

REQUEST FOR PROPOSALS (RFP)

RFP #23-004

NEW YORK STATE EDUCATION DEPARTMENT

Title: Funding for Public High School Equivalency (HSE) Test Administration

The New York State Education Department (NYSED) High School Equivalency Office is seeking proposals from qualified entities interested in receiving reimbursement for administering the New York State (NYS) approved High School Equivalency (HSE) exam. The NYSED contracts with a vendor for the development, delivery and scoring of the state's HSE exam, which is the assessment used to earn a NYS HSE diploma. The GED® Test served as the state's approved HSE exam from the 1940's-2013; after which the state adopted the Test Assessing Secondary Completion (TASC Test™) from 2014-2021, when it was discontinued. Beginning in 2022, NYSED resumed contracting with GED Testing Service (GEDTS) for the provision of the exam. The GED® Test is offered as a paper-based exam through GEDTS and as a computer-based exam through their testing partner, Pearson VUE. NYS HSE exams are publicly funded and there is no cost to NYS residents to take the HSE exam.

This application is for funding to reimburse approved HSE test centers for providing regularly scheduled HSE exams for eligible New York State residents, primarily through computer-based testing (CBT). Additional consideration will be given to sites that were previously approved to deliver paper-based testing (PBT) but have converted to providing CBT. The application should contain a reasonable projection informed by the proposed frequency of testing, capacity of seating and the approved staff available for administration of exams, as described below.

Test Service Areas (TSA) are the statewide structure for the distribution of awards for this RFP and are delineated by workforce investment regions under the federal Workforce Investment and Opportunity Act (WIOA). To ensure greater geographic accessibility, New York City (NYC) is further divided into five TSA's, corresponding to its five counties: Bronx; Kings; New York; Queens; and Richmond. The Big Four Cities of Buffalo, Rochester, Syracuse, and Yonkers, as defined by city limits, are each designated as a TSA. Applicants may submit proposals to administer testing in more than one TSA, however a separate proposal, clearly labeled, must be submitted for each TSA.

A listing of the entities that meet eligibility criteria to apply for funding is provided in the *Official Public HSE Test Center Eligibility Criteria* section of this RFP. Contracts will only be awarded to those entities that will provide testing to the public at no cost to the examinee.

Public test centers must be located within the TSA for which they are applying.

Please see, *Chart 1: Funding by TSA for Standard Examinees and Examinees Utilizing an Accommodated Setting*, for a list of TSAs, annual funding allocations during the current contract period, and the number of examinees tested in 2018 and 2019, including the number and percentage of those requiring testing accommodations. These testing years were selected as they represent more typical years of testing than 2020, and 2021, due to test centers being closed during the pandemic.

NYSED will award at least one contract(s) for each TSA pursuant to this RFP. The contract(s) resulting from this RFP will be for a three-year period, anticipated to begin January 1, 2023, and end December

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31, 2025. Contracts awarded to vendors will be for the purpose of reimbursing test centers, and addendum sites, for administering GED® Tests to the public. Contracts will be awarded commensurate with the need to increase public access to testing, and preference will be given to test centers offering computer-based testing (CBT). Paper-based testing (PBT) will be increasingly limited, except for incarcerated settings and some other special settings, as NYSED transitions to full and widespread implementation of CBT. There is no subcontracting allowed under this RFP.

Mandatory Requirements: See Mandatory Requirements section of the RFP.

Components contained in **RFP #23-004** 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 this Request for Proposal must be submitted by e-mail to RFP23-004@nysed.gov no later than the close of business on **July 21, 2022**. Questions regarding this request should be identified as Program or Fiscal. A Question-and-Answer Summary will be posted on the [ACCES website](#) no later than close of business on **August 4, 2022**. The following are the designated contacts for this procurement.

Program Matters

Ruth Singer
RFP23-004@nysed.gov

Fiscal Matters

Bethany Bennett
RFP23-004@nysed.gov

Bidders are requested to submit their bids electronically. The following documents should be submitted as detailed in the Submission section of the RFP, and must be received at NYSED no later than **August 25, 2022 by 3:00 PM Eastern Time**:

1. Submission Documents labeled **[name of bidder] Submission Documents RFP 23-004**
2. Technical Proposal labeled **[name of bidder] Technical Proposal RFP 23-004**

The email address for all documents is cau@nysed.gov.

Instructions for submitting an electronic bid:

1. The technical proposal should be submitted in Microsoft Office or PDF files that are editable and searchable, such as Optical Character Recognition (OCR). Please do not submit the technical 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

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- 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 23-004." 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 the award.
7. **Bids received after 3:00 pm Eastern Time on August 25, 2022, will be disqualified.**

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.

Mandatory Requirements

The eligible bidder must agree to the Mandatory Requirements found below and must submit the Mandatory Requirements Certification Form, located in 5.) Submission Documents. This required form must be signed by an authorized person. **Bids that do not comply with the Mandatory Requirements and include the form will be disqualified.**

All NYSED HSE Test Centers must be approved to administer the GED® Test by the NYSED High School Equivalency Office and GEDTS/Pearson VUE.

