal based upon the submitted proposal and the requirements of the RFP only. Bidders should not assume that committee review members will be familiar with the current program or have any previous experience with the bidder. Appropriate description should be included to inform review committee members about the bidder’s qualifications and capacity to perform all required deliverables.

The committee will review each proposal to determine compliance with the requirements described in the RFP. NYSED retains the right to determine whether any deviation from the requirements of this RFP is substantial in nature and may reject in whole or in part any and all proposals, waive minor irregularities and conduct discussions with all responsible bidders.

#### **Technical Criteria (70 Points)**

#### **Financial Criteria (30 Points)**

**The Financial Criteria portion of this RFP will be scored based upon the grand total of the Detailed Budget (maximum of 27 points) and the all-inclusive, blended Hourly Rate (maximum of 3 points) submitted on the Cost Proposal Bid Form.**

The financial portion of the proposal represents 30 points of the overall score and will be awarded up to 30 points pursuant to a formula, which awards the highest score of twenty-seven points (27) and three (3) points, respectively, to the Detailed Budget and the Hourly Rate with the lowest overall costs. The remaining cost proposals will be awarded points based on the relative difference of each proposal against the lowest costs proposed. The resulting percentages are then applied to the maximum point values of twenty-seven points (27) and three (3) points, respectively. These calculations will be computed by the CAU upon completion of the evaluation of the technical proposals by the technical review panel.

NYSED reserves the right to request best and final offers. In the event NYSED exercises this right, all responsive bidders will be asked to provide their best and final offer. The Contract Administration Unit will recalculate the financial score.

#### **Method of Award**

The aggregate score of all the criteria listed will be calculated for each proposal received.

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The contract issued pursuant to this proposal will be awarded to the vendor whose aggregate technical and cost score is the highest among all the proposals rated. **If NYSED exercises the right to request best and final offers, the contract must be issued to the vendor with the highest aggregate technical and financial score that results from the best and final offer.**

In the event that more than one proposal obtains the highest aggregate score, the contract will be awarded to the vendor in that group of highest aggregate scores whose budget component reflects the lowest overall cost.

### **NYSED's Reservation of Rights**

NYSED reserves the right to: (1) reject any or all proposals received in response to the RFP; (2) withdraw the RFP at any time, at the agency's sole discretion; (3) make an award under the RFP in whole or in part; (4) disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP; (5) seek clarifications of proposals; (6) use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP; (7) prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available; (8) prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments; (9) change any of the scheduled dates; (10) waive any requirements that are not material; (11) negotiate with the successful bidder within the scope of the RFP in the best interests of the state; (12) conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder; (13) utilize any and all ideas submitted in the proposals received; (14) unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 90 days from the bid opening; (15) require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation; (16) request best and final offers.

### **Post Selection Procedures**

Upon selection, the successful bidder will receive a proposed contract from NYSED. The selected bidder may be given an opportunity to reduce its cost proposal in accordance with the agency's right to negotiate a final best price. The contents of this RFP, any subsequent correspondence during the proposal evaluation period, and such other stipulations as agreed upon may be made a part of the final contract prepared by NYSED. Successful bidders may be subject to audit and should ensure that adequate controls are in place to document the allowable activities and expenditure of State funds.

### **Debriefing Procedures**

In accordance with section 163 of the NY State Finance Law, NYSED, upon request, must provide a debriefing to any unsuccessful bidder regarding the reasons their proposal was not selected for an award.

1. All unsuccessful bidders may request a debriefing within fifteen (15) calendar days of receiving notice from NYSED of non-award. Bidders may request a debriefing by submitting a written request to the Fiscal Contact person at [RateSettingRFP@nysed.gov](mailto:RateSettingRFP@nysed.gov).

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2. Upon receipt of a timely written request from the unsuccessful bidder, NYSED will schedule the debriefing to occur within a reasonable time following receipt of the request. Debriefings will be conducted in person, unless NYSED and the bidder mutually agree to utilize other means, including but not limited to telephone, video-conferencing or other types of electronic communication.
3. The debriefing will include: a) the reasons that the proposal submitted by the unsuccessful bidder was not selected for an award; b) the qualitative and quantitative analysis employed by NYSED in assessing the relative merits of the proposals; c) the application of the selection criteria to the unsuccessful bidder's proposal; and d) when the debriefing is held after the final award, the reasons for the selection of the winning proposal. The debriefing will also provide, to the greatest extent practicable, general advice and guidance to the unsuccessful bidder concerning potential ways that their future proposals could be more responsive.

### **Contract Award Protest Procedures**

Bidders who receive a notice of non-award or disqualification may protest the NYSED award decision subject to the following:

1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by NYSED.
2. The protest must be filed within ten (10) business days of receipt of a debriefing or disqualification letter. The protest letter must be filed with the Contract Administration Unit by emailing: [RateSettingRFP@nysed.gov](mailto:RateSettingRFP@nysed.gov).
3. The NYSED Contract Administration Unit (CAU) will convene a review team that will include at least one staff member from each of NYSED's Office of Counsel, CAU, and the Program Office. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within ten (10) business days of the receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and CAU will advise OSC that a protest was filed.
4. The NYSED Contract Administration Unit (CAU) may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts.

### **Vendor Responsibility**

State law requires that the award of state contracts be made to responsible vendors. Before an award is made to a not-for-profit entity, a for-profit entity, a private college or university or a public entity not exempted by the Office of the State Comptroller, NYSED must make an affirmative responsibility determination. The factors to be considered include legal authority to do business in New York State; integrity; capacity – both organizational and financial; and previous performance. Before an award of \$100,000 or greater can be made to a covered entity, the entity will be required to complete and submit a [Vendor Responsibility Questionnaire](#). School districts, Charter Schools, BOCES, public colleges and universities, public libraries, and the Research Foundation for SUNY and CUNY are some of the exempt



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entities. A [complete list of exempt entities](#) can be viewed at the Office of the State Comptroller's website.

NYSED recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the [VendRep System Instructions](#) or go directly to the [VendRep System on the Office of the State Comptroller's website](#).

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the [Office of the State Comptroller's Help Desk](#) at 866-370-4672 or 518-408-4672 or by email at [ITServiceDesk@osc.ny.gov](mailto:ITServiceDesk@osc.ny.gov).

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the [VendRep website](#) or may contact NYSED or the Office of the State Comptroller's Help Desk for a copy of the paper form.

