**STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE**

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| STATE AGENCY (Name & Address):  NYS Education Department  89 Washington Avenue  Room 503W - EB  Albany, NY 12234 | BUSINESS UNIT/DEPT. ID: SED01/3300390  CONTRACT NUMBER: «ContractNumb»  CONTRACT TYPE:  Multi-Year Agreement  Simplified Renewal Agreement  Fixed Term Agreement |
| CONTRACTOR SFS PAYEE NAME:  «LegalVendorName» | TRANSACTION TYPE:  New  Renewal  Amendment |
| CONTRACTOR DOS INCORPORATED NAME:  «LegalVendorName» | PROJECT NAME:  2023-2028 Migrant Education Tutorial and Support Services (METS) Program |
| CONTRACTOR IDENTIFICATION NUMBERS:  NYS Vendor ID Number: «SfsVendorID»  Federal Tax ID Number: «FederalID»  DUNS Number (if applicable): | AGENCY IDENTIFIER:  GC23-004  CFDA NUMBER (Federally Funded Grants Only): |
| CONTRACTOR PRIMARY MAILING ADDRESS:  «Address»  «Address2»  «City», «State» «Zip»  CONTRACTOR PAYMENT ADDRESS:  Check if same as primary mailing address  CONTRACT MAILING ADDRESS:  Check if same as primary mailing address | CONTRACTOR STATUS:  For Profit  Municipality, Code:  Tribal Nation  Individual  Not-for-Profit  Charities Registration Number:  «CharityNumber»  Exemption Status/Code:  Sectarian Entity |

**STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE**

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| CURRENT CONTRACT TERM:  From: September 1, 2023 To August 31, 2028  CURRENT CONTRACT PERIOD  From: September 1, 2023 To August 31, 2028  AMENDED TERM:  From: To:  AMENDED PERIOD  From: To: | CONTRACT FUNDING AMOUNT  (*Multi-year* – enter total projected amount of the contract; *Fixed Term/Simplified Renewal* – enter current period amount):  CURRENT: «Amount»  AMENDED:  FUNDING SOURCE (S)  State  Federal  Other |
| FOR MULTI-YEAR AGREEMENTS ONLY – CONTRACT PERIOD AND FUNDING AMOUNT:  (Out years represent projected funding amounts)   |  |  |  |  |  | | --- | --- | --- | --- | --- | | # | CURRENT PERIOD | CURRENT AMOUNT | AMENDED PERIOD | AMENDED AMOUNT | | 1 | 9/1/2023 – 8/31/2024 |  |  |  | | 2 | 9/1/2024 – 8/31/2025 |  |  |  | | 3 | 9/1/2025 – 8/31/2026 |  |  |  | | 4 | 9/1/2026 – 8/31/2027 |  |  |  | | 5 | 9/1/2027 – 8/31/2028 |  |  |  | |  |  |  |  |  | | |
| ATTACHMENTS PART OF THIS AGREEMENT:  Attachment A:   A-1 Program Specific Terms and Conditions  A-2 Federally Funded Grants  Attachment B:  B-1 Expenditure Based Budget  B-2 Performance Based Budget  B-3 Capital Budget  B-1 (A) Expenditure Based Budget (Amendment)  B-2 (A) Performance Based Budget (Amendment)  B-3 (A) Capital Budget (Amendment)  Attachment C: Work Plan  Attachment D: Payment and Reporting Schedule  Attachment R: Data Privacy Appendix | |

IN WITNESS THEREOF, the parties hereto have executed or approved this Master Contract on the dates below their signatures.

|  |  |
| --- | --- |
| CONTRACTOR:  «LegalVendorName»  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | THE PEOPLE OF THE STATE OF NEW YORK  Betty A. Rosa  Commissioner of Education  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Julia Patane or Aaron Baldwin  Authorized Contract Officers  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

STATE OF NEW YORK

County of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_, \_\_\_\_, before me personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

to me known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, that he/she is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Master Contract.

(Notary)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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| --- | --- |
| ATTORNEY GENERAL’S SIGNATURE  Printed Name  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | STATE COMPTROLLER’S SIGNATURE  Printed Name  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**STATE OF NEW YORK MASTER CONTRACT FOR GRANTS**

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

**WITNESSETH:**

**WHEREAS**, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

**WHEREAS**, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

**NOW THEREFORE**, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

**STANDARD TERMS AND CONDITIONS**

1. **GENERAL PROVISIONS**
   1. **Executory Clause:** In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.
   2. **Required Approvals:** In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds $50,000 (or $85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master 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, and filed with, the AG and OSC.

***Budget Changes*:** An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

* 1. **Order of Precedence:**

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

* + 1. Standard Terms and Conditions
    2. Modifications to the Face Page
    3. Modifications to Attachment A-21, Attachment B, Attachment C and Attachment D
    4. The Face Page
    5. Attachment A-22, Attachment B, Attachment C and Attachment D
    6. Modification to Attachment A-1
    7. Attachment A-1
    8. Other attachments, including, but not limited to, the request for proposal or program application
  1. **Funding:** Funding for the term of the Master Contract shall not exceed the amount specified as “Contract Funding Amount” on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).
  2. **Contract Performance:** The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.
  3. **Modifications:** To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the

1 To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

2 To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

* 1. **Governing Law:** The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.
  2. **Severability:** Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
  3. **Interpretation:** The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.
  4. **Notice:**
     1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
        1. by certified or registered United States mail, return receipt requested;
        2. by facsimile transmission;
        3. by personal delivery;
        4. by expedited delivery service; or
        5. by e-mail.
     2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).
     3. Notices to the Contractor shall be addressed to the Contractor’s designee as designated in Attachment A-1 (Program Specific Terms and Conditions).
     4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.
     5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Master Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.
  5. **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. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.
  6. **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 the Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master 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 OSC.
  7. **Indemnification:** 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 Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.
  8. **Non-Assignment Clause:** In accordance with Section 138 of the State Finance Law, the Master 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 shall be considered to be 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 State Agency and with the concurrence of OSC, where the original contract was subject to OSC’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 the merged 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 the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
  9. **Legal Action:** No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term “litigation” shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the State of New York, the State Agency, or any county, or other local government entity. The term “regulatory action” shall include commencing or threatening to commence a regulatory proceeding or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.
  10. **No Arbitration:** Disputes involving the Master 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.
  11. **Secular Purpose:** Services performed pursuant to the Master Contract 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.
  12. **Partisan Political Activity and Lobbying:** Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.
  13. **Reciprocity and Sanctions Provisions:** The Contractor is hereby notified that if its 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 it offers shall 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 it be denied contracts which it would otherwise obtain.3
  14. **Reporting Fraud and Abuse:** Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.
  15. **Non-Collusive Bidding:** By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor’s behalf.
  16. **Federally Funded Grants and Requirements Mandated by Federal Laws:** All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto. To the extent

3As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

that the Master Contract is funded, in whole or part, with Federal funds or mandated by Federal laws, (i) the provisions of the Master Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable Federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

1. **TERM, TERMINATION AND SUSPENSION**
   1. **Term:** The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.
   2. **Renewal:**
      1. ***General Renewal*:** The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a “Simplified Renewal Contract”). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.
      2. ***Renewal Notice to Not-for-Profit Contractors*:**
         1. Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State’s intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State’s intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State (“Unusual Circumstances”), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law

§179-t, “Unusual Circumstances” shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program,

(iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

* + - 1. Notification to the not-for-profit Contractor of the State’s intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.
  1. **Termination:**
     1. ***Grounds*:**
        1. Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.
        2. Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.
        3. Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor’s expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.
        4. Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.
        5. Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency’s discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor’s responsibility.
        6. Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a “force majeure.” For purposes of the Master Contract, “Force majeure” shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.
     2. ***Notice of Termination*:**
        1. Service of notice: Written notice of termination shall be sent by:
           1. personal messenger service; or
           2. certified mail, return receipt requested and first class mail.
        2. Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:
           1. if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or
           2. if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.
     3. ***Effect of Notice and Termination on State’s Payment Obligations*:**
        1. 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.
        2. The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.
     4. ***Effect of Termination Based on Misuse or Conversion of State or Federal Property*:**

Where the Master Contract is terminated for cause based on Contractor’s failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

* + - 1. the repayment to the State of any monies previously paid to the Contractor; or
      2. the return of any real property or equipment purchased under the terms of the Master Contract; or
      3. an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State’s ability to pursue such other legal or equitable remedies as may be available.

