

REQUEST FOR PROPOSAL (RFP)

RFP #25-003

NEW YORK STATE EDUCATION DEPARTMENT

Title: Coordination of Vocational Rehabilitation Mediation Services

The New York State Education Department (NYSED) **Adult Career and Continuing Education Services- Vocational Rehabilitation (ACCES-VR)** is seeking proposals for the coordination and delivery of mediation service statewide for ACCES-VR.

Under the Workforce Innovation and Opportunity Act (WIOA), ACCES-VR is mandated to establish and implement procedures to allow an applicant or recipient of vocational rehabilitation services to resolve disputes through a mediation process that must be made available whenever an applicant, recipient of services, customer or the individual's representative requests an impartial due process hearing: 34 CFR 361.57 *Review of Determinations made by Designated State Unit Personnel* (See Attachment A).

There are 20 Community Dispute Resolution Centers (CDRCs) located across New York State. The New York State Unified Court System Office of Alternative Dispute Resolution and Court Improvement Programs (ADR/CIP) provides independent oversight, training and technical support for CDRCs.

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

NYSED will award **ONE (1)** contract pursuant to this RFP. The contract resulting from this RFP will be for a term anticipated to begin October 1, 2025, and to end September 30, 2030.

Service Area: Statewide

A [map](#) provides the name and location of each CDRC throughout the state.

Components contained in RFP #25-003 are as follows:

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

Questions: Questions regarding the request must be submitted via [online form](#) no later than the close of business May 14, 2025. Questions regarding this request should be identified as Program or Fiscal. A Questions and Answers Summary will be posted to the [ACCES Procurement website](#) no later than May 28, 2025. The following are the designated contacts for this procurement:

Program Matters: David Morgan, Malgorzata Zegarska-Sanders

Fiscal Matters: for CAU: Tara Wildove

Submission: Bidders are requested to submit their bids electronically. The following documents should be submitted via [online form](#) as detailed in the Submission section of the RFP, and must be received at NYSED no later than **June 11, 2025**:

1. Submission Documents labeled **[name of bidder] Submission Documents RFP 25-003**
2. Technical Proposal labeled **[name of bidder] Technical Proposal RFP 25-003**
3. Cost Proposal labeled **[name of bidder] Cost Proposal RFP 25-003**
4. Data Security and Privacy Plan **[name of bidder] Cost Proposal RFP 25-003**

Instructions for Submitting an Electronic Bid:

1. The equipment and cost proposal documents should be submitted in Microsoft Office. PDF files that are editable and Optical Character Recognition (OCR) searchable are acceptable. Please do not submit the bid as a scanned PDF.
2. Submission documents requiring a signature must be signed using one of the methods listed below, and may be submitted in a Microsoft Office, PDF, or JPG document. A scanned PDF is acceptable for these documents.
3. The following forms of e-signatures are acceptable:
 - a. handwritten signatures on faxed or scanned documents
 - b. e-signatures that have been authenticated by a third-party digital software, such as DocuSign and Adobe Sign
 - c. stored copies of the images of signatures that are placed on a document by copying and pasting or otherwise inserting them into the documents
4. Unacceptable forms of e-signatures include:
 - a. a typed name, including a signature created by selecting a script or calligraphy font for the typed name of the person "signing"
5. To identify the signer and indicate that the signer understood and intended to agree to the terms of the signed document, the signer will sign beside or provide by upload or email the following attestation: "I agree, and it is my intent, to sign this document by [describe the signature solution used] and by electronically submitting this document to [name of recipient individual or entity]. I understand that my signing and submitting this document is the legal equivalent of having placed my handwritten signature on the submitted document and this attestation. I understand and agree that by electronically signing and submitting this document I am affirming to the truth of the information contained therein."
6. To ensure receipt of your bid, please ensure that the RFP number and title listed on page 1 are accurately entered into the fields "Procurement No" and "Procurement Title/Name" on the [online form](#). Failure to include this information may result in the bid not being received by the deadline or considered for award. Please enter only the procurement number without "RFP" or "#." For technical assistance please email cauhighqsupport@nysed.gov .

