

REQUEST FOR PROPOSAL (RFP)

RFP # 23-005

NEW YORK STATE EDUCATION DEPARTMENT

Title: **Provider of Student Growth Measures for Use in Institutional Accountability, Educator Evaluation, and to Determine Equitable Access to Effective Educators**

The New York State Education Department (NYSED) **Office of Accountability** is seeking proposals to provide student growth measures for use in Institutional Accountability determinations pursuant to the Commissioner's Regulations §§100.19 and 100.21, and State-provided growth scores for teachers, principals, schools, and districts pursuant to New York State Education Law §3012-d as well as NYSED's Every Student Succeeds Act (ESSA) plan to ensure equitable access to effective teachers.

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

NYSED will award **one (1)** contract pursuant to this RFP. The contract resulting from this RFP will be for a term anticipated to begin **October 1, 2022** and to end **December 31, 2027**. If the incumbent vendor is awarded the contract, it is anticipated to begin **January 1, 2023** and to end **December 31, 2027**.

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

Service Area: **Statewide**

Mandatory Requirements: See Mandatory Requirements section of the RFP.

Components contained in RFP Proposal #23-005 are as follows:

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

Questions regarding the request must be submitted by email to GrowthRFP@nysed.gov no later than the close of business **December 6, 2021**. Questions regarding this request should be identified as Program, Fiscal or M/WBE. A Questions and Answers Summary will be posted to the [P-12 Competitive Procurement Contracts webpage](#) no later than **December 20, 2021**. The following are the designated contacts for this procurement:

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Proposals under this Request for Proposal must be submitted electronically to CAU@nysed.gov. The subject line in the email should read "BID SUBMISSION RFP #23-005 [legal name of the organization]."

The submission documents, technical proposal, cost proposal, and MWBE packages must be submitted as detailed in the Submission section of the RFP, preferably in Microsoft Word/Excel or editable PDF file for each.

All emailed documents must be received by the State Education Department at CAU@nysed.gov no later than 3:00 PM on January 14, 2022. **Proposals received after the due date and time will not be accepted or considered for a contract award.**

Please see the information below for instructions on submitting an electronic bid. **All bids must be received by 3:00 PM on January 14, 2022 to be considered.**

1. As indicated in the RFP, proposal documents should be submitted in Microsoft Office (Word/Excel) documents. PDF files that are editable and Optical Character Recognition (OCR) searchable are acceptable. Please do not submit the proposal as a scanned PDF.
2. Submission documents requiring a signature must be signed using one of the methods listed below, and must be submitted in a Microsoft Office, PDF, or JPG document. A scanned PDF is acceptable for these documents.
3. The following forms of e-signatures are acceptable:
 - a. Handwritten signatures on faxed or scanned documents
 - b. E-signatures that have been authenticated by a third-party digital software, such as DocuSign and Adobe Sign
 - c. Stored copies of the images of signatures that are placed on a document by copying and pasting or otherwise inserting them into the documents
4. Unacceptable forms of e-signatures include:
 - a. A typed name, including a signature created by selecting a script or calligraphy font for the typed name of the person "signing"
5. To identify the signer and indicate that the signer understood and intended to agree to the terms of the signed document, the signer will sign beside or provide by email the following attention: "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 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 #23-005 [legal name of organization]" – 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 and considered for award.
7. **Bids must be received by 3:00 PM on January 14, 2022 or they will be disqualified.**

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The parties to this agreement intend the foregoing writing to be the final, complete, and exclusive expression of all the terms of their agreement. 52

Glossary of Terms and Acronyms Used in this RFP

For the purposes of clarity in this document, the following terms are defined below. Note that these terms can be used to mean different things by practitioners and researchers; however, the following shall constitute the working definitions of these terms for the purpose of this procurement.

Annual Professional Performance Review (APPR): Pursuant to NYS Education Law §3012-d, classroom teachers and building principals are required to be evaluated annually based on a plan approved by the Commissioner that consists of multiple measures, including student growth.

Annual Student Growth: Education Law §3012-d(2)(c) defines student growth as the change in student achievement for an individual student between two or more points in time.

BOCES: Board of Cooperative Educational Services. A BOCES is a statutory entity that provides shared educational programs and services to its component school districts. There are currently 37 BOCES incorporating all but nine of the 697 school districts in New York State.

Board of Regents: The Board of Regents is responsible for the general supervision of all educational activities within the State, presiding over The University of the State of New York and the New York State Education Department. The Board comprises 17 members elected by the State Legislature for five-year terms: one from each of the State's 13 judicial districts and four members who serve at large. Regents are unsalaried and are reimbursed only for travel and related expenses in connection with their official duties.

Classroom Teacher: Classroom teacher or teacher means a teacher in the classroom teaching service who is a teacher of record as defined in this section, except evening school teachers of adults enrolled in nonacademic, vocational subjects and supplemental school personnel (i.e., teaching assistants, teacher aides, or pupil personnel providers).

ELA: English Language Arts

Growth in Regents Examinations (GRE): The result of a statistical model that calculates each student's change in achievement between two or more points in time on the number of passed Regents Examinations and compares each student's performance to that of similar students. Student GRE scores are then averaged to generate principal and school GRE scores.

Institutional Accountability: The process approved by the U.S. Department of Education through New York State's Every Student Succeeds Act (ESSA) Plan to determine school and district achievement of Federal student learning requirements. While this RFP does not include construction of State, district, and school accountability measures, the calculations resulting from this work will be used to make institutional accountability determinations and resource allocation decisions by offices that support struggling schools, as well as to determine equitable distribution of educators.

Mean Growth Percentile (MGP): The average of SGPs.

NYSED: The New York State Education Department.

Principal or Building Principal: Principal or building principal shall mean a principal or co-principal of a registered public school or an administrator in charge of an instructional program of a school district or BOCES.

Student Growth Percentile (SGP): The result of a statistical model that calculates each student's change in achievement between two or more points in time on a State assessment and compares each student's performance to that of similar students.

Student/teacher/course linkage: Determined by NYSED based on data showing which students are assigned to which course/class, teachers, schools, and principals for evaluation purposes. Data will also specify that if a "linkage" between a student/teacher/course does not extend for a full academic year what partial dosage criteria will apply. NYSED will provide the data to the vendor as variables in units of number of days of linkage. NYSED collects sophisticated information to specify the amount of time students and teachers are present in the classroom to enable more than one teacher in a grade or subject to be linked to a student for evaluation purposes. Variables collected include: student course entry and exit dates; teacher course entry and exit dates; and days of student attendance that is used to calculate the course duration, student enrollment duration, and student attendance duration.

Teacher, principal or school growth score on State assessments: A score calculated by the vendor, which conforms to requirements of Subpart 30-3 of the Rules of the Board of Regents, as applicable, and is assigned to each teacher, principal, or school based on their growth measures as defined in this section, and any additional adjustments required by policy or empirical evidence. This is currently a number from 0-20.** For some teachers and principals, calculation of this score may require combining results from across different subject areas. ***Range of scores determined by the Board of Regents and subject to change in the future, including changes resulting from New York State Education Law §3012-d.*

Teacher, principal, or school growth measures: This refers to vendor-calculated aggregation of student growth outcomes (expressed as SGP and GRE measures) to a teacher-, principal-, or school-level. The aggregation of student outcomes to educator-level outcomes is based on data about which students are assigned to which teachers for each course/class section and which principals for each school. These measures will be expressed in measures of centrality including means and medians, and measures of dispersion, including standard deviation and ranges, of student growth measures. These measures are used to then assign teacher, principal, and school level growth ratings and scores.