### **Subcontractors:**

For vendors using subcontractors, a Vendor Responsibility Questionnaire and a NYSED vendor responsibility review are required for a subcontractor where:

- the subcontractor is known at the time of the contract award;
- the subcontractor is not an entity that is exempt from reporting by OSC; and
- the subcontract will equal or exceed \$100,000 over the life of the contract.

Note: Bidders must acknowledge their method of filing their questionnaire by checking the appropriate box on the Response Sheet for Bids (5. Submission Documents).

### **Procurement Lobbying Law**

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the New York State Education Department ("NYSED") and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of the solicitation through final award and approval of the Procurement Contract by NYSED and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified below. NYSED employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at [NYSED's Procurement Lobbying Law Policy Guidelines webpage](#).

Designated Contacts for NYSED  
Program Office – **Jamie DiGaudio**  
Contract Administration Unit – **Jessica Hartjen**  
M/WBE – **Brian Hackett**

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### Consultant Disclosure Legislation

Effective June 19, 2006, new reporting requirements became effective for State contractors, as the result of an amendment to State Finance Law §§ 8 and 163. As a result of these changes in law, State contractors will be required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor.

Chapter 10 of the Laws of 2006 expands the definition of contracts for consulting services to include any contract entered into by a State agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

To enable compliance with the law, State agencies must include in the Procurement Record submitted to OSC for new consultant contracts, the State Consultant Services Contractor's Planned Employment from Contract Start Date Through the End of the Contract Term (Form A). The completed form must include information for all employees providing service under the contract whether employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information ***prospectively from the start date of the contract through the end of the contract term.***

[Form A](#) is available on OSC's website.

**Please note that although this form is not required as part of the bid submission, NYSED encourages bidders to include it in their bid submission to expedite contract execution if the bidder is awarded the contract. Note also that only the form listed above is acceptable.**

Chapter 10 of the Laws of 2006 mandates that State agencies must now require State contractors to **report annually** on the employment information described above, including work performed by subcontractors. The legislation mandates that the annual employment reports are to be submitted by the contractor to the contracting agency, to OSC and to the Department of Civil Service. State Consultant Services Contractor's Annual Employment Report (Form B) is to be used to report the information for all procurement contracts above \$15,000. Please note that, in contrast to the information to be included on Form A, which is a one-time report of planned employment data for the entire term of a consulting contract on a projected basis, ***Form B will be submitted each year the contract is in effect and will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31).***

[Form B](#) is available on OSC's website.

For more information, please visit [OSC Guide to Financial Operations](#).

### Public Officer's Law Section 73

All bidders must comply with Public Officer's Law Section 73 (4)(a), as follows:

4. (a) No statewide elected official, state officer or employee, member of the legislature, legislative employee or political party chairman or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any state agency, or (ii) contract for or provide such goods or services with or to any private entity

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where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a state agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(i) The term "state officer or employee" shall mean:

(i) heads of state departments and their deputies and assistants other than members of the board of regents of the university of the state of New York who receive no compensation or are compensated on a per diem basis;

(ii) officers and employees of statewide elected officials;

(iii) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies other than officers of such boards, commissions or councils who receive no compensation or are compensated on a per diem basis; and

(iv) members or directors of public authorities, other than multistate authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, who receive compensation other than on a per diem basis, and employees of such authorities, corporations and commissions.

Review [Public Officer's Law Section 73](#).

### **NYSED Substitute Form W-9**

Any payee/vendor/organization receiving Federal and/or State payments from NYSED must complete the NYSED Substitute Form W-9 if they are not yet registered in the Statewide Financial System centralized vendor file.

The NYS Education Department (NYSED) is using the NYSED Substitute Form W-9 to obtain certification of a vendor's Tax Identification Number in order to facilitate a vendor's registration with the SFS centralized vendor file and to ensure accuracy of information contained therein. We ask for the information on the NYSED Substitute Form W-9 to carry out the Internal Revenue laws of the United States.

### **Workers' Compensation Coverage and Debarment**

New York State Workers' Compensation Law (WCL) has specific coverage requirements for businesses contracting with New York State and additional requirements which provide for the debarment of vendors that violate certain sections of WCL. The WCL requires, and has required since introduction of the law in 1922, the heads of all municipal and State entities to ensure that businesses have appropriate workers' compensation and disability benefits insurance coverage *prior* to issuing any permits or licenses, or *prior* to entering into contracts.

Workers' compensation requirements are covered by WCL Section 57, while disability benefits are covered by WCL Section 220(8). The Workers' Compensation Benefits clause in Appendix A – STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS states that in accordance with Section 142 of the State Finance Law, a contract shall be void and of no force and effect unless the contractor provides and maintains coverage during the life of the contract for the benefit of such employees as are required to be covered by the provisions of the WCL.

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Under provisions of the 2007 Workers' Compensation Reform Legislation (WCL Section 141-b), any person, or entity substantially owned by that person: subject to a final assessment of civil fines or penalties, subject to a stop-work order, or convicted of a misdemeanor for violation of Workers' Compensation laws Section 52 or 131, is barred from bidding on, or being awarded, any public work contract or subcontract with the State, any municipal corporation or public body for one year for each violation. The ban is five years for each felony conviction.

### **PROOF OF COVERAGE REQUIREMENTS**

The Workers' Compensation Board has developed several forms to assist State contracting entities in ensuring that businesses have the appropriate workers' compensation and disability insurance coverage as required by Sections 57 and 220(8) of the WCL.

***Please note – an ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.***

### **Proof of Workers' Compensation Coverage**

To comply with coverage provisions of the WCL, the Workers' Compensation Board requires that a business seeking to enter into a State contract submit appropriate proof of coverage to the State contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate workers' compensation insurance coverage:

- **Form C-105.2** – Certificate of Workers' Compensation Insurance issued by private insurance carriers, or **Form U-26.3** issued by the State Insurance Fund; or
- **Form SI-12**– Certificate of Workers' Compensation Self-Insurance; or **Form GSI-105.2** Certificate of Participation in Workers' Compensation Group Self-Insurance; or
- **CE-200**– Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.

### **Proof of Disability Benefits Coverage**

To comply with coverage provisions of the WCL regarding disability benefits, the Workers' Compensation Board requires that a business seeking to enter into a State contract must submit appropriate proof of coverage to the State contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate disability benefits insurance coverage:

- **Form DB-120.1** - Certificate of Disability Benefits Insurance; or
- **Form DB-155**- Certificate of Disability Benefits Self-Insurance; or
- **CE-200**– Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.