1.) **Description of Services to be Performed**

Work Statement and Specifications

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

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

NYSED has not established M/WBE goals for this procurement. Nevertheless, NYSED remains committed to promoting the participation of certified Minority and Women-Owned Business Enterprises to the greatest extent possible. Therefore, NYSED strongly encourages bidders to seek New York State certified M/WBE subcontractors and suppliers at a participation rate of 30%.

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

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

Background

Vocational Rehabilitation Mediation

The Rehabilitation Act as Amended in 1998 mandated that "Each state shall establish procedures for mediation of, and procedures for review through an impartial due process hearing of, determinations made by personnel of the designated State unit that affect the provision of VR services to applicants." The requirements of the law indicate that procedures must ensure that the mediation process is voluntary and is made available upon request.

Qualifications for VR Mediators

- Mediators must be qualified and impartial, trained in effective mediation techniques and knowledgeable in the laws, regulations and policies relating to the provision of VR services;
- Mediators must be trained by the Unified Court System, the bidder will provide ACCES-VR specific training;

- Mediators must be neutral, not employees of ACCES-VR or employed by a vocational program doing business with ACCES-VR;
- Mediators must not have any personal or financial interest that would conflict with their objectivity; ACCES-VR is provided with a list of trained mediators from the contractor.

ACCES-VR Due Process Policy 105.00 addresses due process and covers the required procedures for the VR Mediation program. This policy is available on the [ACCES website](#).

Mediation Procedures:

- Applicants or recipients of VR services must complete a VR-711 Request for Due Process form to request due process.

Note- ACCES-VR policies and the VR-711 Form are available on the [ACCES-VR Website](#).

- The applicant or recipient of VR services may request mediation in two ways:
 - Complete the VR-711; then the District Office (DO) will contact the Community Dispute Resolution Center (CDRC) and forward the VR-711 to them; or
 - The applicant or recipient of VR services may contact the CDRC directly. The CDRC should ensure that a VR-711 form is completed (it describes the issue for mediation), signed and dated and submits the original to the appropriate ACCES-VR District Office (DO). The CDRC **must** have a discussion with the District Office Manager/Assistant Manager, Director of Counseling or designee before providing any billable service. After contacting the DO, the CDRC then completes the intake and schedules with both parties and Client Assistance Program-Disability Rights New York (CAP/DRNY) if involved. Individuals must be notified by mail and/or email of a scheduled mediation session;
- The CDRC schedules the mediation, which must be scheduled in a timely manner (conducted within 21 days of receipt of a signed due process request) and held in a location that is convenient and accessible to the parties to the dispute (usually the CDRC location);
- Customers should be prepared to describe the factual background regarding the dispute and to discuss their desired outcome;
- Customers involved in mediation may present whatever evidence they wish in support of their position;
- ACCES-VR will be represented by the District Office Manager (or designee) and must be prepared to describe the legal and policy context around which the dispute arose, including factual details of the situation;
- The mediator will facilitate the discussion;
- In case of a postponement, it is the mediator's responsibility to contact all parties including the individual, the individual's advocate CAP-DRNY if involved, and ACCES-VR.

Mediation does not involve findings of facts or the strict weighing of evidence as may be required in an impartial due process hearing. Mediation relies on the good faith efforts of both the customers and ACCES-VR to communicate and work together to reach their own agreement to resolve the dispute. The focus is on a resolution and not on who is right or wrong. ACCES-VR may not agree to a resolution that is contrary to State or federal law, regulation or ACCES-VR policy.

Purpose

The Statewide mediation service contract awardee will:

- Ensure that high-quality mediation services are available to all ACCES-VR applicants and recipients of ACCES-VR services across the state to resolve conflicts with ACCES-VR;
- Coordinate mediation services for NYS ACCES-VR;
- Coordinate access to an adequate pool of trained, qualified and competent VR mediators via initial training and ongoing professional development;
- Maintain a website that describes and promotes the benefits of VR mediation in New York State; and
- Promote mediation through outreach and district office education.