* 1. **Suspension:** The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor’s expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

1. **PAYMENT AND REPORTING**
   1. **Terms and Conditions:**
      1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
      2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.
      3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
      4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
      5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out- of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
      6. Timeliness of advance payments or other claims for reimbursement, 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.
      7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, “Full Execution” shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.
   2. **Advance Payment and Recoupment:**
      1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).
      2. Initial advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page. Subsequent advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the dates specified in Attachment D (Payment and Reporting Schedule).
      3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment

D) will be modified as part of the renewal process.

* + 1. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.
    2. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.
  1. **Claims for Reimbursement:**
     1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

* + 1. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:
       1. Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan). The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.
       2. Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

* + - 1. Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

* + - 1. Milestone/Performance Reimbursement:4 Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor’s satisfactory performance.

* + - 1. Fee for Service Reimbursement:5 Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.
      2. Rate Based Reimbursement:6 Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.
      3. Scheduled Reimbursement:7 The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service

4 A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.

5 Fee for Service is a rate established by the Contractor for a service or services rendered.

6 Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

7 Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

reports shall be used to determine funding levels appropriate to the next annual contract period.

* + - 1. Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).
      2. Fifth Quarter Payments:8 Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.
    1. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
    2. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor’s obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.
    3. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
    4. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.
    5. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.
  1. **Identifying Information and Privacy Notification:**

8 Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

* + 1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, 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 Contractor’s Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor’s Federal employer identification number,

(ii) the Contractor’s Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

* + 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 principle 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. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.
  1. **Refunds:**
     1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).
     2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.
  2. **Outstanding Amounts Owed to the State:** Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.
  3. **Program and Fiscal Reporting Requirements:**
     1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.
     2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:
        1. If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:
           1. *Narrative/Qualitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.
           2. *Statistical/Quantitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)
           3. *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.
           4. *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).
           5. *Consolidated Fiscal Report* (CFR): The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).
        2. If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:
           1. *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor’s progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.
           2. *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.
     3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).
  4. **Notification of Significant Occurrences:**
     1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.
     2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

1. **ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES**
   1. **Contractor as an Independent Contractor/Employees:**
      1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State 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. Notwithstanding the foregoing, the State and the Contractor agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.

* + 1. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.
  1. **Subcontractors:**
     1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, 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 the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.
     2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of $100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of $100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.
     3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.
     4. If requested by the State, when a subcontract equals or exceeds $100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).
     5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.
     6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.
  2. **Use Of Material, Equipment, Or Personnel:**
     1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State’s prior written permission.
     2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.
  3. **Property:**
     1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of $1,000 or more per unit.
        1. If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.
        2. If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor’s cost and expense upon the expiration of the Master Contract.
        3. In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.
        4. The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.
        5. A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.
        6. The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.
        7. No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.
     2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:
        1. For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.
        2. For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.
     3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).
     4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.
     5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.
  4. **Records and Audits:**
     1. ***General*:**
        1. The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).
        2. The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and

1. the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry

(e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

* 1. personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.
  2. payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.
  3. non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.
  4. receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.
     + 1. The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), 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.
       2. The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law 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 Section 87 of the Public Officers Law, is reasonable.
       3. Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State’s rights in connection with discovery in any pending or future litigation.
     1. ***Cost Allocation*:**
        1. For non-performance-based contracts, the proper allocation of the Contractor’s costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A- 87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.
        2. For performance-based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.
     2. ***Federal Funds*:** For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).
  5. **Confidentiality:** The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must 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).
  6. **Publicity:**
     1. Publicity includes but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State’s name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.
     2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:
        1. Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and
        2. State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.
     3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor’s performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.
  7. **Web-Based Applications-Accessibility:** Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08- 005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.
  8. **Non-Discrimination Requirements:** Pursuant to 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 and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. 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 the Master Contract shall be performed within the State of New York, the 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 the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the 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 the Master Contract. The Contractor shall be subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.
  9. **Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises:** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting State 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 State Agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting State 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 Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women- owned business enterprises and (ii) the following provisions shall apply and it is Contractor’s equal employment opportunity policy that:

* + 1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;
    2. The Contractor 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;
    3. The Contractor shall 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, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
    4. At the request of the State, 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 shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor’s obligations herein; and
    5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of subclauses 1 – 5 of this Section (IV)(J), in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State 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 State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall 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.

* 1. **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.

* + 1. If the total dollar amount of the Master Contract is greater than $1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:
       1. The Contractor has made reasonable efforts to encourage the participation of 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;
       2. The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92- 261), as amended;
       3. The Contractor agrees to make reasonable efforts to provide notification to 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
       4. The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of the Master Contract and agrees to cooperate with the State in these efforts.
  1. **Workers' Compensation Benefits:**
     1. In accordance with Section 142 of the State Finance Law, the Master Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Master Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
     2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.
  2. **Unemployment Insurance Compliance:** The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor’s compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

* + 1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;
    2. any debts owed for UI contributions, interest, and/or penalties;
    3. the history and results of any audit or investigation; and
    4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

* 1. **Vendor Responsibility:**
     1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.
     2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.
     3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor’s business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.
     4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:
        1. to require updates or clarifications to the Questionnaire upon written request;
        2. to inquire about information included in or required information omitted from the Questionnaire;
        3. to require the Contractor to provide such information to the State within a reasonable timeframe; and
        4. to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
        5. to require the Contractor 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. By signing the Master Contract, the Contractor agrees

to comply with any such additional conditions that have been made a part of the Master Contract.

* + 1. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall 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 State issues a written notice authorizing a resumption of performance under the Master Contract.
    2. The State, in its sole discretion, reserves the right to make a final Determination of Non- Responsibility at any time during the term of the Master Contract based on:
       1. any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or
       2. the State’s discovery of any material information which pertains to the Contractor‘s responsibility.
    3. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non- responsibility. The State shall detail the reason(s) for the preliminary determination and shall provide the Contractor with an opportunity to be heard.
  1. **Charities Registration:** If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.
  2. **Consultant Disclosure Law:9** 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.
  3. **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

9 Not applicable to not-for-profit entities.

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 condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

ATTACHMENT A-1-A

AGENCY SPECIFIC TERMS AND CONDITIONS FOR

NEW YORK STATE EDUCATION DEPARTMENT GRANT CONTRACTS

# General

1. In the event that the 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.
2. This agreement is subject to applicable Federal and State Laws and regulations and the policies and procedures stipulated in the NYS Education Department Fiscal Guidelines found at http:/www.nysed.gov/cafe/.
3. 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.
4. Funds provided by this contract may not be used to pay any expenses of the State Education Department or any of its employees.

Safeguards for Services and Confidentiality

1. Notwithstanding Standard Terms and Conditions IV (G) (3), 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. 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.

D. No fees shall be charged by the Contractor for training provided under this agreement.

E. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.

F. All inquiries and requests regarding this agreement shall be directed to the Program Contact or Fiscal Contact shown on the Grant Award included as part of this agreement.