1. [NYSED High School Equivalency test center requirements](#)
2. [GED Testing Service \(GEDTS\) and Pearson VUE facility and technical requirements](#)

Background

Overview of the GED® Test:

In 2022 the GED® Test became the New York State approved HSE exam. The GED had served as the HSE exam from the 1940's through 2013, when the Test Assessing Secondary Completion (TASC) became the approved exam from 2014-2021. The GED Test has been synonymous with high school academic equivalency for nearly 80 years, is currently administered in 40 states, and provides a normed and standardized exam which assesses the academic skills and knowledge typically developed in a four-year New York high school education program.

Test centers will primarily administer the GED through computer-based testing (CBT). delivered through their partner Pearson VUE. The GED is available in both English and Spanish with the assessments encompassing the core subject areas, as follows: Reasoning Through Language Arts (RLA), i.e., reading and writing; Mathematical Reasoning; Science; and Social Studies. The full battery of subject tests takes about seven- and one-half hours to complete. Test centers are encouraged to broadly support CBT and post a maximum number of testing dates and times via the CBT online scheduling system, which is a function of Pearson VUE and the method by which test takers view the availability of testing opportunities. GED Testing Service (GEDTS) directly provides paper-based testing (PBT) on a very limited basis. Outside of NYS, PBT is only delivered in correctional settings. For technical specifications, see [Become a GED Test Center](#).

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Official Public HSE Test Center Eligibility Criteria

NYSED approved HSE test centers include both public or non-public testing sites, including school districts; Boards of Cooperative Educational Services (BOCES), community colleges, county jails and state prisons, among others. This RFP is for funding public test centers and their addendum sites only. The public test center must be the applicant.

Public testing sites, which are eligible to apply under this RFP, must be approved by the NYSED HSE office and GEDTS/Pearson VUE. The following entities are eligible public test centers under this RFP:

1. School districts
2. BOCES
3. Community-based organizations
4. Volunteer organizations
5. Not-for-profit institutions including higher education
6. Educational Opportunity Centers (EOCs)
7. Libraries
8. Public housing authorities
9. Other non-profit agencies and organizations.

Test Center Operating Requirements

Test centers must be approved by NYSED High School Equivalency Office and comply with GEDTS and Pearson VUE training and implementation requirements. Information on becoming a NYSED test center can be found at: [Approval by NYSED to Become a Test Center](#)

The NYSED requires specific assurances that HSE test centers comply with the Americans with Disabilities Act (ADA) of 1990. This compliance is met through documented support identified in the Pearson VUE Testing center facility requirements.

Suitable Physical Facilities

- Quiet, clean, climate-controlled, well-lit testing rooms.
- Convenient, close restrooms with working plumbing that includes water fountains, toilets, and sinks.
- Desks and chairs with backs sized for adults and adequate space so that seating can be staggered to preclude copying or collaborating.
- Accessibility for examinees with physical or other disabilities.
- An environment free of distractions/interruptions, i.e., electronic devices, external noise.
- Disruptive activities such as concerts, ballgames, or other activities may not be scheduled in or close to the room where the test is being given. The corridors will not be busy with people traffic.
- Computer workstations have enough room for test takers to work.

All test centers must be approved to operate by the NYSED HSE Office, sign the GEDTS and/or Pearson VUE contract and have their physical facilities and technical specifications approved by GEDTS and/or Pearson VUE prior to administering exams. Test centers are responsible for maintaining

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the management and oversight of a high-quality testing program that ensures access for all qualified examinees and maintains the integrity of the GED® Test and its administration. The enacted *Pearson VUE Authorized Test Center Agreement* affirms test centers' willingness and ability to meet requirements and comply with stated policies. Information about how to become a test center, including the GEDTS Test Administration manual, can be found at: [Become a Test Center](#)

HSE Test Administration

Test centers approved by the NYSED HSE Office and GEDTS/Pearson VUE to administer the GED® Test at public or addendum sites must provide at least three testing sessions per year open to all interested candidates. Public addendum sites may act as satellites serving an expanded geographic area and/or provide increased access to CBT. Public test centers must post their available dates/times for testing through the online scheduling system. HSE public test providers may at times also administer exams at authorized non-public addendum sites.

Project Description

This RFP provides funding to reimburse HSE test centers and their approved addendum sites to administer the GED Test to the public. It is a NYSED priority to ensure that public HSE testing is available in each TSA within the state. Public test centers must be located within the geographic boundary of the TSA for which they are applying. The NYSED may award multiple contracts within a single TSA. Applicants that have test centers in one of the Big 4 Cities: Buffalo, Rochester, Syracuse, or Yonkers ("city TSAs") and also have test centers outside of the city limits in the TSA county surrounding the city ("surrounding county TSAs"), or vice versa, must apply for each TSA separately. If multiple applications are received for the same TSA, proposals will be ranked according to their scores on the evaluation rubric and awards will be made to the highest scoring applicants, until there are no remaining funds to award or there are no remaining eligible applicants in that TSA.