ACCES-VR participates in approximately 12-16 mediations per year. However, with ongoing outreach the number of mediations has increased annually. The number typically increases by 1 to 3 new cases each year.

Mediators are trained volunteers and are not compensated. The bidder awarded the contract is not responsible for any costs incurred by the mediator for the mediation. However, if the mediator travels over 35 miles to attend a training conference, the vendor will be responsible for the mileage expense and lodging if required. See Travel Requirements section.

Staffing Requirements

The contractor should agree to the Staffing Requirements found below.

1. Bidders should have a minimum of three (3) years' experience providing alternative dispute resolution processes in vocational rehabilitation and be familiar with effective mediation techniques in vocational rehabilitation that include creating a collaborative environment where all parties can express their concern. Mediators should be trained in practicing active listening, asking open-ended questions, and summarizing discussions to ensure clarity
2. Bidders should demonstrate appropriate staffing. Appropriate staffing for the statewide mediation program should include:
 - A Project Manager for the oversight of vocational rehabilitation mediation. The position should be filled by one individual. This individual should have a minimum of a bachelor's degree.
 - An administrative assistant to attend to daily office duties and maintain communication and facilitate coordination with Community Dispute Resolution Centers. The position should be filled by one individual.

Deliverables and/or Project Description

The vendor shall:

- Provide a comprehensive year one detailed workplan with a timeline that provides an in-depth description of how the activities required in the RFP will be conducted, including planned training.
- Submit a workplan on an annual basis at least 6 weeks prior to the start of the contract year that is aligned with a detailed timeline for each year of the contract and consistent with the *Deliverables and/or Project Description* section in this RFP;
- Coordinate the pool of trained, qualified and competent mediators in CDRCs. The vendor also must demonstrate that Mediators have been trained in effective mediation techniques consistent with a State-approved or recognized certification, licensing, registration or another requirement. And the Bidder's plan should assure that Mediators are made familiar with federal regulation 34 CFR 361.57 (Attachment A) and [ACCES-VR Policy and Procedure](#).
- Provide MOUs with CDRCs that include a statement that the CDRC will provide trained mediators or bidder should provide a signed letter of intent that the bidder will obtain MOUs with the CDRCs.
- Provide a one-day training* session annually (alternating between the upstate and downstate region each year) to include approximately 30-50 mediators from the 20 Community Dispute Resolution Centers (CDRCs) and other local mediation providers. Training topics will include:
 - mediation skills;
 - laws and regulations relating to the provision of VR services as described under the Workforce Innovation and Opportunity Act (WIOA);
 - documentation of training (especially regulations related to Mediation and alternative dispute resolution process with the New York State Unified Court System Office of Alternative Dispute Resolution and Court Improvement Programs (ADR/CIP).

*(*VR training materials will require ACCES-VR approval at least one month prior to training.)*

- Conduct one half-day professional development session (minimum of 3 clock-hours) at one upstate and one downstate ACCES-VR District Office in years 2 and 4 of the contract to communicate the positive aspects of facilitating complaint resolution through mediation.
- Maintain a website that:
 - provides contact information for the CDRCs and other local mediation providers;
 - describes and promotes the benefits of VR mediation in New York State;