For additional information regarding workers' compensation and disability benefits requirements, please refer to the [New York State Workers' Compensation Board website](#). Alternatively, questions

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relating to either workers' compensation or disability benefits coverage should be directed to the NYS Workers' Compensation Board, Bureau of Compliance at (518) 486-6307.

**Please note that although these forms are not required as part of the bid submissions, NYSED encourages bidders to include them in their bid submission to expedite contract execution if the bidder is awarded the contract. Note also that only the forms listed above are acceptable.**

### **Sales and Compensating Use Tax Certification (Tax Law, § 5-a)**

Tax Law § 5-a requires contractors awarded State contracts for commodities or services valued at more than \$100,000 over the full term of the contract to certify to the New York State Department of Taxation and Finance ("DTF") that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specific period of time. The registration requirement applies if the contractor made a cumulative total of more than \$300,000 in sales during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June – August, September – November, December – February, and March – May. In addition, contractors must certify to DTF that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also certify to the procuring State entity that they filed the certification with the DTF and that it is correct and complete.

The selected bidder must file a properly completed Form ST-220-CA (with NYSED as the Contracting Agency) and Form ST-220-TD (with the DTF). These requirements must be met before a contract may take effect. Further information can be found at the [New York State Department of Taxation and Finance's website](#). Forms are available through these links:

- [ST-220 CA](#)
- [ST-220 TD](#)

**Please note that although these forms are not required as part of the bid submissions, NYSED encourages bidders to include them with their bid submissions to expedite contract execution if the bidder is awarded the contract.**

#### 4.) **Assurances**

The State of New York Agreement, Appendix A (Standard Clauses for all New York State Contracts), Appendix A-1 (Agency-Specific Clauses), and Appendix R (Data Security and Privacy Plan Provisions) **WILL BE INCLUDED** in the contract that results from this RFP. Vendors who are unable to complete or abide by these assurances should not respond to this request.

The documents listed below are included in **5.) Submission Documents**, which must be signed by the Chief Administrative Officer. Please review the terms and conditions. Certain documents will become part of the resulting contract that will be executed between the successful bidder and the NYS Education Department.

1. Non-Collusion Certification
2. MacBride Certification
3. Certification-Omnibus Procurement Act of 1992
4. Certification Regarding Lobbying; Debarment and Suspension; and Drug-Free Workplace Requirements
5. Offerer Disclosure of Prior Non-Responsibility Determinations
6. NYSED Substitute Form W-9 (If bidder is not yet registered in the SFS centralized vendor file.)
7. Iran Divestment Act Certification
8. Sexual Harassment Policy Certification
9. Certification Under Executive Order No. 16

M/WBE Documents – **(the forms below are included in 5.) Submission Documents)**

Please return the documents listed for the compliance method bidder has achieved:

#### **Full Participation-No Request for Waiver**

1. M/WBE Cover Letter
2. **M/WBE 100** Utilization Plan
3. **M/WBE 102** Notice of Intent to Participate
4. **EEO 100** Staffing Plan

#### **Partial Participation-Request for Partial Waiver**

1. M/WBE Cover Letter
2. **M/WBE 100** Utilization Plan
3. **M/WBE 102** Notice of Intent to Participate
4. **EEO 100** Staffing Plan
5. **M/WBE 101** Request for Waiver
6. **M/WBE 105** Contractor's Good Faith Efforts

#### **No Participation-Request for Complete Waiver**

1. M/WBE Cover Letter
2. **EEO 100** Staffing Plan
3. **M/WBE 101** Request for Waiver
4. **M/WBE 105** Contractor's Good Faith Efforts

STATE OF NEW YORK AGREEMENT

This AGREEMENT is hereby made by and between the People of the State of New York, acting through Dr. Betty A. Rosa, Commissioner of Education of the State of New York, party of the first part, hereinafter referred to as the (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT;

NOW THEREFORE, in consideration of the promises, responsibilities and covenants herein, the STATE and the CONTRACTOR agree as follows:

I. Conditions of Agreement

A. This AGREEMENT may consist of successive periods (PERIOD), as specified within the AGREEMENT or within a subsequent Modification Agreement(s) (Appendix X). Each additional or superseding PERIOD shall be on the forms specified by the particular State agency and shall be incorporated into this AGREEMENT.

B. Funding for the first PERIOD shall not exceed the funding amount specified on the face page hereof. Funding for each subsequent PERIOD, if any, shall not exceed the amount specified in the appropriate appendix for that PERIOD.

C. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.

D. For each succeeding PERIOD of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (The attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT.

To modify the AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, or change in the term, is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A1.

E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Workplan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.

G. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.

II. Payment and Reporting

A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.

B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to

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exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.

C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

### III. Terminations

A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.

B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.

C. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A1.

D. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.

E. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.

F. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

### IV. Indemnification

A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.

B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

### V. Property

Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A1.

### VI. Safeguards for Services and Confidentiality

A. Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief or promote or discourage adherence to religion in general or particular religious beliefs.

B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.

C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the contract and in conformity with applicable provisions of laws and regulations, or specified in Appendix A1.



**Appendix A**  
**STANDARD CLAUSES FOR NYS**  
**CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an

amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials,

equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without

limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's

Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition,

replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules (“CPLR”), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor’s actual receipt of process or upon the State’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates

that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business and Technology  
Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women’s Business  
Development  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
[NYS M/WBE Directory](#)

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROcity AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in

accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“[Prohibited Entities List](#)”).

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form

approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

(June 2023)

APPENDIX A-1  
AGENCY-SPECIFIC CLAUSES

Payment and Reporting

- A. In the event that Contractor shall receive, from any source whatsoever, sums the payment of which is in consideration for the same costs and services provided to the State, the monetary obligation of the State hereunder shall be reduced by an equivalent amount provided, however, that nothing contained herein shall require such reimbursement where additional similar services are provided and no duplicative payments are received.
- B. For each individual for whom costs are claimed under this agreement, the contractor warrants that the individual has been classified as an employee or as an independent contractor in accordance with 2 NYCRR 315 and all applicable laws including, but not limited to, the Internal Revenue Code, the New York Retirement and Social Security Law, the New York Education Law, the New York Labor Law, and the New York Tax Law. Furthermore, the contractor warrants that all project funds allocated to the proposed budget for Employee Benefits, represent costs for employees of the contractor only and that such funds will not be expended on any individual classified as an independent contractor.