G. 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.

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

ATTACHMENT B-1 EXPENDITURE BASED BUDGET

**The University of the State of New York PROPOSED BUDGET FOR A**

**THE STATE EDUCATION DEPARTMENT FEDERAL OR STATE PROJECT**

***(see instructions for mailing address)* FS-10 (03/10)**

**Local Agency Information**

Funding Source: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Report Prepared By: |  | | | | |
| Agency Name: |  | | | | |
| Mailing Address: |  | | | | |
|  | Street | | | | |
|  |  |  |  |  |  |
|  | City |  | State |  | Zip Code |

Telephone #: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-Mail Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Project Operation Dates: \_\_\_\_\_\_\_/\_\_\_\_\_\_/\_\_\_\_\_\_\_ \_\_\_\_\_\_/\_\_\_\_\_\_/\_\_\_\_\_\_ Start End

**INSTRUCTIONS**

* **Submit the original budget and the required number of copies along with the completed application directly to the appropriate State Education Department office as indicated in the application instructions for the grant program for which you are applying.** DO NOT submit this form to the Grants Finance.
* Enter whole dollar amounts only.
* Prior approval by means of an approved budget (FS-10) or budget amendment (FS-10-A) is required for:
* Personnel positions, number and type
* Beginning with the 2005-06 budgets, equipment items having a unit value of $5,000 or more, number and type
* Budgets for 2004-05 and earlier years equipment items having a unit value of $1,000 or more, number and type
* Minor remodeling
* Any increase in a budget subtotal (professional salaries, purchased services, travel, etc.) by more than 10 percent or $1,000, whichever is greater
* Any increase in the total budget amount.
* Certification on page 8 must be signed by Chief Administrative Officer or designee.
* High quality computer generated reproductions of this form may be used.
* For changes in agency or payee address contact the State Education Department office indicated on the application instructions for the grant program for which you are applying.
* For further information on budgeting, please refer to the Fiscal Guidelines for Federal and State Aided Grants which may be accessed at www.oms.nysed.gov/cafe/ or call Grants Finance at (518) 474-4815.

**SALARIES FOR PROFESSIONAL STAFF: Code 15**

Include only staff that are employees of the agency. Do not include consultants or per diem staff. Do not include central administrative staff that are considered to be indirect costs, e.g., business office staff. One full-time equivalent (FTE) equals one person working an entire week each week of the project. Express partial FTE's in decimals, e.g., a teacher working one day per week equals .2 FTE.

|  |  |  |  |
| --- | --- | --- | --- |
| **Specific Position Title** | **Full-Time**  **Equivalent** | **Annualized Rate**  **of Pay** | **Project**  **Salary** |
|  |  |  |  |
|  |  | Subtotal - Code 15 |  |

**SALARIES FOR SUPPORT STAFF: Code 16**

Include salaries for teacher aides, secretarial and clerical assistance, and for personnel in pupil transportation and building operation and maintenance. Do not include central administrative staff that are considered to be indirect costs, e.g., account clerks.

|  |  |  |  |
| --- | --- | --- | --- |
| **Specific Position Title** | **Full-Time**  **Equivalent** | **Annualized Rate**  **of Pay** | **Project**  **Salary** |
|  |  |  |  |
|  |  | Subtotal - Code 16 |  |

**PURCHASED SERVICES: Code 40**

Include consultants (indicate per diem rate), rentals, tuition, and other contractual services. Copies of contracts may be requested by the State Education Department. Purchased Services from a BOCES, if other than applicant agency, should be budgeted under Purchased Services with BOCES, Code 49.

|  |  |  |  |
| --- | --- | --- | --- |
| **Description of Item** | **Provider of**  **Services** | **Calculation**  **of Cost** | **Proposed**  **Expenditure** |
|  |  |  |  |
|  |  | Subtotal - Code 40 |  |

**SUPPLIES AND MATERIALS: Code 45**

Beginning with the 2005-06 year include computer software, library books and equipment items under $5,000 per unit. For earlier years include computer software, library books and equipment items under 1,000 per unit.

|  |  |  |  |
| --- | --- | --- | --- |
| **Description of Item** | **Quantity** | **Unit Cost** | **Proposed**  **Expenditure** |
|  |  |  |  |
|  |  | Subtotal - Code 45 |  |

**TRAVEL EXPENSES: Code 46**

Include pupil transportation, conference costs and travel of staff between instructional sites. Specify agency approved mileage rate for travel by personal car or school-owned vehicle.

|  |  |  |  |
| --- | --- | --- | --- |
| **Position of Traveler** | **Destination**  **and Purpose** | **Calculation**  **of Cost** | **Proposed**  **Expenditures** |
|  |  |  |  |
|  |  | Subtotal - Code 46 |  |

**EMPLOYEE BENEFITS: Code 80**

Rates used for project personnel must be the same as those used for other agency personnel.

|  |  |  |
| --- | --- | --- |
| **Benefit** | | **Proposed Expenditure** |
| **Social Security** | |  |
| **Retirement** | **New York State Teachers** |  |
| **New York State Employees** |  |
| **Other** |  |
| **Health Insurance** | |  |
| **Worker's Compensation** | |  |
| **Unemployment Insurance** | |  |
| **Other (Identify)** | |  |
|  | |  |
|  | |  |
|  | |  |
| Subtotal – Code 80 | |  |

**INDIRECT COST: Code 90**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| A. Modified Direct Cost Base – Sum of all preceding subtotals (codes 15, 16, 40, 45, 46, and 80 and excludes the portion of each subcontract exceeding $25,000 and any flow through funds) | $ |  | | (A) |
| B. Approved Restricted Indirect Cost Rate |  | | % | (B) |
| C. (A) x (B) = Total Indirect Cost Subtotal – Code 90 | $ |  | | (C) |

**PURCHASED SERVICES WITH BOCES: Code 49**

|  |  |  |  |
| --- | --- | --- | --- |
| **Description of Services** | **Name of BOCES** | **Calculation**  **of Cost** | **Proposed**  **Expenditure** |
|  |  |  |  |
|  |  | Subtotal – Code 49 |  |

**MINOR REMODELING: Code 30**

Allowable costs include salaries, associated employee benefits, purchased services, and supplies and materials related to alterations to existing sites.

|  |  |  |
| --- | --- | --- |
| **Description of Work**  **To be Performed** | **Calculation of**  **Cost** | **Proposed**  **Expenditure** |
|  |  |  |
|  | Subtotal – Code 30 |  |

**EQUIPMENT: Code 20**

Beginning with the 2005-06 year all equipment to be purchased in support of this project with a unit cost of $5,000 or more should be itemized in this category. Equipment items under $5,000 should be budgeted under Supplies and Materials, Code 45. Repairs of equipment should be budgeted under Purchased Services, Code 40.

For earlier years the threshold for reporting equipment purchases was $1,000 or more. Equipment items under $1,000 should be budgeted under Supplies and Materials.

|  |  |  |  |
| --- | --- | --- | --- |
| **Description of Item** | **Quantity** | **Unit Cost** | **Proposed**  **Expenditure** |
|  |  |  |  |
|  |  | Subtotal – Code 20 |  |

**BUDGET SUMMARY**

|  |  |  |
| --- | --- | --- |
| **SUBTOTAL** | **CODE** | **PROJECT COSTS** |
| Professional Salaries | 15 |  |
| Support Staff Salaries | 16 |  |
| Purchased Services | 40 |  |
| Supplies and Materials | 45 |  |
| Travel Expenses | 46 |  |
| Employee Benefits | 80 |  |
| Indirect Cost | 90 |  |
| BOCES Services | 49 |  |
| Minor Remodeling | 30 |  |
| Equipment | 20 |  |
| Grand Total | |  |

**CHIEF ADMINISTRATOR'S CERTIFICATION**

*I hereby certify that the requested budget amounts are necessary for the implementation of this project and that this agency is in compliance with applicable Federal and State laws and regulations.*

\_\_\_\_/\_\_\_\_ /\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date Signature**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Name and Title of Chief Administrative Officer**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Agency**  **Code:** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Project #:**  **(If pre-assigned)** |  |  |  |  |  |  |  |  |  |  |  |  |