Teacher(s) of record: Teacher(s) of record is defined as an individual (or individuals, such as in co-teaching assignments) who has been assigned primary and direct responsibility for a student's learning in a subject/course with aligned performance measures, and as further defined by NYSED.

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 section 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 signed form will be disqualified.**

1. Bidders must be either for-profit or not-for-profit entities, including large companies, consultants, and/or educational organizations with a demonstrated capacity to complete all required analytic services for large-scale assessment systems. Bidders must, at a minimum, demonstrate five (eight or more preferred) years of experience providing statistical growth modeling services.
 - a. Five years of professional experience becomes operationally defined as having performed any work like the work described in this RFP for five different full calendar or school years. This work must be in the development, generation, analysis, and enhancement of statistical growth models in each of the five different years.

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

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

ACHIEVE FULL COMPLIANCE WITH PARTICIPATION GOALS (PREFERRED)

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

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

DOCUMENTATION OF GOOD FAITH EFFORTS

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

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

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

REQUEST A PARTIAL WAIVER OF PARTICIPATION GOALS

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

REQUEST A COMPLETE WAIVER OF PARTICIPATION GOALS

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

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

Service-Disabled Veteran-Owned Business (SDVOB) Participation Goals Pursuant to Article 17-B of New York State Executive Law

Article 17-B of Executive Law was enacted to ensure that certified SDVOBs are provided opportunities for meaningful participation in the performance of state contracts. To this end, NYSED strongly encourages bidders to make maximum possible use of SDVOBs as subcontractors and/or suppliers under this contract, consistent with the requirements of State Finance Law and State procurement guidelines, as well as NYSED policies and procedures. Bidders should consider fulfilling the requirements of this contract through the participation of SDVOBs at a rate of 6%. For additional information about this program, including a list of SDVOBs, please visit the [Office of General Services, Division of Service-Disabled Veterans' Business Development website](#).

1.1 Context for this Request for Proposals

Since the 2012-13 school year, NYSED has been implementing an enhanced student growth model to generate individual student-level growth estimates that are then aggregated to create teacher-, principal-, and school-level growth measures and to calculate State-provided growth ratings and scores. These State-provided growth ratings and scores are currently calculated for teachers of English Language Arts (ELA) and/or mathematics in grades 4-8, principals and schools that include any of grades 4-8, and principals and schools that include all of grades 9-12. State-provided growth ratings and scores were incorporated into educators' Annual Professional Performance Reviews (APPR) pursuant to New York State Education Law §3012-c and, beginning with the 2015-16 school year, New York State Education Law §3012-d.¹

In December 2015, the Board of Regents adopted regulatory amendments to add §30-2.14 and §30-3.17 to the Rules of the Board of Regents, which provided a four-year transition period for APPRs during which time State-provided growth scores were not used for employment purposes and were used for advisory purposes only. This transition period lasted through the 2018-19 school year.

Pursuant to Chapter 59 of the Laws of 2019, which amended the Student Performance Category requirements of Education Law §3012-d, State-provided growth scores are no longer required to be used by New York State teachers of mathematics and ELA in grades 4-8 and their principals for APPR purposes. However, as part of the amendment, districts and/or BOCES may use State-provided growth for educator evaluation purposes for collective bargaining agreements developed after April 12, 2019.

In April 2015, the Board of Regents adopted Commissioner's Regulations §100.19 to implement State Law 211-f, which utilizes school-level growth measures to identify Struggling and Persistently Struggling Schools. Under this regulation, districts must provide evidence that Struggling and Persistently Struggling Schools are making demonstrable improvement on indicators approved by the Commissioner in order to avoid being placed into independent receivership. School growth measures are one of the metrics used to make demonstrable improvement determinations.

Beginning with the 2017-18 school year, school- and district-level growth measures have also been incorporated into New York State's school and district accountability system under the Every Student Succeeds Act (ESSA) Plan, pursuant to Commissioner's Regulations §100.21. These growth measures include three years of student growth scores and are used as part of the process for identifying schools as Comprehensive Support and Improvement Schools, Targeted Support and

¹ Beginning in 2015-16, districts implemented APPR plans pursuant to either §3012-c or §3012-d. All districts were required to implement APPR plans pursuant to §3012-d beginning with the 2016-17 school year.

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Improvement Schools, and districts as Target Districts. They are also used to determine if Comprehensive Support and Improvement, Targeted Support and Improvement schools and Target Districts meet the exit criteria to move into Good Standing.

As part of its ESSA Plan, the Department also uses State-provided growth results, in conjunction with other information, to help determine where there is disproportionate access to effective educators and to develop strategies to ensure that all students have equitable access to effective educators.

With this RFP, the New York State Education Department requests that vendors annually calculate, produce, and deliver State-provided growth ratings and scores for educators and student growth measures for institutional accountability purposes, as required by §§100.19 and 100.21. In addition, the vendor will support NYSED efforts to review and strengthen its student growth model by designing, conducting, and reporting on beta analyses of potential changes to the student growth model recommended by NYSED, the Board of Regents, and the vendor's own technical experts.

In the first year of the contract, State-provided growth ratings and scores will be produced for teachers, principals, and schools with students in grades 4-8 ELA and/or Mathematics and for high school principals and schools with students taking New York State Regents Examinations, according to existing student growth methodologies and based on assessment results from the 2021-22 school year.² For years 2-5 of the contract, State-provided growth ratings and scores may be produced according to revised methodologies, based on any changes to the methodologies beta modeled by vendor and adopted by NYSED.

Results from the methodologies developed and produced under this contract may be used as one component of teacher and principal annual professional performance evaluations and will be used as one of multiple components to determine equitable distribution of educators. Results will also be incorporated into New York State's institutional accountability system.³ As such, the methodologies currently approved for use, as well as those that will be developed by the vendor, shall be created with the specific intent to be fair, accurate, and as transparent as possible, and to produce reliable estimates of student growth that are valid for the purpose and comparable across students, teachers, principals, schools, and years, in order to contribute to these evaluations and to provide useful information about student learning to individual teachers, principals, and other stakeholders.

There are several challenges about this work, including:

- New York State has a large and complex education system, with many school districts and other Local Education Agencies.
- Many constituencies throughout the State may provide input into decisions about specifications of any changes to the model and gaining buy in of diverse stakeholders is essential.
- Substantive modifications to the existing growth model methodology will require approval by the Board of Regents in public meetings.

² High school principals and schools receive State-provided growth ratings and scores only if they include all of grades 9-12.

³ NYSED's institutional accountability system uses the grades 4-8 school-level unadjusted growth measures to make determinations for schools and districts; see section 1.2.1 for a description of the unadjusted measure.

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- The student growth model receives high media attention and may be subject to potential litigation; the vendor must be prepared to explain and defend the model, including but not limited to the methodologies underlying the model and any analysis or results of the model.

As a result of such challenges, the vendor selected must be able to serve as an adviser and thought partner to NYSED in addition to providing technical expertise and capacity to simply design and deliver results. The Department seeks a vendor with a strong demonstrated track record engaging around complex technical analyses with diverse audiences, and with credibility as experts who can provide State decision-makers with a clear understanding of the implications of the many nuanced decisions that may need to be made. In addition, given the high profile and high stakes nature of this project, the vendor selected must demonstrate experience implementing comprehensive quality assurance strategies to ensure the accuracy and integrity of all results.