The NYSED anticipates providing approximately 80,000 HSE sub-test administrations annually, including providing all accommodations approved by GEDTS. To estimate the need for accommodation testing within each TSA, data was reviewed to determine the percentage of accommodated examinees from the 2018 and 2019 calendar years delivered within each TSA.

Chart 1: Funding by TSA for Both Standard Examinees and Examinees Utilizing an Accommodated Setting in 2018 and 2019 includes data on the number of examinees; those receiving testing accommodations; and the percentage of the total that accommodated test takers represent. 2018 and 2019 were selected as the years for displaying data as these were the most recent years for which testing was stable and predictable.

Chart 1: Funding by Test Service Area (TSA) for Both Standard Examinees and Examinees Utilizing an Accommodated Setting in 2018 and 2019

Upstate Test Service Area	Annual Funds Available	# Standard Examinees	# Examinees with Accommodations	% Examinees with Accommodations
Albany-Schenectady-Schoharie	\$22,100.00	885	29	3.20%
Broome-Tioga	\$16,300.00	570	57	9.10%

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Buffalo	\$19,500.00	751	38	4.80%
Cattaraugus-Allegany	\$14,500.00	447	75	14.40%
Cayuga Onondaga-Cortland	\$6,900.00	251	19	7.00%
Chautauqua	\$12,600.00	507	16	3.10%
Clinton-Essex	\$6,900.00	156	61	28.10%
Delaware-Chenango-Otsego	\$10,400.00	360	37	9.30%
Dutchess	\$31,900.00	1146	98	7.90%
Erie	\$32,800.00	1115	128	10.30%
Franklin	\$2,700.00	85	14	14.10%
Genesee-Wyoming-Livingston	\$8,700.00	296	34	10.30%
Hamilton-Fulton-Montgomery	\$5,400.00	217	7	3.10%
Herkimer-Madison-Oneida	\$28,500.00	1177	22	1.80%
Jefferson-Lewis	\$8,500.00	251	50	16.60%
Monroe	\$48,800.00	1567	228	12.70%
Ontario-Seneca-Wayne-Yates	\$10,500.00	39	27	6.50%
Orange	\$9,500.00	386	10	2.50%
Orleans-Niagara	\$13,500.00	472	47	9.10%
Oswego	\$4,100.00	171	2	1.20%
Rensselaer-Columbia-Greene	\$27,600.00	1086	45	4.00%
Rochester	\$19,500.00	815	12	1.50%
Saratoga-Warren-Washington	\$11,800.00	388	51	5.90%
Schuyler-Chemung-Steuben	\$9,500.00	394	6	11.60%
St. Lawrence	\$9,300.00	328	32	1.50%
Sullivan	\$3,900.00	139	13	8.60%
Syracuse	\$31,900.00	948	182	16.10%
Tompkins	\$14,000.00	419	78	15.70%
Ulster	\$9,800.00	340	36	9.60%

Downstate Test Service Areas (TSA)

NYC – Bronx	\$170,500.00	7305	25	0.30%
NYC – Kings	\$396,400.00	15021	890	5.60%
NYC - New York	\$101,600.00	4211	74	1.70%
NYC – Queens and Rikers	\$306,900.00	13004	104	0.80%
NYC - Richmond	\$48,500.00	1502	251	14.30%
Nassau	\$44,800.00	1810	53	2.80%
Rockland	\$12,300.00	464	29	5.90%
Suffolk	\$58,700.00	2382	64	2.60%

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Westchester-Putnam	\$39,500.00	1574	55	3.40%
Yonkers	\$19,400.00	790	20	2.50%

Payments and Reports

There is \$1.65 million available annually to reimburse test centers for the administration of the GED Test. Awards will be made annually to downstate TSAs, including the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Westchester, Putnam, and Rockland. All other counties, as reflected in Upstate TSA's, have funding in the amount of \$451,400. Funding must be available in the state budget and appropriated for this purpose.

Testing Center Reimbursement

Test centers administering the GED Test under standard time conditions will be reimbursed at a rate of \$8 per examinee (upstate) and \$9 per examinee (downstate) for each subtest delivered. Upstate and downstate TSAs are delineated in *Chart 1: Funding by Test Service Area (TSA) for Standard Examinees and Examinees Utilizing an Accommodated Setting*. The same rates apply for CBT and PBT, taken in English or Spanish.

The maximum amount that a test center will be reimbursed is based on NYSED testing regulations. Specifically, an examinee may attempt each subtest up to three times each calendar year, if not successful on prior attempts. Therefore, an examinee cannot test more than three times each year, on each of the four sub-tests contained within the complete battery of the GED Test. An examinee may take a maximum of 12 sub-tests per year at \$8 per subtest, or \$96 per individual examinee (upstate) or \$9 per sub-test for a maximum of 12 sub-tests, or \$108 (downstate).