Terminations

- A. The State may terminate this Agreement without cause by thirty (30) days prior written notice. In the event of such termination, the parties will adjust the accounts due and the Contractor will undertake no additional expenditures not already required. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder.
- B. SED reserves the right to terminate this Agreement in the event it is found that the certification by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, SED may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

Responsibility Provisions

- A. General Responsibility Language  
The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Education or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- B. Suspension of Work (for Non-Responsibility)  
The Commissioner of Education or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Education or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- C. Termination (for Non-Responsibility)  
Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate SED officials or staff, the Contract may be terminated by the Commissioner of Education or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Education or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

Property



- A. The Contractor shall maintain a complete inventory of all realty, equipment and other non-expendable assets including, but not limited to, books, paintings, artifacts, rare coins, antiques and other collectible items purchased, improved or developed under this agreement.

Inventories for non-expendable assets must be submitted with the final expenditure report. In addition to or as part of whatever rights the State may have with respect to the inspection of the Contractor, the State shall have the right to inspect the inventory without notice to the Contractor.

The Contractor shall not at any time sell, trade, convey or otherwise dispose of any non-expendable assets having a market value in excess of Two Thousand Dollars (\$2,000) at the time of the desired disposition without the express permission of the State. The Contractor may seek permission in writing by certified mail to the State.

The Contractor shall not at any time use or allow to be used any non-expendable assets in a manner inconsistent with the purposes of this agreement.

- B. If the Contractor wishes to continue to use any of the non-expendable assets purchased with the funds available under this agreement upon the termination of this agreement, it shall request permission from the State in writing for such continued use within twenty-five (25) days of the termination of this agreement. The Contractor's request shall itemize the non-expendable assets for which continued use is sought. The State may accept, reject or accept in part such request. If the request for continued use is allowed to any degree, it shall be conditioned upon the fact that said equipment shall continue to be used in accordance with the purposes of this agreement.

If after the State grants permission to the Contractor for "continued use" as set forth above the non-expendable assets are not used in accordance with the purposes of this agreement, the State in its discretion may elect to take title to such assets and may assert its right to possession upon thirty (30) days prior written notice by certified mail to the Contractor. The State upon obtaining such non-expendable assets may arrange for their further use in the public interest as it in its discretion may decide.

- C. Upon termination of this agreement, the State in its discretion may elect to take title and may assert its right to possession of any non-expendable assets upon thirty (30) days prior written notice by certified mail to the Contractor. The State's option to elect to take title shall be triggered by the termination of this agreement or by the State's rejection of continued use of non-expendable assets by the Contractor as set forth herein. The State upon obtaining such non-expendable assets may arrange for their further use in the public interest as it in its discretion may decide.
- D. The terms and conditions set forth herein regarding non-expendable assets shall survive the expiration or termination, for whatever reason, of this agreement.

#### Safeguards for Services and Confidentiality

- A. Any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department. The material prepared under the terms of this agreement by the Contractor shall be prepared by the Contractor in a form so that it will be ready for copyright in the name of the New York State Education Department. Should the Contractor use the services of consultants or other organizations or individuals who are not regular employees of the Contractor, the Contractor and such organization or individual shall, prior to the performance of any work pursuant to this agreement, enter into a written agreement, duly executed, which shall set forth the services to be provided by such organization or individual and the consideration therefor. Such agreement shall provide that any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department and that such work shall be prepared in a form ready for copyright by the New York State Education Department. A copy of such agreement shall be provided to the State.
- B. Required Web Accessibility of Delivered Documents and Applications. If applicable, all documentation, applications

development, or programming delivered pursuant to the contract or procurement, will comply with New York State Education Department IT Policy NYSED-WEBACC-001, Web Accessibility Policy, which requires that documents, web-based information and applications are accessible to persons with disabilities. All delivered documentation and applications must conform to NYSED-WEBACC-001 as determined by quality assurance testing. Such quality assurance testing will be conducted by NYSED employee or contractor and the results of such testing must be satisfactory to NYSED before documents and applications will be considered a qualified deliverable under the contract or procurement.

- C. All reports of research, studies, publications, workshops, announcements, and other activities funded as a result of this proposal will acknowledge the support provided by the State of New York.
- D. This agreement cannot be modified, amended, or otherwise changed except by a writing signed by all parties to this contract.
- E. No failure to assert any rights or remedies available to the State under this agreement shall be considered a waiver of such right or remedy or any other right or remedy unless such waiver is contained in a writing signed by the party alleged to have waived its right or remedy.
- F. Expenses for travel, lodging, and subsistence shall be reimbursed at the per diem rate in effect at the time for New York State Management/Confidential employees.
- G. No fees shall be charged by the Contractor for training provided under this agreement.
- H. Partisan Political Activity and Lobbying. Funds provided pursuant to this Agreement shall not be used for any partisan political activity or for activities that may influence legislation or the election or defeat of any candidate for public office.
- I. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.
- J. This agreement, including all appendices, is, upon signature of the parties and the approval of the Attorney General and the State Comptroller, a legally enforceable contract. Therefore, a signature on behalf of the Contractor will bind the Contractor to all the terms and conditions stated therein.

**The parties to this agreement intend the foregoing writing to be the final, complete, and exclusive expression of all the terms of their agreement.**

#### Certifications

- A. Contractor certifies that it has met the disclosure requirements of State Finance Law §139-k and that all information provided to the State Education Department with respect to State Finance Law §139-k is complete, true and accurate.
- B. Contractor certifies that it has not knowingly and willfully violated the prohibitions against impermissible contacts found in State Finance Law §139-j.
- C. Contractor certifies that no governmental entity has made a finding of non-responsibility regarding the Contractor in the previous four years.
- D. Contractor certifies that no governmental entity or other governmental agency has terminated or withheld a procurement contract with the Contractor due to the intentional provision of false or incomplete information.
- E. Contractor affirms that it understands and agrees to comply with the procedures of the STATE relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6)(b).
- F. Contractor certifies that it is in compliance with NYS Public Officers Law, including but not limited to, §73(4)(a).

## Notices

Any written notice or delivery under any provision of this AGREEMENT shall be deemed to have been properly made if sent by certified mail, return receipt requested to the address(es) set forth in this Agreement, except as such address(es) may be changed by notice in writing. Notice shall be considered to have been provided as of the date of receipt of the notice by the receiving party.

