

Request for Proposals (RFP)

RFP #16-007

Administrative Review System and Services
for



New York State Education Department (NYSED)
Child Nutrition Programs

July 1, 2016

NEW YORK STATE EDUCATION DEPARTMENT

RFP Proposal #16-007

Title: Child Nutrition Program: Administrative Review System (CNP: ARS)

The New York State Education Department (NYSED) Child Nutrition Program (CNP) is seeking proposals from vendors to provide Commercial off the Shelf (COTS) software solutions and accompanying integration and support services to replace its current Administrative Review (AR) process and comply with United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) requirements.

NYSED will award one (1) contract for system implementation and support services pursuant to this RFP. The contract resulting from this RFP will be for a period of five (5) years, anticipated to begin January 1, 2017 and ending December 31, 2021.

Subcontracting will be limited to thirty percent (30%) of the annual contract budget. Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel. NYSED has not established M/WBE goals for this procurement. Nevertheless, NYSED remains committed to promoting the participation of certified Minority and Women-Owned Business Enterprises to the greatest extent possible. Therefore, NYSED strongly encourages bidders to seek New York State certified M/WBE subcontractors at a participation rate of 30%.

Components contained in RFP Proposal #16-007 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 attachments)

Questions regarding the request must be submitted by e-mail to RFP16007@nysed.gov no later than the close of business on the due date indicated in the Timetable. Questions regarding this request should be identified as either Program or Fiscal. A Questions and Answers Summary will be posted to <http://www.p12.nysed.gov/comprocontracts/comprocontracts.html> no later than July 31, 2015.

Program Matters	Fiscal Matters
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THE FOLLOWING DOCUMENTS MUST BE SUBMITTED IN SEPARATELY SEALED ENVELOPES, AS DETAILED IN SECTION 2 OF THIS RFP, AND BE RECEIVED AT NYSED NO LATER THAN 3:00 PM ON AUGUST 10, 2016:

1. Submission Documents labeled **Submission Documents – RFP #16-007 Do Not Open**
2. Technical Proposal labeled **Technical Proposal – RFP #16-007 Do Not Open**
3. Cost Proposal labeled **Cost Proposal – RFP #16-007 Do Not Open**
4. Two CD-ROMs containing the submission documents, technical proposal, and cost proposal submitted using Microsoft Word. Place in a separate envelope labeled **CD-ROM-RFP #16-007 Do Not Open**.

Table 1 – Timetable

Activity	Date
Release of RFP	7/1/2016
Final Date for Receipt of Questions	7/15/2016
Official Responses to Questions Posted	7/22/2016
Proposal Due Date / RFP Close	3:00 PM 8/10/2016
Technical Presentations/Demonstrations	On or about Week of Sept. 19th - 23rd, 2016
Estimated Selection Recommendation Date	10/1/2016
Estimated Projected Contract Start Date	1/1/2017
Projected Contract End Date	12/31/2021

Hand delivered proposals and documents will not be accepted for this RFP. The above documentation must be submitted to the following mail address:

NYS Education Department
Bureau of Fiscal Management
Attn: Richard Duprey, RFP#16-007
Contract Administration Unit
89 Washington Avenue, Room 501W EB
Albany, NY 12234

(Facsimile copies of the proposals are NOT acceptable)

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Glossary of Terms and Acronyms Used in this RFP

Term	Definition
§	Section
Administrative Review	The Administrative Review is the State’s assessment of the LEA’s administration of the NSLP, SBP, and other school nutrition programs. The objectives of the Administrative Review are to: <ul style="list-style-type: none"> • Determine whether the LEA meets program requirements • Provide technical assistance • Secure any needed corrective action • Assess fiscal action and, when applicable, recover improperly paid funds
Agency	Any governmental department, agency, board, commission, office, institution, public benefit corporation or public authority of the State of New York, or the State of New York acting on behalf of one or more of the foregoing entities.
AR	Administrative Review
ASSP	Afterschool Snack Program
Best Value	As defined by New York State Finance Law § 163(1)(j), means the basis for awarding contracts for services to the Bidder which optimizes quality, cost and efficiency, among responsive and responsible Bidders.
Bidder	Any eligible entity submitting a Bid Proposal to this solicitation.
CEP	Community Eligibility Provision
CN	Child Nutrition
CN18	Child Nutrition Database release 18
CNP	Child Nutrition Programs are programs that offer food and nutrition assistance for children, including: FFVP, NSLP, SBP, SMP, SFSP.
Contract Effective Date	The date that the Contract is approved by the New York State Comptroller.
Contractor	The successful Bidder who has executed a Contract as a result of an award made by the State in response to this RFP. Unless otherwise specified, the term Contractor as used in this document, includes the prime contractor and subcontractors.
COTS	Commercial off-the-shelf (COTS) describes ready-made products that can easily be obtained. COTS products typically require configuration that is tailored for specific uses. The key characteristic that differentiates COTS from custom software is that the user configurations are within the defined parameters of the commercial item and not the result of customizations to the commercial item itself.
DCMP	Direct Certification Matching Process
FFVP	Fresh Fruit and Vegetable Program
FNS	Food and Nutrition Service
FSMC	Food Service Management Company

Term	Definition
ISP	Identified Student Percentage
LEA	Local Education Agency is a public board of education or other public or private nonprofit authority legally constituted within a state having administrative control of schools.
NSLP	National School Lunch Program
Pricing	The Bidder's pricing schedules set forth in the Bidder's Cost Proposal.
Project Services or Services	Those services to be provided by the Contractor, which are the purpose of this RFP, pursuant to the resulting Contract.
Proposal	The Bidder's Administrative, Technical, and Cost Proposals, (collectively referred to as "Submissions") submitted in response to this RFP.
Provision 2	An alternative provision to the normal requirements for annual determinations of eligibility for free and reduced-price school meals and daily meal counts by type at the point of service
RA	Recipient Agency
SBP	School Breakfast Program
SFSP	Summer Food Service Program
SMP	Special Milk Program
SNA	Simplified Nutrition Assessment
SNAP	Supplemental Nutrition Assistance Program
SPO	Special Provision Options (includes CEP and Provision 2)
SSO	Seamless Summer Option
State	The State of New York (including the Education Department).
Subcontractor	Any firm engaged or assigned by the Contractor to perform work under the Contract, or any person so engaged or assigned who is not an employee of the Contractor.
Successful Bidder	The Vendor that is awarded the contract resulting from this procurement.
Susceptible to Award	A Bidder is Susceptible to Award if the sum of the Bidder's technical score and cost score indicates the Bidder has a chance of winning.
USDA	United States Department of Agriculture

1. DESCRIPTION OF SERVICES TO BE PERFORMED

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.

1.1. PURPOSE OF REQUEST FOR PROPOSALS (RFP)

The New York State Education Department (NYSED) seeks to streamline and improve its administration of Child Nutrition Programs (CNP). Child Nutrition Programs are programs that offer food and nutrition assistance for children. NYSED is issuing this Request for Proposal (RFP) to solicit proposals from responsive and responsible contractors for the acquisition and provision of an AR System and associated services for the administration of its Child Nutrition Programs. The business goals for this procurement include but are not limited to:

1. Comply with United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) requirements
2. Streamline and standardize AR procedures and protocols
3. Improve the efficiency and effectiveness of NYSED's administration of Child Nutrition Programs
4. Centralize NYSED's CNP documentation repository
5. Reduce the number of appeals

1.2. MINIMUM QUALIFICATIONS

The eligible Bidder must agree to the Mandatory Requirements found below and must submit the Minimum Qualifications Certification Form located within Attachment 5.1, signed by an authorized person. The technical proposal must contain information to support the claimed qualifications, as noted in the Minimum Qualifications Certifications Form. If the Bidder's proposal fails to meet any of the minimum qualifications set forth in this RFP, the State shall deem the Proposal as non-responsive and eliminate the Bidder from further consideration.

MINIMUM QUALIFICATION 1

The primary Bidder must demonstrate a minimum of five (5) years of experience implementing systems and services for Child Nutrition Programs (CNP). This experience requirement must be satisfied by the primary contractor and will be verified through the Bidder's statement of Background and Experience.

MINIMUM QUALIFICATION 2

The primary Bidder must have a minimum of two (2) years of verifiable experience implementing and supporting its proposed solution.

MINIMUM QUALIFICATION 3

The primary Bidder must own the proposed Commercial Off the Shelf (COTS) software solution.

MINIMUM QUALIFICATION 4

The Bidder must provide a Commercial Off the Shelf (COTS) software solution that it has implemented for other clients within the last five years.

MINIMUM QUALIFICATION 5

A completed Attachment 5.4 is included with the bid and must indicate that all mandatory system requirements will be met either out of the box, with configuration or with customization.

1.3. CNP ADMINISTRATION OFFICE BACKGROUND

The Child Nutrition Program Administration office (CNP office), within the NYSED, is responsible for administering the Child Nutrition Programs including: the National School Lunch Program (NSLP), School Breakfast Program (SBP), Fresh Fruit and Vegetable Program (FFVP), Special Milk Program (SMP), and Summer Food Service Program (SFSP). The NSLP is a federally assisted meal program operating in public and nonprofit private schools and residential child care institutions which are identified as Local Education Agencies (LEAs). It provides nutritionally balanced, low-cost or free meals to children each school day. New York State operates the third largest program in the country with 1,094 LEAs and 6,248 RAs participating in the NSLP. The CNP office currently has 75 staff and is responsible for conducting approximately 400 ARs each school year. ARs are mandated by the United States Department of Agriculture (USDA) Food and Nutrition Services (FNS). The AR is NYSED's assessment of the LEA's administration of the school nutrition programs.

The table below presents a breakdown of the approximate number of LEAs, RAs, Sponsors, and sites participating in each nutrition program.

Table 2 – Nutrition Program Participation

Nutrition Program	LEA Count	RA Count	LEA Sponsor Count	Site Count
National School Lunch Program (NSLP)	1094	6248	N/A	N/A
School Breakfast Program (SBP)	1002	5858	N/A	N/A
Fresh Fruit and Vegetable Program (FFVP)	26	235	N/A	N/A
Special Milk Program (SMP)	71	112	N/A	N/A
Summer Food Service Program (SFSP)	N/A	N/A	336	2890

Section 207 of the Healthy, Hunger-Free Kids Act of 2010 amended section 22 of the National School Lunch Act, 42 USC 1769c, to require implementation of a unified accountability system designed to ensure that LEAs comply with the NSLP and SBP requirements. In response, USDA FNS, in conjunction with State agency partners, conducted a rigorous assessment of the review requirements in 7 CFR 210.18, ARs, and other guidance including the Coordinated Review Effort Procedures Manual. This assessment led USDA FNS to develop an updated and streamlined AR process, which is outlined in the Administrative Review Guidance Manual and accompanying forms, workbooks, etc. issued by USDA FNS. The Guidance is found at <http://www.fns.usda.gov/cnd/guidance/adminreview.htm>.

1.3.1. CURRENT STATE

Figure 1 is a graphical depiction of the current state and is followed by narrative describing the CNP Stakeholders' interaction with the current system.

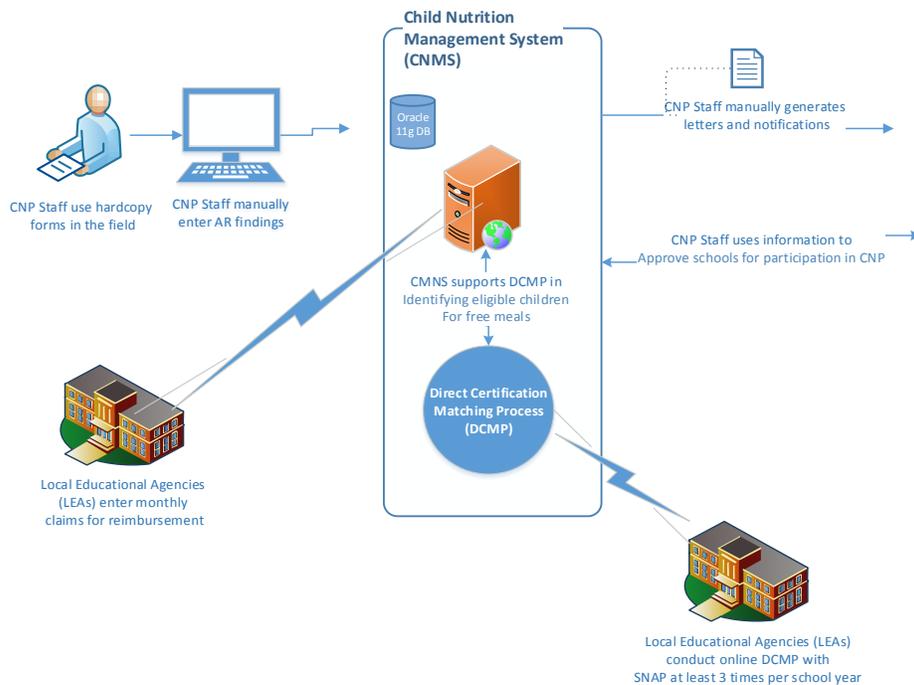


Figure 1 - Current State

Currently, NYSED hosts a Child Nutrition Management System (CNMS) that supports some aspects of administering the Child Nutrition Programs but the AR process is labor intensive and manual. The CNP office staff members use hard copy forms in the field which must be manually scanned and saved to the CNP office’s shared drive independent of CNMS. The current system lacks the ability to capture and track findings related to the AR process, does not support electronic submission of corrective action documents from LEAs, and requires CNP staff to generate letters and notifications manually. The CNMS is a web based payment system that is utilized by LEAs in NYS that participate in the Child Nutrition Programs. LEAs enter their monthly claims for reimbursement into the system via the internet through Internet Explorer. The CNP office also utilizes the system to manage information needed to approve LEAs and RAs for participation in the Child Nutrition Programs. The system is written in PL/SQL and is a web generated application from Oracle Designer. It uses an Oracle 11g database and an IBM AIX server.

The CNMS supports NYSED’s Direct Certification Matching Process (DCMP) which identifies eligible children for free meals. DCMP is intended to certify all eligible students for free school meals without further application, who reside in a household receiving Supplemental Nutrition Assistance Program (SNAP) or Medicaid (determined by the Medicaid Program at or below 133 percent of the Federal poverty guidelines). The DCMP increases efficiency, lowers costs and improves program integrity by reducing paperwork and increasing the percentage of eligible students who are certified for free meals. LEAs are required to conduct an electronic data match for SNAP and Medicaid households. A joint effort has been made between the Office of Temporary and Disability Assistance (OTDA), the New York State Department of Health (DOH) and the New York State Education Department (NYSED) to provide access to confidential electronic data to LEAs. All DCMP users must certify that this information will remain confidential in compliance with the disclosure statement provided. LEA data systems must be able to match students by indicating the corresponding assistance program (i.e., SNAP, Medicaid).

LEAs are required to conduct the online DCMP with SNAP at least three times per school year. DCMP data files are available for LEAs to access in July, October, January and April.

Limitations of the Current State

- The AR process is becoming more complex with the addition of Professional Standards and procurement
- The Reviews must be conducted more frequently (every 3 years rather than every 5 years)
- The AR is currently manual and labor intensive. The forms are subject to interpretation and reviewer judgment which leads to inconsistencies and compromises the integrity of the process
- AR documentation is scattered and stored in various locations including: electronic files that are saved to the CN shared drive, reviewer computer hard drives and email inboxes, and hardcopy documents stored in AR folders
- The existing AR process is consuming staff resources and limiting NYSED’s ability to respond to other vital initiatives

1.3.1.1. CURRENT TECHNICAL ENVIRONMENT

NYSED operates a data center in Albany, NY that houses most of its internal applications. NYSED will host the new system in its current technical environment which is further described below.