ATTACHMENT C

WORK PLAN

### Purpose

As per Section 1301 [20 U.S.C. 6391] of Title I, Part C of the *Elementary and Secondary Education Act* (ESEA) of 1965, as amended by the *Every Student Succeeds Act* (ESSA) of 2015, the purposes of this grant contract are to support the New York State Education Department (NYSED) in the implementation of the Migrant Education Program (MEP) under Title I, Part C – Education of Migratory Children under the *Elementary and Secondary Education Act* (ESEA) of 1965, as amended by the *Every Student Succeeds Act* (ESSA) of 2015. The purposes of the grant contract, based on the requirements of Section 1301 of the ESEA, are to:

1. Support the New York State Migrant Education Program (NYS-MEP) in developing and implementing high-quality and comprehensive educational programs and supportive services during the school year and summer months or intersession periods, based on the approved ESSA Consolidated State Plan, the State Service Delivery Plan (SDP) and Theory of Action (ToA), and that address the complex and unique educational needs of migratory children and youth;
2. Ensure that migratory children and youth who move among the States are not penalized in any manner by disparities among the States in curriculum, graduation requirements, and challenging State academic standards;
3. Ensure that migratory children receive full and appropriate opportunities to meet the same challenging State academic standards that all children are expected to meet;
4. Help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit the ability of such children to succeed in school; and
5. Help migratory children benefit from State and local systemic reforms.

**Child Eligibility**

A child is eligible for the MEP, and thereby eligible to receive MEP educational programs and support services, if the child:

1. Meets the definition of “migratory child” in section 1309(3) of the ESEA, and is an “eligible child” as the term is used in section 1115(c)(1)(A) of the ESEA and 34 C.F.R. § 200.103; and
2. Has the basis for the State’s determination that the child is a “migratory child” properly recorded on the national Certificate of Eligibility (COE).

**Migratory Child**

According to sections 1115(c)(1)(A), a child is a “migratory child” if the following conditions are met:

1. The child is not older than 21 years of age; and
2. The child is entitled to a free public education (through grade 12) under State law, or
3. The child is not yet at a grade level at which the LEA provides a free public education, and
4. The child made a qualifying move in the preceding 36 months as a migratory agricultural worker or a migratory fisher, or did so with, or to join a parent/guardian or spouse who is a migratory agricultural worker or a migratory fisher; and
5. With regard to the qualifying move identified in paragraph 3, above, the child moved due to economic necessity from one residence to another residence, and—
6. From one school district to another; or
7. In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or
8. Resides in a school district of more than 15,000 square miles and migrates a distance of 20 miles or more to a temporary residence.

**Qualifying Move**

For purposes of migrant eligibility, under Section 1309(5) of the ESEA, a qualifying move is:

1. made due to economic necessity; and
2. from one residence to another residence; and
3. from one school district to another school district.

A “residence” is a place where one lives and not just visits, for the purpose of the Migrant Education Program (MEP), and that migratory children cannot afford to stay in their current location(s) and make qualifying move(s) due to economic necessity. The MEP is premised on the understanding that migratory children have unique needs in view of their mobility and generally are in low-income families

### Project Period

The grant contract period will be for five (5) years, from September 1, 2023 to August 31, 2028.

The five-year contract period is subject to:

* the availability of funds and level of funding from the U.S. Department of Education (ED) for the period;
* successful program delivery and implementation by the individual METS program centers in the previous year, based on the requirements of the approved ESSA Consolidated State Plan, the State Service Delivery Plan (SDP) and Theory of Action (ToA); and
* the mutual agreement of the New York State Education Department (NYSED or “the Department”) and the individual METS program centers.

The approved ESSA Consolidated State Plan can be viewed at: <http://www.nysed.gov/essa/nys-essa-plan>. The NYS-MEP Service Delivery Plan (SDP) and Theory of Action (ToA) can be viewed at: <https://www.nysmigrant.org/about>.

### Project Funding

Estimated funds totaling approximately seven (7) million dollars will be available statewide each year of the five-year grant contract period, 2023-2028, subject to the availability of funds and level of funding from the U.S. Department of Education (ED) and successful program delivery and implementation by the individual METS program centers in the previous year.

The annual allocation for each METS program center will be based on two factors:

1. The annual award amount that the New York State Education Department (NYSED or “the Department”) receives from U.S. Department of Education (ED) under Title I, Part C – Education of Migratory Children Program; and
2. The State-approved migrant funding formula.

One award will be made for each METS region (i.e., program, center). An applicant must serve a METS region in its entirety without exceptions.

### Description of Program

To carry out the purpose of this part, the New York State Education Department (NYSED or “the Department) seeks to establish eight (8) regional Migrant Education Tutorial and Support Services (METS) program centers across the State. These METS program centers, in consultation and coordination with the State Education Department (SED), work in partnerships with parents, schools, colleges and universities, community-based organizations, and other relevant stakeholder groups to support the identification and recruitment of migrant-eligible children and youth, agricultural workers, fishers, and their families, and to provide them with needs- and data-driven, evidence-based educational programs and support services. These programs and services include, but are not limited to, strategic tutoring and academic support; strengthening family-school-community partnerships; facilitating social-emotional well-being and fostering positive identity development; encouraging parent and family engagement; and increasing students’ access to educational opportunities through advocacy to self-advocacy and identity development, and other supportive services. The goal is to ensure that all migrant children will graduate from high school ready for college, careers, and life, prepared to pursue the future of their choosing.

### Allowable Expenditures

The METS program centers may use grant funds for activities, programs, and services relating to migrant children and youth as well as their families to the extent that:

* specific use of such funds is consistent with the purpose of Title I, Part C and meets federal guidelines for “reasonable and necessary costs” as outlined in the Office of Management and Budget's (OMB) [Uniform Guidance for Grants](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1); and
* specific use of such funds is consistent with the service delivery requirements as outlined in the approved ESSA Consolidated State Plan, the State Service Delivery Plan (SDP) and the Theory of Action (ToA) for the New York State Migrant Education Program (NYS-MEP).

**Required Activities that Target the Needs of Migratory Children and Families**

1. Increase the academic achievement of migrant children by providing needs- and data-driven, evidence-based and effective (best practices) supplemental subject content and language instruction educational programs, demonstrating the effectiveness of the programs in increasing migrant student performance towards meeting State Performance Targets (SPTs) and Measurable Program Outcomes (MPOs) in terms of English proficiency for out-of-school youth (OSY); student academic achievement in the core academic subjects, especially English Language Arts (ELA) and Mathematics for in-school children; and graduation rates for in-school adolescents.
2. Provide high-quality and effective professional development opportunities to migrant educators and data specialists at each METS program centers that are designed to:

* improve the instruction and assessment of migrant children and youth;
* coordinate and provide support services as needed;
* promote parent and family engagement; and
* enhance the ability of migrant educators and data specialists to understand and use data for effective data-driven decision-making.

The METS is required to demonstrate the effectiveness of the professional development in increasing the students’ academic achievement and/or English proficiency or substantially increasing the subject matter knowledge and teaching skills of the migrant educators. The professional development shall be sustained (not stand-alone, one-day, or short-term workshops), intensive, collaborative, job-embedded, data-driven, and student- and family-focused, and of sufficient intensity and duration to have a positive and lasting impact on the migrant educators’ performance and the achievement of migrant children and youth.