## Miscellaneous

- A. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.
- B. If required by the Office of State Comptroller ("OSC") Bulletin G-226 and State Finance Law §§ 8 and 163, Contractor agrees to submit an initial planned employment data report on Form A and an annual employment report on Form B. State will furnish Form A and Form B to Contractor if required.
- C. The initial planned employment report must be submitted at the time of approval of this Agreement. The annual employment report on Form B is due by May 15th of each year and covers actual employment data performed during the prior period of April 1st to March 31st. Copies of the report will be submitted to the NYS Education Department, OSC and the NYS Department of Civil Service at the addresses below.

By mail:               NYS Office of the State Comptroller  
                          Bureau of Contracts  
                          110 State Street, 11<sup>th</sup> Floor  
                          Albany, NY 12236  
                          Attn: Consultant Reporting

By fax:               (518) 474-8030 or (518) 473-8808

Reports to DCS are to be transmitted as follows:

By mail:               NYS Department of Civil Service  
                          Office of Counsel  
                          Alfred E. Smith Office Building  
                          Albany, NY 12239

Reports to NYSED are to be transmitted as follows:

By mail:               NYS Education Department  
                          Contract Administration Unit  
                          Room 505 W EB  
                          Albany, NY 12234

By fax:               (518) 408-1716

- C. Consultant Staff Changes. If this is a contract for consulting services, Contractor will maintain continuity of the consultant team staff throughout the course of the contract. All changes in staff will be subject to STATE approval. The replacement consultant(s) with comparable skills will be provided at the same or lower hourly rate.
- D. Order of Precedence. In the event of any discrepancy, disagreement, conflict or ambiguity between the various documents, attachments and appendices comprising this contract, they shall be given preference in the following order to resolve any such discrepancy, disagreement, conflict or ambiguity:
1. Appendix A - Standard Clauses for all State Contracts

2. State of New York Agreement
3. Appendix A-1 - Agency Specific Clauses
4. Appendix X - Sample Modification Agreement Form (where applicable)
5. Appendix A-3 - Minority/Women-owned Business Enterprise Requirements (where applicable)
6. Appendix B - Budget
7. Appendix C - Payment and Reporting Schedule
8. Appendix R – Security and Privacy Mandates (where applicable)
9. Appendix D - Program Work Plan

Revised 5/23/22

**Appendix R**  
**NEW YORK STATE EDUCATION DEPARTMENT'S**  
**DATA PRIVACY APPENDIX**

**ARTICLE I: DEFINITIONS**

As used in this Data Privacy Appendix (“DPA”), the following terms shall have the following meanings:

- 1. Access:** The ability to view or otherwise obtain, but not copy or save, Student Data and/or APPR Data arising from the on-site use of an information system or from a personal meeting.
- 2. APPR Data:** Personally Identifiable Information from the records of an Educational Agency relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of Education Law §§ 3012-c and 3012-d.
- 3. Breach:** The unauthorized Access, acquisition, Disclosure or use of Student Data or APPR Data that is (a) accomplished in a manner not permitted by New York State and federal laws, rules, and regulations, or in a manner that compromises its security or privacy, (b) executed by or provided to a person not authorized to acquire, access, use, or receive it, or (c) a Breach of Contractor’s or Subcontractor’s security that leads to the accidental or unlawful alteration, destruction, loss of, Access to or Disclosure of Student Data or APPR Data.
- 4. Commercial or Marketing Purpose:** The Disclosure, sale, or use of Student Data for the purpose of directly or indirectly receiving remuneration, including the Disclosure, sale, or use of Student Data for advertising purposes, or the Disclosure, sale, or use of Student Data to develop, improve, or market products or services to Students.
- 5. Disclose or Disclosure:** The intentional or unintentional communication, release, or transfer of Student Data and/or APPR Data by any means, including oral, written, or electronic.
- 6. Education Record:** An education record as defined in the Family Educational Rights and Privacy Act and its implementing regulations, 20 U.S.C. § 1232g and 34 C.F.R. Part 99, respectively.
- 7. Educational Agency:** As defined in Education Law § 2-d, a school district, board of cooperative educational services, school, or the New York State Education Department (“NYSED”).
- 8. Eligible Student:** A Student who is eighteen years of age or older.
- 9. Encrypt or Encryption:** As defined in the Health Insurance Portability and Accountability Act of 1996 Security Rule at 45 CFR § 164.304, encrypt means the use of an algorithmic process to transform Personally Identifiable Information into an unusable, unreadable, or indecipherable form in which there is a low probability of assigning meaning without use of a confidential process or key.
- 10. Information:** Student Data and APPR Data from an Educational Agency that is Disclosed or made available to the Contractor pursuant to this contract with NYSED to which this DPA is attached and incorporated.

- 11. NIST Cybersecurity Framework:** The U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1.
- 12. Parent:** A parent, legal guardian, or person in parental relation to the Student.
- 13. Personally Identifiable Information (PII):** Personally Identifiable Information, as defined in the Family Educational Rights and Privacy Act and its implementing regulations, 20 U.S.C. § 1232g and 34 C.F.R. Part 99, (§ 99.3), and Teacher or Principal APPR Data.
- 14. Release:** Shall have the same meaning as Disclose.
- 15. School:** As defined in Education Law § 2-d, any (a) public elementary or secondary school, including a charter school; (b) universal pre-kindergarten program authorized pursuant to Education Law § 3602-e; (c) an approved provider of preschool special education; (d) any other publicly funded pre-kindergarten program; (e) a school serving children in a special act school district as defined in Education Law § 4001; (f) an approved private school for the education of students with disabilities; (g) a State-supported school subject to the provisions of Article 85 of the Education Law; or (h) a State-operated school subject to the provisions of Articles 87 or 88 of the Education Law.
- 16. Services:** Services provided by Contractor pursuant to this contract with NYSED to which this DPA is attached and incorporated.
- 17. Student:** Any person attending or seeking to enroll in an Educational Agency.
- 18. Student Records:** An education record as defined in the Family Educational Rights and Privacy Act and its implementing regulations, 20 U.S.C. § 1232g and 34 C.F.R. Part 99, respectively.
- 19. Student Data:** PII from Student Records of an Educational Agency and PII regarding a Student provided to the Contractor by the Student or the Student's Parent.
- 20. Subcontractor:** Contractor's non-employee agents, consultants, volunteers, including student interns, and/or any natural person or entity funded through this contract who is engaged in the provision of Services pursuant to an agreement with or at the direction of the Contractor.