Server

Platform and Operating systems

The hardware platforms and operating systems supported by the current technical environment are listed in the following table.

Platform	Operating System
IBM P-770	AIX 7.1, either as an LPAR or preferably as a WPAR
VMware vSphere 5.5 or greater, x86 architecture	Windows Server 2008 R2 or greater, or SUSE Linux 12
HP x86 physical hardware	Windows Server 2008 R2 or greater, or SUSE Linux 12

Database

NYSED strongly prefers Oracle DB 12 (or 11) running on AIX, but MS SQL 2008 R2 or later will be considered if necessary.

Web Server

If the product does not include a “built-in” web service, NYSED prefers that Apache, NGINX, IIS or Oracle Fusion Middleware 11g be used.

Desktop

NYSED currently deploys Windows 7 with MS Office 2010 on agency desktop and laptop PCs. The agency has migrated to the statewide Office 365 cloud-based service. Employees are encouraged to use the desktop Outlook email and calendar client, but a browser-based version is also available. Internet Explorer is the currently preferred/standard browser, but Chrome is also supported. McAfee Antivirus 8.8 is deployed on desktops and laptops.

The agency uses Microsoft Windows Server Update Services and System Center Configuration Manager to manage different aspects of device updates and configuration.

The CNP Office also uses tablets for conducting reviews in the field. The proposed solution shall be compatible with the Microsoft Surface Pro 4 tablet Intel Core m3 in addition to the agency desktop and laptop PCs. Bidders must describe the end user equipment requirements to support the solution.

Network

Remote offices connect back to the Albany headquarters through a private Intranet, and all access to other networks and services is controlled there.

Backup and Archive

NYSED will continue handle database and server backups and archiving. Oracle RMAN is used for Oracle database backups. Servers and databases are backed up with nightly incremental and weekly full backups using EMC Networker 8.8.1. Oracle RMAN is used as an intermediary for Oracle database backups. Each week, full backups are saved on tape and sent to Iron Mountain for storage

Bidders must describe the expected typical user session requirements in kilobits per second (Kbps) or megabits per second (Mbps) and the recommended network connection capacity (e.g., 100Mbps, 1Gbps, 10Gbps) for each network segment.

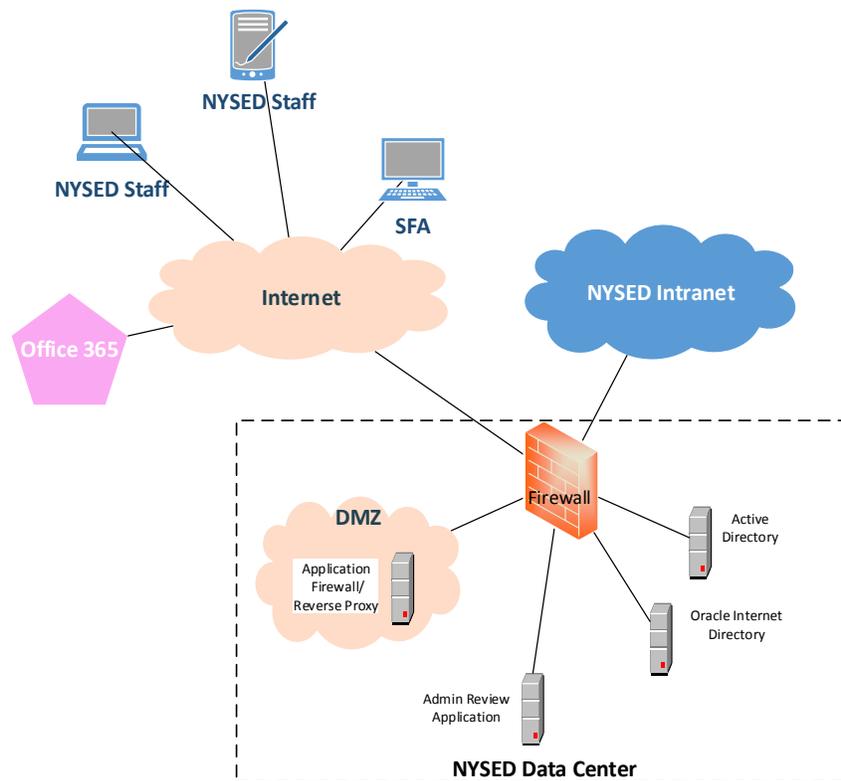


Figure 2 - Network Concept Drawing

1.4. DESIRED SERVICES

To accomplish its business goals, the CNP Office desires to procure a software solution as well as accompanying integration and support services for the following:

- Off-site AR at the school district level
- On and off-site AR at the state agency level
- AR supplemental modules

NYSED will not eliminate Bidders who fail to propose a supplemental module(s) or Bidders whose proposed supplemental module(s) do not provide the functionality described in Attachment 5.4 – Section 2; however, failure to demonstrate how a functional requirement will be met will result in a lower evaluation score.

NYSED desires the ability to integrate school data from the following supplemental software modules (listed in priority order).

Production Records

The Production Records Module should have the ability to populate menu records into production record templates and should automatically calculate production quantities for forecasting the production of menu items. The Module should also support the pre-population of menu items and quantities based upon previous production records.

Menu Planning and Nutrient Analysis

The Menu Planning and Nutrition Analysis Module should have the ability to assess menus for compliance with meal pattern and nutrition specification requirements, and should enable users to conduct nutrient analyses of menus. The Module should also allow users to add and modify recipes and to calculate nutrition information from user recipes.

Verification

The Verification Module should assist LEA users in selecting the appropriate verification sampling method and should calculate the number of applications to be verified. The Module should enable automated confirmation reviews and should support the generation of editable prototype letters.

Student Eligibility

The Eligibility Module should have the ability to populate a Benefit Issuance Document with eligibility data and should have the ability to import eligibility data from LEAs. The Module should enable users to sort data and should provide reporting features.

Applications (Free and Reduced Price Meals/Milk)

The Applications Module should provide a household income calculator and feature an electronic approval system for determining student eligibility status. The Module should also enable automated secondary review of applications and should provide reporting features.

Professional Standards

The Professional Standards module should provide the ability to maintain training documents and to track professional development and training hours for LEA food service staff. The Module should have the ability to organize training documents by employee and should enable LEA users to select staff type.

Bidders are asked to include a solution for each of the supplemental modules in their proposals.

An overview of the solution and services required is described in the next section of this RFP.

1.5. CONTRACTOR REQUIREMENTS

This RFP and the attachments, appendices and exhibits it references provide details on specific solution and services requirements, Contractor and State responsibilities, and other pertinent information to support the CNP Administrative Review project. The provisions and requirements of this RFP will be incorporated into the resulting contract between the State and the Successful Bidder.

Contractor requirements are intended to define all of the activities and responsibilities of the Contractor. These are all mandatory requirements of the successful bidder while under contract. The mandatory functional and nonfunctional system requirements are detailed in Section 1 of the Requirements Verification and Traceability Matrix (Attachment 5.4). Fulfillment of contractor requirements and functional and non-functional system requirements are necessary for project completion and payment.

1.5.1. GENERAL CONTRACTOR REQUIREMENTS

Table 3 - General Contract Requirements

ID	Requirement
G1	The Contractor shall propose a format and outline for each deliverable and obtain NYSED approval prior to deliverable preparation. This approval process includes submission of a Deliverable Expectation Document (DED). The goal for the use of the DED is to ensure that a common understanding exists between NYSED and the Contractor regarding the scope and content (depth and breadth) of the deliverable prior to the Contractor beginning work on the deliverable. The complexity of the DED will be proportional to the complexity of the deliverable. The DED summarizes the key content of the deliverable including, where appropriate, key figures, diagrams and tables.
G2	The Contractor shall use the NYSED standard suite of desktop tools consisting of Microsoft Word 2010, Microsoft Excel 2010 and pdf, in the preparation of all Contract correspondence and deliverables.
G3	The Contractor shall establish and maintain compatibility with the NYSED standard suite of desktop tools referenced above at no cost to NYSED.
G4	The Contractor shall submit all deliverables electronically in their native format (e.g., Microsoft Word, Excel, etc.).
G5	The Contractor Project Manager shall certify for each deliverable, that an internal quality review was conducted and the deliverable is complete and accurate.
G6	Deliverables shall be provided by the scheduled dates for their completion as approved by NYSED in the Project Work Plan.
G7	The Contractor shall submit each deliverable to the NYSED Project Manager or their designee.
G8	Each deliverable will require a negotiated NYSED review period to be included in the Project Work Plan. Unless agreed upon otherwise, NYSED review time shall not be more than fifteen (15) State business days.
G9	The Contractor shall perform a walkthrough of each deliverable with NYSED staff approximately ten (10) State business days after submission of the deliverable.
G10	Should revisions to the deliverable be required, the Contractor will receive written notice from NYSED of said changes and reflect them in the deliverable within fifteen (15) State business days of receiving said list of changes. NYSED may, at its discretion, allow a period longer than the fifteen (15) State business days in consideration of the scope of the changes.

ID	Requirement
G11	Unless agreed upon otherwise, NYSED’s review time after receipt of the revised deliverable shall be within fifteen (15) State business days.
G12	The Contractor shall not change a deliverable that has been accepted by NYSED without the approval of NYSED.
G13	Deliverable documents shall be in accordance with the approved DED and consistent throughout in style and quality. This means if the document is the composite work of many people within the Contractor’s organization, the document is to be edited for style and consistency.
G14	When NYSED requires deliverables to be revised, the Contractor shall clearly identify the revisions in the revised deliverable.
G15	The Contractor shall maintain an on-site presence of designated staff, as agreed upon by the Contractor and NYSED during contract negotiations, during the entire project (including maintenance and support) at the NYSED headquarters location in Albany to facilitate knowledge transfer to State staff.
G16	The Contractor shall utilize NYSED-provided workstations to connect to the NYSED network while on NYSED premises. Contractors will not be allowed to access any NYSED systems with their own devices (laptops, etc.) for security reasons while on NYSED premises. This includes all removable storage devices (flash/USB drives, smartphones, etc.). NYSED will provide workstations for Contractor staff.
G17	The Contractor staff shall sign an information protection agreement (IPA) with NYSED prior to obtaining access to the NYSED systems. (See Exhibit 3 for a sample IPA)
G18	The Contractor shall support NYSED during audits and other required government reviews to assist in answering ‘how’ the system performs specific functions.

1.5.2. ROLES AND RESPONSIBILITIES

The Contractor shall be responsible for supporting all activities associated with the implementation of the solution (including design, configuration/customization, integration and testing) and for warranties, maintenance and support of the installed system through the term of the agreement.

The table below identifies activities that are critical for the success of this project. This list is not intended to be an all-inclusive list and the Contractor must ensure all Contractor responsibilities are identified in the project plans and schedule.

Table 4 - Responsibility Matrix

Activity	Contractor	NYSED
Engagement/Project Management	R	A
Architectural Design	R	A
Procure and Install Hardware	C	R
Solution Installation*	R	R/A
Configuration & Customization	R	A
System Integration	R	A
Develop Test Plans/Scripts/Methodology	R	A
Conduct Testing & Provide Test Results	R	A
Conduct User Acceptance Test	C	R
Develop Training	R	A

Activity	Contractor	NYSED
Conduct NYSED User Training	R	I
Conduct NYSED System Administrator Training	R	I
Conduct LEA Training		R
Develop and Maintain Documentation	R	A
Provide Post Implementation Support	R	A

* Since the solution will be hosted at NYSED, installation will be a joint responsibility. NYSED staff performs the majority of the work for installation in the Production environment. Contractor staff must sign an IPA agreement prior to performing work.

<p>Key:</p> <p>R Responsible: that is the person who is owner of the activity</p> <p>A Accountable: the person to whom "R" is accountable; the authority who approves to sign off on work before it is effective</p> <p>C Consulted: that is a person who provides information and/or expertise necessary to complete the project</p> <p>I Informed: that is a person who needs to be notified of results but need not necessarily be consulted</p>
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The Contractor shall provide necessary staff to perform all of the required tasks, produce all required deliverables and to meet the requirements as defined within this RFP. NYSED business and technical staff will provide assistance with defining a detailed project plan that will be developed after contract award.

The Contractor's project staffing plan shall include, at a minimum, the following key staff positions and any other key staff that it considers instrumental to the project. Table 5 describes the expected contractor Key Staff roles and responsibilities.

Table 5 – Key Staff Roles

Role – Contractor Key Staff	Description
Project Manager	Will lead the contractor's project team in consultation with the NYSED project manager. Responsible for execution and coordination of all aspects of the Contractor's project plan and schedule; provides the primary point of contact for NYSED, also has authority to act on behalf of the Contractor.
Solution Architect	Will lead the overall technical design, implementation, and testing, and consult with NYSED staff on integration issues
Lead Analyst	Will lead the business and technical analysis

The Contractor shall ensure the continued availability of Key Staff for the duration of the Contract and shall not choose to replace Key Staff without the prior written approval of NYSED. Upon approval by NYSED, the Contractor shall provide the resumes of potential replacements with equal or better qualifications for NYSED review, selection and approval within seven (7) business days, or as otherwise agreed to by NYSED.

The Contractor may identify additional or alternate staff members in its response and must describe the roles of all team members.

1.5.3. CONTRACTOR AND STAFF EXPERIENCE

NYSED considers the Contractor’s qualifications and experience to be of paramount importance. The Contractor’s team experience must be relevant to the services requested. The mandatory Contractor experience requirement of at least five years of experience implementing systems and services for CNPs must be satisfied by the primary Contractor. NYSED understands that there may be a need for a potential Contractor to use one or more Subcontractors to satisfy certain requirements. NYSED reserves the right to approve all Subcontractors as part of this contract.

Table 6 – Experience Requirement

ID	Requirement
EX1	The Project Manager shall have a minimum of five (5) years of verifiable experience overseeing IT system implementations.

1.5.4. PROJECT MANAGEMENT

Using a structured project management methodology, the Contractor shall provide overarching management of the entire project including work planning, issue tracking, escalation, and status-monitoring processes.

Table 7 - Project Management

ID	Requirement
PM1	<p>The Contractor shall provide the following project management deliverables:</p> <ul style="list-style-type: none"> • Detailed Project Work Plan • Staffing Plan • Quality Assurance Plan • Issue and Risk Management Plan • Monthly Status Reports • Communication Plan • Change Control and Configuration Management Plan • Implementation and Transition Plan (including data migration plans, training plans and training materials)
PM2	<p>The Detailed Project Work Plan shall specify:</p> <ul style="list-style-type: none"> • Detailed tasks • Durations • Start and end dates • Resource loading and task ownership including contractor and NYSED resources • Dependencies • Critical path • List of project deliverables, including documentation delivery milestones • Key project milestones
PM3	The Contractor shall maintain the project work plan to keep it current (within 10 business days)
PM4	The Quality Assurance Plan shall describe the objective approach and quantitative basis for judging product quality, ensuring that service-levels are met and analyzing problems with products and processes.