- contains a link to the NYSED ACCES-VR website;
- provides external links to State and federal services for alternative dispute resolution; and
- complies with current accessibility standards applicable to persons with disabilities [New York State Enterprise IT Policy NYS-P08-005 Accessibility of Web-Based Information and Applications](#).
See Accessibility of Web-Based Information and Applications section below.
- Provide documentation agreed upon by ACCES-VR and vendor to assure that mediations are conducted in accordance with ACCES-VR policy and federal regulation; (See Attachment A- 34 CFR 361.57)
- Provide documentation to ACCES-VR of reimbursement to CDRCs for the cost of mediation services and eligible transportation costs;
- Establish a data collection/maintenance system to track data provided by the CDRCs beginning with a party's request for mediation until its completion. The vendor will be responsible for maintaining this data system and developing an annual report to include:
 - Number of requests for mediation,
 - Number of disputes settled prior to the development of a written mediation agreement,
 - Number of disputes resulting in a written mediation agreement, and
 - Number of disputes not resolved through the mediation process.
- Submit timely and accurate quarterly data, narrative summary progress reports, and fiscal reports to the ACCES-VR project manager, due within four weeks of the close of each quarter, which includes:
 - Program narrative
 - Data reports on number and category of mediations
 - Fiscal expenditures
- Provide an annual year-end report that includes all required data and evaluates the effectiveness of mediation, including:
 - The rate (increase/decrease) of successful mediations.
- Attend quarterly project management meetings in Albany with the ACCES-VR project manager.
- Maintain records of activities (events, public outreach efforts, calendars, information dissemination, advocacy and technical assistance).
- Conduct outreach about VR mediation and provide copies of information and outreach materials.
- Through oversight, the contractor ensures each mediation session is scheduled in a timely manner (2 weeks from receipt of request or referral) and held in a location that is convenient to all parties involved in the dispute.

- Through oversight, the contractor ensures a written mediation agreement is completed if the parties involved in the dispute reach agreement. The mediator will compose the agreement and ask the parties to sign the mediation agreement before leaving the mediation session. "The agreement will be implemented within 20 days" as per [105.00 ACCES-VR Due Process Policy](#).
- Maintain confidentiality. Discussions during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. "The mediator will ask the parties to sign a confidentiality pledge prior to the start of the mediation session" (105.00 ACCES-VR Due Process Policy).

Allowable Costs

Expenditure of contract funds is allowed for the following:

Management and Coordination of VR Mediation Services

1. Professional and non-professional salaries.
2. Employee benefits.
3. Purchased services: Note that subcontracting costs for direct services are limited to 30 percent of the total budget. Purchased services include consultant services.
4. Non-Personal Service Items: Supplies, materials, printing, and postage directly related to the project. Includes travel by contractor for required duties and travel by volunteer mediators who travel over 35 miles to attend training conferences.
5. Other Costs: Fees for training space (every effort should be made to obtain space at no cost).
6. Indirect Costs. Reimbursement to the CDRCs for the administrative costs related to conducting vocational rehabilitation mediation services.

Indirect costs can be broadly defined as central administrative costs and certain other organization-wide costs that are incurred in connection with a project but that cannot readily be identified with the project (e.g., payroll preparation, central purchasing). These funds are used to support the central administrative costs.

Examples of indirect costs are:

- costs of operating and maintaining facilities;
- general administration and general expenses, such as budgeting, accounting, human resources, legal, and purchasing; and
- centralized services, such as motor pools and information systems; and Personnel and accounting administration.

Indirect cost rates for agencies are set by NYSED and may not exceed 8%.

7. VR Mediation Services Deliverables (current rates are shown in parenthesis). The Bidder should propose their rates for the following:

- Collect required data; notify ACCES-VR if mediation is requested by an individual receiving ACCES-VR; contact all parties to schedule mediation.
- Mediation with written agreement (includes intake) (\$600)
- Mediation without a written agreement (includes intake) (\$600)
- Hourly fee for case development when no mediation is held (not to exceed 5 hours) (\$50 per hour)
- Intake fee when no mediation is held (not to exceed 3 hours) (\$50 per hour)
- Fee for each additional session (\$175 for each additional sessions completed)

The vendor will maintain a data system to track claims for payment of mediation services by each CDRC, submit these costs to NYSED on a quarterly basis as part of the fiscal voucher and expenditure report, and reimburse the CDRCs for the mediation services conducted. (For bidding purposes, the applicant should budget \$20,000 per year for these reimbursement costs.) Reimbursement rates for administrative costs of cases are determined by NYSED.