The most recent year that student growth results were generated was 2018-19.⁴ The 2018-19 results included the following data:

- 1.45 million valid student records in grades 4-8 in 2018-19, and 1.41 million valid student records in 2017-18 (valid student records are those with two consecutive years of valid assessment results)⁵
- 170,000 valid student scores for the ELA Regents Exam
- 140,000 valid student scores for the Algebra 1 Regents Exam
- 520,000 students included in the Growth in Regents Exams passed measure
- 47,000 teachers had at least one student attributed to them and 37,000 met the minimum sample size required to receive a State-provided growth score in 2018-19
- 3,800 principals and 3,800 schools with grades 4-8 had at least one student attributed to them
- 1,300 principals and 1,500 schools with all of grades 9-12 had at least one student attributed to them; (slightly fewer principals and schools met the minimum sample size required to receive a State-provided growth score)

1.2 Required Services and Deliverables

1.2.1 Annual Calculation and Delivery of Production Model Growth Scores

⁴ No growth results were generated for the 2019-20 school year because the United States Department of Education granted a waiver from administering 2019-20 assessments and from making accountability determinations using 2019-20 results (see [2019-20 Accountability Implications Based on April 2020 United States Department of Education Waivers and Changes to Commissioner's Regulation s §100.21 to Address the COVID-19 Crisis](#)). While the 2020-21 assessments were administered, the Department again did not generate 2020-21 growth results because it received a waiver from making accountability determinations using 2020-21 results (see [United States Department of Education \(USDE\) Waiver of Every Student Succeeds Act \(ESSA\) Accountability and Report Card Provisions for the 2020-21 School Year](#)).

⁵ There were 1.41 million valid student records in 2017-18 and similar numbers in earlier years; there was about an 80% student participation rate on State assessments in 2018-19. In 2020-21, student participation decreased to about 50% due to the COVID-19 pandemic.

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Beginning in Year 1 of the contract, and anticipated in each year thereafter, vendor will calculate and deliver State-provided growth scores for all educators and schools covered by the approved production model methodologies. Such methodologies currently cover teachers, principals, and schools with students in grades 4-8 taking the State ELA and/or math assessments and high school principals and schools with students taking New York State Regents Examinations. In Year 1 of the contract, vendor must calculate and deliver State-provided growth scores based on results from the 2022-23 school year. It is expected that 2022-23 results will be based on the student growth methodologies approved for implementation and used to produce results based on 2021-22 school year data.⁶

Vendor will be provided detailed business rules and programming to implement production methodologies used for State-provided growth score calculations based on 2021-22 school year data. For years 2-5 of the contract, vendor will update and submit for approval revised detailed business rules that account for any additional changes to the student growth methodology beta modeled by the vendor and approved by NYSED.

Mathematical models using test scores from State assessments including the grades 4-8 ELA and math assessments and Algebra I Regents Examination scores are currently in use to annually calculate individual student-level growth measures (currently expressed as student growth percentiles, or SGPs) and educator and school growth measures (currently expressed as mean growth percentiles, or MGPs) for use in the State's educator evaluation system and institutional accountability system.⁷ Mathematical models using Regents Examination scores from Algebra and ELA and Regents Examination completion rates of grades 9-12 students are currently in use to annually calculate individual student-level growth measures (currently expressed as student growth percentiles, or SGPs, and Growth in Regents Examinations passed measures, or GREs) and high school principal and school growth measures (MGPs and GREs) for use in the State's educator evaluation system.⁸

Individual student-level growth measures must be produced as both unadjusted and adjusted measures. Unadjusted growth measures are based solely on student prior achievement data and adjusted measures are based on additional student, class/course, and/or school characteristics. Results from these measures shall be attributed to teachers, principals, schools, and districts based on student linkage data submitted by school districts and BOCES and according to student linkage business rules to generate educator- and school-level growth measures. State-provided growth ratings (Highly Effective, Effective, Developing, Ineffective, or "HEDI") and scores (0-20) must then be assigned to teachers, principals, and schools according to existing methodologies (full details of the existing New York State growth model are available [here](#)).

In addition to calculating outcomes on all unadjusted and adjusted growth measures and providing all required State-provided growth ratings and scores, vendor must deliver to NYSED data files containing results for educators and schools statewide, as well as district-specific data files, in a format agreed

⁶ In response to the COVID-19 pandemic, the Department cancelled the 2019-20 spring assessments as well as the August 2020 and most administrations of the 2021 Regents examinations of the Regents examinations. The 2021-22 growth models were adjusted to account for missing assessments.

⁷ Beginning with the 2021-22 school year results, student growth scores will be generated for grade 8 students who take the Algebra I Regents exam. Algebra I growth scores for students who take the Algebra I Regents exam in lieu of the grade 8 assessment will be used to generate educator and school growth measures.

⁸ Beginning with the 2021-22 school year results, the grades 9-12 growth models will take into account previously passed Department-Approved Alternatives as well as exemptions granted from taking Regents examinations for students who passed Regents (or approved alternatives) during the COVID-19 pandemic.

upon by NYSED. Vendor must also deliver state- and district-level data files containing the underlying student data used to calculate results and generate State-provided growth ratings and scores.

Vendor must be able to provide state-level results files and present an overview of such results to NYSED for review and approval no later than 5 weeks after receiving data files from NYSED, for each year of the contract. If needed, results may be delivered separately for grades 4-8 and 9-12, such that grades 4-8 results are delivered within 5 weeks of receiving assessments results for those grades and grades 9-12 results are delivered within 5 weeks of receiving Regents Examination results. Vendor can anticipate receipt of student assessment data for Regents Examination data in mid-July and delivery of grades 4-8 ELA and math in mid to late July. See 1 through 4 below for details regarding these deliverables.

Deliverables and detailed requirements

Deliverable 1: Calculation and delivery of State-provided growth results. Vendor will annually calculate and deliver State-provided growth results for teachers, principals, and schools statewide. Successful completion of this deliverable requires each of the following:

- a. **Data preparation and file management.** Annually, vendor will implement into the business rules and programming all approved modifications to the models and prepare and maintain data layouts containing specifications for data files transferred to/from NYSED. Vendor will conduct quality control checks on and process source data files received from NYSED in preparation for student growth score calculations and will provide NYSED with interim output files summarizing the results of the file preparation as a quality assurance mechanism.
- b. **Calculate results.**
 - i. **Student-level growth score calculations.** Annually, vendor will calculate adjusted and unadjusted student growth results (currently expressed as SGP and GRE measures) using the methodologies approved by NYSED for implementation in the current school year.
 - ii. **Educator- and school-level growth measures and growth ratings and scores.** Annually, vendor will aggregate adjusted and unadjusted student growth results to calculate teacher, principal, and school-level growth measures (currently expressed as MGPs and GREs) using student-linkage rules approved for implementation in the current school year; vendor will assign teacher, principal, and school growth ratings and scores based on classification rules approved for use by NYSED in the current school year.
- c. **Deliver data files.** Annually, vendor will produce and deliver to NYSED statewide data files containing the outcomes calculated in b.i-ii above, in a format agreed upon by NYSED. Vendor will provide the same data files subset for each individual Local Educational Agency for distribution to the field. Final data files must be delivered within 5 weeks of receiving assessment results from NYSED. Output must include the student growth results of sub-groups of students, including but not limited to the lowest and highest prior achieving students, economically disadvantaged students, students with disabilities, and students with limited English proficiency.

- d. **Redelivery of data files.** Only if deemed necessary by NYSED, vendor will accept updated source data for a segment of educators and/or schools and recalculate growth scores and reproduce relevant data files. Such a scenario is not anticipated, but in rare instances that missing or mis-scored assessment results are discovered after assessment records were transferred to the vendor, vendor must have in place processes to accept revised or additional assessment results and incorporate them into student growth scores for applicable educators and schools. State-provided growth data files will be redelivered within a reasonable timeframe to be determined in conjunction with NYSED based on the amount of data being rerun.