ID	Requirement
PM5	<p>The Quality Assurance Plan shall describe:</p> <ul style="list-style-type: none"> • the proposed QA Team organization • QA Team functions and responsibilities • QA Team schedule for periodic meetings • methodologies for identifying defects or deficiencies and solutions for corrective action.
PM6	<p>The Contractor shall revise its proposed staffing plan that identifies individual resources assigned to each of the project activities.</p>
PM7	<p>The Monthly Status Reports shall specify:</p> <ul style="list-style-type: none"> • Tasks planned for the current month • Tasks completed during the current month • Tasks planned for the next month • Current schedule status • Current issue summary • Current risk summary, including status of mitigation and contingency actions • Current change summary
PM8	<p>The Communication Plan shall describe how communications will be managed on the project, including:</p> <ul style="list-style-type: none"> • how project information will be collected and stored, and what procedures will be followed to disseminate the information • the distribution structure, specifically detailing what, how, and when information will flow to Stakeholders • the method by which information will be accessed if it is needed between regularly scheduled communications
PM9	<p>The Issue and Risk Management Plan shall describe:</p> <ul style="list-style-type: none"> • specific activities that the Contractor will regularly perform to identify, qualify, quantify, prioritize, and manage risks • the frequency of risk management activities and status reporting • how issues will be captured, tracked, prioritized and assigned • how and when issues will be escalated for resolution
PM10	<p>The Contractor shall maintain the risk management plan and identify actions to be taken to avoid, mitigate, or accept each risk impact.</p>
PM11	<p>The Change Control and Configuration Management Plan shall describe how the Contractor will manage proposed changes and enhancements to the software, and associated documentation.</p>
PM12	<p>The Contractor must comply with NYSED System Change Control and Configuration Management Processes to manage proposed changes and enhancements to the hardware, software, and requirements. The System Change Control Process must include steps for NYSED approval of the change, coordination of the implementation with NYSED testing of the change prior to installation in the production environment, and approval of the final change in the production environment by NYSED.</p>

ID	Requirement
PM13	The Contractor shall integrate its project management processes (issue tracking, risk tracking, schedule management, change management) with the NYSED project management processes.
PM14	<p>The Implementation and Transition Plan shall specify:</p> <ul style="list-style-type: none"> • Approach to preparing NYSED staff for the new system • Implementation strategy • Implementation schedule • Roles and responsibilities, including Contractor and NYSED staff • Approach to transitioning from the legacy systems to the new system • Roles and responsibilities during the transition period • Procedures to ensure all required data has been correctly loaded • Help desk procedures for addressing problems when the system is brought up • Criteria used to ensure the system is functioning correctly

1.5.5. SOLUTION IMPLEMENTATION

Solution implementation involves design, installation, configuration, customization, and integration of product components delivered under this RFP. It also involves ensuring that the system is operational and validating that all requirements of this RFP have been satisfied.

The Contractor will architect a solution to meet the functional and technical requirements of this RFP and provide and implement a methodology for component testing and for the integration and user acceptance testing (UAT) of the overall solution in a pre-production environment. The pre-production environment should be representative of the architecture of the production environment.

NYSED will not accept the system for payment until all required testing has been completed and the results approved by NYSED.

Table 8 - Solution Implementation

ID	Requirement
SI 1	<p>The Contractor shall perform a System Gap Analysis that includes:</p> <ul style="list-style-type: none"> • Gaps between the base Commercial Off the Shelf (COTS) product and the functional and technical requirements described in this RFP • Methods to address the gaps between the base product and the system functional and technical requirements (i.e., configuration, customization, additional products), and the impacts and risks of the proposed resolution. For instance, if customization is required, what is the impact to maintenance and operation, and what skill sets will be needed.

ID	Requirement
SI2	<p>The Contractor shall document and deliver the System Architecture including:</p> <ul style="list-style-type: none"> • Description of the required hardware • Description of the software, including development tools, languages, technology, software versions, database, COTS products, middleware, reporting tools, administration tools, and other software modules • Communication interfaces between the various system components (e.g., communication between application tiers) • Operating system platform • Application architecture • Relationships between all system components, in pictorial and narrative form • The expected typical user session network requirements in kilobits per second (Kbps) or megabits per second (Mbps) and the recommended network connection capacity (e.g., 100Mbps, 1Gbps, 10Gbps) for each network segment. • Data flow diagram • Security architecture • Contractor’s approach to performance and capacity modeling
SI3	<p>The Contractor shall deliver each COTS package, including software, manuals, manufacturer warranties, and licenses needed to meet the requirements of this RFP.</p>
SI4	<p>The Contractor shall deploy the solution on equipment to be housed at NYSED or other NY State facilities. Required hardware, operating system and other supporting infrastructure will be procured by NYSED based on the Contractor’s specifications and NYSED supported technical environment as described in Section 1.3.1.1 of the RFP.</p>
SI5	<p>The Contractor shall deliver a validated system in two (2) environments, a Pre-Production environment and a Production environment. This shall include ingestion of NYSED data from the NYSED-designated data stores. The Contractor shall provide recommendations on the number and characteristics of the pre-production environments required.</p>
SI6	<p>The Contractor shall not remove any NYSED data from the premises.</p>
SI7	<p>Any custom-developed software code in support of the system shall be delivered to NYSED. This includes but is not limited to:</p> <ul style="list-style-type: none"> • Source code, including appropriate comments and source code headers • Software utilities developed • Configuration files (e.g., .DLL, .INI, etc.)
SI8	<p>The Contractor shall integrate the new Administrative Review System with existing NYSED systems. In many cases, this integration means providing a NYSED-configurable interface for mapping data in flat files and uploading and downloading these flat files to and from the system by automatic and manual methods, both scheduled daily and on-demand.</p>
SI9	<p>The Contractor shall document and deliver a description of data transfer from the current SED Oracle database to the Administrative Review system.</p>

ID	Requirement
SI10	<p>The Contractor shall integrate the new Administrative Review System with existing NYSED databases CNMS/PEMS to access data including:</p> <p>LEA General Information:</p> <ul style="list-style-type: none"> • Names, addresses, email addresses, and phone numbers of Contact People (CN Fiscal Contact, Food Service Director, and School Business Official) • LEA name, LEA code, LEA address (physical and mailing), County, Team, Team Contact, Municipality code • Whether the RA has a Food Service Management Company (FSMC) or receives vended meals <p>LEA Annual Information:</p> <ul style="list-style-type: none"> • List of programs (NSLP, SBP, ASSP, SMP, SFSP, CEP, Provision 2) that each RA participates in • Attendance factor • Whether the LEA has been approved for a waiver (i.e. Dark Green Vegetable, Passover Grain, Milk, Age and Grade Flexibility, Whole Grain Rich) <p>LEA Annual Information – Claims Information:</p> <ul style="list-style-type: none"> • Number of days of service, average daily participation (ADP)%, Eligibles (number of free and reduced students) and meal counts by category (free, reduced, paid) for the review period selected for each RA <p>LEA Admin Reviews:</p> <ul style="list-style-type: none"> • Review cycle, date of previous Administrative Review <p>RA General Information:</p> <ul style="list-style-type: none"> • RA name, RA LEA code, RA address, type of school <p>RA Provision Information</p> <ul style="list-style-type: none"> • Participation in a special provision (CEP, Provision 2) at the RA or LEA level • The CEP Identified Student Percentage (ISP) by RA <p>RA Annual Information:</p> <ul style="list-style-type: none"> • Method of service, participation in FFVP <p>LEA profile/renewal:</p> <ul style="list-style-type: none"> • Meal serving times.
SI11	<p>The Contractor shall provide and implement a methodology for the integration and user acceptance testing (UAT) of the overall solution in a pre-production test environment. The test environment shall be representative of the architecture of the production environment.</p>
SI12	<p>The Contractor shall document test plans defining:</p> <ul style="list-style-type: none"> • review and sign-off processes including NYSED approvals • the overall strategy for validating the functionality of the system • the approach to ensure test coverage of each requirement • the individual test cases that will be performed to execute the testing strategy • the environments in which the tests will be conducted

ID	Requirement
SI13	<p>The test plans shall include:</p> <ul style="list-style-type: none"> • testing objectives • scope of testing (both what is in and what is out of scope) • responsibilities (who will be performing the test) • testing approach • testing sequence • defect reporting and criteria
SI14	<p>The test case descriptions shall be traced to requirements and include:</p> <ul style="list-style-type: none"> • test data needed to execute the tests • preconditions required prior to the start of test • criteria for suspending and resuming testing • expected test results
SI15	<p>The Contractor shall design and create Acceptance Test scripts for NYSED approval or modification.</p>
SI16	<p>The Contractor shall create additional specific test scripts, upon NYSED request.</p>
SI17	<p>Integration testing shall be designed to ensure that all components, data feeds, work together properly and, as a whole, meet the business and functional requirements of the system. Component integration testing shall include the development of automated system test scripts to validate that the system operates in accordance with the design specification, for example:</p> <ul style="list-style-type: none"> • user roles are performing properly • authentication performs properly • workflows perform properly • data flows perform properly
SI18	<p>Integration and testing methodology shall include the process, services, and environments to:</p> <ul style="list-style-type: none"> • design, manage, and present component test cases and scripts for review and approval. • for component and integration testing, execute the scripts, track defects, and present results of testing to NYSED for review prior to requesting sign-off on any production deliverables. • methodology for and implementation of re-testing (or regression testing) prior to releasing packages of enhancements and fixes. • For UAT, schedule and facilitate NYSED-selected users to complete UAT, track results, and present to NYSED for review prior to requesting
SI19	<p>The Contractor shall deliver test plans, descriptions, scripts and test results for review and approval by NYSED.</p>

1.5.6. DOCUMENTATION

Documentation services are the activities associated with developing, revising, maintaining, reproducing, and distributing information in hard copy and electronic form. The Contractor must provide and maintain hardware, software and training documentation related to its proposed solution as specified in Table 9 .

The Contractor shall provide system update notifications that detail the specifics of newly deployed

system changes. Although update information will be included in all other impacted deliverables, this notification will summarize the changes for advanced users who would not likely reread the complete documentation.

Table 9 - Documentation

ID	Requirement
D1	<p>The Contractor shall deliver system documentation for the End User which describes the following:</p> <ul style="list-style-type: none"> • Review and sign-off processes including NYSED approvals • Features and functionality of the system • System workflows, including mandatory data elements, expected actions for each workflow step, specific validations and business rules at each workflow step, and tips to assist the users • Procedures for creating ad hoc reports • Supervisory controls and special features only available to managers and supervisors, including reassignment of their staff’s work, handling exceptions, and overriding workflow steps
D2	<p>The Contractor shall deliver system documentation for the System Administrators which describes specific procedures for the following:</p> <ul style="list-style-type: none"> • Management of user accounts and security • Checklist for error and exception diagnosis and handling • Changing system constants and parameters (e.g., rates, deadlines, etc.) • Reviewing system and database logs for general activities, problems, and trends • Adding and modifying data elements and user-defined fields • Creating and modifying standard reports and forms • Creating and modifying system workflows • Creating and modifying business rules and field validations • Creating and modifying document types and templates • Monitoring and managing interfaces and data imports/exports
D3	<p>The Contractor shall deliver documentation for the system to be used by technical staff including but not limited to installation documentation, and upgrade procedures.</p>
D4	<p>The Maintenance and Operations Plan and Procedures shall describe:</p> <ul style="list-style-type: none"> • Specific maintenance procedures for the system, such as applying software upgrades and patches, logging and correcting application errors, database re-sizing and re-indexing, etc. • Specific operational procedures for the system, including such things as system monitoring, processing of batch files, etc. • Operations schedule (e.g., batch jobs, maintenance windows, etc.) • Suggested software maintenance schedule
D5	<p>The Contractor shall deliver the following User Guides:</p> <ul style="list-style-type: none"> • User’s Guide that fully details the functionality of the solution for an end user in a LEA and schools • Agency User’s Guide that fully details the functionality of the solution for an end user in the NYS CNP Office

ID	Requirement
D6	The Contractor shall deliver a system infrastructure guide that details the minimum recommended technical specifications and configurations needed to successfully access and interact with the solution.
D7	The Contractor shall deliver updates to the end-user and administrator, and technical system documentation described above for the test release, the full production release, and any subsequent releases offered by the Contractor.

1.5.7. TRAINING

The Contractor shall provide training materials and conduct training for the NYS CNP staff users, system administrators, help desk, and technical support staff.

Table 10 – Training

ID	Requirement
T1	<p>The Contractor shall be responsible for providing the following types of training:</p> <ul style="list-style-type: none"> • train-the-trainer (for end-user training) • help desk • system administrator • system technical support <p>Note: NYSED will provide the training space for on-site training if applicable.</p>
T2	<p>The Contractor shall organize, develop, and lead planning sessions with NYSED to plan for the development of</p> <ul style="list-style-type: none"> • a training plan and strategy • training documentation • help desk materials, and • training/professional development materials.
T3	<p>The Training Plan shall specify:</p> <ul style="list-style-type: none"> • Review and sign-off processes including NYSED approvals • Approach to training • Suggested approach to training system users, trainers, help desk staff, and system administrators • Descriptions of course curriculum, training processes, and training material outline(s) • Strategy for transferring system technical knowledge to NYSED technical staff • Training schedule • Process to ensure the training was effective and how any remedial training will be addressed

ID	Requirement
T4	<p>The Training Materials shall include:</p> <ul style="list-style-type: none"> • Course outlines and content (including presentation materials) • Student materials used during the training course(s) (electronic copies of training materials provided before scheduled training. NYSED will print hard copies for all training attendees) • Training Manual (to be used by the trainers) describing the objectives of the course(s), key topics and exercises • Description of each system function/module/feature • Description of the data elements and their range of values and business rules • Description of system workflows • Tips and key references for navigating the system • Use of ad hoc reporting tools and features
T5	All Training Materials shall adhere to NYSED’s accessibility format requirements as detailed in this RFP.
T6	The end-user training materials shall be re-useable.
T7	The Contractor shall provide updated training materials for any system updates or enhancements.
T8	The Contractor shall organize, develop, and lead knowledge-transfer and operations training sessions for NYSED designees for all technical and system services components of the solution.
T9	The training provided by the Contractor shall include training evaluations as developed during the training planning, to be completed by the students.
T10	Evaluations shall be conducted for each training class.
T11	A summary of the results of the evaluations and the detailed evaluation of results shall be provided to the NYSED Project Manager.
T12	The training provided by the Contractor shall include the use of post-test(s) to evaluate the effectiveness of the training.
T13	<p>In the event that training evaluations do not meet designated thresholds, the Contractor shall provide follow-up training to address topics that were not well understood. The Contractor and NYSED shall develop the evaluation thresholds as part of developing the Training Plan after contract award. The Contractor shall modify or update the appropriate training materials to address topics which were not well understood.</p> <p>Training materials modifications shall be completed within 30 days after consultation with NYSED training staff on the changes required (or as negotiated with NYSED) at no additional cost to the state.</p>

ID	Requirement
T14	The Contractor will coordinate with NYSED for training scheduling and for managing and maintaining the training environment and providing the appropriate training data to support all Contractor-provided training activities.

NYSED will provide training facilities (room, PCs, Internet connectivity, projector, reasonable accommodation, etc.).

1.5.8. POST IMPLEMENTATION SUPPORT SERVICES

This section summarizes the maintenance and support activities required of the contractor post system implementation. The detailed requirements are specified below for Application Warranty, Operational Maintenance, and Technical Support Services as well as Exhibit 2 – Maintenance and Support Services.