1. Provide mentoring, and academic and/or career counseling; develop programs and services to strengthen family-school-community partnerships; encourage parent and family engagement; facilitate social-emotional well-being; foster positive identity development; coordinate and provide support services and referrals as needed; and increase students’ access to educational opportunities through promoting advocacy to self-advocacy and identity development.
2. Conduct parent and family engagement in order to build the capacity of parents and guardians to be active participants in their children’s education; provide opportunities for identity development and community building; develop skills and confidence to advocate for their children in schools and the community; and provide training on topics in response to their questions and concerns.
3. Conduct both local and statewide Parent Advisory Council (PAC) meetings, where parents and guardians are consulted on the planning, operation, and evaluation of the initiatives, programs, and services of the migrant education program.
4. Collaborate and coordinate activities with community-based organizations and other entities including, but are not limited to, preschool programs, dental and health services, farm and labor organizations, social services, and legal services, in order to support the education of migrant children and youth and the needs of their families.

**Required Uses**

Please note that the staffing positions, as described below, are required for the implementation of the METS program centers and that these positions must be retained throughout the contract term.

Funds must be used to support the recruitment, hiring, retention, and training of effective (1) METS Program Director; (2) Data Specialist; (3) Administrative Assistant/Support Staff; and (4) Migrant Educators.

* **METS Program Director** – 0.50-1.0 FTE – Ensures programs and services meet organization goals and requirements. Develops work plan and implements processes and policies, directs staff, and works with different stakeholders to define, prioritize, and develop projects and programs. Requires a baccalaureate degree; a master’s degree preferred. In lieu of an academic degree, six or more years of relevant experience in the migrant education program with demonstrated success or excellence may suffice. Experience with program management, as well as implementation of instructional programs and supportive services required.
* **Data Specialist** – 0.50-1.0 FTE – Enters data into and extracts data from statewide MIS2000 and MSIX student data management systems; prepares reports for use by program director and migrant educators; and analyzes data and generates reports that provide formative and summative information useful in evaluating and improving programs and services. Experience with MIS2000 student information system and the Migrant Student Information Exchange Initiative (MSIX) national records transfer system, as well as experience working with schools and school districts as it relates to migrant student data preferred. Demonstrated successful experience as a data specialist may be substituted for formal academic qualifications.
* **Administrative Assistant/Support Staff** – 0.50-1.0 FTE – Performs different administrative and clerical tasks as assigned. These include providing support to the program director, data specialists and migrant educators; assisting in daily office needs and managing the METS’s general administrative activities; and serving as a liaison with central office where the METS is housed. The ideal administrative assistant/support staff member should have excellent oral and written communication skills and be able to organize their work using tools like MS Word, Excel, and PowerPoint, and operate different office equipment.
* **Migrant Educators** – 0.20-1.0 FTE and Per Diem Employment – Implement instructional programs and provide supportive services to migrant-eligible preschool children, in-school children, in-school adolescents, and out-of-school youth (OSY), ages 3-21, and their families under the supervision of the METS Program Director. The essential duties include, but are not limited to:
  + Support the identification and recruitment of migrant-eligible children and youth;
  + Provide 1:1 as well as group tutoring in English Language Arts (ELA), Mathematics, and core content subjects, academic advising, and academic success support functions to ensure ongoing academic progress of migrant children and youth;
  + Work closely with migrant children, their families, and school-related personnel (e.g., classroom teachers, guidance counselors, school nurses, principals, etc.) to identify all academic options including, but not limited to, postsecondary studies, extracurricular activities, mentorship, research opportunities, and internships; support and counsel students in selection of option(s) best suited to student’s goals, interests, and skills through different tools including the Migrant Personal Learning Plan (PLP) and Graduation Plan (GP);
  + Monitor and assess student academic progress and social-emotional needs through a variety of reporting tools including MIS2000, MSIX, observations, assessment data, consultations with teachers and related staff, etc., and work collaboratively with students, parents, teachers and others to ensure migrant students’ academic success through meaningful data inquiry cycles;
  + Coordinate and provide guidance and advice, including referrals as needed, to migrant children and youth; ensure access to opportunities for developing their personal leadership capacity, support their growth in being able to advocate for themselves and to have a positive self-identity; and to promote their health, social and emotional well-being;
  + Develop cohesive, developmentally-appropriate, and differentiated curricular materials and strategies that are aligned to New York State’s framework for [Social Emotional Learning: Essential for Learning, Essential for Life](https://www.p12.nysed.gov/sss/documents/SELEssentialforLearningandLife.pdf); New York State’s [Social Emotional Learning Benchmarks](https://www.p12.nysed.gov/sss/selbenchmarks.html); New York State’s [Culturally Responsive-Sustaining Education Framework](http://www.nysed.gov/common/nysed/files/programs/crs/culturally-responsive-sustaining-education-framework.pdf), and New York State’s Learning Standards in [English Language Arts](http://www.nysed.gov/curriculum-instruction/new-york-state-next-generation-english-language-arts-learning-standards) (ELA) and [Mathematics](http://www.nysed.gov/curriculum-instruction/new-york-state-next-generation-mathematics-learning-standards) (at a minimum) so that migratory students and youth experience connectedness to school and community and to become better learners;
  + Implement instructional and supportive processes, procedures, policies, and practices that improve students’ ability to develop self-awareness and self-management; use social and interpersonal skills to establish and maintain positive relationships; develop positive identity development; and to be able to self-advocate for themselves, their families, and communities;
  + Coordinate meetings and ensure that schools provide interpretation for effective communication between parents and school staff using strategies like Authentic Voices for effective two-way bilingual communications;
  + Maintain student files and records on MIS2000 and MSIX, as required;
  + Collaborate and coordinate identification and recruitment activities with recruiters; and
  + Work collaboratively with all stakeholders, including migrant children and youth, their parents, teachers and other school staff, community-based organizations, etc. to facilitate comprehensive and holistic student support.

The responsibilities of these migrant educators and their positions represent required tasks associated with grant deliverables based on the requirements of the approved ESSA Consolidated State Plan, the State Service Delivery Plan (SDP), the Theory of Action (ToA), as well as (emerging) data and needs of migrant children and youth, and their families, as outlined in this Announcement for Funding Opportunity, and are not representative of specified FTEs. The total FTEs will vary based on the number of migrant eligible children and families identified and served, as well as an analysis of their needs. Experience working with migrant-eligible children and youth, their families, as well as classroom teachers, principals, guidance counselors, school nurses, community- and faith-based organizations and other relevant stakeholder groups to support the needs of migrant children and youth and their families preferred. Demonstrated successful experience serving underserved and underrepresented student populations, including migratory children and their families, may be substituted for formal academic qualifications.

Cont’d: **Allowable Uses**

* Strategic tutoring, mentoring, and academic and/or career counseling for migratory children and youth.
* Update migrant program objectives and effective instruction strategies based on emerging needs and data analysis.
* Identify, plan and develop, and/or acquire curricular materials, educational software, and technologies to be used in the program.
* Improve instruction, including the provision of appropriate educational technology.
* Supplemental instructional programs and support services, including the payment of costs associated with the provision of additional materials and supplies, as well as transportation, where necessary and reasonable.
* Other supplemental instructional programs and services that are designed to assist migratory children and their families to achieve in schools, such as programs on the educational system in the United States; general education, graduation pathways, and diploma requirements in New York State; civics education; college admission and costs; social and emotional needs; etc.
* Family literacy resources, parent and family outreach, training activities, and local and statewide Parent Advisory Council (PAC) meetings designed to assist parents and families to become active participants in the education of their children.
* Training for parents, teachers, and migrant educators on the effective use of Community Interpreters.
* Activities, in collaboration and coordination with community-based organizations, institutions of higher education, and other entities with expertise in working with migrant children, and to refer parents and families of migrant children and youth to different community services.
* Parent, family, and community engagement through community participation programs, parent outreach, and training activities for migrant parents and families.
* Effective professional development opportunities that:
* are designed to improve the instruction and assessment of migrant children and youth;
* enhance the ability of classroom teachers and principals to understand and implement curricula, assessment measures and practices, and instructional strategies for migratory children and youth;
* are effective in increasing the English language development, acquisition, and proficiency and/or substantially increasing the subject matter knowledge and teaching skills of migrant educators; and
* are of sufficient intensity and duration to have a positive and lasting impact on instruction.
* Opportunities for [credit accruals](http://www.nysed.gov/curriculum-instruction/earning-credit), test preparation courses, [high school equivalency diploma (HSE) programs or other courses](http://www.acces.nysed.gov/hse/high-school-equivalency-hse) that help adolescent migrant students and out-of-school youth achieve success and to earn a high school diploma or its equivalent (i.e., high school equivalency diploma) from [the HSE Exam Pathway, the 24 College Credits Pathway, the National External Diploma Program (NEDP) Pathway, or the Regents/HSE Exam Pathway](http://www.acces.nysed.gov/hse/high-school-equivalency-hse).
* Consultant costs should be itemized, reasonable, and aligned to the requirements of the Migrant Education Program’s (MEP) State Service Delivery Plan (SDP) and Theory of Action (ToA).
* Collaborate/coordinate with the Statewide Identification & Recruitment/MIS2000/MSIX-Technical Assistance and Support Center (ID&R) program center, all METS personnel (Program Directors, Data Specialists, and Migrant Educators) will enter migrant student data in the web snap system.