Deliverable 2: Presentation of results. Vendor will annually deliver and present via teleconference a summary of growth model results for NYSED senior management and other stakeholders identified by NYSED, as requested. Presentation of results will include, at minimum: information about data processing; overview of the model calculations and model fit, including ensuring model fit at the tail ends of the distribution; distributions of growth measures, growth ratings, and growth scores at all levels and by grade/subject where appropriate; impact/sensitivity analyses by student subgroups, school type (such as charter and non-charter; elementary, middle, and high school, etc.), school size, and classroom characteristics; and other impact analyses required by NYSED and/or suggested by vendor. Results presentation must be delivered on the same day as results data files.

Deliverable 3: Growth model documentation. Vendor must develop, maintain, and deliver annual updates to documentation of growth model methodologies to meet the needs of several different audiences. Documentation is intended for users of State-provided growth results and Institutional Accountability growth results.

Documents will be reviewed and approved by NYSED, and vendor will prepare revised and final versions for public distribution based on NYSED feedback:

- a. **General public.** Documentation for the general public should provide a high-level overview of what the public needs to know to understand the objectives and key concepts behind growth modeling. The target audience is primarily parents and other non-practitioners. This audience will benefit from clear and comprehensive explanations of what the model is measuring, how the model works, and why measures of growth are included in institutional and educator accountability systems. For example, see [Measuring Student Growth for Institutional Accountability in New York](#) and [How is the Growth Model Produced for Teachers](#).
- b. **Practitioners/Educational Users.** Educational user documentation should specify what a user needs to know to understand the objectives and key concepts behind growth modeling, the key inputs and business rules applied to calculate measures, and how to interpret the output of each growth measure for purposes including evaluation, professional development, instructional and human capital planning. Documentation for this audience must include the following:
 - i. **High-Level User's Guides.** User documentation should build upon existing [User's Guides](#), which introduce the key concepts behind the growth modeling through key ideas, examples, and other tutorial material including frequently asked questions.

- ii. **Reference Manuals.** More in-depth Reference Manuals, which more precisely and completely fill in the technical details for educational users, will also be developed by the vendor. The target audience for these manuals will be teachers, district- and building-level administrators, and other educational staff who will access student growth model results and use the data for various professional purposes, including but not limited to those uses described above. See for example [Growth Scores FAQ](#) and the [Classification Rules for Growth Ratings and Scores](#).

User's Guides and Reference Manuals must be maintained and updated annually as needed to reflect the most recent information related to the growth model. Documentation for educational users must be delivered and approved by NYSED within one (1) week of delivering final results files to NYSED.

- c. **Technical Users.** Technical users include data or policy analysts or educational researchers. Documentation for this group will provide full specifications of the growth models in the detail typically expected by industry standards for this form of research and statistical analysis. It should contain enough information for knowledgeable statisticians and educational researchers to be able to replicate the calculations in the models (if they had access to the student and educator data used in the model). Separate documentation will be generated for results included in the State-provided growth results delivery to districts and the results used to make accountability determinations. Rationale for design decisions and choices made around business rules should be explained fully. This documentation should build upon existing Technical Reports (see [Growth Model for Educator Evaluation 2018/19 Technical Report](#) and [Growth Model for Institutional Accountability 2018/19 Technical Report](#)). Documentation for technical users must be delivered within one (1) month (and no later than November 1 of each year) of delivering final results files to NYSED. Documentation may require final editing and must be approved by NYSED before considered final.
- d. **Future Implementers.** Technical documentation of all methodological specifications of the growth models must be provided to NYSED to allow for replication of all calculations by third-party experts and to ensure that the initiative is sustainable by skilled staff or other providers at the end of this contract, including business rules and code used for model implementation and results generation. Business rules documentation describes how source files are processed to generate growth results described in Deliverable 1 b.i-ii above. Code should be fully annotated, containing documentation that specifies how the components are implemented, including coding details and design decisions that are not obvious from the code. Technical documentation of the specifications of each component of the growth model must be maintained throughout the contract term and shared with NYSED on an ongoing basis as updates are made. Final versions of the specifications implemented during each year of the contract should be delivered, with corresponding programming code, within two (2) weeks of delivering final results files to NYSED.

Deliverable 4: Planning Meetings/Knowledge Transfer.

- a. In all years prior to the final year of the contract, the vendor will participate in annual planning meetings with NYSED staff to review and finalize scope of work and priorities for the coming contract year. These meetings may occur remotely or in-person at the New York State Education Department offices in Albany, NY, and last no more than two days. This meeting will occur at the beginning of the contract for Year 1 (approximately November if a new vendor is awarded the contract, or February if the incumbent vendor is awarded the contract) to plan

for the Year 1 work. It will also occur at the end of Year 1 (and at the end of subsequent contract years) (approximately November) to plan for the following year (see the timeline for Services 1.2.1).

- b. During the final year of the contract, vendor shall organize, develop, and lead knowledge transfer and training sessions for NYSED-designees on the student growth methodology and its implementation. It is expected that such knowledge transfer will take place over up to two days and will take place at NYSED offices with approximately 5-10 NYSED staff members.

High-Level Timeline for Annual Delivery of Growth Scores

	Year 1*
October – June (new vendor)	Data preparation and file management based on approved methodologies
January – June (incumbent vendor)	Data preparation and file management based on approved methodologies
June - August	Calculation of results
August	Delivery of data files and results presentation
August - September	Redelivery of updated results (only in the unlikely event it is deemed necessary by NYSED)
September - October	Delivery of results documentation
October - December	Preparation for Year 2 work (includes annual meeting or knowledge transfer session)

* Contract Years 2-5 are expected to follow the same high-level timeline beginning in January of each year.

1.2.2 Development and Delivery of Beta Analyses on Changes to Existing Student Growth Model

New York State has the desire to ensure its student growth model remains valid, reliable, fair, and aligned with the most up to date best practices in the field based on rigorous research. While NYSED, through the work outlined in Section 1.2.1 of this RFP, will deliver State-provided growth score results for use in institutional accountability, educator equity reports, and educator evaluations according to existing methodologies in place each year. We also seek to continually review of our growth model. Review of the model will include mitigating the impact of COVID-19 (including changes in the assessment system and data collections) on growth results, and ensuring model fit at the tail ends of the distribution. Under this service, the vendor will support those efforts and conduct beta analyses of changes to the student growth model and its implementation that are recommended by NYSED to consider adopting in future years of the contract.

For Years 2-5, the vendor must also develop options for technical changes for NYSED to consider based on the recommendations made by its own expertise and experience.⁹ It is expected that the technical changes recommended by the vendor for beta modeling will be in line with current research

⁹ Technical details on NYSED's current student growth model are available here: <http://www.nysed.gov/state-growth-measures-toolkits/technical-report-growth-measures-2018-19>.

and best practices related to measuring student growth and/or educator value-added measures. Upon agreement by NYSED, the vendor will conduct feasibility analyses and beta modeling of model modifications or redesign.

NYSED expects that the Year 1 areas for review will include:

- **Measurement Error Correction on the Grades 9-12 Growth in Regents Examination Scores.** Based on vendor's review of current grades 9-12 model, vendor will model potential adjustments to increase the precision of post-test predictions that takes in account how students meet graduation requirements (i.e., either passing a Regents examination or receiving a Regents exemption).
- **Measurement Error Correction on the ELA and Algebra I Regents Growth Scores.** Based on vendor's review of current grades 9-12 model, vendor will model potential adjustments to increase the precision of post-test predictions based upon pre-test results. Vendor will beta model separate potential adjustments for Regents examinations in ELA and Algebra I, including Grade 8 students who take the Algebra I Regents examination.
- **Impact of COVID-19 on Growth Scores.** Vendor will model potential adjustments to address the on-going impacts of interruptions to the 2019-20 and 2020-21 grades 3-8 ELA and math assessments and Regents Examinations.