1.5.8.1. APPLICATION WARRANTY

The Contractor shall provide staff support on-site, as needed, for 60 days following full system acceptance. The Contractor will repair code developed by Contractor during the warranty period, at no charge to NYSED, provided that:

- the incident results in a Severity 1, 2, or 3 Level incident (see Attachment 3 Maintenance and Support Services); and
- the root cause analysis indicates the issue was introduced solely by Contractor.

1.5.8.2. OPERATIONAL MAINTENANCE

Operational maintenance services are the activities associated with repairing defects and developing minor functional enhancements for the application programs and system modules that are put into production (after the 60-day warranty period).

1.5.8.3. TECHNICAL SUPPORT SERVICES

The Contractor shall provide technical support for protocols across the entire solution (all products and services for all Contractors included in the contract) subject to NYSED approval.

Table 11 - Post Implementation Support Services

ID	Requirement
SS1	The Contractor shall comply with the terms described in Exhibit 2 Maintenance and Support Services.
SS2	The Contractor shall provide Maintenance and Operations Plan and Procedures.

ID	Requirement
SS3	<p>The Maintenance and Operations Plan and Procedures shall describe:</p> <ul style="list-style-type: none"> • Review and sign-off processes including NYSED approvals • Specific maintenance procedures for the system, such as applying software upgrades and patches, logging and correcting application errors, database re-sizing and re-indexing, etc. • Specific operational procedures for the system, including such things as system monitoring, processing of batch files, etc. • Operations schedule (e.g., batch jobs, maintenance windows, etc.) • Suggested software maintenance schedule • Help desk support procedures
SS4	The Contractor shall provide technical support in compliance with the terms described in Exhibit 2 Maintenance and Support Services
SS5	The Contractor shall notify NYSED of software releases, bug fixes, and version upgrades when available.
SS6	The Contractor shall work with NYSED to determine the approach to incorporating the software releases, bug fixes, and version upgrades.
SS7	The Contractor shall work with NYSED to determine the approach to Backup and Recovery.
SS8	The Contractor shall provide NYSED with Backup and Recovery procedure documentation.
SS9	The Contractor shall work with NYSED staff to conduct a test to ensure the backup and recovery procedures are correct and validate recovery results after the system has been installed and prior to final system acceptance.

1.5.8.4. ADDITIONAL SERVICES

NYSED may, at any time, by written notice, make changes or additions to work or services within the general scope of this contract for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the Agreement, an adjustment shall be made in the cost using the billing rates set forth in the Agreement, and the Contractor shall be notified, in writing, accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 calendar days from the date of receipt by the Contractor of the notification of change; provided however, that NYSED, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with the Agreement as modified. A change to the scope of the Agreement or budget would be subject to the prior approval of the State Comptroller.

If the need for unanticipated work beyond what is described within this RFP arises, a deliverable-based budget will be negotiated for the work based upon an agreed-upon number of hours multiplied by the appropriate hourly rates provided in the Contractor's cost proposal.

Task Orders will be used when work is required by the Contractor that had not been included in the Deliverables or in the contract's Statement of Work. Prior to the parties' entering into a Task Order, a

reasonability determination will be performed by the State Project Director or designee. Such reasonability determination shall include the State's review of the Contractor's required number of hours for the task; the titles of staff performing such tasks; and the rates for such tasks consistent with the Contractor's rates submitted in its Cost Proposal. Upon the parties' acceptance, in writing, of the terms of the Task Order, and approval by the State Comptroller if required, the Contractor shall perform such Task Order.

The Task Order will specify:

1. The work to be performed
2. The acceptance criteria
3. The name of the Contractor's staff member(s) who will be assigned to fulfill the Task Order
4. The estimated number of hours to be worked by the Contractor's staff
5. The total amount to be paid for each Contractor's staff member
6. The total amount to be paid for the Services performed

Table 12 - Additional Services

ID	Requirement
A1	The Contractor shall provide additional services in accordance with the task order process defined in the RFP (Section 1.4.1.8), and the rates provided in the Cost Proposal.

1.5.9. SOLUTION REQUIREMENTS

Attachment 5.4 – Section 1 specifies the mandatory system requirements for the solution. The remaining sections of Attachment 5.4 specify the detailed functional and non-functional solution requirements.

1.6. DELIVERABLES AND PROPOSED TIMELINE¹

1. Initial planning/discussion meeting (1/2 day) with NYSED: within 5 business days of contract execution
2. Contractor presents detailed work plan for NYSED approval: within 10 business days of contract execution
3. Monthly project management status reports: on the 15th of the following month
4. NYSED acceptance of solution implementation (Successful Completion of UAT/Production Rollout): 90 calendar days after contract start
5. Warranty period: begins when solution is implemented into production and continues for 60 days
6. Post Implementation Support: follows the warranty period

¹ Dates may be negotiated based on notice of contract award by State Comptroller.

Table 13 - Tentative Milestones and Deliverables Timeline

Timeline	Milestone Activity	Deliverables	Milestone Completion
Contract start			
Within 10 days of contract start	Project Planning	Project Management Plans (Project Work Plan/Schedule, Staffing Plan, QA Plan, Communication Plan, Issue and Risk Management Plan, Change Control and CM Plan, Implementation and Transition Plan including Training Plan)	State Approval of Project Management Plans
		Kick off Meeting held	
	Design	Gap Analysis Report System Architecture/Design Description	State Approval of System Architecture/Design Specification
	Construction and Integration	Solution installed and configured	State Approval of system technical documentation
		Interface design specified	
		Customizations complete related technical documentation (source code, software utilities, configuration files, interface specifications)	
	Test Planning	Test Plans and methodology documented Test cases and scripts documented UAT scripts documented	State Approval of Test Plans, case descriptions and scripts
	Documentation	End User documentation complete System Administration documentation complete Maintenance and Operations Plan and Procedures complete	Completion and State Acceptance of System Documentation
	System Testing	Successful test results; Updated technical, end user and system administrator documentation	Successful Completion of System Test and Approval of the Test Results Report
	NYSED staff training	NYSED staff training completed Related training materials delivered Loaded and approved UAT test data	Acceptance of Training Materials and Documentation
Within 90 days after contract start	User Acceptance Testing	Successful UAT results Updated technical, end user and system administrator and training documentation	Successful Completion of UAT/ Production Rollout
Begins with product rollout and continues for 60 days	Warranty Period	Successful Completion of the 60-day Warranty Period (release of Contract Holdback payment)	State Approval to release Contract Holdback

Table identifies the proposed split of the total non-recurring project costs across major milestones. The total non-recurring project costs is based on the Bidder’s completed Attachment 5.3 Cost Proposal Workbook and is the sum of the Contractor Services Costs + Software Costs + Customization Costs.

Table 14 – Payment Schedule

PAYMENT MILESTONE	PERCENTAGE
1 – Completion and Acceptance of Training and system rollout	90%
2 - Successful Completion of the Production Acceptance Period (release of Contract Holdback)	10%
Milestone Payment Total	100%

1.7. CONTRACT PERIOD

The initial term of the contract resulting from this RFP will be the five-year period anticipated to begin January 1, 2017 and ending December 31, 2021.

1.8. SUBCONTRACTING LIMIT

Subcontracting will be limited to 30% of the annual 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 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;

FOR ADDITIONAL INFORMATION ABOUT VENDOR RESPONSIBILITY, SEE SECTION 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 Attachment 5.3 – Cost Proposal Workbook 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.

1.9. 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. Additional information and authorization forms are available at the State Comptroller’s website at www.osc.state.ny.us/epay/index.htm.

2. SUBMISSION

2.1. 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 sub-contractor 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. This will be followed by various terms and conditions that reflect the specific needs of this project.

Bidders must complete all the documents that are contained in each package, signing each individual document as required. Attach any other pertinent information that responds to the information requested in the RFP and mail the documents to ensure the documents are received by the due date that is stated on the cover of the RFP:

Submit each of the following submission document packages in separately sealed envelopes labeled in accordance with Table below.

Table 15 – Proposal Submission Packages

Package	Labeling	Number of Copies
Submission Documents (completed Attachment 5.1)	Submission Documents – RFP #16-007 Do Not Open	Three (3) (one signed original plus 2 copies)
Technical Proposal (completed Attachments 5.2& 5.4)	Technical Proposal – RFP #16-007 Do Not Open	Seven (7) (one signed original plus 6 copies)
Cost Proposal (completed Attachment 5.3)	Cost Proposal – RFP #16-007 Do Not Open	Three (3) (one signed original plus 2 copies)
CD-ROMs containing the technical, cost, and submission proposals submitted using Microsoft Word.	CD-ROM-RFP #16-007 Do Not Open.	Two (2) CD-ROMs

The proposal must be received by NYSED in Albany, New York prior to the due date and time indicated in the Timetable.

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 which 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 must specifically be so identified, and the basis for such confidentiality must be specifically set forth in the proposal.

2.1.1. TECHNICAL PROPOSAL

The Technical Proposal should include the following completed Attachments:

- Attachment 5.2 – Technical Proposal Narrative
- Attachment 5.4 – System Requirements Verification and Traceability Matrix
- Attachment 5.5 – Reference Forms

2.1.1.1. ATTACHMENT 5.2 TECHNICAL PROPOSAL NARRATIVE

The Bidder should complete and submit Attachment 5.2 – Technical Proposal Narrative, which includes the following sections:

- Table of Contents
- Contractor Background and Experience
 - Corporate/Business Background
 - General
 - Past Performance and Experience
 - History of working with proposed subcontractor(s)
 - Key Staff
- Engagement Approach
 - Project Management
 - Solution Implementation
 - Documentation
 - Training
- Technical Solution Description
 - Solution Architecture
 - Administrative Review
 - Supplemental Modules
- Post Implementation Services
 - Application Warranty
 - Operational Maintenance
 - Technical Support Services
 - Additional Services

2.1.1.2. ATTACHMENT 5.4 REQUIREMENTS VERIFICATION AND TRACEABILITY MATRIX

The Bidder shall complete Attachment 5.4 (Requirements Verification and Traceability Matrix) to verify its ability to meet the functional and nonfunctional system requirements and to identify what section/page in the accompanying narrative (Attachment 5.2) describes the features and functionality in more detail, where necessary.

Failure to provide the page number where the requirement is addressed in the proposal may result in a

lower score. Failure to be able to meet each and every mandatory requirement in Attachment 5.4 will lead to rejection of the proposal on non-responsive grounds (i.e. Not supported is not an acceptable response to a mandatory requirement). Higher technical scores will be achieved by Bidders whose products meet requirements out of the box.

The cost for all requirements for which the vendor indicates a positive response must be included in the cost proposal, unless clearly indicated otherwise.

2.1.1.3. ATTACHMENT 5.5 – REFERENCE FORMS

The Bidder should request at least three (3) clients to provide a reference on its behalf. The clients should have received similar services as described in this RFP and the similar services/projects should be described in the “Past Performance and Experience” section of the Bidder’s Technical Proposal.

The Bidder shall complete the top portion of the form in Attachment 5.5 and send a copy of that form and its request for a reference to its clients.

Each client should complete and submit the reference form directly to NYSED as specified in Attachment 5.5.

2.1.2. COST PROPOSAL

The Bidder shall complete Attachment 5.3 (Cost proposal) to provide a detailed budget, as well as a budget Summary for the entire five-year contract period. Budgets must be submitted using whole dollar figures.

The Financial Criteria portion of the RFP will be scored based upon the grand total of the five- year Budget Summary.

The pricing provided within the Cost Proposal must include ANY AND ALL fees, charges or costs for the duration of the contract, including all direct and indirect costs, as well as all overhead, fees, and profit, including, but not limited to:

- labor, parts, shipping, material, license and equipment costs
- administrative, reporting or other requirements, transition costs, overhead costs, and profit
- travel costs, parking fees, and any other ancillary fees and costs including permits, licenses, insurance, etc.
- services not explicitly stated in these specifications, but necessarily attendant thereto as applicable to the associated item for which the rate/fee is being quoted.

The proposed costs shall include all proposed services required to meet the applicable RFP requirements. All terminology used in the cost proposal shall be consistent with and correspond to terminology used in the technical proposal.

Bidders are to submit hourly labor rates for staff anticipated to provide services in the RFP. These hourly rates will be evaluated during the cost-evaluation phase.

NYSED provides an assumption about the number of hours for unanticipated work in the Cost Proposal worksheets and this same number of hours will be used to calculate the cost of additional services based on each Bidder’s hourly rates.

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 complete proposals received by the deadline that meet the minimum qualifications and mandatory requirements will be reviewed using the following criteria and ratings. Bidders must ensure that all components of this proposal request have been addressed, the required number of copies has been provided, all forms and assurances have been completed, and the original signatures in blue are included as required. All complete proposals received by the deadline that meet the mandatory requirements will be reviewed using the following criteria outlined in Section 2 Submissions and the following ratings.

Evaluation	Points
Technical Evaluation	
Written Technical Proposal	65
○ Contractor Experience	8
○ Engagement Approach Narrative	18
○ Technical Solution Description	34
○ Post Implementation Services Approach	5
Oral Technical Presentation/Demonstration	5
Cost Evaluation	30
Total Evaluation Points Available	100

An evaluation committee will review each written technical proposal to determine compliance with the requirements described in the RFP and detailed in the Technical Proposal Submission section. Each evaluation committee member will complete a scoring rubric for each proposal submitted.

The financial criteria portion of this RFP, the Cost Proposal, will be scored based upon the grand total cost of the Cost Proposal Summary. The Cost Proposal score will be computed by the Contract Administration Unit upon completion of the technical proposal scoring by the technical review panel.

The submitted cost information will be awarded points pursuant to a formula which awards the highest score of 30 points to the proposal that reflects the lowest overall cost. The remaining proposals will be awarded points based on a calculation that computes the relative difference of each proposal against the lowest cost submitted. The resulting percentage is then applied to the maximum point value of 30 points.

NYSED reserves the right to request best and final offers. In the event NYSED exercises this right, Bidders with a technical evaluation score that meets or exceeds the minimum will be asked to provide a best and final offer. The Contract Administration Unit will recalculate the financial score and aggregate score.

3.1.1. ORAL TECHNICAL PRESENTATION/DEMONSTRATION

After completion of the Technical proposal evaluation and Cost evaluation, a composite score will be assigned to each proposal by adding the technical and cost scores to determine finalists for Oral Presentation/Demonstration. Bidders within five points of the top Bidder’s composite score will be considered as finalists and will be required to deliver a presentation/demonstration of the Bidder’s

product and services to the evaluation team. NYSED will provide additional information about the format of the oral presentation/demonstration prior to the presentation. This presentation will be geared to assess the Bidders' full understanding of the project requirements and functionality of the application. NYSED will provide selected Bidder's with a script prior to the oral presentation/demonstration. Up to five points will be awarded for a Bidder's oral presentation/demonstration.

When the Oral presentation review process is complete, the Technical Proposal, Cost Proposal and Oral Presentation scores will be summed to create an aggregate score out of 100 points.

3.2. METHOD OF AWARD

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.

3.3. 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) to request best and final offers.

3.4. 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.

3.5. DEBRIEFING PROCEDURES

All unsuccessful Bidders may request a debriefing within fifteen (15) calendar days of receiving notice from NYSED. Bidders may request a debriefing letter on the selection process regarding this RFP by submitting a written request to the Fiscal Contact person at:

NYS Education Department
Procurement Office
89 Washington Avenue
Room 501W EB
Albany, NY 12234

The Fiscal Contact person will make arrangements with program staff to provide a written summary of the proposal's strengths and weaknesses, as well as recommendations for improvement. Within fifteen (15) business days, the program staff will issue a written debriefing letter to the Bidder.