Monitoring Requirements

The awardee will be required to provide an Annual Workplan, Quarterly Progress Reports and Annual Performance Summary report to the program manager in ACCES-VR by the due dates listed in the Payments and Reports section. Failure to submit the required standard vouchers, progress reports and annual year-end report may result in the suspension of future payment.

Payments and Reports

The contractor will be required to submit quarterly performance reports and billing statements to ACCES-VR program manager and an annual performance summary to meet the federal and State requirements.

Complete invoices with quarterly performance reports, Annual Workplan and Annual Performance Summary are due to NYSED on the following schedule:

	<u>Due Date</u>
• Annual Workplan	May 1
• Annual Performance Summary	August 1
• 1 st Quarter (October 1 – December 31)	January 30
• 2 nd Quarter (January 2 – March 31)	April 30
• 3 rd Quarter (April 1 – June 30)	July 31
• 4 th Quarter (July 1 – September 30)	October 31

All invoices submitted for payment must include:

- A unique identifier AWARE Participant ID for the VR applicant or recipient of VR services who participated in mediation;
- date of intake;
- date of mediation service;
- an itemized list of activities; and
- costs consistent with the approved Deliverables described above and contained in the executed contract.

Payments will be made upon submission of a complete and accurate invoice with deliverable where appropriate. Payment(s) for subcontractor(s) must list subcontractor name(s), payment amount(s), name of ACCES-VR applicant, recipient of services, customer or former customer, and nature of services provided separately on the invoice submitted. Invoices with incomplete information will be returned to the vendor.

Quarterly payments will be made to the vendor once the standard vouchers and quarterly performance reports are reviewed and project initiatives and outcomes are determined to be adequate. Administration and staff costs are calculated for the year and invoiced quarterly. VR Mediation Services will be reimbursed on a payment for service delivered basis and itemized on the quarterly invoice.

Travel Requirements

Any travel for vendor staff, consultants or volunteer mediators who travel more than 35 miles to attend training conferences for Mediation for Vocational Rehabilitation, must be in accordance with the approved NYS rates. NYS rates for Privately Owned Vehicle (POV) mileage reimbursement rates are available at the [U.S. General Services Administration website](#).

Travel expenses should not exceed eight (8) percent of the annual budget and may also include mileage paid to volunteer mediators who travel over 35 miles to provide mediation services.

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 receives PII include a Data Privacy and Security Plan, pursuant to Education Law § 2-d and § 121.6 of the Regulations of the Commissioner of Education. For every contract, the Contractor must complete the following or provide a plan that materially addresses its requirements, including alignment with the NIST Cybersecurity Framework, which is the standard for educational agency data privacy and security policies in New York state.

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

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

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

Accessibility of Web-Based Information and Applications

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

Subcontracting Limit

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

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

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

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

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

Staff Changes

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

Contract Period

NYSED will award **ONE (1)** contract pursuant to this RFP. The contract resulting from this RFP will be for a term anticipated to begin **October 1, 2025** and to end **September 30, 2030**.

Electronic Processing of Payments

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

2.) **Submission**

Documents to be submitted with this proposal

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

Project Submission

The proposal submitted in response to this RFP must include the following documents submitted via the [online form](#) in Microsoft Office or editable PDF per the electronic proposal submission procedures outlined above, preferably with each of the following sets of documents uploaded as a single file:

1. Submission Documents/Certifications bearing signatures
2. Technical Proposal/Narrative and Workplan
3. Cost Proposal/Budget
4. Data Security and Privacy Plan

The proposal must be received by the due date.

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

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

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

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

Technical Proposal (70 points)

The completed Technical Proposal should be submitted via the [online form](#) and labeled **[name of bidder] Technical Proposal – RFP 25-003**. The Technical Proposal should be a narrative and include

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a Workplan not to exceed 20 pages. The Technical Proposal should address the technical criteria items listed below. In addition to the narrative and Workplan, staff resumes or job descriptions and MOUs between the VR Mediation Coordinator and the Community Dispute Resolution Centers (or letters of intent) should be included.