Compliance with the Office of Management and Budget’s (OMB) final uniform administrative requirements, cost principles, and audit requirements for federal grants. This “Supercircular” or “Omnicircular” (December 26, 2013) sets standard requirements for financial management of federal awards and supersedes requirements from OMB Circulars A-21, A-110, and other related directives. See the [Code of Federal Regulations website](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1) for more information.

### Entities’ Responsibility

Projects must operate under the jurisdiction of the local board of education, or other appropriate governing body, and are subject to at least the same degree of accountability as all other expenditures of the local agency. The local board of education, or other appropriate governing body, is responsible for the proper disbursement of, and accounting for, project funds. Written agency policy concerning wages, mileage and travel allowances, overtime compensation, or fringe benefits, as well as State rules pertaining to competitive bidding, safety regulations and inventory control must be followed. Supporting or source documents are required for all grant-related transactions entered into the local agency’s recordkeeping systems. Source documents that authorize the disbursement of grant funds consist of purchase orders, contracts, time and effort records, delivery receipts, vendor invoices, travel documentation and payment documents.

Supporting documentation for grants and grant contracts must be kept for at least six years after the last payment was made unless otherwise specified by program requirements. Additionally, audit or litigation will “freeze the clock” for records retention purposes until the issue is resolved. All records and documentation must be available for inspection by State Education Department officials or their representatives.

For additional information about grants, please refer to the [Fiscal Guidelines for Federal and State Aided Grants](http://www.oms.nysed.gov/cafe/guidance/guidelines.html).

### Reporting

Grantees must submit an annual performance report (APR) and final expenditure summary report at the end of each grant period but no later than the last Friday in Novemberof each year of the grant. The performance report should demonstrate that substantial progress has been made towards meeting the project goals and the program performance indicators.  The State Education Department (SED) will make additional information about the annual performance report available to grantees after contract grant awards are issued. Grantees who do not demonstrate adequate performance may be discontinued.

### Monitoring

Under federal and State law, the State Education Department (SED) is required to monitor the METS program centers on a regular basis to ensure compliance with all applicable federal and State Migrant Education Program (MEP) requirements and policies.

SED will conduct on-site comprehensive compliance monitoring and technical assistance visits, virtual or remote targeted monitoring, desk review, or self-assessment on a two- to three-year cycle during which METS program centers are monitored for compliance. As a result of these compliance monitoring and technical assistance activities, the Department will issue a compliance monitoring report within 30 days of completion of the monitoring visit or desk review and to provide technical assistance and support, as appropriate. The Department will also implement an independent self-assessment protocol to promote use of best practices and to proactively detect and correct non-compliance by each METS program center.

In the instance where compliance findings are identified, a corrective action plan is requested detailing resolution of compliance items cited and program improvements needed. SED will provide technical assistance and support, as appropriate. The corrective action plan must be submitted to SED within 30 days of receipt of the monitoring report.

### Accessibility of Web-Based Information and Applications

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

### Requirements of Education Law Section 2-d

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

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

**<Applicant Narrative will be incorporated into the contract Attachment C, Part 2.>**

**ATTACHMENT D**

**PAYMENT AND REPORTING SCHEDULE**

**I. PAYMENT PROVISIONS**

In full consideration of contract services to be performed the State Agency agrees to pay and the contractor agrees to accept a sum not to exceed the amount noted on the face page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

**A. Initial Payment and Recoupment Language (if applicable): Not applicable for For-Profits.**

1. The State agency will make an initial payment to the Contractor in the amount of twenty percent (20%) of the annual budget as set forth in the most recently approved applicable Attachment B form (Budget). This payment will be made no later than 90 days after the beginning of the budget period.

2. Recoupment of any initial payment shall be recovered by crediting (100%) of subsequent claims and such claims will be reduced until the initial payment is fully recovered within the contract period.

3. Scheduled interim payments shall be due in accordance with an approved payment schedule as follows:

Period: \_\_\_\_\_\_\_\_ Amount: \_\_\_\_\_\_\_\_\_\_\_ Due Date: \_\_\_\_\_\_\_\_\_

Period: \_\_\_\_\_\_\_\_ Amount: \_\_\_\_\_\_\_\_\_\_\_ Due Date: \_\_\_\_\_\_\_\_\_

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Period: \_\_\_\_\_\_\_\_ Amount: \_\_\_\_\_\_\_\_\_\_\_ Due Date: \_\_\_\_\_\_\_\_\_

**B. Interim and/or Final Claims for Reimbursement**

Claiming Schedule (select applicable frequency):

Quarterly Reimbursement

Due date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Monthly Reimbursement

Due date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Biannual Reimbursement

Due date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fee for Service Reimbursement

Due date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Rate Based Reimbursement

Due date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Milestone/Performance Reimbursement

Due date/Frequency \_\_\_\_\_\_\_\_\_\_\_

Scheduled Reimbursement

Due date/Frequency \_\_\_\_\_\_\_\_\_\_\_\_

Interim Reimbursement as Requested by Contractor \_\_\_\_\_\_\_\_\_\_\_\_

To receive interim payments, the Contractor will submit form FS-25 REQUEST FOR FUNDS FOR A FEDERAL OR STATE PROJECT to the address shown below. Requests for interim payments made by Not-for-Profit Contractors may only represent actual expenditures plus anticipated expenditures during the next month in accordance with the FS-10 for the budget period. For-Profit Contractors may request interim payments that represent only actual expenditures.

Up to 90% of the total approved budget amount for each budget period will be reimbursed through the interim payment process.

Final Payment:

To receive final payment for a budget period, the Contractor will submit form FS 10-F **FINAL EXPENDITURES FOR A FEDERAL OR STATE PROJECT** to the address shown below. Final payment shall be made upon satisfactory statement of expenditures consistent with the approved budget and any approved budget amendments on a properly completed form. Final payments are also contingent upon submission of all required program reports.

If the Contractor has received payment in excess of the approved amount in Form FS-10-F, the Contractor shall return to the State any excess payment within thirty (30) days of the termination of this budget period. Alternatively, the State may use the amount of any excess payment to offset costs associated with a subsequent budget period. Payment by the State will be made in the ordinary course of State business upon receipt of the properly completed forms.

Forms FS-25 and FS-10-F should be submitted to:

New York State Education Department

Grants Finance

Room 510W EB

89 Washington Avenue

Albany, New York 12234

**II. REPORTING PROVISIONS**

**A. Expenditure-Based Reports** *(select the applicable report type):*

Narrative/Qualitative Report

The Contractor will submit, on a quarterly basis, not later than \_\_\_\_\_ days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of the Master Contract

Statistical/Quantitative Report

The Contractor will submit, on a quarterly basis, not later than \_\_\_\_ days from the end of the quarter, the report described in Section III (G)(2)(a)(ii) of the Master Contract.