Test centers must schedule examinees for all accommodations approved by GEDTS, such as a small group setting and/or extended time, among other approved accommodations. For a testing accommodation of extended time only, please see rates indicated in *Chart 2: Reimbursement rates per sub-test delivery. Rates for additional time are multiplied by the rate indicated*. When a test center must limit the number of examinees scheduled, due to an accommodation approved for a private testing environment (1:1 ratio of examinee to staff) or a small group test setting (6 or fewer examinees per staff), a separate reimbursement rate applies, as indicated. Notwithstanding approved individualized (1:1) testing accommodations requiring a private setting, test centers will only be reimbursed for up to 4 small group sessions per year, with HSE office approval required prior to delivering any small group testing sessions.

Chart 2: Reimbursement rates per sub-test delivery. Rates for additional time are multiplied by the rate indicated

Time Allotted for Examinee by Sub-test	Upstate Rates	Downstate Rates
Standard	\$8.00	\$9.00
1.25X	\$10.00	\$11.25
1.5X	\$12.00	\$13.50

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2.0X	\$16.00	\$18.00
1:1 Small Group Accommodation	\$192.00	\$219.00

The full range of reimbursement rates for current testing accommodations, effective through 12/31/2022, can be found on the [ACCES website](#).

Financial Management

The following measures should be implemented:

- Keep detailed records and submit related test materials to the NYSED HSE Office, as prescribed
- Submit standard vouchers, i.e., invoices, to NYSED within 30 days after the end of any month where at least one test administration occurred. Invoices that are not submitted in a timely manner will be delayed and may not be reimbursed.

Contract Funding Reimbursement Process

The test center coordinator must complete and submit the following forms in the manner and time frame indicated for test administration reimbursement:

[Standard State of New York Standard Voucher Form](#)

And these two HSE Test Center Forms from the [ACCES website](#):

1. *HSE Daily Test Roster, titled, HSE Test Reporting Sheet*

This submitted roster, titled the HSE Test Reporting Sheet (when the link is opened), conveys the names of the individual examinees that the test center is submitting for reimbursement. Rosters should have a single reimbursed test session OR a complete list of all reimbursed examinees.

2. *HSE Testing Reimbursement Form*

This form should be used to summarize each reimbursed event. If necessary multiple Testing Reimbursement forms should be submitted.

Qualifications of the HSE Test Center Staff and Staffing of Test Administrations

Test center staff must be approved by NYSED HSE Office and comply with GEDTS and/or Pearson VUE training and implementation requirements. Each test center is required to identify a designated Test Center Coordinator, who serves as the primary test center contact person, and Test Center Examiner(s) who assist the coordinator with testing administration. A minimum of a four-year degree is required. A staff appointment form can be found at: [Test Center Staff Appointment Form](#)

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There is a designated examinee to staff ratio of 15:1. It is also advisable to have more than one approved staff administering an exam to address whatever circumstances may arise during testing as there must always be an approved coordinator or examiner present while examinees are testing.

Please note that it is a conflict of interest for adult education preparation program staff who work directly with students preparing them to pass the GED Test, to also administer the exam. Therefore, adult education preparation program staff who work directly with students in preparing for the exam may not also serve in a position administering the test.

Full Testing Support Services

The following measures should be implemented:

- Provide testing support services to all examinees
- Offer convenient testing schedules that are frequent enough to meet community needs
- Have an established emergency plan for handling any testing interruptions and irregularities
- Provide information, guidance, and services regarding testing accommodations approved by GEDTS
- Advise and support candidates to make informed decisions about testing, remediation, and transitioning to post-secondary education
- Demonstrate a commitment to the value of the HSE testing program
- Keep detailed records

Test Security and Document Submission

Test centers are required to maintain compliance with all NYSED HSE Office and GEDTS and Pearson VUE policies and practices, including submitting testing rosters to the HSE Office, as instructed, through an online process. Please convey the test center's approach to meeting these provisions and describe how your test center will manage any testing irregularities that may occur.

The following measures should be implemented:

- Process by which the test center will engage with GEDTS and Pearson VUE
- Maintain full compliance with all policies outlined in the [PVTC Technical Requirements](#)
- Submit the attendance testing roster to the HSE Office through a secure digital upload
- Affirmation of ability to fully cooperate with GEDTS, Pearson VUE and NYSED in any instances of test irregularity or where testing integrity was compromised

Scheduling

The following measures should be implemented:

- The testing schedule will meet the needs of the local community
- The test center will maintain an up-to-date testing schedule for the test center and approved public addendum sites
- The test center may be asked by NYSED to schedule additional examinations on an as needed and occasional basis to meet unexpected demand

The test schedules posted through Pearson VUE must be consistent with the proposed testing upon which the application was evaluated, i.e., frequency of testing, number of sessions per year and days and times scheduled. Applicants may schedule more frequent public test sessions but cannot schedule fewer than proposed in the application, keeping within the annual award of the contract. The dates, times and locations of the public test centers will be available for candidates to see and schedule through their GED account.