3.6. CONTRACT AWARD PROTEST PROCEDURES

Bidders who receive a notice of non-award 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 letter. The protest letter must be filed with:
NYS Education Department
Procurement Office
89 Washington Avenue
Room 501W EB
Albany, NY 12234
3. The NYSED Procurement Office will convene a review team that will include at least one staff member from each of NYSED's Office of Counsel, Procurement Office, 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 the Procurement Office will advise OSC that a protest was filed.
4. The NYSED Procurement Office 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.

3.7. VENDOR RESPONSIBILITY

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

universities, public libraries, and the Research Foundation for SUNY and CUNY are some of the exempt entities. For a complete list, see:

http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm.

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 AVAILABLE AT [HTTP://WWW.OSC.STATE.NY.US/VENDREP/VENDOR_INDEX.HTM](http://www.osc.state.ny.us/vendrep/vendor_index.htm) OR GO DIRECTLY TO THE VENDREP SYSTEM ONLINE AT [HTTPS://PORTAL.OSC.STATE.NY.US](https://portal.osc.state.ny.us).

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 ciohelpdesk@osc.state.ny.us.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact NYSED or the Office of the State Comptroller's Help Desk for a copy of the paper form.

3.7.1. 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).

3.7.2. 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 the following web link: <http://www.oms.nysed.gov/fiscal/cau/PLL/procurementpolicy.htm>

Designated Contacts for NYSED:

Program Office: Raemie Swain

Procurement Office: Richard Duprey

3.7.3. 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 - see link below). 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: <http://www.osc.state.ny.us/agencies/forms/ac3271s.doc>

Please note that although this form is 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 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 - see link below) 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: <http://www.osc.state.ny.us/agencies/forms/ac3272s.doc>

For more information, please visit OSC Guide to Financial Operations. <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/> .

3.7.4. PUBLIC OFFICER'S LAW SECTION 73

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

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

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

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

- (i) heads of state departments and their deputies and assistants other than members of the board of regents of the university of the state of New York who receive no compensation or are compensated on a per diem basis;
- (ii) officers and employees of statewide elected officials;
- (iii) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies other than officers of such boards, commissions or councils who receive no compensation or are compensated on a per diem basis; and
- (iv) members or directors of public authorities, other than multistate authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, who receive compensation other than on a per diem basis, and employees of such authorities, corporations and commissions.

Public Officer's Law Section 73 can be found at: [http://www.jcope.ny.gov/about/ethc/PUBLIC OFFICERS LAW 73 JCOPE.pdf](http://www.jcope.ny.gov/about/ethc/PUBLIC_OFFICERS_LAW_73_JCOPE.pdf).

3.7.5. 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.

3.7.6. WORKERS' COMPENSATION COVERAGE AND DEBARMENT

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

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

Under provisions of the 2007 Workers' Compensation Reform Legislation (WCL Section 141-b), any person, or entity substantially owned by that person: subject to a final assessment of civil fines or

penalties, subject to a stop-work order, or convicted of a misdemeanor for violation of Workers' Compensation laws Section 52 or 131, is barred from bidding on, or being awarded, any public work contract or subcontract with the State, any municipal corporation or public body for one year for each violation. The ban is five years for each felony conviction.

3.7.7. PROOF OF WORKERS' COMPENSATION COVERAGE

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.

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.

3.7.8. PROOF OF DISABILITY BENEFITS COVERAGE

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

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

For additional information regarding workers' compensation and disability benefits requirements, please refer to the New York State Workers' Compensation Board website at: <http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp>. 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.

3.7.9. 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 with 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 OSC as the Contracting Agency within 48 hours of notification of selection for award) 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, available through this link: www.tax.ny.gov/pdf/publications/sales/pub223.pdf. Forms are available through these links:

- ST-220 CA: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf
- ST-220 TD: http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

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, Appendix Q, and Appendix R **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

4.1. STATE OF NEW YORK AGREEMENT

STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

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

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

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

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

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

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

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

II. Payment and Reporting

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

B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given 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.

4.2. APPENDIX A STANDARD CLAUSES FOR NYS CONTRACTS

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 \$10,000, 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 Section 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 because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. 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 (2NYCRR 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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 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 section. 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: mwb certification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.lic.asp>

The Omnibus Procurement Act of 1992 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) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. 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).

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 Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 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 Section 5-a, if the contractor fails to make the certification required by Tax Law Section 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") posted at: <http://www.ogs.ny.gov/about/reggs/docs/ListofEntities.pdf>

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.

(January 2014)

4.3. APPENDIX A-1

APPENDIX A-1

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. Variations in each budget category not exceeding ten percent (10%) of such category may be approved by the Commissioner of Education. Any such variations shall be reflected in the final expenditure report and filed in the Office of the State Comptroller. Variations in each budget category which do exceed ten percent (10%) of such category must be submitted to the Office of the State Comptroller for approval.
- C. 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. 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.
- C. This agreement cannot be modified, amended, or otherwise changed except by a writing signed by all parties to this contract.
- D. 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.
- E. 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.
- F. No fees shall be charged by the Contractor for training provided under this agreement.
- G. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.
- H. This agreement, including all appendices, is, upon signature of the parties and the approval of the Attorney General and the State Comptroller, a legally enforceable contract. Therefore, a signature on behalf of the Contractor will bind the Contractor to all the terms and conditions stated therein.

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

Certifications

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

Notices

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

Miscellaneous

- A. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.
- B. If required by the Office of State Comptroller ("OSC") Bulletin G-226 and State Finance Law §§ 8 and 163, Contractor agrees to submit an initial planned employment data report on Form A and an annual employment report on Form B. State will furnish Form A and Form B to Contractor if required.

The initial planned employment report must be submitted at the time of approval of this Agreement. The annual employment report on Form B will be submitted each year the contract is in effect and will detail actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Form B will be filed no later than May 15th of each year. 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 D – Program Workplan

(Revised 10/20/15)

4.4. STATE FINANCE LAW § 165-A

Iran Divestment Act

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act’s effective date, at which time it will be posted on the OGS website.

By entering into this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before SED may approve a request for Assignment of Contract

During the term of the Contract, should SED receive information that a person is in violation of the above-referenced certification, SED will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then SED shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

SED reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award 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.

Rev. 6/4/13

4.5. APPENDIX Q - AMENDMENTS AND ADDITIONS TO APPENDIX A-1 FOR THIS CONTRACT AND ADDITIONAL CONTRACTUAL PROVISIONS

i. Contractor Staff

1. All employees of the Contractor, or of its subcontractors, who shall perform Services under this resulting contract(s), shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services under the Agreement on behalf of Contractor shall, in performing the Services, comply with all applicable Federal and State laws concerning employment in the United States.

A. Staffing Changes

Key Project Staff

2. Except as otherwise provided for herein or for cessation of work for Reasons Beyond the Contractor's Control (as defined below), the Contractor agrees that the Key Project Staff as defined in Table 5 – Key Staff Roles will continue their assignment to completion of said assignment except as provided in this section.

- a. The Contractor's Project Manager will be responsible for the day-to-day management of the project's timetable, personnel, and administration. His/Her role shall include, but not be limited to, resource allocation, ensuring Contractor staff performance, ensuring the timely development and acceptance of implementation documents and all other Deliverables.. The Contractor's Project Manager(s) shall always be able to be contacted through Final Acceptance of the System.
- b. The Contractor's Solution Architect will be responsible for the overall technical design, implementation, and testing of the System. His/Her role shall include, but not be limited to being responsible for the detailed design and integration documents in conjunction with the Contractors and NYSED subject matter experts (SME).
- c. The Contractor's Solution Architect will be responsible for assisting with the design and performing the implementation, integration and testing of the new system.
- d. The Contractor understands that the State's selection of the Contractor to perform the work under the resulting Agreement will be based, in part, upon the State's confidence in the abilities of the Key Project Staff. Therefore, if the Contractor wishes to remove any of the Key Project Staff from the Project prior to commencement of his or her assignment, or during his or her assignment period, the Contractor shall first, before proceeding with such removal, consult with and seek the advice and opinion of the State Project Director. If, after said consultation, it is mutually agreed that such removal shall take place, the Contractor must immediately provide the résumés of three or more potential replacements with similar or better qualifications for the State Project Director's review and approval. If the State Project Director does not approve one of those candidates, the Contractor must immediately provide additional candidates for the State Project Director's review. If the State Project Director still cannot agree to a replacement, it reserves the right to either (a)

have Key Project Staff remain on the Project, or (b) terminate the resulting Agreement for cause. Upon the State Project Director's approval, the replacement will become Key Project Staff and will be subject to the terms and conditions of the resulting Agreement. If the Key Project Staff member's work has already commenced, the Contractor will ensure that there is a smooth transition, including having the Contractor staff who is leaving train the replacement Contractor staff (see Staff Transition Period, below).

- e. If the State Project Director does not agree to the replacement of Key Project Staff and does not wish to terminate the Agreement, and the Key Project Staff has not ceased work for Reasons Beyond the Contractor's Control, then the Key Project Staff member must remain on the Project and must continue to work with the same degree of professionalism he or she provided prior to the Contractor's request for removal. If the Key Project Staff fails to do so, or if the Contractor removes the Key Project Staff without the State Project Director's consent, the State has the right to terminate the resulting Agreement for cause.
- f. If the State Project Director reasonably and in good faith believes that a member of the Contractor's Key Project Staff is not performing adequately and is jeopardizing the timely delivery of deliverables meeting the acceptance criteria, the State Project Director will notify the Contractor and the NYSED Executive Sponsor. The Contractor will have 5 business days to propose a remediation plan to the Department. If the remediation plan is not satisfactory to the NYSED Executive Sponsor, then the Contractor must provide the resumes of three or more potential replacements with similar or better qualifications for the State Project Director's review and approval. If the State Project Director does not approve one of these candidates, the Contractor must immediately provide additional candidates for the State Project Director's review. If the State Project Director still cannot agree to a replacement, it reserves the right to either (a) have Key Project Staff remain on the Project, or (b) terminate the resulting Agreement for cause. Upon the State Project Director's approval, the replacement will become Key Project Staff and will be subject to the terms and conditions of the resulting Agreement. If the Key Project Staff member's work has already commenced, the Contractor will ensure that there is a smooth transition, including, having the Contractor staff who is leaving train the replacement Contractor staff (see Staff Transition Period, below).

Other Contractor Staff

3. The parties hereto understand that staff turnover is detrimental to Project progress, the quality of the Deliverables and Services to be provided hereunder, and the skills transfer process. The State believes, therefore, that it is in its best interest to maintain the continuity of work assignments for all levels of Employees. The State also recognizes that it can be difficult, or in some cases impractical, to maintain said continuity. The Contractor agrees, therefore, to make a good-faith, commercially reasonable effort to minimize turnover of Employees it assigns to the Project. The Contractor further agrees that if the Contractor removes an Employee, who is not Key Project Staff, prior to completion of his or her assignment, the Contractor will so notify the State's Project Manager, in writing, five (5) business days prior to said Employee's leave date. The Contractor will provide a replacement with similar or better qualifications. The Contractor will ensure that there is a smooth transition, including having the Employee who is leaving train the replacement Employee at the State's facilities.

Cessation of Work by Contractor Staff for Reasons Beyond Contractor's Control

4. Reasons beyond the control of the Contractor shall be defined as: (i) death of the Contractor Staff member; (ii) new disability or illness; (iii) Contractor Staff member resigns his or her position; (iv) termination of this Contract; or (v) any other reason deemed acceptable by the State's Project Director.
5. In the event that any Contractor Staff member ceases work for the reasons specified in (i) through (v), written notification must be forwarded to the State's Project Director.
6. The provisions of this section do not preclude any Contractor Staff member from reasonable sick leave or annual leave.
7. The contractor shall take prompt, commercially reasonable steps to resolve the difficulties caused by the Reasons Beyond Contractor's Control, and will seek to replace a staff member or Key Project Staff member in accordance with the provisions of this section.

Staff Transition Period

8. In the event the Contractor initiates a staffing change of either a Contractor employee or a subcontractor employee who is identified as Key Project Staff under the Agreement, the Contractor will offer State a mutually agreed upon transition period up to two (2) weeks. During the transition period, the departing staff and the new staff will work together to develop a transition plan to transition the responsibilities, at no additional cost to NYSED. The State reserves the right to approve this transition plan, in writing, for Key Project Staff.

B. Work Site and Schedule

9. The Contractor's team members shall perform their duties related to the design, implementation and testing of the System primarily on-site in Albany, New York, to the degree required to support the requirements in Section 1.5, unless otherwise agreed to by the State, in writing. All team members working on-site shall be identified to the State, along with any Contractor-issued equipment intended to be used on-site. Contractor team members working on site shall comply with all building policies, and Contractor team members using NYSED-issued equipment, software, or infrastructure, or Contractor-issued equipment within the NYSED IT environment, or accessing NYSED-owned data, will be responsible for following all IT and acceptable use policies. No reasonable request by the Contractor to permit the use of State equipment off-site shall be refused.
10. The State and the Contractor will determine equipment/computer needs of the on-site Contractor's Team that the State can provide.
11. The Contractor's assigned staff and any subcontractor's staff, when working on-site, shall be located at offices designated by the State Project Director and shall be provided access to such offices to the extent possible.

ii. Deliverable Acceptance

12. Deliverables must meet all applicable State-approved Acceptance Criteria developed in accordance with State-approved Acceptance Management Plans and Test Plans (as defined in Section 5.4).

13. For each document-based Deliverable (as defined in Section 5.4) other than status reports, the State shall have an acceptance period beginning on the date written notification of completion was received from the Contractor and as outlined herein. All document-based Deliverables shall require written approval by the State Project Director or his or her written designee that such Deliverables comply with the terms of the Agreement.

14. The Contractor shall provide document-based Deliverables in the form and format agreed to by the State using deliverable specification sheets approved by the State Project Director. The deliverable specification sheets will include, but not be limited to the following information: Deliverable title, frequency, draft, and final due dates, approval requirements, outline of contents, and delivery of media.

- A. The number of business days for any State initial review of a document-based Deliverable shall be no more than fifteen (15) business days, unless otherwise mutually agreed to by the State Project Director and the Contractor's Project Manager in the Project Work Plan. The fifteen (15) day period shall begin upon written transmittal by the Contractor Project Manager to the State Project Manager that the Deliverable is in final form and ready for approval, and shall be counted from and include the first working day following the delivery of the Deliverable to the State. The State shall provide Contractor (i) with approval of the Deliverable or (ii) with a written statement, of the itemized deficiencies preventing approval.
- B. The Contractor shall have fifteen (15) business days to complete all corrective actions or changes in order for such document-based Deliverable to conform in all material respects with the requirements set forth in the Agreement. The count of such business days shall begin on the first business day following Contractor's receipt of the written statement of required corrective actions or changes.
- C. If the State cannot approve the document-based Deliverable after correction by Contractor, the Contractor's Project Manager and the State Project Director may mutually agree to further steps to correct outstanding material deficiencies. However, in no event shall the total time allocated for review, correction, and re-review of material deficiencies in a Deliverable exceed forty (40) business days, except for good cause in the sole discretion of the State.
- D. The State will have final approval of all document-based Deliverables.