It is expected that beta modeling in the three areas above will require an approximate total of 1400 hours to complete and will take place during Year 1 of the contract. Any recommended changes resulting from the beta modeling will be approved by NYSED for incorporation into the operational growth model implemented in 2023-24. At the end of Year 1, and each contract year thereafter, NYSED will identify and determine in collaboration with the vendor approximately three additional model enhancements to beta test the following year. For each contract year, NYSED expects the beta analyses to require an approximate total 1400 hours to complete. See 5 through 8 below for details regarding beta analysis deliverables.

Deliverables and detailed requirements

Deliverable 5: Comprehensive model review and beta analysis plan. Vendor shall complete a comprehensive review of the current New York State growth models and the areas for its modification recommended by NYSED, and, based on these recommendations and the vendor's own expertise, within 60 days of each contract year, shall submit a detailed analytic plan specifying vendor's procedures for examining potential modifications to the growth model in each of the prioritized areas and the project timeline for completing each beta modeling element.

- a. Beta modeling based on NYSED recommendations will be completed during each year of the contract. In each contract year, NYSED and vendor will define beta analysis of potential enhancements to the growth models. Vendor will develop a beta analysis plan based upon the defined analyses.
- b. The vendor will work in consultation with NYSED during the 60 day period at the beginning of each contract year to develop the analysis plan and timeline, and will have incorporated NYSED feedback into the plan submitted within 60 days.

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- c. Vendor will not begin work on beta modeling until NYSED has approved the model review and beta analysis plan each year.
- d. Questions addressed in the beta analysis plan may be further defined after the 60-day planning period in consultation with NYSED.

Deliverable 6: Calculation and delivery of beta modeling results. Vendor may complete these steps separately for each beta analysis conducted:

- a. **Data preparation and file management.** Vendor will prepare data layouts containing specifications for data files transferred to/from NYSED in order to complete beta analyses. Vendor will process source data files received from NYSED in preparation for student growth score calculations and will provide NYSED with interim output files summarizing the results of the file preparation as a quality assurance mechanism, in a format agreed upon by NYSED.
- b. **Calculate results.**
 - i. **Student-level growth score calculations.** Vendor will calculate student growth scores using the approved beta modeling methodologies from its analysis plan.
 - ii. **Educator- and school-level growth measures and growth ratings and scores.** Vendor will use student growth results to calculate teacher, principal, and school-level growth measures using student-linkage rules approved for implementation in the current school year (and, as relevant, revised student linkage rules based on approved beta modeling methodologies); vendor will assign teacher, principal, and school growth ratings and scores based on classification rules currently approved for use (and, as relevant, those revised classification rules based on approved beta modeling methodologies).
- c. **Deliver data files.** Vendor will produce and deliver to NYSED statewide data files containing the outcomes calculated in b.i.-ii. above. Output must include the student growth results of sub-groups of students, including but not limited to the lowest and highest prior achieving students, economically disadvantaged students, students with disabilities, and English Language Learners.

Deliverable 7: Presentation of results. Vendor may complete this step separately for each beta analysis completed. Vendor will develop and deliver results presentation(s) that include summaries of beta modeling results for NYSED senior management and other stakeholders. Presentation of results will include, at a minimum, information about data processing; overview of model calculations and model fit; distributions of growth measures, growth ratings, and growth scores at all levels and by grade/subject where appropriate; impact/sensitivity analyses by student subgroups, school type, and classroom characteristics; comparisons between the outcomes for each methodology included in the beta analysis and the current student growth methodology; and other impact analyses required by NYSED and/or suggested by vendor. Vendor will also provide recommendations as to any modification to the existing methodology NYSED should consider adopting, including the rationale for such recommendations. Vendor will present results to NYSED and any relevant stakeholders identified by NYSED via teleconference.

Deliverable 8: Beta modeling documentation. Vendor must annually develop, maintain, and deliver documentation of methodologies included in beta analyses. Technical documentation of all

methodological specifications of the beta analyses must be provided to NYSED, including code and business rules used for beta model implementation and results generation. Code should be fully annotated, containing documentation that specifies how the components are implemented, including coding details and design decisions that are not obvious from the code. Technical documentation of the specifications of each component of the beta analyses must be maintained and shared with NYSED on an ongoing basis as updates are made, and final versions of the specifications implemented should be delivered, with corresponding programming code, within two (2) weeks of delivering beta modeling results files to NYSED.

High Level Timeline for Beta Analyses of Growth Model Changes

	Year 1*
January - February	Development and delivery of beta analysis plan
March - December	Calculation and delivery of beta modeling results, beta modeling documentation, results presentations and recommendations for modifications to adopt will have been provided to NYSED, according to project timeline determined in collaboration with NYSED

* Contract Years 2-5 are expected to follow the same high-level timeline.

1.3 Additional Project Requirements

This section describes the additional requirements that must be fulfilled throughout the duration of the contract in order to successfully meet NYSED’s requirements, in support of and in addition to the Deliverables 1-8 described above. The vendor is required to perform such services as described below.

1.3.1 Project Management Requirements

Vendor will provide overarching management of the entire Student Growth Measures project including work planning, issue tracking and escalation, and status monitoring. Vendor’s project management approach must also meet the following minimum requirements:

1. **Project staffing:** Vendor will provide clearly identified and accountable staff resources to ensure completion of all deliverables and to consult and advise as needed with NYSED so that NYSED can make timely and informed decisions. Vendor will designate one of its team members as Project Manager who will be responsible for all project activities and the overall success of the project. It is expected that the vendor Project Manager will be a full-time position in Year 1 of the contract. Thereafter, the vendor Project Manager will be at least 50%. Vendor will maintain continuity of the team staff throughout the project. Changes in key staff require prior approval by NYSED. Replacement staff must have comparable skills and must be provided at the same or lower rate.
2. **Project schedule:** Vendor Project Manager will develop and maintain a comprehensive project schedule that breaks down all tasks associated with the project, including the beginning and end dates of each task and how many personnel are associated with the task. This schedule will be submitted to NYSED within 60 days of entering into contract.

3. **Project status reporting:** Vendor Project Manager will lead weekly project status teleconference meetings with appropriate NYSED and vendor staff. Vendor Project Manager will provide weekly written project status reports to designated NYSED project manager that identify tasks to be performed, tasks that have been performed, and risks or issues that surfaced during the week. The status report will be provided in a format mutually agreed on by NYSED and the vendor.
4. **Project risk assessment:** Vendor must maintain an inventory of project risks identified during the development of the project schedule and those that arise during project status reporting. Vendor will work with NYSED to develop appropriate risk mitigation approaches and identify what risks will result in project scope changes.

1.3.2 Quality Control Processes

1. **Internal quality control:** Vendor must implement comprehensive internal quality control processes that include, but are not limited to, the following elements. Vendor must implement procedures to verify and ensure that the growth model is executed and data files are produced accurately and according to all technical specifications. This will include specific quality control performed upon receipt of each data file transferred from NYSED to vendor; checks conducted after processing and cleaning each source data file in preparation for implementing the model; and on model output and final data files themselves. Vendor will verify that the software applications developed perform as specified and that the output reports and data files accurately reflect the business rules specified by NYSED. Vendor must verify that all data files transferred from vendor to NYSED are accurate and complete, and that all data files received from NYSED are complete and are incorporated into vendor processing accurately and completely. Vendor must also develop and be prepared to implement procedures that permit the acceptance of updated or previously missing data and recalculate growth scores for relevant educators/schools (per Deliverable 1d).
2. **Support for NYSED validation studies:** NYSED may undertake an independent validation study of its student growth model, and any modifications to the model adopted as a result of beta analyses undertaken as part of this contract. Vendor must provide support for such a study through participation in planning meetings, to take place via phone or webinar, the provision of technical specification materials, and the provision of any data deemed necessary by NYSED.