Population to be Served and Age Eligibility of Testing Applicants

Test takers seeking an HSE diploma may require support in registering and scheduling their exams and physically getting to the test center. The HSE population of test takers includes those needing public transportation to access the test center, as well as those who need supplemental services, such as help in arranging child care and/or working through other obstacles in order to be available to test.

Candidates under age 19 must demonstrate their age eligibility to test prior to being approved to take the GED Test, as specified in the NYSED Commissioner’s Regulation. Specifically, candidates must have met Maximum Compulsory School Attendance Age (MCSAA) prior to testing. Education Law section 3205 (3) authorizes the board of education to determine the MCSAA for their school district which occurs when a student turns either 16 or 17 years of age. MCSAA is reached on July 1st of the school year (July 1 – June 30) immediately following the year when a student is legally permitted to withdraw from high school.

Alternative High School Equivalency Preparation (AHSEP) Programs, which serve students up to age 21, are approved annually by the NYSED and operated by a public-school district, BOCES or the New York State Office of Children and Family Services in accordance with the NYSED Commissioner’s Regulations. Age eligibility status for AHSEP students is affirmed by the AHSEP Program Manager.

For non AHSEP Programs, age eligibility is approved by the NYSED HSE Office upon receipt of the required age eligibility form, which is accessible through the GED registration system when a candidate establishes a GED account.

Except for the age eligibility criteria, the criteria below applies to all applicants.

A. Has lived in New York State for at least thirty days prior to the test date, and:

1. Is 19 years of age or over on the day of testing, and
2. Has not graduated from an accredited high school in the United States or its territories; and
3. Has not received a high school equivalency certificate or diploma in the United States or its territories; and
4. Is not currently enrolled in a regular high school program of instruction leading to a high school diploma; and
5. Has not previously earned scores on the TASC or GED Tests sufficient to qualify for a high school equivalency diploma/certificate.

B. Has lived in New York State for at least thirty days prior to the test date; and:

1. Is 17 or 18 years old on the day of testing; and

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2. One year has passed since the applicant reached maximum compulsory school attendance age (MCSAA) and was last enrolled in a regular full-time high school program of instruction leading to a high school diploma, or
3. Was a member of a high school class that has already graduated; or
4. Is enrolled in an approved Alternative High School Equivalency Preparation (AHSEP) Program, or
5. Has been accepted into the U.S. Armed Forces, college, university or an accredited post-secondary institution; or
6. Has been a participant in a Job Corps program; or
7. Is a resident confined to a narcotics addiction control center, New York State Office of Children and Family Services (NYSOCFS) facility, county jail or New York State Department of Corrections and Community Services (NYSDOCCS) facility, or is a patient in a hospital in the State of New York, or
8. Is an adjudicated youth under the direction of a prison, jail, detention center, parole or probation officer, or
9. Has been home schooled, or
10. Is foreign-born and has never attended K-12 schools in the United States.

C. Has lived in New York State for at least thirty days prior to the test date, and

1. Is 16 years old on the day of testing, and
2. Has reached MCSAA; and
3. Is enrolled in an approved AHSEP Program, or
4. Has been accepted into the U.S. Armed Forces, college, university, or an accredited postsecondary institution.

Administration of the GED in Spanish

Examinees will have the option of scheduling their GED in English or Spanish during the test scheduling process. Test center staff should anticipate the need to accommodate all test takers. It is preferred, but not required, that test center coordinators and examiners have Spanish proficiency when administering tests in Spanish. TSAs with a high percentage of Spanish speaking candidates are expected to provide significantly more testing than in those areas of the state with fewer Spanish speaking students, as conveyed by *Chart 3: Test Service Areas Where Testing in Spanish Supported 25 or More Examinees in 2018 and 2019*.

Chart 3: Test Service Areas Where Testing in Spanish Supported 25 or More Examinees in 2018 and 2019

Test Service Area (TSA)	# of Examinees Testing in Spanish in 2018 and 2019
Albany-Schenectady-Schoharie	27
Chautauqua	24
Dutchess	469
Herkimer-Madison-Oneida	67
Nassau	283
NYC - Bronx	2367

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NYC - Kings	4620
NYC - New York	1337
NYC - Queens and Rikers	5313
NYC - Richmond	169
Ontario-Seneca-Wayne-Yates	151
Rockland	173
Suffolk	763
Sullivan	55
Syracuse	64
Westchester-Putnam	685
Yonkers	916

Testing Accommodations for Individuals with Disabilities

As the state's HSE exam vendor, GEDTS is responsible for reviewing, approving, and ensuring the provision of testing accommodations for applicants with a physical, mental, sensory, and/or cognitive disability or impairment that affects their ability to take the GED Test under standard conditions. All testing accommodation requests must be accompanied by the appropriate documentation from a qualified professional. The GED Test design includes accessible formats and allowable resources and provides the assistive technology needed by examinees who are approved for such an accommodation.