15. For Deliverables that contain hardware or software programs, the State's Deliverable review process will include acceptance testing as detailed in an approved Acceptance Test Plan. The number of business days for any State initial review/test of a software-based Deliverable shall be set forth in the Acceptance Test Plan, but will be not less than ten (10) business days, unless otherwise mutually agreed to by the State Project Director and the Contractor's Project Manager. The process for software Deliverables will be as follows: User Acceptance testing will take place in a test environment. After approval by the State, the software Deliverable will be migrated to the production environment. The software Deliverable will then be monitored to verify performance in accordance with all requirements and acceptance criteria. The State will provide Deliverable Acceptance upon completion of Production Verification. If any issues are reported by the State during Production Verification, the review period will

reset starting on the date the State is notified that the correction has been made in the production system. The State shall have final approval of all hardware or software-based Deliverables.

iii. Task Orders

16. Task Orders will be used when work is required by the Contractor that had not been included in the Deliverables or in the contract's Statement of Work. Prior to the parties' entering into a Task Order, a reasonability determination will be performed by the State Project Director or designee. Such reasonability determination shall include the State's review of the Contractor's required number of hours for the task; the titles of staff performing such tasks; and the rates for such tasks consistent with the Contractor's rates submitted in its Cost Proposal. Upon the parties' acceptance, in writing, of the terms of the Task Order, and approval by the State Comptroller if required, the Contractor shall perform such Task Order.

17. The Task Order will specify:

The work to be performed

The acceptance criteria

The name of the Contractor's staff member(s) who will be assigned to fulfill the Task Order

The estimated number of hours to be worked by the Contractor's staff

The total amount to be paid for each Contractor's staff member

The total amount to be paid for the Services performed

iv. Manner of Payment/Retainage

A. Hourly Rate Escalation

1. Rates will be fixed for the five-year term of the contract.

B. Payment Schedule

18. The State anticipates that the Deliverable payment schedule will be consistent with Table 14, but the exact schedule will be established by the State and the successful Bidder.

Monthly Maintenance and Support charges may not begin for a minimum of 60 days after the Final System Acceptance, and will be billable monthly in arrears of each Maintenance and Support contract year.

v. Warranties

19. Where Contractor generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to the State.

A. Representations and Warranties

20. The Contractor warrants that the Services rendered by the Contractor shall be performed in accordance with all the terms and conditions, covenants, statements, and representations contained in the Contract, including all appendices.

B. Deliverables

21. The Contractor warrants that the Contractor's Deliverables and the System will, in order of precedence, conform in all material respects to: (i) the Detailed Requirements (Attachment 5.4), specifications, and all applicable State-approved Acceptance Criteria developed in accordance with State approved Acceptance Management Plans and Test Plans for such Deliverables in Contractor's most recently approved deliverable specification or task order, and (ii) the applicable requirements for such Deliverables in the Agreement.

22. The Contractor warrants that: (i) any Deliverable(s) that it creates or provides to the State shall be substantially free from defects, as defined herein, and; (ii) the Services relating to the integration, development, and implementation of the Software by means of the Contractor's configuration, modification, and/or enhancement of such Software shall not introduce defects to, or negatively impact the operations of, any pre-existing or newly- developed software.

23. The Contractor warrants that it shall be responsible for performance of Contractor's software and any third-party software provided by the Contractor to the State. Software used by the Contractor to develop the product and any third-party software supplied to the State by the Contractor must be currently supported by the manufacturer and free of any known defect.

24. "Defects" shall mean: (i) a failure of a configuration, modification, and/or customization of the software to operate in accordance with the Acceptance Criteria or RFP functional or technical requirements; an error, flaw, mistake, failure, fault, or "undocumented feature" in the software that causes a deviation, which in NYSED's reasonable discretion is detrimental, from its intended behavior or performance as specified in its written specifications. or (ii) a failure of the Software to operate in accordance with the Software program documentation.

C. Workmanship Warranty

25. The Contractor warrants that all services provided by the Contractor and its subcontractors under the Agreement will be performed using a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of the Contract, "highest applicable industry standards" shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances. The Contractor shall meet or exceed the manufacturers' installation standards.

D. Contractor Compliance

26. The Contractor warrants that it will pay, at its sole expense, all applicable permits, licenses, tariffs, tolls, and fees and to give all notices and comply with all laws, ordinances, rules, and regulations of any governmental entity in conjunction with the performance of obligations under the Agreement. Prior to award, and during the Agreement term and any renewals thereof, the Contractor shall establish, to the satisfaction of the State, that it meets or exceeds all requirements of the Agreement and any applicable laws, including but not limited to permits, insurance coverage, licensing, and proof of

coverage for workman's compensation, and shall provide such proof as required by the State. Failure to do so shall constitute grounds for the State to cancel or suspend the Agreement, in whole or in part, or to take any other action deemed necessary by the State.

E. Personnel Eligible for Employment

27. The Contractor further warrants to the State that Contractor personnel performing services under the Agreement from within the United States are eligible for employment in the United States.

F. Product Performance

28. Products delivered pursuant to the Agreement shall conform to the specifications and performance standards defined by the RFP and the Product's documentation. The Product's documentation shall fully describe the proper procedure for using the Products.

G. System Support

29. Commencing from the User Acceptance of the first project phase through Final Acceptance as defined in the Project Management Documentation and approved by NYSED, the Contractor shall warrant the following:

- a. Components or Deliverables specified and furnished by or through the Contractor in the course of providing the services described in the Agreement shall, individually and together, operate in accordance with all Acceptance Criteria for such Deliverables and the System and shall operate substantially uninterrupted and error-free, and be guaranteed against faulty material and workmanship.
- b. Defects in the materials or workmanship of components or Deliverables specified and furnished by or through Contractor shall be promptly repaired or replaced by Contractor at no cost or expense to the State.
- c. Accepted Deliverables and the System, as a whole, shall: (i) continue to meet the functional, performance, and reliability requirements of the State, as set forth in the RFP, the Agreement, and the manufacturers' specifications for the Equipment and Software, as the same may be amended and updated, and (ii) operate, in conformance with the acceptance criteria established for each Deliverable, the System, as a whole, and by the Acceptance Management Plan.

30. The Contractor shall promptly provide all necessary services and support, at no cost, to the State to ensure all Deliverables and the System operate in accordance with the warranties set forth in a, b, and c above.

31. Where the Contractor or other third-party manufacturer/developer markets any project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, the Contractor's obligations for System Support described herein. Where such standard commercial warranty covers all or some of the System Support, Contractor shall be responsible for the coordination with other third-party Product manufacturer(s)/developer(s) for warranty repair or replacement of other third-party manufacturer's/developer's Product.

32. Where the Contractor or other third-party Product manufacturer/developer markets any Project Deliverable with a standard commercial warranty which goes beyond the System Support, the Contractor shall notify the State and pass through the manufacturer's standard commercial warranty to the State, at no additional charge.

H. System Warranty

33. For the period of this agreement and any extensions thereof (the "Warranty Period"), the Contractor shall warrant the following:

- a. Components or Deliverables specified and furnished by or through the Contractor in the course of providing the services described in the Agreement shall, individually and together, operate in accordance with all Acceptance Criteria for such Deliverables and the System and shall operate, substantially uninterrupted and error-free, and be guaranteed against faulty material and workmanship.
- b. Defects in the materials or workmanship of components or Deliverables specified and furnished by or through Contractor shall be promptly repaired or replaced by Contractor, at no cost or expense to the State.
- c. Accepted Deliverables and the System, as a whole, shall: (i) continue to meet the functional, performance, and reliability requirements of the State, as set forth in the RFP, the Agreement, and the manufacturers' specifications for the Equipment and Software, as the same may be amended and updated, and (ii) operate in conformance with the acceptance criteria established for each Deliverable, the System as a whole, and by the Acceptance Management Plan.

34. The Contractor shall promptly provide all necessary services and support, at no cost to the State, to ensure all Deliverables and the System operate in accordance with the warranties set forth in a, b, and c above.

35. Where the Contractor or other third-party manufacturer/developer markets any project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, the Contractor's obligations for System Warranty described herein. Where such standard commercial warranty covers all or some of the System Warranty, Contractor shall be responsible for the coordination with other third-party Product manufacturer(s)/developer(s) for warranty repair or replacement of other third-party manufacturer's/developer's Product.

36. Where the Contractor or other third-party Product manufacturer/developer markets any Project Deliverable with a standard commercial warranty, which goes beyond the System Support, the Contractor shall notify the State and pass through the manufacturer's standard commercial warranty to the State, at no additional charge.

I. Training and Certification Warranty

37. The Contractor warrants that all staff assigned to the State's account will be kept current in training and certification. Any fees or charges incurred by the Contractor to obtain and maintain such training and certification shall be the responsibility of the Contractor and may not be billed to the State.

J. Survival of Warranties

38. All warranties contained in the Agreement shall survive the termination of the Agreement. The Contractor will maintain all original manufacturers' warranties, organized by installation location, and will present the organized warranty package to the State upon completion and/or termination of Agreement.

K. Virus Warranty

39. The Contractor warrants that services relating to the integration, development, and implementation of the Software by means of the Contractor's configuration, modification, and/or enhancement of such Software shall be performed in a manner so as not to result in introducing a virus or other malware to the software. The Contractor will utilize commercially reasonable virus detection and vulnerability scanning software on its equipment to ensure that any configuration, modification, and/or enhancement it creates and provides to the State shall not contain any virus or vulnerability.

L. Date/Time Warranty

40. The Contractor warrants that Product(s) furnished pursuant to the resulting Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including but not limited to calculating, comparing, and sequencing) transitions, including leap-year calculations.

M. Breach of Warranty

41. In the event of any breach of the above warranties, the Contractor shall, as applicable: (i) correct errors and defects that caused the breach of warranty, or (ii) re-perform the deficient services. If the Contractor does not correct the program errors or re-perform the service in a commercially reasonable time and manner, the State may pursue other remedies as described below.

vi. Indemnification Relating to Third-Party Rights

42. The Contractor warrants that it owns or holds appropriate license rights in any intellectual property provided to the State/Department, and that any such use of intellectual property in accordance with this contract will not infringe on those rights. The Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorney's fees), claims, judgments, liabilities, and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent and/or any other ownership interest, , or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the Contractor's products, Deliverables, or services furnished or utilized under the Agreement, provided that the State shall give Contractor: (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit;(ii) the opportunity to take over, settle, or defend such action, claim, or suit at Contractor's sole expense; and (iii) reasonable assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated

infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State shall require.

43. If the use of any Contractor product, Deliverable, or part(s) thereof shall be enjoined for any reason, or if the Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion, to take action in the following order of precedence: (i) to procure for the State the right to continue using such product, Deliverable(s) or part(s) thereof, as applicable; (ii) to modify the product or Deliverable(s) so that it becomes non-infringing and is of at least equal quality and performance; (iii) to replace said product or Deliverable or part(s) thereof, as applicable, with a non-infringing product or Deliverable of at least equal quality and performance; or (iv) if none of the foregoing is commercially reasonable, then the State agrees to return the product or Deliverable (or part thereof), and Contractor shall provide monetary compensation to the State for its inability to continue to provide for the use of the affected product or Deliverable (or part thereof) up to the applicable dollar amount specified in the Limitation of Liability section below.

44. The Contractor further agrees that, in the event the State is sued by a third party for issues related to the work performed by the Contractor under this Agreement and/or the deliverables, the Contractor will provide such experts and witnesses as may be necessary to defend any allegations regarding such work or deliverables, at Contractor's cost. Defense shall include, but is not limited to, consultation with the State's representatives and attorneys, and appearance at depositions or trials to give testimony.

vii. Limitation of Liability

45. Except as set forth in the Indemnification paragraphs above, the limit of liability shall be as follows, except as otherwise provided for herein:

- a. The State may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the State unless Contractor, at the time of the presentation of claim, shall demonstrate to the State's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

46. The Contractor remains liable, without monetary limitation, for direct damages for personal injury, death, or damage to real property or tangible personal property or intellectual property attributable to the negligence or other tort of contractor, its officers, employees, subcontractors, partners, or agents, or due to a breach of the provisions of this Agreement related to confidentiality of data and/or violation of State or federal confidentiality laws.

47. Notwithstanding any other provision in this contract, the Contractor shall be responsible for any and all notification obligations arising out of a breach of confidentiality by Contractor, its officers, employees, subcontractors, partners or agents, of data provided by the State pursuant to this contract and during the term of this Agreement. The costs of such notification will be borne solely by the Contractor.

viii. Force Majeure

48. Neither Party will be liable for losses, defaults, or damages under the resulting Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of the resulting Agreement, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, fire, or any other cause beyond the reasonable control of the party that was so delayed or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

ix. Conflict Resolution

49. In connection with the Contractor's performance under the Agreement, the Contractor shall cooperate in a reasonable manner with the State and any other Contractor(s) or consultant(s) retained by NYSED or the State to work on this project.

50. In the event of conflicts between the Contractor and other consultants, contractors, or subcontractors, the Contractor shall submit to the State a timely written explanation of the details of the conflict, including such pertinent facts as may provide the State with a firm basis for understanding the nature of the conflict. The Contractor agrees to act in a good-faith effort to avoid conflicts, and to resolve conflicts with other consultants, contractors or subcontractors that cannot be avoided.

51. With respect to the conflicts detailed above, if the Contractor is unable to resolve a conflict, the State Project Director (or designee) shall have the right and authority to direct the involved parties on the appropriate course of action to be taken to resolve the conflict.

x. Remedies for Breach

52. It is understood and agreed that all rights and remedies set forth in this Agreement shall be in addition to all remedies or actions otherwise authorized or permitted by law:

- A. Withhold Payment: In any case where a question of non-performance or deficient performance by the Contractor arises, payment may be withheld, in whole or in part, at the discretion of the Department.
- B. Bankruptcy: In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of the Contract, the State may, at its discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the State the amounts owed by the Contractor arising out of the same transactions.
- C. Reimbursement of Costs Incurred: The State shall have the right to award a new contract to complete the Administrative Review Tool as described by the RFP, and the Contractor shall be responsible for damages and for all additional costs incurred in re-letting the contract.
- D. Deduction/Credit: Sums due as a result of these remedies may be deducted or offset by the State from payments due, or to become due, to the Contractor on the same or another transaction. If no deduction, or only a partial deduction, is made in such fashion, the

Contractor shall pay to the State the amount of such claim or portion of the claim still outstanding, on demand. The State reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

xi. Suspension of Work

2. The State reserves the right to suspend any or all activities under the Agreement, at any time, in the best interest of the State. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a freeze on State spending, revocation of any funding associated with the project, declaration of emergency, or other such circumstances. Upon receipt of such notice, the Contractor shall immediately comply with the suspension order. Activity may resume at such time as the State issues a formal written notice authorizing a resumption of work.

xii. Mitigation of Costs

53. The Contractor shall not undertake any additional or new contractual obligations on or after the date of a termination notice without the prior written approval of the State. On or after the date of termination notice, and during the termination notice period, if any, the Contractor shall take all commercially reasonable and prudent actions to close out outstanding, existing obligations to the extent possible and as economically as possible for the State.

xiii. Termination Closeout Plan

54. Within thirty (30) calendar days of receipt of a notice of termination as set forth in the Agreement, or at the end of the contract term, the Contractor shall provide for approval by the State a detailed written plan for transition. The closeout plan shall outline, at a minimum, the tasks, milestones, and Deliverables associated with the smooth transition of the Project to a successor Contractor or to identified persons with the State. The closeout plan shall include all other information mutually agreed upon by the Parties to the Agreement. Consideration for the closeout plan shall be considered paid as part of the payments for the Deliverables in the Agreement. No further compensation shall be due for the completion of the closeout plan.

xiv. General Provision as to Remedies

55. The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with, or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy or constitute a waiver of, an event otherwise constituting a breach or default under the Agreement.

xv. Public Announcements

56. Public announcements or news releases regarding the NYSED program may not be released by any Bidder, the Contractor, or their agent without prior review and approval of the NYSED. Such approval shall not be considered until an executed Agreement is in place.