1.3.3 Technology Requirements

Vendor must make provisions for the transferability of data to NYSED. NYSED prefers that a vendor use non-proprietary software or statistical modeling tools for completion of this work. If such proprietary software or statistical modeling tools must be used, the contractor must provide NYSED's research staff with access to the software and training in its use at no additional charge to NYSED for the duration of the contract and three years after the end of the contract.

1.3.4 Ongoing Vendor Engagement

As part of the ongoing implementation of this project, vendor may be called on to provide information about the student growth model to NYSED and its stakeholders, including possibly presenting to the

Board of Regents. In the event such engagement requires an in-person presentation, NYSED will provide vendor with adequate notice and vendor will provide key project staff.

1.3.5 Deliverable Reduction

As stated above, Deliverables 1-8 and associated costs in contract Years 2-5 will be the same as those outlined above and in the cost proposal for Year 1.

If NYSED determines that a deliverable is not required, it will notify the vendor at least five (5) months prior to September 1st. The vendor, in turn, will no longer be responsible for performing the work related to the deliverable, and the contract cost total will be reduced by the budgeted amount for the canceled deliverable. If a deliverable is removed during a contract year, it will also be removed for subsequent contract year(s).

1.3.6 Payments and Reports

The vendor will be required to submit quarterly reports and invoices to NYSED containing the program narrative, dates of services, and an itemized list of activities and costs consistent with the approved Schedule of Deliverables contained in the executed contract. Payments will be made once the quarterly reports are reviewed and project deliverables are determined by NYSED to be adequate. Payment for each Deliverable will be made upon 100% satisfactory completion and approval by NYSED. Payment(s) for subcontractor(s) must list the subcontractor's name(s), payment amount(s), and nature of services provided separately on the invoice submitted. Invoices with incomplete information will be returned to the vendor.

The vendor must retain records and accounts, updated on a monthly basis, and must be able to prepare and submit statistical, narrative, and/or financial summaries related to this contract as requested by NYSED.

1.3.7 Liquidated Damages Related to Delivery of Results Files and Errors in the Calculation and/or Delivery of Production Model Growth Scores

It is understood and agreed that all rights and remedies set forth in this Agreement shall be in addition to those otherwise prescribed by law. If the vendor fails to comply with the criteria set forth in section 1.2.1 of the Agreement, then the liquidated damages provisions will apply.

If the vendor fails to deliver the results files either (i) within the timelines prescribed in section 1.2.1 or (ii) in accordance with a modification previously approved by NYSED, then the vendor hereby agrees to pay NYSED liquidated damages in the amount of 1% of the annual contract budget for the Calculation and Delivery of Production Model Growth Score referred to in section 1.2.1 of the Agreement.

If an error in the Calculation and/or Delivery of Production Model Growth Scores occurs due to the vendor's actions or failure to act, the vendor must correct the error(s) and provide NYSED with revised calculations and/or scores, and any related Deliverables 2-3 documentation within four weeks of identifying the error and with no cost to NYSED. In addition, the following liquidated damages provisions will apply:

- a. Upon the occurrence of a vendor error that directly or indirectly results in the delivery of incorrect State-provided growth scores to any teacher, principal, and/or school the vendor agrees to pay NYSED liquidated damages in the amount of 5% of the annual contract budget for the Calculation and Delivery of Production Model Growth Scores (1.a-c in the Bid Form 1 Cost Proposal);
- b. Upon the occurrence of vendor error that directly or indirectly results in the delivery of incorrect State-provided growth scores to any teacher, principal, and/or school and impacts 10% or more of that particular group statewide (e.g., an error in the results files provided to principals that impacts 10% or more of principals) the vendor agrees to pay NYSED liquidated damages in the amount of 10% of the annual contract budget for the Calculation and Delivery of Production Model Growth Scores (1.a-c in the Bid Form 1 Cost Proposal).

1.3.8 Additional Requirements

1. Any materials, processes, and products produced for NYSED pursuant to this contract, including but not limited to methodologies, measures, software, code, documentation, growth results, implementation guidance, training materials, evaluation forms, data complications, and reports shall be the sole and exclusive property of the New York State Education Department. Should the vendor use the services of consultants or other organizations or individuals who are not regular employees of the vendor, the subcontract agreement shall provide that any work produced pursuant to the agreement shall be the sole and exclusive property of NYSED.
2. Paragraph #1 of this section shall not apply to proprietary information regarding methodologies or measures that are the property of the vendor at the time the contract resulting from this RFP is executed, or for which a license or other permission for use is required for the vendor to produce the materials. As to such proprietary information, the vendor shall clearly identify such proprietary information and give, or arrange from a third party owner to give, a license to NYSED to continue using such proprietary information solely for NYSED's educational purposes for a period of ten years from the date of termination of this contract.
3. The vendor shall reproduce, use, display, and include copies of NYSED's trademarks, trade name, logos, copyrights, and other intellectual property (collectively, the "Marks") on all copies of materials produced for NYSED. The vendor acknowledges that the Marks are owned solely and exclusively by NYSED, and nothing contained in the resulting contract shall give the vendor any ownership right or interest in such Marks or a right to use the Marks except pursuant to this contract.
4. All vendors must adhere to NYSED's security protocols regarding the transmission of secure materials via encrypted files and the secure shipment of all materials using a carrier that has ground tracking capability. Electronic transfer via e-mail, Internet, or facsimile (FAX) of individual student information or any secure test data is not permitted unless authorized by NYSED to do so on a case-by-case basis.
5. All materials are to be held strictly confidential and must not be copied, duplicated, or disseminated in any manner or discussed with anyone other than persons authorized by NYSED.
6. The vendor and all of its subcontractors performing work on the contract resulting from this RFP must sign a [Non-Disclosure Agreement](#) (Appendix B, found in Section 5, Submission Documents) provided by NYSED, assuring the confidentiality of all work and discussions carried

out under this contract after the contract is awarded. These signed agreements must be submitted to NYSED prior to the initiation of work under this contract.

7. The vendor agrees to cooperate with NYSED with respect to any challenge to the technical methodology, the results of such methodology and statistical analyses associated with this contract and, if necessary, provide at no expense to NYSED, experts, evidence, witness testimony, or other documentation necessary to refute a challenge to the validity and reliability or any other aspect of the development of the growth model with which the vendor was associated for the duration of the contract and minimum of five years after termination of this contract.
8. As more fully set forth in Section IV of the State of New York Agreement, attached hereto as Appendix A of the submissions document, the terms of which will be incorporated into any contract awarded pursuant to this RFP, Vendor will indemnify and hold harmless NYSED, its employees, officers and agents against any and all claims, suits, losses, damage or injury to persons or property of whatsoever kind and nature arising from Vendor's work under this contract.

1.4 Security

The vendor must use encrypted files and design, host, and maintain a secure file transfer protocol (FTP) site as a means of file transfer. Access to the NYS assessment and linkage data on this site must be limited to the vendor and NYSED unless further sharing with other parties is authorized in writing by NYSED. Any other electronic transfer via e-mail, Internet, or facsimile (FAX) of individual student information is not permitted unless authorized by NYSED to do so on a case-by-case basis.