GEDTS endeavors to fully comply with federal and applicable state laws providing protection to the disabled including the Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008 and is committed to supporting full access to the GED Test for individuals with disabilities who request testing accommodations. Candidates must provide the required documentation of their disability(ies) when applying for accommodations and test centers are responsible for providing approved accommodations.

Approved HSE test centers need to provide for the following accommodations, as approved:

1. Extended testing time, e.g., 25%, 50% 100% additional time
2. Extra breaks
3. A private room for testing
4. A paper version of the test for examinees with a medical condition the precludes CBT
5. An audio version of the test – provided through Jobs Access with Speech (JAWS) screen reading technology integrated into the computer test driver
6. Presentation in an appropriate font size as determined by the examinee using a Zoom Text
7. Braille
8. Talking calculator for visually impaired examinees
9. Scribe and/or reader for examinees with a variety of physical conditions prohibiting reading or responding on one's own

Requirements of Education Law Section 2-d

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

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receives 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.

Staff Changes

The contractor will seek to maintain continuity of staff throughout the course of the contract. All changes in staff will be subject to NYSED approval. A staff appointment form can be found at: [Test Center Staff Appointment Form](#)

Contract Period

NYSED will award multiple contracts pursuant to this RFP. The contracts resulting from this RFP will be for a term anticipated to begin January 1, 2023, and to end December 31, 2025.

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.

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 applicant 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 applicant'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 in Microsoft Office or an 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 two attachments):

1. Submission Documents bearing signature
2. Technical Proposal bearing signature

The proposal must be received by **August 25, 2022 by 3:00 PM** by email to cau@nysed.gov.

Proposals should be prepared simply and economically, avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete presentation. If supplemental materials are a necessary part of the proposal, the bidder should reference these materials in the technical 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 as they 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.

Technical Criteria (100 Points)

1) Project Description

The completed Technical Proposal should be emailed and labeled **[name of bidder] Technical Proposal – RFP #23-004** and include the following:

a) HSE Test Center(s) location(s) (25 points)

- Identify the TSA in which the applicant proposes to operate test centers (one TSA per proposal). Provide the names and GEDTS Test Center ID for each public HSE test center(s) and any proposed addendum sites.
- Describe how the agency will provide a test center environment over the course of the proposed HSE Test Center Reimbursement contract that includes the relevant provisions identified under Full Testing Support Services
- Describe how the HSE test center(s) will share and/or advertise information about HSE testing to the public within the TSA.

b) Population to be Served (10 points)

- Describe the target population(s), their literacy needs as well as their need for HSE testing. Provide a typical test examinee profile (e.g., age, educational level, employment status, and other demographic information) and how scheduled test availability will meet English and/or Spanish HSE testing in your community.
- Describe the test center's ability to provide accommodations approved by GEDTS in terms of staff, space, and time.

c) Computer-Based Testing (15 points)

- Describe the test center's physical setting and capacity to administer English and Spanish computer-based testing (CBT).
- Describe the configuration of test center computers that meets technology specifications for administering CBT, as delineated by Pearson VUE. Include a description of all environments where the examinee will be present throughout the test event.
- Describe the maximum number of computer-based tests that can be administered at one time. Specifically, how many computers does the test center make available for testing?
- If a test center is not fully operational as a CBT site, are there plans to increase the volume of CBT testing after the first year of the contract? In future years?
- If paper-based testing (PBT) is currently approved for the applicant test center, provide a justification substantiating the need for PBT. Include a plan to migrate toward providing computer-based testing (CBT) as the primary test delivery option.

d) Public Transportation/Supplemental Services (5 points)

- For each test center identified in (a) above, describe the sites' public transportation access. Include the approximate distance of test center(s) from public transportation access points.
- Describe any supplemental/support services such as assessment, counseling, and referral for childcare, transportation, etc., arranged by the test center to decrease the incidence of "no shows."

e) Program Coordination

(10 points)

- Describe how the applicant proposes to establish a connection between HSE test preparation programs and the HSE test administration programs in the TSA.
- Identify the agencies/organizations for which HSE test administrations are offered as a public addendum site.

f) HSE Test Center Staff and Test Administration Experience

(5 points)

- Identify test center staff members, their positions and/or their responsibility related to the operation of the test center(s). Staff members who assist in delivering the GED must complete required NYSED and GEDTS (for PBT) Pearson VUE (for CBT) trainings and assessments and provide a list of all staff members who have completed training and are approved to administer exams.
- Include a staffing plan that demonstrates the examinee to staff ratio (15:1) which will be maintained during test administration. Include the applicant's ability to provide technical support during CBT administration.

g) Number of Sub-tests to be Administered

(10 points)

- Provide a schedule of proposed CBT sub-tests to be offered during the first calendar year
- Estimate the delivery of CBT sub-tests proposed for each of the subsequent funded calendar years that the RFP encompasses (all sub-tests, not examinees)
- If applicable, provide estimated totals for paper-based testing for the initial calendar year of the funding

h) Availability and Frequency of Testing

(10 points)