## ARTICLE II: PRIVACY AND SECURITY OF INFORMATION

### 1. Compliance with Law.

When providing Services pursuant to this contract, Contractor may have Access to or receive Disclosure of Information that is regulated by one or more New York and/or federal laws and regulations, among them, but not limited to, the Family Educational Rights and Privacy Act ("FERPA") at 12 U.S.C. § 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. §§ 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. § 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. § 1400 et seq. (34 CFR Part 300); New York Education Law § 2-d; and the Regulations of the Commissioner of Education at 8 NYCRR Part 121. Contractor agrees to maintain the confidentiality and security of Information in accordance with (a) applicable New York, federal and local laws, rules,

and regulations, and (b) NYSED's Data Privacy and Security Policy. Contractor further agrees that neither the Services provided nor the manner in which such Services are provided shall violate New York, federal and/or local laws, rules, and regulations, or NYSED's Data Privacy and Security Policy.

**2. Authorized Use.**

Contractor agrees and understands that Contractor has no property, licensing, or ownership rights or claims to Information Accessed by or Disclosed to Contractor for the purpose of providing Services, and Contractor shall not use such Information for any purpose other than to provide the Services. Contractor will ensure that its Subcontractors agree and understand that neither the Subcontractor nor Contractor has any property, licensing or ownership rights or claims to Information Accessed by or Disclosed to Subcontractor for the purpose of assisting Contractor in providing Services.

**3. Contractor's Data Privacy and Security Plan.**

Contractor shall adopt and maintain administrative, technical, and physical safeguards, measures, and controls to manage privacy and security risks and protect Information in a manner that complies with New York State, federal and local laws, rules, and regulations, and the NYSED policies. Education Law § 2-d requires that Contractor provide NYSED with a Data Privacy and Security Plan that outlines the safeguards, measures, and controls, that the Contractor will employ, including how the Contractor will implement such safeguards, measures, and controls, to comply with (a) the terms of this DPA, (b) all applicable state, federal and local data privacy and security requirements, (c) the parents bill of rights for data privacy and security that is attached hereto and incorporated herein as DPA Exhibit 2, and (d) applicable NYSED policies. Contractor's Data Privacy and Security Plan is attached to and incorporated in this DPA as Exhibit 1.

**4. NYSED's Data Privacy and Security Policy**

State law and regulation require NYSED to adopt a data privacy and security policy that complies with Part 121 of the Regulations of the Commissioner of Education and aligns with the NIST Cyber Security Framework. Contractor shall comply with NYSED's Data Privacy and Security Policy located at <http://www.nysed.gov/data-privacy-security/nysed-data-privacy-and-security-policy> and other applicable NYSED policies and agrees to contractually require its Subcontractors to comply with NYSED's Data Privacy and Security Policy.

**5. Right of Review and Audit.**

Upon NYSED's request, Contractor shall provide NYSED with copies of its policies and related procedures that pertain to the protection of Information. In addition, NYSED may require Contractor to undergo an audit of its privacy and security safeguards, measures, and controls as they pertain to alignment with the requirements of New York State laws and regulations, NYSED's policies applicable to Contractor, and alignment with the NIST Cybersecurity

Framework. Any audit required by NYSED must be performed by an independent third party at Contractor's expense and the audit report must be provided to NYSED. In lieu of being subject to a required audit, Contractor may provide NYSED with an industry standard independent audit report of Contractor's privacy and security practices that was issued no more than twelve months before the date that NYSED informed Contractor that it required Contractor to undergo an audit.

**6. Contractor's Employees and Subcontractors.**

- (a) Access to or Disclosure of Information shall only be provided to Contractor's employees and Subcontractors who need to know the Information to provide the Services and such Access and/or Disclosure of Information shall be limited to the extent necessary to provide such Services. Contractor shall ensure that all such employees and Subcontractors comply with the terms of this DPA.
- (b) Contractor must ensure that each Subcontractor performing Services where the Subcontractor will have Access to and/or receive Disclosed Information is contractually bound by a written agreement that includes confidentiality and data security obligations equivalent to, consistent with, and no less protective than, those found in this DPA.
- (c) Contractor shall examine the data privacy and security measures of its Subcontractors. If at any point a Subcontractor fails to materially comply with the requirements of this DPA, Contractor shall: (i) notify NYSED, (ii) as applicable, remove such Subcontractor's Access to Information; and (iii) as applicable, retrieve all Information received or stored by such Subcontractor and/or ensure that Information has been securely deleted or securely destroyed in accordance with this DPA. In the event there is an incident in which Information held, possessed, or stored by the Subcontractor is compromised, unlawfully Accessed, or unlawfully Disclosed, Contractor shall follow the Data Breach reporting requirements set forth in Section 11 of this DPA.
- (d) Contractor shall take full responsibility for the acts and omissions of its employees and Subcontractors.
- (e) Other than Contractor's employees and Subcontractors who have a need to know the Information, Contractor must not provide Access to or Disclose Information to any other party unless such Disclosure is required by statute, court order or subpoena, and Contractor notifies NYSED of the court order or subpoena no later than the time the Information is Disclosed, unless such Disclosure to NYSED is expressly prohibited by the statute, court order or subpoena. Notification shall be made in accordance with the Notice provisions of this contract and shall also be provided to the Office of the Chief Privacy Officer, NYS Education Department, 89 Washington Avenue, Albany, New York 12234.



- (f) Contractor shall ensure that its Subcontractors know that they cannot provide Access to or Disclose Information to any other party unless such Access or Disclosure is required by statute, court order or subpoena. If a Subcontractor is required to provide Access to or Disclose Information pursuant to a court order or subpoena, the Subcontractor shall, unless prohibited by statute, court order or subpoena, notify Contractor no later than two (2) days before any Information is Accessed or Disclosed. Upon receipt of notice from a Subcontractor, Contractor shall provide notice to NYSED no later than the time that the Subcontractor is scheduled to provide Access or Disclose the Information.

#### **7. Training.**

Contractor shall ensure that all its employees and Subcontractors who have Access to or will receive Information will be trained on the federal and state laws governing confidentiality of such Information prior to receipt.