Expenditure Report

The Contractor will submit, on a quarterly basis, not later than \_\_\_\_ days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.

Final Report

The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than 90 days after the end of the contract period.

Consolidated Fiscal Report (CFR)[[1]](#footnote-1)

The Contractor will submit the CFR on an annual basis, in accordance with the time frames designated in the CFR manual. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

**B. Progress-Based Reports**

1. Progress Reports

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the format provided by the State Agency, summarizing the work performed during the contract period (see Table 1 below for the annual schedule).

2. Final Progress Report

Final scheduled payment will not be due until \_\_\_\_ days after completion of agency’s audit of the final expenditures report/documentation showing total grant expenses submitted by vendor with its final invoice. Deadline for submission of the final report is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The agency shall complete its audit and notify vendor of the results no later than \_\_\_\_\_\_\_\_\_\_. The Contractor shall submit the report not later than \_\_\_\_days from the end of the contract.

**C. Other Reports**

The Contractor shall provide reports in accordance with the form, content and schedule as set forth in Table 1.

Contract Number: #\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Page 3 of 4, Attachment D – Payment and Reporting Schedule

**TABLE I – REPORTING SCHEDULE**

|  |  |  |
| --- | --- | --- |
| **PROGRESS REPORT #** | **PERIOD COVERED** | **DUE DATE** |
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**Attachment R**

**NEW YORK STATE EDUCATION DEPARTMENT’S**

**DATA PRIVACY APPENDIX**

**ARTICLE I: DEFINITIONS**

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

1. **Access:** The ability to view or otherwise obtain, but not copy or save, Student Data and/or APPR Data arising from the on-site use of an information system or from a personal meeting.
2. **APPR Data**: Personally Identifiable Information from the records of an Educational Agency relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of Education Law §§ 3012-c and 3012-d.
3. **Breach:** The unauthorized Access, acquisition, Disclosure or use of Student Data or APPR Data that is (a) accomplished in a manner not permitted by New York State and federal laws, rules, and regulations, or in a manner that compromises its security or privacy, (b) executed by or provided to a person not authorized to acquire, access, use, or receive it, or (c) a Breach of Contractor’s or Subcontractor’s security that leads to the accidental or unlawful alteration, destruction, loss of, Access to or Disclosure of Student Data or APPR Data.
4. **Commercial or Marketing Purpose:**  The Disclosure, sale, or use of Student Data for the purpose of directly or indirectly receiving remuneration, including the Disclosure, sale, or use of Student Data for advertising purposes, or the Disclosure, sale, or use of Student Data to develop, improve, or market products or services to Students.
5. **Disclose or Disclosure**: The intentional or unintentional communication, release, or transfer of Student Data and/or APPR Data by any means, including oral, written, or electronic.
6. **Education Record:** An education record as defined in the Family Educational Rights and Privacy Act and its implementing regulations, 20 U.S.C. § 1232g and 34 C.F.R. Part 99, respectively.
7. **Educational Agency**: As defined in Education Law § 2-d, a school district, board of cooperative educational services, school, or the New York State Education Department (“NYSED”).
8. **Eligible Student:** A Student who is eighteen years of age or older.
9. **Encrypt or Encryption**: As defined in the Health Insurance Portability and Accountability Act of 1996 Security Rule at 45 CFR § 164.304, encrypt means the use of an algorithmic process to transform Personally Identifiable Information into an unusable, unreadable, or indecipherable form in which there is a low probability of assigning meaning without use of a confidential process or key.
10. **Information:**  Student Data and APPR Data from an Educational Agency that is Disclosed or made available to the Contractor pursuant to this contract with NYSED to which this DPA is attached and incorporated.
11. **NIST Cybersecurity Framework**: The U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1.
12. **Parent:** A parent, legal guardian, or person in parental relation to the Student.
13. **Personally Identifiable Information (PII):** Personally Identifiable Information, as defined in the Family Educational Rights and Privacy Act and its implementing regulations, 20 U.S.C. § 1232g and 34 C.F.R. Part 99, (§ 99.3), and Teacher or Principal APPR Data.
14. **Release:** Shall have the same meaning as Disclose.
15. **School:** As defined in Education Law § 2-d, any (a) public elementary or secondary school, including a charter school; (b) universal pre-kindergarten program authorized pursuant to Education Law § 3602-e; (c) an approved provider of preschool special education; (d) any other publicly funded pre-kindergarten program; (e) a school serving children in a special act school district as defined in Education Law § 4001; (f) an approved private school for the education of students with disabilities; (g) a State-supported school subject to the provisions of Article 85 of the Education Law; or (h) a State-operated school subject to the provisions of Articles 87 or 88 of the Education Law.
16. **Services:** Services provided by Contractor pursuant to this contract with NYSED to which this DPA is attached and incorporated.
17. **Student:** Any person attending or seeking to enroll in an Educational Agency.
18. **Student Records:** An education record as defined in the Family Educational Rights and Privacy Act and its implementing regulations, 20 U.S.C. § 1232g and 34 C.F.R. Part 99, respectively.
19. **Student Data:** PII from Student Records of an Educational Agency and PII regarding a Student provided to the Contractor by the Student or the Student’s Parent.
20. **Subcontractor:** Contractor’s non-employee agents, consultants, volunteers, including student interns, and/or any natural person or entity funded through this contract who is engaged in the provision of Services pursuant to an agreement with or at the direction of the Contractor.

**ARTICLE II: PRIVACY AND SECURITY OF INFORMATION**

1. **Compliance with Law.**

When providing Services pursuant to this contract, Contractor may have Access to or receive Disclosure of Information that is regulated by one or more New York and/or federal laws and regulations, among them, but not limited to, the Family Educational Rights and Privacy Act ("FERPA") at 12 U.S.C. § 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. §§ 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. § 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act (“IDEA”) at 20 U.S.C. § 1400 et seq. (34 CFR Part 300); New York Education Law § 2-d; and the Regulations of the Commissioner of Education at 8 NYCRR Part 121. Contractor agrees to maintain the confidentiality and security of Information in accordance with (a) applicable New York, federal and local laws, rules, and regulations, and (b) NYSED’s Data Privacy and Security Policy. Contractor further agrees that neither the Services provided nor the manner in which such Services are provided shall violate New York, federal and/or local laws, rules, and regulations, or NYSED’s Data Privacy and Security Policy.

1. **Authorized Use.**

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

1. **Contractor’s Data Privacy and Security Plan**.

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

1. **NYSED’s Data Privacy and Security Policy**

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

1. **Right of Review and Audit.**

Upon NYSED’s request, Contractor shall provide NYSED with copies of its policies and related procedures that pertain to the protection of Information. In addition, NYSED may require Contractor to undergo an audit of its privacy and security safeguards, measures, and controls as they pertain to alignment with the requirements of New York State laws and regulations, NYSED’s policies applicable to Contractor, and alignment with the NIST Cybersecurity Framework. Any audit required by NYSED must be performed by an independent third party at Contractor’s expense and the audit report must be provided to NYSED. In lieu of being subject to a required audit, Contractor may provide NYSED with an industry standard independent audit report of Contractor’s privacy and security practices that was issued no more than twelve months before the date that NYSED informed Contractor that it required Contractor to undergo an audit.