- Times available:
- Testing will be offered at least once every 2 weeks = 6 points
- Weekend testing will be offered at least once every month = 3 points
- Weekday testing will be offered at least once every month = 3 points
- Evening testing – 6 pm to 11 pm - will be offered at least once every month = 3 points

i) Test Security and Document Submission

(10 points)

- How will the test center effectively engage with GEDTS and Pearson VUE (PVTC)
- Describe how the test center, which is approved by PVTC, will maintain compliance with all [PVTC Technical Requirements](#)
- Explain how the test center will submit the attendance testing roster to the HSE Office through a secure digital upload
- Describe how the test center will address any instances of test irregularity, or where testing integrity was compromised

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 have been addressed, the required number of copies has been provided, all forms and assurances have been completed and 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 descriptions 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 (100 Points)

- | | |
|--|--------------------|
| 1) Project Description | |
| a) HSE Test Center(s) location(s) | (25 points) |
| b) Population to be Served | (10 points) |
| c) Computer-Based Testing | (15 points) |
| d) Public Transportation/Supplemental Services | (5 points) |
| e) Program Coordination | (10 points) |
| f) HSE Test Center Staff and Test Administration Experience | (5 points) |
| g) Number of Sub-tests to be Administered | (10points) |
| h) Availability and Frequency of Testing | (10 points) |
| i) Test Security and Document Submission | (10 points) |

Method of Award

The technical portion of the proposal will be reviewed and rated by the review team according to the criteria above. The total scores for each review team will be averaged. Applicants applying for the same TSA will be ranked according to their scores on the evaluation rubric and awards will be made to the highest scoring applicants until there are no remaining funds to award or there are no remaining eligible applicants in that TSA. If there are insufficient funds to award the last fundable applicant in full, a partial award will be offered. In the event of a tie score, proposals will be ranked based on the average score

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awarded for the c) Computer Based Testing section of the rubric. If there is still a tie, applications will be ranked based on the greatest number of computer-based testing (CBT) administrations proposed.

In New York City, TSAs in the counties, i.e., boroughs, of Bronx, Kings (Brooklyn), New York (Manhattan), Queens, and Richmond (Staten Island), should include their full capacity to provide HSE test administrations within the TSA. However, no applicant will receive more than 50 percent of the funding in any of the boroughs unless there are funds remaining in the TSA after all eligible applicants have been funded. If there is a TSA with funds remaining after all eligible applicants have been fully funded, these funds may be moved to another TSA within New York City where applicants have been partially funded or could not be reached through monies within the TSA. If funds are available to be distributed to another TSA, they will be distributed to fund any remaining partially funded or unfunded applications in other TSAs in the following order: Kings; Queens; New York; Bronx; and Richmond.

If after funding all eligible applicants within a Big 4 city TSA there are still funds remaining, these funds may be moved to the surrounding county(ies) TSA, if there are applicants within the county TSA that were partially funded or could not be reached through the funds available within the TSA. Similarly, if there are funds remaining in the surrounding county(ies) TSA, they can be used to award any remaining fundable applicants within the corresponding city TSA. TSA city and associated counties are: Buffalo/Erie; Rochester/Monroe; Syracuse/Onondaga/Cayuga/Cortland; and Yonkers/Westchester/Putnam.

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 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

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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 RFP23-004@nysed.gov
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: RFP23-004@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

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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 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.

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

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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 – Ruth Singer

Contract Administration Unit – Bethany Bennett

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

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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 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

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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.

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.

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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 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

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 exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given

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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, licenser, 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 (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), 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 is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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, 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

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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

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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.

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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
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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
New York, NY 10017
212-803-2414
email: mwbecertification@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 October 2019, 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 State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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.

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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.

(October 2019)

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.

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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.

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- 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 nonresponsibility 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

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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.

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, 11th Floor
Albany, NY 12236

By fax: Attn: Consultant Reporting
(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

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- 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

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Appendix R
NEW YORK STATE EDUCATION DEPARTMENT'S
DATA PRIVACY APPENDIX FOR GRANT CONTRACTS

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, data arising from the on-site use of an information system or from a personal meeting.
2. **Breach:** The unauthorized Access, acquisition, use, or Disclosure of Personal Information 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 destruction, loss, alteration, Access to or Disclosure of, Personal Information.
3. **Disclose or Disclosure:** The intentional or unintentional release, transfer, or communication of Personal Information by any means, including oral, written, or electronic.
4. **Personal Information:** Information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person.
5. **Services:** Services provided by Contractor pursuant to this Contract with the New York State Education Department (“NYSED”) to which this DPA is attached and incorporated.
6. **Subcontractor:** Contractor’s non-employee agents, consultants, volunteers, including student interns, 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 PERSONAL INFORMATION

1. **Compliance with Law.**

When providing Services pursuant to this Contract, Contractor may receive and/or have Access to Personal Information regulated by one or more New York and/or federal laws and regulations, including, but not limited to, the Family Educational Rights and Privacy Act at 12 U.S.C. § 1232g (34 CFR Part 99); Children's Online Privacy Protection Act at 15 U.S.C. §§ 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment at 20 U.S.C. § 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act at 20 U.S.C. § 1400 et seq. (34 CFR Part 300); the New York Education Law at § 2-d (8 NYCRR Part 121); the New York General Business Law at article 39-F; and the New York Personal Privacy Protection Law at Public Officers Law article 6-A. Contractor

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agrees to maintain the confidentiality and security of Personal Information in accordance with applicable New York, federal and local laws, rules and regulations.