57. Publicity includes but is not limited to news conferences, news releases, advertising, brochures, reports, discussions, and/or presentations at conferences or meetings.

xvi. Conflict of Interest

58. In providing its services, the Contractor warrants and represents, to the best of its knowledge and belief, that Contractor's other obligations to third parties or to the State will not result in a conflict of interest or in the appearance of a conflict of interest that would render Contractor, its employees, subsidiaries, affiliates, partners, agents, or subcontractors unable to legally provide the Products or Services under the Agreement.

59. If the Contractor develops a conflict of interest based upon its other business relationships, which would render the Contractor unable to legally perform the Services, the Department may terminate the Agreement upon written notice. The Contractor shall notify the Department of any such conflict upon becoming aware of such conflict.

60. The Contractor represents and covenants that it has, and will maintain during the term of the Agreement, quality control systems to prevent such a conflict of interest and that it maintains, and will maintain during the term of the Agreement, adequate safeguards to comply with this requirement.

61. If NYSED terminates the Agreement as a result of the Contractor establishing a new business relationship with a third party, the Contractor shall compensate the State/NYSED for any and all reasonable, documented, costs that the State/NYSED incurs to procure a new Contractor to perform the portion of the Services not yet performed by the Contractor as of the effective date of termination. Prior to any such termination the NYSED will provide notice to the Contractor.

62. The Contractor must disclose the name of any officer, director, project staff, or senior executive who is also an employee of New York State. Further, the Contractor must disclose the name of any State employee who directly owns an interest of ten percent (10%) or more in the Contractor's Firm or any of its subsidiaries. No State employee shall receive, directly or indirectly, any compensation from the Contractor or any of its subsidiaries as a result of this contract. The Contractor will take appropriate steps to make a similar determination regarding its sub-contractors.

63. This shall be an ongoing requirement, and failure to comply will subject the Agreement to cancellation.

xvii. Required Consents

64. Each party is responsible for promptly obtaining and providing all required consents necessary for the Parties to provide the Services described in the Agreement. A Required consent means any consents or approvals required to give the parties, and the Contractor's subcontractors, the right or license to access, use and/or modify (including creating derivative works) the hardware, software,

firmware, and other products the State of New York Users, without infringing the ownership or license rights (including patent and copyright) of the provisions of owners of such products.

xviii. Confidentiality

65. All work will be performed by the Contractor, its subcontractor and their respective officers, agents, and employees under the supervision of the Contractor or the Contractor's employees.

66. Any information made available to the Contractor, its subcontractor, or their respective officers, agents, and employees, in any format, shall be used only for the purpose of carrying out the provisions of the Agreement. Information contained in such material will be treated as confidential and will not be divulged or made known, in any manner, to any person except as may be necessary in the performance of the Agreement. Disclosure to anyone other than an officer, agent, or employees of the Contractor or its subcontractors is prohibited. The Contractor will be required to sign an Information Protection Agreement, and a Confidentiality and Non-Disclosure Agreement, to be provided subsequent to award.

67. All information will be accounted for by the Contractor upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

68. The Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the State Project Director or his/her designee with a statement containing the date of the destruction, description of material destroyed, and the method used. In the event that it becomes necessary for the Contractor to receive confidential information, which Federal or State statute or regulation prohibits from disclosure, the Contractor hereby agrees to destroy all such confidential information that has been received as part of this Agreement when the purpose that necessitated its receipt by the Contractor has been completed. In addition, Contractor agrees not to retain any confidential information which Federal or State statute or regulation, including but not limited to the federal Family Educational Rights and Privacy Act (FERPA), prohibits from disclosure after termination of the Agreement. Contractor will provide written notification to the State Project Manager when the confidential information has been destroyed. The Contractor will require all project staff who have access to such confidential information to sign a confidentiality agreement that they will use the confidential information solely for purposes of this contract, and will not disclose the information to any third parties, nor to any person within Contractor's firm or sub-contractors unless such person has a legitimate business need to access such information for purposes of this contract.

69. The Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of the State's confidential information, which Federal or State statute or regulation prohibits from disclosure. At a minimum, the Contractor shall comply with, and shall require and ensure that its subcontractor(s) comply with, the data and information security policies of NYSED; New York State Cyber Security Policy P03-002 (see <http://www.dhSES.ny.gov/ocs/resources/documents/Cyber-Security-Policy-P03-002-V3.4.pdf>); and the federal Family Educational Records and Privacy Act (FERPA). However, if the laws of the state in which the data is housed by Contractor or a subcontractor provide greater protection for confidentiality and security of the data, then the Contractor or subcontractor must comply with the most stringent security and confidentiality laws. Failure to abide by the more stringent laws of the other state, where the data

is housed, will be considered a violation of this contract in the same manner as violation of applicable New York or federal law.

70. The Contractor shall never disclose information which Federal, State statute, or regulation prohibits from disclosure. Other confidential information disclosed under the Agreement will be subject to the Agreement for five years following the initial date of disclosure.

71. The Contractor agrees that it shall immediately report to the State the discovery of any unauthorized use or unauthorized disclosure of such confidential information of any New York State agency information directly to that New York State agency. The State may terminate the Agreement for cause if it determines that the Contractor has violated a material term of this section. The terms of this section shall apply equally to the Contractor, its agents, and subcontractors, if any. The Contractor agrees that all subcontractors, if any, and agents shall be made aware of and shall agree to the terms of this section.

72. The State will have the right to terminate the Agreement for cause if the Contractor fails to provide the safeguards described above.

73. Notwithstanding the language contained in this section, the Contractor may release any information pursuant to a final order issued from a Court of competent jurisdiction, provided the State has had an opportunity to be heard. The Contractor shall immediately forward to the State Project Director a copy of any such order requiring disclosure of confidential information, and shall advise the court of this provision.

74. Notwithstanding the foregoing, information which falls into any of the following categories shall not be considered confidential information:

- a. Information that is previously rightfully known to the receiving party without restriction on disclosure;
- b. Information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain;
- c. Information that is independently developed by the Contractor without use of confidential information of the State;
- d. Information unrelated to the scope of this engagement and not required by State or federal law to be kept confidential; and
- e. That the State has approved for disclosure, but solely in accordance with the State's approval or direction.

See also Appendix R of This RFP as it relates to NYSED's Data Security and Privacy Plan, which will form part of the Agreement that will result from this RFP.

xix. Insurance

75. Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor must obtain and furnish Certificates of Insurance evidencing compliance with all insurance requirements contained herein. Such Certificates shall be, in form and substance, acceptable to the State.

76. Acceptance and/or approval of Certificates of Insurance by the State shall not diminish any of Contractor's obligations, responsibilities, or liabilities under the Agreement.

77. All insurance required by the Agreement shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State; shall be primary and non-contributing (only with respect to liability arising out of the Agreement) to any insurance or self-insurance maintained, and shall be endorsed to provide that reasonable efforts will be used for written notice to be given to the State at least thirty (30) calendar days prior to the cancellation or non-renewal of such policy or policies, which notice, evidenced by return receipt of United States Certified Mail, shall be sent to the State/Department. The insurance policy(ies) shall name the State of New York, its officers, agents, and employees as additional insureds. The additional insured requirement does not apply to Workers' Compensation or Disability coverage.

78. The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject.

79. Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII," the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the State and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

80. The Contractor shall cause all insurance to be in full force and effect as of the commencement date of the Agreement and to remain in full force and effect throughout the term of the Agreement and as further required by the Agreement. The Contractor shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverage during the period of time such coverage is required to be in effect.

81. Not less than thirty (30) calendar days prior to the expiration date or renewal date, the Contractor shall supply with updated replacement Certificates of Insurance, and amendatory endorsements.

82. The Contractor, throughout the term of the Agreement, or as otherwise required by the Agreement, shall obtain and maintain, in full force and effect, the following insurance with limits not less than those described below and as required by the terms of the Agreement, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

83. Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 0001, or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract).

84. Workers' Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near, or over navigable waters, US Longshore and Harbor Workers' Compensation Act endorsement must be included. Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) require that the State shall not enter into any contract unless proof

of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the State, the Contractor shall be required to verify for the State, on forms authorized by the New York State Workers' Compensation Board, that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. Any questions relating to either Workers' Compensation or disability benefits coverage should be directed to the New York State Workers' Compensation Board.

85. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired, and non-owned automobiles.

86. Employee dishonesty coverage on all employees, including contract and temporary, in an amount of \$250,000.

xx. Workers' Compensation Coverage and Debarment

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

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

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

PROOF OF COVERAGE REQUIREMENTS

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

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

Proof of Workers' Compensation Coverage

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

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

Proof of Disability Benefits Coverage

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

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

For additional information regarding workers' compensation and disability benefits requirements, please refer to the New York State Workers' Compensation Board website at: <http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp>. 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.

87.

xxi. Mergers, Acquisitions or Divestitures

88. In the event there is a substantial or material change, as defined below, in the ownership or financial viability of the Contractor, its corporate affiliates, subsidiaries or divisions, or subcontractors, the Contractor is required to provide prompt written notice to the State with all details of any such change.

89. "Substantial" or "material" change in Contractor status shall be defined to include, but not be limited to, a sale, acquisitions, mergers, or takeovers involving the Contractor, its corporate affiliates, subsidiaries or divisions, or partners which result in a change in the controlling ownership or assets of such entity after the submission of the proposal; or entry of an order for relief under Title 11 of the United States Code; the making of a general assignment for the benefit of creditors; the appointment of a general receiver or trustee in the bankruptcy of the Contractor, its corporate affiliates, subsidiaries or division, or partners under any state insolvency or similar law for the purposes of its bankruptcy, reorganization or liquidation; or court ordered liquidation against Contractor, its corporate affiliates, subsidiaries, or divisions or partners.

90. Upon receipt by the State of such notice, the State shall have thirty (30) business days from the date of notice to review the information. The Contractor may not transfer or assign the Agreement without the consent of the State. In addition to any other remedies available at law or equity, the State shall have the right to terminate this Agreement immediately, in whole or in part, if it finds that such change materially and adversely affects the delivery of services solely determined with reference to the best interests of the State, or if the change in Contractor status causes a conflict of interest or violation of law.

91. In the event the Contractor is acquired or merged, the Contractor shall continue to be bound by, and shall perform under, all terms and conditions set forth herein.

xxii. Material Change in Contractor Status

A. Ownership

92. Any property or material furnished or provided by the State to the Contractor hereunder, is and will remain the property of the State.

B. Prior Licensed Software

93. The State's prior licensed software shall not be extinguished or merged by execution of the resulting Agreement or by unilateral acts of the Contractor.

xxiii. Open Source and Third Party Software Disclaimer

94. Open source software and Third Party software is developed independently of Contractor and may be governed by a separate license. If such software is governed by a separate license, Contractor shall provide a copy of that license in the applicable Documentation, and the Authorized User's license rights and obligations with respect to that open source software shall be defined by those separate license terms and subject to the conditions, if any, therein. Nothing in the Contract shall restrict, limit, or otherwise affect any rights or obligations the Authorized User may have, or conditions to which the

Authorized User may be subject, under such separate open source license terms. The Contractor may not use material pursuant to a Creative Commons License for performance of its responsibilities under this contract without prior approval of the State, and shall ensure that any such material is free from all obligations to third parties, including but not limited to royalties.

xxiv. Ownership of Data and Records

95. All data and other records contained in or entered into any Contractor accessible data store by the State, or supplied to the Contractor by the State are, and shall remain, the sole property of the State respectively. The Contractor shall not copy or use such records except to carry out contracted work under the terms herein, and shall not transfer or display such records to any other party not involved in the performance of the resulting Agreement. Contractor will certify in writing that all data and records have been destroyed upon completion of the work hereunder.

xxv. Title and Legal Interest in Agreement Deliverables

96. Unless otherwise specified in the Agreement, all materials developed pursuant to the terms of the Agreement without limitation, including materials developed as a result of Task Orders, contract documentation, software coding or modifications, and all other contract Deliverables of whatever description, custom program code developed or prepared for the State by the Contractor under the Agreement, whether or not the Agreement is completed, is confidential information and the property of the State and all title and interest therein shall vest in the State and shall be deemed to be a "work made for hire" and made in the course of the services rendered hereunder. To the extent that title to any such works may not, by operation of law, vest in the State, or such works may not be considered works made for hire, all rights, title and interest therein are hereby irrevocably assigned to the State. All such materials shall belong exclusively to the State, with the State having the right to obtain and to hold in its own name copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. The Contractor agrees to give the State, and any person designated by the State, reasonable assistance, at the State's expense, required to perfect the rights defined in this Paragraph.

97. Notwithstanding the foregoing, the Contractor or third parties shall retain all right, title and interest in any of their respective pre-existing software products. The State acknowledges that the successful Contractor or its licensors shall retain all ownership and intellectual property rights to proprietary code offered to the State under a licensing agreement. Any property or material furnished or provided by the State to the Contractor hereunder is and will remain the property of the State.

98. Nothing herein shall preclude the State from entering into an agreement with the Contractor to jointly own a specific work developed under the Agreement.

xxvi. Software Use

99. To the extent that the Agreement involves the licensing of software by the Contractor to NYSED, such software license grant shall be governed by the following terms and conditions:

- 1) License Scope- NYSED is to be granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the software within its business enterprise up to the maximum licensed capacity stated in the license agreement. Software may be accessed, used, executed, displayed or

performed for the purposes outlined in the Administrative Review Tool agreement (the contract resulting from this award). NYSED shall have the right to use and modify or customize the software for the purposes in the Administrative Review Tool agreement, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in the trademark, trade name, or service mark is granted hereunder. The software will not be distributed to any third parties, except for use by the federal government as may be required by 34 C.F.R. §80.34.