#### **8. Data Return and Destruction of Data.**

- (a) Contractor is prohibited from retaining Disclosed Information or continuing to Access Information, including any copy, summary, or extract of Information, on any storage medium (including, without limitation, hard copies and storage in secure data centers and/or cloud-based facilities) beyond the term of this contract unless such retention is expressly authorized for a prescribed period by this contract, necessary for purposes of facilitating the transfer of Disclosed Information to NYSED, or expressly required by law. As applicable, upon expiration or termination of this contract, Contractor shall transfer the Disclosed Information to NYSED in a format and manner agreed to by the Parties.
- (b) When the purpose that necessitated Contractor's Access to and/or Disclosure of Information has been completed or Contractor's authority to have Access to Information or retain Disclosed Information has expired, Contractor shall ensure that, as applicable, (1) all privileges providing Access to Information are revoked, and (2) all Information (including without limitation, all hard copies, archived copies, electronic versions, electronic imaging of hard copies) retained by Contractor or its Subcontractors and/or all Information maintained on behalf of Contractor or its Subcontractors in a secure data center and/or cloud-based facilities is securely deleted and/or destroyed in a manner that does not allow it to be retrieved or retrievable, read or reconstructed. Hard copy media must be shredded or destroyed such that Information cannot be read, or otherwise reconstructed, and electronic media must be cleared, purged, or destroyed such that the Information cannot be retrieved. Only the destruction of paper

Information, and not redaction, will satisfy the requirements for data destruction. Redaction is specifically excluded as a means of data destruction.

- (c) Contractor shall provide NYSED with a written certification of, as applicable, (1) revocation of Access to Information granted by Contractor and/or its Subcontractors, and (2) the secure deletion and/or secure destruction of Information held by the Contractor or Subcontractors to the contract at the address for notifications set forth in this contract.
- (d) To the extent that Contractor and/or its Subcontractors continue to be in possession of any de-identified data (i.e., data that has had all direct and indirect identifiers removed), Contractor agrees that it will not attempt to re-identify de-identified data and/or transfer de-identified data to any person or entity, except as provided in subsection (a) of this section and that it will contractually prohibit its Subcontractors from the same.

#### **9. Commercial or Marketing Use Prohibition.**

Contractor agrees that it will not sell, use, or Disclose Student Data for a Commercial or Marketing Purpose and that it will contractually prohibit its Subcontractors from the same.

#### **10. Encryption.**

Contractor shall use industry standard security measures including encryption protocols that comply with New York law and regulations to preserve and protect Information. Contractor must encrypt Information at rest and in transit in accordance with applicable New York laws and regulations.

#### **11. Breach.**

Contractor shall promptly notify NYSED of any Breach of Information, regardless of whether Contractor or a Subcontractor suffered the Breach, without delay and in the most expedient way possible, but in no circumstance later than seven (7) calendar days after discovery of the Breach. Notifications shall be made in accordance with the notice provisions of this contract and shall also be provided to the office of the Chief Privacy Officer, NYS Education Department 89 Washington Avenue, Albany, New York 12234, and must, include a description of the Breach which includes the date of the incident and the date of discovery, the types of Information affected, and the number of records affected; a description of Contractor's investigation; and the name of a point of contact. Violations of the requirement to notify NYSED shall be subject to a civil penalty pursuant to Education Law § 2-d. The Breach of certain Information protected by Education Law § 2-d may subject the Contractor to additional penalties.

#### **12. Cooperation with Investigations.**

Contractor and its Subcontractors will cooperate with NYSED, and law enforcement where necessary, in any investigations into a Breach. Any costs incidental to the required cooperation or participation of the Contractor will be the sole responsibility of the Contractor if such Breach is attributable to Contractor or its Subcontractors.

### **13. Notification to Individuals.**

Where a Breach of Information occurs that is attributable to Contractor and/or its Subcontractors, Contractor shall pay for or promptly reimburse NYSED the full cost of NYSED's notification to Parents, Eligible Students, teachers, and/or principals, in accordance with Education Law § 2-d and 8 NYCRR Part 121. NYSED will be reimbursed by Contractor within 30 days of a demand for payment under this section.

### **14. Termination.**

The confidentiality and data security obligations of Contractor under this DPA shall survive any termination of this contract to which this DPA is attached but shall terminate upon Contractor's certifying that it and its' Subcontractors, as applicable (a) no longer have the ability to Access any Information provided to Contractor pursuant to this contract to which this DPA is attached and/or (b) that Contractor and its' Subcontractors have destroyed all Disclosed Information provided to Contractor pursuant to this contract to which this DPA is attached.

## **ARTICLE III: PARENT AND ELIGIBLE STUDENT PROVISIONS**

### **1. Parent and Eligible Student Access.**

Education Law § 2-d and FERPA provide Parents and Eligible Students the right to inspect and review their child's or the Eligible Student's Student Data stored or maintained by NYSED. To the extent Student Data is held by Contractor pursuant to the Contract, Contractor shall respond within thirty (30) calendar days to NYSED's requests for access to Student Data necessary for NYSED to facilitate such inspection and review by a Parent or Eligible Student, and shall facilitate corrections, as necessary. If a Parent or Eligible Student contacts Contractor or a Subcontractor directly to review any of the Student Data held by Contractor or a Subcontractor pursuant to the Contract, Contractor shall refer the Parent or Eligible Student to NYSED and notify NYSED.

### **2. Bill of Rights for Data Privacy and Security.**

As required by Education Law § 2-d, the Parents Bill of Rights for Data Privacy and Security and the Supplemental Information for this contract is attached to and incorporated in this DPA as Exhibit 2 Contractor understands and agrees that, as an agreement with a third-party contractor who will receive Access to and/or Disclosure of Student Data, Education Law § 2-d requires NYSED to post Exhibit 2 to its website.