1. **Contractor’s Employees and Subcontractors**.
   1. Access to or Disclosure of Information shall only be provided to Contractor’s employees and Subcontractors who need to know the Information to provide the Services and such Access and/or Disclosure of Information shall be limited to the extent necessary to provide such Services. Contractor shall ensure that all such employees and Subcontractors comply with the terms of this DPA.
   2. Contractor must ensure that each Subcontractor performing Services where the Subcontractor will have Access to and/or receive Disclosed Information is contractually bound by a written agreement that includes confidentiality and data security obligations equivalent to, consistent with, and no less protective than, those found in this DPA.
   3. Contractor shall examine the data privacy and security measures of its Subcontractors. If at any point a Subcontractor fails to materially comply with the requirements of this DPA, Contractor shall: (i) notify NYSED, (ii) as applicable, remove such Subcontractor’s Access to Information; and (iii) as applicable, retrieve all Information received or stored by such Subcontractor and/or ensure that Information has been securely deleted or securely destroyed in accordance with this DPA. In the event there is an incident in which Information held, possessed, or stored by the Subcontractor is compromised, unlawfully Accessed, or unlawfully Disclosed, Contractor shall follow the Data Breach reporting requirements set forth in Section 11 of this DPA.
   4. Contractor shall take full responsibility for the acts and omissions of its employees and Subcontractors.
   5. Other than Contractor’s employees and Subcontractors who have a need to know the Information, Contractor must not provide Access to or Disclose Information to any other party unless such Disclosure is required by statute, court order or subpoena, and Contractor notifies NYSED of the court order or subpoena no later than the time the Information is Disclosed, unless such Disclosure to NYSED is expressly prohibited by the statute, court order or subpoena. Notification shall be made in accordance with the Notice provisions of this contract and shall also be provided to the Office of the Chief Privacy Officer, NYS Education Department, 89 Washington Avenue, Albany, New York 12234.
   6. Contractor shall ensure that its Subcontractors know that they cannot provide Access to or Disclose Information to any other party unless such Access or Disclosure is required by statute, court order or subpoena. If a Subcontractor is required to provide Access to or Disclose Information pursuant to a court order or subpoena, the Subcontractor shall, unless prohibited by statute, court order or subpoena, notify Contractor no later than two (2) days before any Information is Accessed or Disclosed. Upon receipt of notice from a Subcontractor, Contractor shall provide notice to NYSED no later than the time that the Subcontractor is scheduled to provide Access or Disclose the Information.
2. **Training**.

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

1. **Data Return and Destruction of Data**.
   1. Contractor is prohibited from retaining Disclosed Information or continuing to Access Information, including any copy, summary, or extract of Information, on any storage medium (including, without limitation, hard copies and storage in secure data centers and/or cloud-based facilities) beyond the term of this contract unless such retention is expressly authorized for a prescribed period by this contract, necessary for purposes of facilitating the transfer of Disclosed Information to NYSED, or expressly required by law. As applicable, upon expiration or termination of this contract, Contractor shall transfer the Disclosed Information to NYSED in a format and manner agreed to by the Parties.
   2. When the purpose that necessitated Contractor’s Access to and/or Disclosure of Information has been completed or Contractor’s authority to have Access to Information or retain Disclosed Information has expired, Contractor shall ensure that, as applicable, (1) all privileges providing Access to Information are revoked, and (2) all Information (including without limitation, all hard copies, archived copies, electronic versions, electronic imaging of hard copies) retained by Contractor or its Subcontractors and/or all Information maintained on behalf of Contractor or its Subcontractors in a secure data center and/or cloud-based facilities is securely deleted and/or destroyed in a manner that does not allow it to be retrieved or retrievable, read or reconstructed. Hard copy media must be shredded or destroyed such that Information cannot be read, or otherwise reconstructed, and electronic media must be cleared, purged, or destroyed such that the Information cannot be retrieved. Only the destruction of paper Information, and not redaction, will satisfy the requirements for data destruction. Redaction is specifically excluded as a means of data destruction.
   3. Contractor shall provide NYSED with a written certification of, as applicable, (1) revocation of Access to Information granted by Contractor and/or its Subcontractors, and (2) the secure deletion and/or secure destruction of Information held by the Contractor or Subcontractors to the contract at the address for notifications set forth in this contract.
   4. To the extent that Contractor and/or its Subcontractors continue to be in possession of any de-identified data (i.e., data that has had all direct and indirect identifiers removed), Contractor agrees that it will not attempt to re-identify de-identified data and/or transfer de-identified data to any person or entity, except as provided in subsection (a) of this section and that it will contractually prohibit its Subcontractors from the same.
2. **Commercial or Marketing Use Prohibition.**

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

1. **Encryption.**

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

1. **Breach**.

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

1. **Cooperation with Investigations.**

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

1. **Notification to Individuals.**

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

1. **Termination**.

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

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

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

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

1. **Bill of Rights for Data Privacy and Security**.

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

**EXHIBIT 1 - Contractor’s Data Privacy and Security Plan**

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

1. **Contractor Name:** Click or tap here to enter text.
2. **Outline how you will implement applicable data privacy and security contract requirements over the life of the Contract.**

|  |
| --- |
| Click or tap here to enter text. |

1. **Specify the administrative, operational, and technical safeguards and practices that you have in place to protect Information.**

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| --- |
| Click or tap here to enter text. |

1. **Address the training received by your employees and any Subcontractors engaged in the provision of services under the Contract on the federal and state laws that govern the confidentiality of Information.**

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| --- |
| **Click or tap here to enter text.** |

1. **Outline how you will ensure that your employees and any Subcontractors are bound by written agreement to the requirements of this contract.**

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| **Click or tap here to enter text.** |

1. **Specify how you will manage any data privacy and security incidents that implicate Information, including a description of any specific plans you have in place to identify data Breaches, unauthorized Access to Information and unauthorized Disclosure of Information, to meet your obligation to report such incidents to the NYSED.**

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| Click or tap here to enter text. |

1. **If applicable, describe how Disclosed Information will be transitioned to NYSED when either (a) it is no longer needed by you to meet your obligations under this contract or (b) your authorization to Access Information or use Disclosed Information has terminated.**

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| --- |
| Click or tap here to enter text. |

1. **Describe your secure destruction and secure deletion practices and how you will certify to NYSED that all Access to Information has been revoked by you and, as applicable, your Subcontractors and that all Disclosed Information has been either securely deleted or securely destroyed by you and your Subcontractors.**

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| Click or tap here to enter text. |

1. **Outline how your data privacy and security program/practices align with NYSED’s applicable policies.**

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| --- |
| Click or tap here to enter text. |

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

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

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

***Supplemental Information***

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

**Name of Contractor:** Click or tap here to enter text.

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

|  |
| --- |
| Click or tap here to enter text. |

* + 1. **Type(s) of Data that Contractor will be provided Access to or Disclosure of:**

**Student Data**  Yes  No

**APPR Data**  Yes  No

* + 1. **Contract Term:**

**Contract Start Date:** September 1, 2023 **Contract End Date:** August 31, 2028

* + 1. **Subcontractor use and written agreement requirement:**

**Contractor will use Subcontractors**   Yes  No

**Contractor will not use Subcontractors**  Yes  No

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

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

**Not Applicable because Contractor will not use Subcontractors.**   Yes  No

* + 1. **Data Transition and Secure Destruction**

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

* Are unable to Access any Information provided to Contractor pursuant to this contract.
* Securely transfer Disclosed Student Data and APPR Data to NYSED, or at NYSED’s option and written discretion, a successor contractor in a format agreed to by the Parties**.**
* Securely delete and destroy Disclosed Student Data and APPR Data.
  + 1. **Challenges to Data Accuracy**

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

* + 1. **Secure Storage and Data Security**

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

Yes  No Using a cloud or infrastructure owned and hosted by a third party.

Yes  No Using Contractor owned and hosted solution

Yes  No Other:

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

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| --- |
| Click or tap here to enter text. |

* + 1. **Encryption requirement**

Yes  No Contractor agrees that Student Data and APPR Data will be encrypted while in motion and at rest.

* + 1. **Contractor Certification.**

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

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Contractor’s Name Signature

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Printed Name Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

1. The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document. [↑](#footnote-ref-1)