- Project Description
- Workplan
- Resume or job description for Project Manager
- MOUs with Community Dispute Resolution Centers (CDRCs)

<p>Project Description The complete project description and supporting materials will be reviewed to determine the overall consistency of the proposal to the stated purpose and objectives of the RFP. The qualifications of key personnel and the adequacy of the resources of the Bidder will be reviewed to determine the organization’s ability to implement the activities described in the application.</p>	<p>40 Points</p>
<p>1. Describe the Project Manager’s experience in alternative dispute resolution and in any of these areas: experience in organizational management; funding development; networking in the community; outreach, including public speaking and service promotion. Experience in dispute resolution involving vocational rehabilitation will be rated higher, including if documentation is provided that demonstrates training with the New York State Unified Court System Office of Alternative Dispute Resolution and Court Improvement Programs (ADR/CIP). (Attach resume or job description and any training documentation.)</p>	<p>10 Points</p>
<p>2. Provide a full description of the purpose/mission to provide coordination and oversight to the Community Dispute Resolution Center network, consistent with the project description in this RFP.</p>	<p>5 Points</p>
<p>3. Describe bidder’s experience in providing training on mediation skills for mediators.</p>	<p>10 Points</p>
<p>4. Describe experience in coordinating programs, with preference for coordinating mediation programs.</p>	<p>5 Points</p>
<p>5. Explain organizational capacity and experience providing alternative dispute resolution processes in vocational rehabilitation and familiarity with effective mediation techniques in vocational rehabilitation.</p>	<p>10 Points</p>
<p>Workplan - must detail activities, timeline, audience, and outcomes. This section will be evaluated based on the comprehensiveness of the applicant’s plan to achieve NYSED’s anticipated results for each of the activities and how</p>	<p>30 Points</p>

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well the Workplan describes specific strategies and activities to accomplish the required deliverables:	
1 Describe how the bidder will ensure an adequate pool of trained, qualified and competent vocational rehabilitation mediators. Bidder will provide MOUs with CDRCs that include a statement that the CDRC will provide trained mediators or bidder will provide a signed letter of intent that the bidder will obtain MOUs with the CDRCs.	5 Points
2 Develop plan to provide one annual training (alternating upstate and downstate) for mediators.	5 Points
3 Develop/maintain a website that describes and promotes the benefits of VR mediation in NYS. The website will contain links to the NYSED ACCES-VR website. Other links to state and federal services for alternative dispute resolution will be maintained and updated. The website must be accessible to persons with disabilities.	5 Points
3 Develop and maintain a data system that documents the process of mediation beginning with a party's request for mediation to its completion.	5 Points
4 Develop and conduct one half-day professional development session (minimum of 3 clock-hours) at one upstate and one downstate ACCES-VR District Office in year 2 and 4 of the contract to communicate the positive aspects of facilitating complaint resolution through mediation.	5 Points
5 Develop a plan for a comprehensive strategy for outreach to the public including marketing materials and community education about mediation.	5 Points

Cost Proposal (30 points)

The completed Cost Proposal should be submitted via the [online form](#) and labeled [name of bidder]

Cost Proposal – RFP 25-003 and include the following:

- 1.) Year 1 Detailed Budget
- 2.) 5 Year Budget Summary
- 3.) Subcontracting Form

The Financial Criteria portion of the RFP will be scored based upon the grand total of the 5-year budget summary.

3.) Evaluation Criteria and Method of Award

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

Criteria for Evaluating Bids

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

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

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

The proposal will be based on a total possible score of one hundred (100) points.

Proposals must include a comprehensive workplan that describes how the activities and deliverables described in the RFP will be provided, include activities to address all stated needs for coordinating VR, and how mediation services will be coordinated for ACCES-VR.