All vendor and subcontractor staff having access to secure or confidential information, including but not limited to student, teacher, and principal data and personally identifiable information, shall sign a non-disclosure agreement (Appendix B) and submit to NYSED prior to the initiation of work under this contract.

The vendor and its subcontractors must make appropriate arrangements to securely destroy within one year of the completion of activities all printed and computer records of any confidential data or personally identifiable student information that the vendor and any of its subcontractors were given access to so as to perform the tasks described in this RFP.

In their technical proposal, bidders must describe all aspects of their security procedures handling student data and assessment files in their proposals, which must be at a minimum, consistent with the Data Privacy Appendix in Appendix R. These security guidelines set forth the management of secure materials and should be reflected in the vendor's procedures.

1.5 Requirements of Education Law Section 2-d

The Contractor agrees to comply with FERPA and New York State Education Law § 2-d. The NYSED is required to ensure that all contracts with a third-party contractor include a Data Security and Privacy Plan, pursuant to Education Law § 2-d and Section 121.6 of the Commissioner's Regulations. For every contract, the Contractor must complete the form or provide a plan that materially addresses its requirements, including alignment with the NIST Cybersecurity Framework.

The NIST Cybersecurity Framework Version 1.1 is the standard for data security and privacy for NYSED, and its related policies. Third party contractors that do business with NYSED must submit a plan that outlines how the contractor will align with the NIST CSF and implement all (i) state, (ii) federal, and (iii) NYSED data security and privacy contract requirements, over the life of the contract.

Pursuant to Education Law §2-d and Section 121.3 of the Commissioner's Regulations, the NYSED is required to post information to its website about its contracts with third-party contractors that will receive Personally Identifiable Information (PII).

The Appendix R – Data Privacy Agreement, including DPA Exhibit 1 and Exhibit 2 is posted separately with this RFP, the terms of which are incorporated herein by reference, and which shall also be part of the Contract.

Bidders should use these templates to submit the required data security and privacy plan and return them with their proposal for review.

1.6 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.

1.7 Subcontracting Limit

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

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

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

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

If the vendor proposes to change subcontractors during the contract period, NYSED must be notified prior to the change. NYSED reserves the right to reject any replacement subcontractors proposed by the vendor and reserves the right to approve all changes in subcontractors. The Subcontracting Form located in the Submission Documents must be updated annually and submitted to NYSED. Using this form, the vendor must also report to NYSED, on an annual basis, actual expenditures incurred for all subcontractors and indicate which subcontracting costs are associated with M/WBE.

1.8 Staff Changes

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

1.9 Contract Period

NYSED will award **one (1)** contract pursuant to this RFP. The contract resulting from this RFP will be for a term anticipated to begin **October 1, 2022** and to end **December 31, 2027**. If the incumbent vendor is awarded the contract, it is anticipated to begin **January 1, 2023** and to end **December 31, 2027**.

1.10 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.

1.11 M/WBE and Equal Employment Opportunities Requirements:

Contractor Requirements and Obligations under New York State Executive Law, Article 15-A (Participation by Minority Group Members and Women with Respect to State Contracts)

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

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

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

In accordance with these requirements, the contractor hereby agrees to make every good faith effort to promote and assist the participation of certified Minority and Women-Owned Business Enterprises (“M/WBE”) as subcontractors and suppliers on this project for the provision of services and materials in an amount at least equal to the M/WBE goal (Included in the procurement document) as a percentage of the total dollar value of this project. In addition, the contractor shall ensure the following:

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

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

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

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

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

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

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

4. Contractors and subcontractors shall undertake programs of affirmative action and equal employment opportunity as required by this section¹⁰. In accordance with the provision of the Article, the bidder will submit, with their proposal, Staffing Plan (EEO 100).

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

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

¹⁰ Notice – Contractors are provided with notice herein, NYSED may require a contractor to submit proof of an equal opportunity program after the proposal opening and prior to the award of any contract. In accordance with regulations set forth under Article 15-A §312.5, contractors and/or subcontractors will be required to submit compliance reports relating to the contractor's and/or subcontractor's program in effect as of the date the contract is executed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.) **Submission**

Documents to be submitted with this proposal

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

Project Submission

The complete proposal submitted in response to this RFP must include all required documents bearing signatures in an acceptable form as outlined above, emailed to CAU@nysed.gov, and titled "BID SUBMISSION RFP #23-005 [legal name of bidder]." This includes:

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

The proposal must be received by **January 14, 2022, by 3:00 PM** at NYSED in Albany, New York.

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

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

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

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

2.1 Technical Proposal (70 points)

The completed Technical Proposal must be emailed and include the following:

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- Cover Letter
- Table of Contents
- Executive Summary
- Project Narrative, including all subsections described below and any relevant attachments or appendices
- Evidence of Organizational Capacity and Demonstrated Effectiveness, including all subsections described below
- Appendix R
- Request for Exemption from Disclosure Pursuant to the Freedom of Information Law (found in Section 5, Submission Documents)

Project Narrative (25 points)

The proposal should begin with an Executive Summary. It should then include a clear, detailed, rationale and concise description of how the vendor will provide all required services and deliverables described in this RFP, and how the vendor will meet all the additional project requirements described in Section 1 of this RFP. The proposal must include the following:

- A clear articulation of how vendor will meet all required deliverables for Service 1.2.1 (Deliverables 1-4, including subparts) and articulation of why that approach will best meet NYSED's needs;
- A clear articulation of the technical approach to the data analysis and beta modeling required under Service 1.2.2 (Deliverables 5-8, including subparts) and articulation of why that approach will best meet NYSED's needs;
- A clear articulation of how vendor will meet all additional project requirements detailed in section 1.3, subparts 1.3.1-1.3.4;
- A proposed work plan indicating the approximate dates and specific staff needed to complete all services according to the high-level timelines specified in sections 1.2.1 and 1.2.2.

Evidence of Organizational Capacity and Demonstrated Effectiveness (45 points)

The proposal should include a clear articulation of the qualifications and proven track-records of project staff, including the following:

- Capacity of organization and key staff, including:
 - Proposed staffing plan, including specification by name of all key staff including program managers, research/analytical staff, and other key support staff (or, if hiring will occur, the planned hiring dates, qualifications sought, and names of potential employees, if known); organizational diagram of key staff and specification of full- or part-time status; resumes and detailed description of responsibilities and qualifications for all key staff;
 - Evidence of organization's capacity to provide statistical modeling services, including any specific staff expertise and computing power needed to handle large data sets and run growth models;
 - Demonstration of organizational approach to maintaining current knowledge of state-of-the-art student growth and value-added modeling, particularly in educational environments;

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- All aspects of their security procedures handling student data and assessment files in their proposals, which must be at a minimum, consistent with the requirements in Appendix R.
- Demonstrated track record in the field, including:
 - Description of vendor's experience in conducting research for the development of growth and value-added models, including both models that measure the *adequate growth* of a student towards a desired standard of performance as well as models that measure the *relative growth* of a student compared to other students with similar test histories and/or other characteristics;
 - Detailed information about prior work completed at similar scale and scope to this RFP, include contributions to improve upon growth measures, experience engaging around complex technical analyses with diverse audiences, and with credibility as experts who can provide State decisions-makers with a clear understanding of the implications of the many nuanced decisions that may need to be made;
 - List of previous clients and at least two letters of reference from current clients (where current shall mean relevant within the past three years; NYSED staff may not be used as references); the dates of service and a brief summary of the services provided should be included for each reference;
 - Details of industry awards or recognition of the organization or its key staff;
 - Relevant publicly available materials or website citations to prior work;
 - Must demonstrate experience implementing comprehensive quality assurance strategies to ensure the accuracy and integrity of all results.
- Approach to supporting and interacting with NYSED and its stakeholders, including:
 - Description of how vendor will organize and support the consultative work required to enable NYSED to make sound choices around the decisions Service 1.2.2 involving the analysis and testing of different options for modifying existing student growth methodologies;
 - Description of experience and willingness to engage with stakeholders, policy makers, and the press (possibly including in conjunction with litigation), in explaining and defending the results generated by the student growth methodologies and the technical choices made in the adoption of any model modifications that result from vendor's beta analytic work;
 - Description of how vendor staff will work with NYSED on ongoing project management issues, including planning and coordinating status meetings, developing status reports and project plans, notifying NYSED of potential problems or changes to dates or deliverables, and submitting all deliverables according to the agreed upon schedule with appropriate time for NYSED review and approval;
 - Description of how vendor will ensure that the work of the contract has the necessary priority within the organization to be completed with the highest quality and on time.