2. Data Privacy and Security.

- (a) Contractor agrees and understands that Contractor has no property, licensing, or ownership rights or claims to Personal Information Accessed by or Disclosed to Contractor for the purpose of providing Services, and Contractor shall not use Personal Information for any purpose other than to provide 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 PII received or Accessed by or Disclosed to Subcontractor for the purpose of assisting Contractor in providing Services.
- (b) Contractor shall adopt and maintain reasonable safeguards to protect the security, confidentiality, and integrity of Personal Information in a manner that complies with General Business Law section 899-bb and other applicable New York State, federal and local laws, rules and regulations.
- (c) Upon NYSED's request, Contractor may be required to undergo an audit of its privacy and security safeguards, measures, and controls, or in lieu of performing an audit, provide NYSED with an industry standard independent audit report on Contractor's privacy and security practices that is no more than twelve months old.

3. Contractor's Employees and Subcontractors.

- (a) Access to or Disclosure of Personal Information shall only be provided to Contractor's employees and Subcontractors who need to know the Personal Information to provide the Services and such Access and/or Disclosure of Personal 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 Personal 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 Personal Information; and (iii) as applicable, retrieve all Personal Information received or stored by such Subcontractor and/or ensure that such Personal Information has been securely deleted or securely destroyed in accordance with this DPA. In the event there is an incident in which Personal 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 5 of this DPA.

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- (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 Personal Information, Contractor must not provide Access to or Disclose Personal 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 Personal 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 Personal Information to any other party unless such Disclosure is required by statute, court order or subpoena. If a Subcontractor is required to provide Access to or Disclose Personal 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 Personal Information is 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 to or Disclose the Personal Information.
- (g) Contractor shall ensure that all its employees and Subcontractors who will receive Personal Information will be trained on the federal and state laws governing confidentiality of such data prior to receipt.

4. Data Return and Destruction of Data.

- (a) Contractor is prohibited from retaining Disclosed Personal Information or continuing to Access Personal Information, including any copy, summary or extract of Personal 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 the this Contract unless such retention is expressly authorized by the this Contract, necessary for purpose of facilitating the transfer of Personal Information to NYSED, or expressly required by law. As applicable, upon expiration or termination of this Contract, Contractor shall transfer Personal Information to NYSED in a format agreed to by the Parties.
- (b) When the purpose that necessitated Contractor's Access to and/or Disclosure of Personal Information has been completed or Contractor's authority to have Access to Personal Information and/or retain Disclosed Personal Information has expired, Contractor shall ensure that, as applicable, (1) all privileges providing Access to Personal Information are revoked, and (2) all Personal Information (including without limitation, all hard copies, archived copies, electronic versions, electronic imaging of hard copies) retained by Contractor and/or its Subcontractors, including all Personal 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 Personal Information cannot be read, or otherwise reconstructed, and electronic media must be securely cleared, purged, or destroyed such that the Personal Information cannot be retrieved, read, or reconstructed. When Personal Information is held in paper form, destruction of such Personal Information, and not redaction, will satisfy the requirements for data destruction. Redaction is specifically excluded as a means of data destruction.

- (c) Upon request by NYSED, Contractor may be required to provide NYSED with a written certification of (1) revocation of Access to Personal Information granted by Contractor and/or its Subcontractors, and (2) the secure deletion and/or secure destruction of Personal Information held by the Contractor or Subcontractors, 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 prohibit its Subcontractors from the same.

5. Breach.

- (a) Contractor shall promptly notify NYSED of any Breach of Personal Information, regardless of whether the 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 provide 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 that identifies the date of the incident, the date of discovery, the types of Personal Information affected and the number of records affected; a description of Contractor's investigation; and the name of a point of contact.
- (b) 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 or its Subcontractors will be the sole responsibility of the Contractor if such Breach is attributable to Contractor or its Subcontractors.
- (c) Contractor shall promptly notify the affected individuals of any Breach, regardless of whether Contractor or a Subcontractor suffered the Breach. Such notice shall be made using one of the methods prescribed by § 899-aa (5) of the New York General Business Law. If Contractor requires information from NYSED to perform such

notifications, Contractor shall reimburse NYSED for the cost of assembling and providing such information to Contractor.

6. 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 and shall continue for as long as Contractor or its Subcontractors retain Access to Personal Information.