## EXHIBIT 1 - Contractor's Data Privacy and Security Plan

Pursuant to Education Law § 2-d and § 121.6 of the Regulations of the Commissioner of Education, NYSED is required to ensure that all contracts with a third-party contractor that has Access to or receives Information include a Data Privacy and Security Plan. For every contract, the Contractor must complete the following or provide a plan that materially addresses its requirements, including alignment with the NIST Cybersecurity Framework, which is the standard for educational agency data privacy and security policies in New York state. **While this plan is not required to be posted to NYSED's website, contractors should nevertheless ensure that they do not include information that could compromise the security of their data and data systems.**

- 1. Contractor Name:**
- 2. Outline how you will implement applicable data privacy and security contract requirements over the life of the Contract.**
- 3. Specify the administrative, operational, and technical safeguards and practices that you have in place to protect Information.**
- 4. Address the training received by your employees and any Subcontractors engaged in the provision of services under the Contract on the federal and state laws that govern the confidentiality of Information.**
- 5. Outline how you will ensure that your employees and any Subcontractors are bound by written agreement to the requirements of this contract.**
- 6. Specify how you will manage any data privacy and security incidents that implicate Information, including a description of any specific plans you have in place to identify data Breaches, unauthorized Access to Information and unauthorized Disclosure of Information, to meet your obligation to report such incidents to the NYSED.**
- 7. If applicable, describe how Disclosed Information will be transitioned to NYSED when either (a) it is no longer needed by you to meet your obligations under this contract or (b) your authorization to Access Information or use Disclosed Information has terminated.**
- 8. Describe your secure destruction and secure deletion practices and how you will certify to NYSED that all Access to Information has been revoked by you and, as applicable, your Subcontractors and that all Disclosed Information has been either securely deleted or securely destroyed by you and your Subcontractors.**
- 9. Outline how your data privacy and security program/practices align with NYSED's applicable policies.**

## EXHIBIT 2 - Education Law § 2-d Bill of Rights for Data Privacy and Security and Supplemental Information for Contracts that Utilize Personally Identifiable Information

Parents (including legal guardians or persons in parental relationships) and Eligible Students (students 18 years and older) can expect the following:

1. A Student's Personally Identifiable Information ("Student PII") cannot be sold or released for any Commercial or Marketing purpose. Student PII, as defined by Education Law § 2-d and the Family Educational Rights and Privacy Act ("FERPA"), includes direct identifiers such as a student's name or identification number, parent's name, or address; and indirect identifiers such as a student's date of birth, which when linked to or combined with other information can be used to distinguish or trace a student's identity. Please see FERPA's regulations at 34 CFR § 99.3 for a more complete definition.
2. The right to inspect and review the complete contents of the student's education record stored or maintained by an educational agency. This right may not apply to Parents of an Eligible Student.
3. State and federal laws such as Education Law § 2-d; the Regulations of the Commissioner of Education at 8 NYCRR Part 121, FERPA at 12 U.S.C. § 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. §§ 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. § 1232h (34 CFR Part 98); and the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. § 1400 et seq. (34 CFR Part 300) protect the confidentiality of Student PII.
4. Safeguards associated with industry standards and best practices including, but not limited to, encryption, firewalls and password protection must be in place when Student PII is stored or transferred.
5. A complete list of all student data elements collected by New York State Education Department ("NYSED") is available at [www.nysed.gov/data-privacy-security/student-data-inventory](http://www.nysed.gov/data-privacy-security/student-data-inventory) and by writing to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.
6. The right to have complaints about possible breaches and unauthorized disclosures of Student PII addressed. Complaints should be submitted to the NYS Education Department at [www.nysed.gov/data-privacy-security/report-improper-disclosure](http://www.nysed.gov/data-privacy-security/report-improper-disclosure), by mail to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234; by email to [privacy@nysed.gov](mailto:privacy@nysed.gov); or by telephone at 518-474-0937.
7. To be notified in accordance with applicable laws and regulations if Student PII is either unlawfully accessed or unlawfully disclosed.
8. NYSED workers that have access to or receive disclosure of Student PII will receive training on applicable state and federal laws, policies, and safeguards associated with industry standards and best practices that protect PII.
9. NYSED contracts with vendors that receive Student PII will address statutory and regulatory data privacy and security requirements.

## **Supplemental Information**

Pursuant to Education Law § 2-d and § 121.3 of the Regulations of the Commissioner of Education, NYSED is required to post information to its website about its contracts with third-party contractors that will be provided Access to or receive Disclosure of Student Data and/or APPR Data.

### **1. Name of Contractor:**

### **2. Description of the exclusive purpose(s) for which the Student Data and/or APPR Data will be used:**

### **3. Type(s) of Data that Contractor will be provided Access to or Disclosure of:**

Student Data     Yes     No

APPR Data         Yes     No

### **4. Contract Term:**

Contract Start Date:

Contract End Date:

### **5. Subcontractor use and written agreement requirement:**

**Contractor will use Subcontractors**                       Yes     No

**Contractor will not use Subcontractors**                       Yes     No

If Contractor plans to use Subcontractors, Contractor will not utilize Subcontractors without a written contract that requires the Subcontractors to adhere to, at a minimum, materially similar data protection obligations imposed on the Contractor by state and federal laws and regulations and this contract.

Contractor agrees to bind its Subcontractors by written agreement.                       Yes     No

Not Applicable because Contractor will not use Subcontractors.                       Yes     No

### **6. Data Transition and Secure Destruction**

Yes     No Contractor agrees that the confidentiality and data security obligations under this DPA will survive the expiration or termination of this contract but shall terminate upon Contractor's certifying, that Contractor and its Subcontractors:

- Are unable to Access any Information provided to Contractor pursuant to this contract
- Securely transfer Disclosed Student Data and APPR Data to NYSED, or at NYSED's option and written discretion, a successor contractor in a format agreed to by the Parties.
- Securely delete and destroy Disclosed Student Data and APPR Data.

### **7. Challenges to Data Accuracy**

Yes     No Contractor agrees that parents, eligible students, teachers, or principals who seek to challenge the accuracy of Student Data or APPR Data will be referred to NYSED and if a correction to data is deemed necessary, NYSED will notify Contractor. Contractor further agrees to facilitate such corrections within 21 days of receiving NYSED's written request.

## 8. Secure Storage and Data Security

Please indicate where Student Data and/or APPR Data will be stored:

- Yes  No Using a cloud or infrastructure owned and hosted by a third party.  
 Yes  No Using Contractor owned and hosted solution  
 Yes  No Other:

**Please describe how data privacy and security risks will be mitigated in a manner that does not compromise the security of the data:**

## 9. Encryption requirement

Contractor agrees that Student Data and APPR Data will be encrypted while in motion and at rest.

- Yes  No

## 10. Contractor Certification.

Contractor certifies that Contractor will comply with, and require its Subcontractors to comply with, applicable State and Federal laws, rules, and regulations and NYSED policies.

Contractor's Name

Signature

Printed Name

Title

Date