2.2 Cost Proposal (30 points)

The completed Cost Proposal must be emailed and include the following:

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1. Year 1 Detailed Budget
2. Five-Year Budget Summary, **Signature Required**
3. Subcontracting Form
4. M/WBE Purchases Form

Budgets must be submitted using whole dollar numbers.

Vendors must provide a cost proposal reflecting the cost for each deliverable. Bidders must bid on ALL deliverables described in this RFP.

Deliverable-based costs will be provided in the cost proposals for deliverables associated with the annual calculation and delivery of production model growth scores (Section 1.2.1; Deliverables 1-4, including subparts) and the development and delivery of beta analyses on changes to the student growth model and review and verification process (Service 1.2.2; Deliverables 5-8). These deliverable-based costs will incorporate all of the following components:

- Total salaries
- Total fringe benefit cost
- Total purchased services (non-employee consultants, subcontractors, subcontractor travel)
- Total non-personal services (supplies and materials, employee travel, etc.)
- Other costs (indirect costs, etc.)

Additionally, all costs associated with ongoing management and implementation of the project should be incorporated into the costs for the deliverables, including costs associated with the additional project requirements specified in Section 1.3 of this RFP.

The Financial Criteria portion of the RFP will be scored based upon the grand total of the Five-Year Budget Summary (Bid Form 3) (maximum of 30 points).

2.3 M/WBE Documents

The original completed M/WBE Documents must be mailed in a separate envelope labeled **RFP #23-005-M/WBE Documents-Do Not Open**. Please return the documents listed for the compliance method bidder has achieved:

Full Participation-No Request for Waiver

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

Partial Participation-Request for Partial Waiver

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

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No Participation-Request for Complete Waiver

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

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.

3.1 Criteria for Evaluating Bids

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

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

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

3.2 Technical Criteria (70 Points)

- **Project Narrative – 25 points**
- **Organizational Capacity and Demonstrated Effectiveness – 45 points**

3.3 Financial Criteria (30 Points)

- **Five Year Budget Summary (Bid Form 3) – 30 points**

The Financial Criteria portion of this RFP will be scored based upon the grand total for the One Year Budget Summary (Bid Form 3) (maximum of 30 points).

- The financial portion of the proposal represents 30 points of the overall score and will be awarded up to 30 points pursuant to a formula. This calculation will be computed by the Contract Administration Unit upon completion of the technical scoring by the technical review panel.
- The submitted budget will be awarded points pursuant to a formula that awards the highest score of 30 points to the budget that reflects the lowest overall cost. The remaining budgets will be awarded points based on a calculation that computes the relative difference of each proposal against the lowest budget submitted. The resulting percentage is then applied to the maximum point value of 30 points.

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

3.3 Method of Award

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

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

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

3.4 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.

3.5 Post Selection Procedures

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

3.6 Debriefing Procedures

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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 via email to GrowthRFP@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.

3.7 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 NYSED Contract Administration Unit (CAU) by emailing GrowthRFP@nysed.gov:
3. 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 seven (7) business days of the receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and CAU will advise OSC that a protest was filed.
4. The NYSED Contract Administration Unit (CAU) may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts.

3.8 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

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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).

3.9 Procurement Lobbying Law

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

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Designated Contacts for NYSED

Program Office – **Jennifer Todd**

Contract Administration Unit – **Samuel Rose**

M/WBE – **Brian Hackett**

3.10 Consultant Disclosure Legislation

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

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

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

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

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

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

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

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

Public Officer's Law Section 73

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

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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](#).

3.11 NYSED Substitute Form W-9

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

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

3.12 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

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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.

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.

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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.

3.13 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 Clause for all New York State Contracts), Appendix A-1 (Agency-Specific Clauses), and Appendix R (Security and Privacy Mandates) **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

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

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

Full Participation-No Request for Waiver

Signatures Required

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

Partial Participation-Request for Partial Waiver

Signature Required

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

No Participation-Request for Complete Waiver

Signature Required

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

STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

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

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

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

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

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

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

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

II. Payment and Reporting

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

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

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

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

III. Terminations

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

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

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

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

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

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

IV. Indemnification

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

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

V. Property

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

VI. Safeguards for Services and Confidentiality

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

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

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

Appendix A
STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (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 the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or

services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

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

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules

("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

NYS Department of Economic Development
Division for Small Business
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.

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)

APPENDIX A-1
AGENCY-SPECIFIC CLAUSES

Payment and Reporting

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

Terminations

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

Responsibility Provisions

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

Property

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

under this agreement. The Contractor shall submit a copy of the inventory in a form identical to or essentially similar to, Exhibit A annexed hereto. The term "non-expendable assets" shall mean for the purposes of this agreement any and all assets which are not consumed during the term of this agreement and which have a cost of One Thousand Dollars (\$1,000) or more.

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

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

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

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

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

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

Safeguards for Services and Confidentiality

- A. Any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department. The material prepared under the terms of this agreement by the Contractor shall be prepared by the Contractor in a form so that it will be ready for copyright in the name of the New York State Education Department. Should the Contractor use the services of consultants or other organizations or individuals who are not regular employees of the Contractor, the Contractor and such organization or individual shall, prior to the performance of any work pursuant to this agreement, enter into a written agreement, duly executed, which shall set forth the services to be provided by such organization or individual and the consideration therefor. Such agreement shall provide that any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department and that such work shall be prepared in a form ready for copyright by the New York State Education Department. A copy of such agreement shall be provided to the State.
- B. Required Web Accessibility of Delivered Documents and Applications. If applicable, all documentation, applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Education Department IT Policy NYSED-WEBACC-001, Web Accessibility Policy, which requires that documents, web-

based information and applications are accessible to persons with disabilities. All delivered documentation and applications must conform to NYSED-WEBACC-001 as determined by quality assurance testing. Such quality assurance testing will be conducted by NYSED employee or contractor and the results of such testing must be satisfactory to NYSED before documents and applications will be considered a qualified deliverable under the contract or procurement.

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

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

Certifications

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

Notices

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

be changed by notice in writing. Notice shall be considered to have been provided as of the date of receipt of the notice by the receiving party.

Miscellaneous

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

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

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

Reports to DCS are to be transmitted as follows:

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

Reports to NYSED are to be transmitted as follows:

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

By fax: (518) 408-1716

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

5. Appendix A-3 - Minority/Women-owned Business Enterprise Requirements (where applicable)
6. Appendix B - Budget
7. Appendix C - Payment and Reporting Schedule
8. Appendix R – Security and Privacy Mandates (where applicable)
9. Appendix D - Program Work Plan

Revised 6/12/17