- 2) License Term- The license term shall commence upon acceptance of the software by NYSED.
- 3) Licensed Documentation- "Licensed Documentation" shall mean all documentation related to or associated with software licensed pursuant to the Agreement, whether or not currently existing and regardless of format, including but not limited to user manuals, technical manuals and training materials. Contractor hereby grants to NYSED a perpetual license and right to make, reproduce and distribute, either electronically or otherwise, copies of such Licensed Documentation as necessary to enjoy full use of the software in accordance with the terms of the license.
- 4) Permitted License Transfers- As NYSED's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site, including transfers between NYSED offices. ("permitted license transfers"). NYSED does not have to obtain the approval of Contractor for permitted license transfers.
- 5) Archival Back-Up and Disaster Recovery- NYSED may use and copy licensed software and related Licensed Documentation in connection with: 1) reproducing a reasonable number of copies of the software for archival backup and disaster recovery procedures in the event of destruction or corruption of the software or disasters or emergencies which require Board to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; and 2) reproducing a reasonable number of copies of the software and related documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the software not to be installed until and after the declaration by NYSED of a disaster.
- 6) Confidentiality Restrictions- NYSED will not disclose or otherwise distribute or reproduce any licensed software other than as authorized under the terms of Agreement. NYSED will not remove or destroy any proprietary markings of the Contractor.
- 7) Restricted Use by NYSED- Except as expressly authorized by the terms of license, NYSED shall not:
 - a) Copy the Product;
 - b) Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
 - c) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.
- 8) Right to Purchase Additional Software – NYSED may elect to purchase additional software components/modules, to complement the integration of the existing collection of software components/modules to rapidly changing technology. The characteristics of an increment may vary depending upon the type of information technology being acquired and the nature of the system

being developed. The following factors may be considered in choosing an appropriate contracting technique that facilitates the acquisition of subsequent software components:

- a) Takes advantage of any evolution in technology or needs that occur during implementation;
 - b) Address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable systems or solutions for attainment of those objectives; and,
 - c) Reduce risk of potential adverse consequences on the overall project by isolating and avoiding custom-designed components of the System.
- 9) The Contractor shall offer to the State the lowest price offered to other customers. This provision of this contract shall survive termination or expiration of the contract.
- 10) The information technology acquired through this Contract for each increment should be compatible, integrate seamlessly with the existing software products, comply with commercially acceptable information technology standards when available and appropriate, and shall conform to the State's information technology architecture. The performance requirements of each increment should be consistent with the performance requirements of the overall solution, and should address interface requirements with succeeding increments.
- 11) Licensed Documentation – If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense one (1) hard copy and one (1) master electronic copy of the Documentation in CD format; Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product), and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license. Contractor must also provide access to an on-line library to ensure that users have access to the most recent user manuals and other documentation.
- 12) Platform Migration – The State may elect to change its technical infrastructure including the hardware, operating system, and database management system, to another platform supported by the Contractor. In such a case, the Contractor will provide the State, at no charge and with no amendment to the terms and conditions set forth herein, with all updates and software replacements necessary to use the licensed software on the new platform.
- 13) The State acquires only the right to use the Software and does not acquire any rights of ownership, other than for application programs developed specifically for this Agreement. All rights, title, and interest in the Software shall at all times remain the property of the Contractor. The Contractor represents that (i) it is the owner of the Software developed by the Contractor, with the exception of the application programs developed specifically for the Agreement and that it has the right to modify same and to grant the State a license for its use.

xxvii. Product Version

100. Products licensed or provided shall be the most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested, in writing, by the State Project Director and Contractor is willing to provide such version.

xxviii. No Hardstop/Passive License Monitoring

101. Unless NYSED is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Contractor agrees that, in the event of a breach or alleged breach of this provision, NYSED shall not have an adequate remedy at law, including monetary damages, and that NYSED shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which NYSED shall be entitled.

xxix. Use by Other Agencies and the Federal Government

102. Any contract entered into pursuant to an award of this RFP shall contain a provision that grants the option to extend the terms and conditions of such contract to any other State agency in New York. The Contractor recognizes that this contract is funded by federal Race to the Top / American Recovery and Reinvestment Act (ARRA) funds, and that the federal government reserves a right to use material or works created pursuant to this contract pursuant to 34 C.F.R. §80.34, to the extent that provision is applicable.

xxx. Freedom to Undertake

103. With respect to any contract or employment as an independent Contractor or employee of New York State, or any New York public corporation as defined in Section 66 of the New York General Construction Law or any agency or department of either, pursuant to the terms of any other present or future agreement, expressed, implied, entered into with such entity, if any, the Contractor by submitting a proposal thereby covenants and represents that there is no conflict as to hours required to be worked or duties required to be performed pursuant to the terms of this proposal and any aforesaid contract or employment.

xxxi. Reports and Findings

104. Any and all reports and findings rendered to NYSED by the Contractor shall be the exclusive property of NYSED and subject to its exclusive use and control. The Contractor herewith waives any and all rights to such reports and findings and the control thereof.

105. The Contractor shall take all appropriate action to protect the confidentiality of all information supplied to it or developed by it during the course of its performance under the terms of the contract.

xxxii. Records Access

106. NYSED staff, others authorized by NYSED such as representatives of the Federal government, or other State agencies authorized by State law, shall have access to and the right to examine the books, documents, work papers, documentation of charges, or other records of the Contractor involved in

transactions relating to the contract during the contract period and for a period of six years after final payment for said services by the Department. The Contractor will make all records, including related documents of any and all subcontractors, available to New York State. Such retained records shall not include confidential data or information, as defined in this Contract, unless specifically mandated in writing by NYSED to be retained. Otherwise, such confidential data and information shall be promptly destroyed as provided in this Contract.

107. As authorized by NYSED, the Contractor shall cooperate with Federal auditors and other independent auditors conducting audits of State and related Federal records and with any subsequent auditors for the examination of documents, systems, and financial statements. Such cooperative work shall be reported to NYSED and identified separately in all billings under the contract.

xxxiii. Work Paper Retention and Availability

108. The work papers to be prepared by the Contractor during the engagement will be the Contractor's property, although copies thereof and access to them will be made available, upon request, to NYSED, representatives of the Federal government and State agencies when authorized by NYSED, and other State agencies authorized by law, for a period of six (6) years following the date of the final payment under the contract. All such requests, and their disposition, shall be authorized by the Department.

109. The Contractor selected agrees to make personnel available to explain fully all data, materials, and work papers developed during the engagement for a period of six (6) years following the date of the final payment under the contract.

xxxiv. Waiver, Modification, Execution, or Severability

110. No waiver or modification of the contract or any covenant, condition, or limitation herein contained shall be valid unless in writing and executed by the parties hereto, and no evidence of any waiver or modification shall be offered or received in evidence in any action between the parties hereto arising out of or affecting the contract, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid, and the parties further agree that the provisions of the paragraph may not be waived except as herein set forth.

111. The written contract shall contain the sole and entire agreement between the parties and shall supersede any and all other agreements between the parties.

112. The parties hereto shall execute such other further documents as may be required to effectuate the terms of the contract.

113. In the event that any provision of the Agreement shall be declared void, voidable, illegal, or invalid for any reason, such provision shall be of no force and effect only to the extent that it is so declared void, voidable, illegal, or invalid. All of the provisions of the Agreement not specifically found to be so deficient shall remain in full force and effect.

xxxv. Freedom of Information Law

114. New York State's Freedom of Information Law (FOIL) (Public Officers Law, Article 6, §§84-90), available at: <http://www.dos.state.ny.us/coog/index.html>, promotes the public's right to know the

process of governmental decision-making and grants maximum public access to governmental records. The proposal of the successful Bidder and the proposals of unsuccessful Bidders may be subject to disclosure under FOIL.

115. However, pursuant to Section 87(2)(d) of FOIL, a State agency may deny access to those portions of proposals or portions of a successful Bidder's contract which are "trade secrets" or submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise.

116. Please note that all information that a Firm may claim as proprietary, copyrighted, or rights-reserved is not necessarily protected from disclosure under FOIL.

117. If there is information in a Firm's proposal that a Firm claims meets the definition set forth in Section 87(2)(d), the Firm should identify such information and provide an outline of its reasons for seeking exemption from FOIL disclosure.

118. Failure to identify the information which a Firm believes should be protected by Section 87(2)(d) may result in such information being disclosed if a request is received.

119. It is a Firm's responsibility to consult an attorney with any questions the Firm may have about New York State's Freedom of Information Law. All work products described herein may also be subject to FOIL disclosure.

120. The State will not honor any attempt by a Bidder either to designate its entire bid proposal as proprietary or to claim copyright protection for its entire proposal.

121. The Contractor must provide to the Department all information, records, and other written material it produces, possesses, or relies upon if such material is the object of a legitimate request to the Department pursuant to the Freedom of Information Law.

xxxvi. Piggybacking

122. This contract may be extended for use in accordance with the State Finance Law Section 163 (10)(e). NYSED reserves the right to convert any provisions that involve associated entity procurement into a piggybacked OGS backdrop contract.

xxxvii. Performance Monitoring

123. The Contractor's performance will be assessed by the State according to the achievement of Contractor's contractual obligations in a timely and professional manner, as set forth herein. NYSED may utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work product.

xxxviii. Notices

124. All notices, demands, instructions, claims, approvals, and disapprovals are required to be given to either Party at the addresses set forth in the final contract document or to such other address as either Party shall have provided the other.

xxxix. Reservations

125. NYSED reserves the right to employ other consultants and contractors in connection with its responsibilities and functions. In that event, Contractor will, as directed by NYSED, cooperate and work in harmony with such consultants and contractors.

xi. Proposal Ownership

126. All proposals and accompanying documentation become the property of the State of New York and will not be returned. The Department reserves the right to use any portions of the Bidder's proposal not specifically noted as proprietary.

xli. Accessibility of Web-Based Information and Applications

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 (see <http://www.cio.ny.gov/Policy/NYS-P08-005.pdf>) as determined by quality assurance testing. Such quality assurance testing will be conducted by the 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

xlii. Consultant Staff Changes

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

Appendix R – Data Security and Privacy Plan

1. The individually identifiable data provided to or stored by the Contractor pursuant to this agreement (the "Data") are sensitive, requiring appropriate levels of security to prevent unauthorized disclosure or modification. The Contractor shall take all reasonable measures to protect the confidentiality of the Data as required by federal and state laws and regulations applicable to the Contractor. These may include but are not limited to the New York State Social Services Law, Personal Privacy Protection Law and Education Law §2-d; the federal Social Security Act and Family Educational Rights and Privacy Act; internet security laws; and any regulations promulgated thereunder.
2. The Contractor has full and final responsibility for the security of the Data. The Contractor agrees to implement reasonable technical and physical security measures to ensure the confidentiality, integrity and availability of the Data. Such security measures may be reviewed by the State, both through an informal audit of policies and procedures and/or through inspection of security methods used within the Contractor's infrastructure, storage, and other physical security. The Contractor should review its implementation and maintenance of its security review periodically to protect the data in strict compliance with statutory and regulatory requirements.
3. The Contractor's security measures must also include:
 - a. Provision that access to the Data is restricted solely to staff who need such access to carry out the responsibilities of the Contractor under this agreement, and that such staff will not release such Data to any unauthorized party;
 - b. All confidential Data are stored on computer and storage facilities maintained within Contractor's computer networks, behind appropriate firewalls;
 - c. Access to computer applications and Data are managed through appropriate userID/password procedures;
 - d. Contractor's computer network storing the Data is scanned for inappropriate access through an intrusion detection system. NYSED has the right to perform a site visit to review the vendor's security practices if NYSED feels it is necessary;
 - e. That Contractor have a disaster recovery plan that is acceptable to the State;
 - f. Satisfactory redundant and uninterruptible power and fiber infrastructure provisions; and
 - g. A copy of the Contractor's security review evidencing compliance with these requirements must be submitted to NYSED for review and approval within 6 months of the signing of the contract or before the first certification test is performed, whichever occurs first.
4. The Data must be returned to NYSED upon termination or expiration of this Agreement, or at such point that the Data are no longer needed for the purpose referenced in this Agreement, or, at the sole discretion of NYSED, securely destroyed. All hard copies of personally identifiable Data in the possession of the Contractor must be securely destroyed, and all electronic Data must be purged from the network in a manner that does not permit retrieval of the data. The contractor is specifically prohibited from commingling any data from outside sources into the Data received from NYSED, except as specifically authorized by NYSED.
5. If personally identifiable data of students, teachers or building principals will be disclosed to the Contractor by NYSED for purposes of the Contractor providing services to NYSED, the Contractor must comply with the following requirements of Education Law §2-d (Chapter 56, Subpart L of the Laws of 2014) and any implementing regulations:

- a. Any officers or employees of the third party contractor and its assignees who have access to student data or teacher or principal data have received or will receive training on the federal and state law governing confidentiality of such data prior to receiving access;
 - b. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
 - c. not use the education records for any other purposes than those explicitly authorized in its contract;
 - d. except for authorized representatives of the third party contractor to the extent they are carrying out the contract, not disclose any personally identifiable information to any other party:
 - i. without the prior written consent of the parent or eligible student; or
 - ii. unless required by statute or court order and the party provides a notice of the disclosure to the department, district board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;
 - e. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable student information in its custody; and
 - f. use encryption technology consistent with Education Law §2-d and any implementing regulations.
6. If requested by NYSED to make any disclosure of aggregated data using the Data provided to or stored by the Contractor, Contractor must ensure that the disclosed aggregated data cannot reasonably be used to identify a particular individual. Aggregated data will be considered identifiable if the disclosure has less than five (5) data elements per cell or the data elements per cell comprise 100% of the subject population.
 7. Contractor agrees that all Data shall remain at all times the property of the State, and may not be used for any purpose other than the purpose outlined in this Agreement without the express written permission of NYSED. The Contractor has no ownership of or licensing rights to the Data except as provided in this Agreement, and Contractor specifically agrees that it will not sell, give or otherwise transfer the Data to any third party without NYSED's express prior approval.
 8. The Contractor must ensure that these confidentiality and security provisions apply to any subcontractor engaged by the Contractor for the work under this agreement. The Contractor shall take full responsibility for the acts and omissions of its subcontractors, and the use of subcontractors shall not impair the rights of NYSED against the Contractor in accordance with this Agreement.
 9. Hardware, software and services acquired by the Contractor under this Agreement may not be used for other activities beyond those described in the scope of the contract unless authorized in advance by NYSED.

10. Security of Location - Server room will remain a restricted access, locked room with access via security cards. The list of staff with access to the server room will continue to be reviewed quarterly against the number of times each staff actually gained access to the server room.

11. Breach Notification.

- a. Contractor that receives student data or teacher or principal data pursuant to a contract or other written agreement with an educational agency shall be required to notify such educational agency of any breach of security resulting in an unauthorized release of such data in accordance with Education Law §2-d and any implementing regulations. Upon such notification, the educational agency shall take appropriate action in accordance with Education Law §2-d and any implementing regulations.
- b. In the event that the State is required, pursuant to Education Law §2-d(6)(b), to notify one or more parent, eligible student, teacher or principal of an unauthorized release of student data by the Contractor or its assignee, the Contractor shall promptly reimburse the State for the full cost of such notification.
- c. Contractor acknowledges that it may be subject to penalties under Education Law §§2-d(6) and 2-d(7) for unauthorized disclosure of personally identifiable student, teacher or principal data.
- d. Contractor agrees that it will cooperate and promptly comply with any inquiries from the State based upon the State's receipt of a complaint or other information indicating that an improper or unauthorized disclosure of personally identifiable information may have occurred. Contractor will permit on-site examination and inspection, and will provide at its own cost necessary documentation or testimony of any employee, representative or assignee of Contractor relating to the alleged improper disclosure of data.

5. SUBMISSION DOCUMENT ATTACHMENTS

5.1. ADMINISTRATIVE SUBMISSION DOCUMENTS

5.2. TECHNICAL PROPOSAL NARRATIVE

5.3. COST PROPOSAL

5.4. REQUIREMENTS VERIFICATION AND TRACEABILITY MATRIX

5.5. REFERENCE FORMS

6. EXHIBITS

EXHIBIT 1 – INFORMATION PROTECTION AGREEMENT SAMPLE

EXHIBIT 2 – MAINTENANCE AND SUPPORT SERVICES

EXHIBIT 3 – NYSED SECURITY STANDARDS