Technical Criteria_(70 Points)

Project Description – 40 Points

Workplan – 30 Points

Financial Criteria (30 Points)

The Financial Criteria portion of this RFP will be scored based upon the grand total for the 5-year budget summary.

The **financial portion** of the proposal represents 30 points of the overall score and will be awarded up to 30 points pursuant to a formula. This calculation will be computed by the Contract Administration Unit upon completion of the technical scoring by the technical review panel.

The submitted budget will be awarded points pursuant to a formula that awards the highest score of 30 points to the budget that reflects the lowest overall cost. The remaining budgets will be awarded points

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based on a calculation that computes the relative difference of each proposal against the lowest budget submitted. The resulting percentage is then applied to the maximum point value of 30 points.

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

Method of Award

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

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

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

NYSED's Reservation of Rights

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

Post Selection Procedures

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

Debriefing Procedures

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

1. All unsuccessful bidders may request a debriefing within fifteen (15) calendar days of receiving notice from NYSED of non-award. Bidders may submit a request for debriefing through the [online form](#).
2. Upon receipt of a timely written request from the unsuccessful bidder, NYSED will schedule the debriefing to occur within a reasonable time following receipt of the request. Debriefings will be conducted in person, unless NYSED and the bidder mutually agree to utilize other means, including but not limited to telephone, video-conferencing or other types of electronic communication.
3. The debriefing will include: a) the reasons that the proposal submitted by the unsuccessful bidder was not selected for an award; b) the qualitative and quantitative analysis employed by NYSED in assessing the relative merits of the proposals; c) the application of the selection criteria to the unsuccessful bidder's proposal; and d) when the debriefing is held after the final award, the reasons for the selection of the winning proposal. The debriefing will also provide, to the greatest extent practicable, general advice and guidance to the unsuccessful bidder concerning potential ways that their future proposals could be more responsive.

Contract Award Protest Procedures

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

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

Vendor Responsibility

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

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

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

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

Subcontractors:

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

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

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

Procurement Lobbying Law

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

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debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at [NYSED's Procurement Lobbying Law Policy Guidelines webpage](#).

Designated Contacts for NYSED

Program Office – **David Morgan, Malgorzata Zegarska-Sanders**

Contract Administration Unit – **Tara Wildove**

Consultant Disclosure Legislation

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

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

To enable compliance with the law, State agencies must include in the Procurement Record submitted to OSC for new consultant contracts, the State Consultant Services Contractor's Planned Employment from Contract Start Date Through the End of the Contract Term (Form A). The completed form must

include information for all employees providing service under the contract whether employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information ***prospectively from the start date of the contract through the end of the contract term.***

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

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

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

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

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

Public Officer's Law Section 73

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

4. (a) No statewide elected official, state officer or employee, member of the legislature, legislative employee or political party chairman or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any state agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a state agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

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

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

(ii) officers and employees of statewide elected officials;

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

(iv) members or directors of public authorities, other than multistate authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, who

receive compensation other than on a per diem basis, and employees of such authorities, corporations and commissions.

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

NYSED Substitute Form W-9

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

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

Workers' Compensation Coverage

New York State Workers' Compensation Law (WCL) has specific coverage requirements for businesses contracting with New York State.

PROOF OF COVERAGE REQUIREMENTS

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

Proof of Workers' Compensation Coverage

NYSED must ensure all awardees/contractors who are required to carry workers' compensation insurance have an active policy. NYSED must obtain **one** of the following forms before a contract can be approved:

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

Proof of Disability and Paid Family Leave Benefits Coverage

NYSED must ensure all awardees/contractors who are required to carry Disability and Paid Family Leave benefits insurance have an active policy. NYSED must obtain **one** of the following forms before a contract can be approved:

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

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

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

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

Tax Law § 5-a requires contractors awarded State contracts for commodities or services valued at more than \$100,000 over the full term of the contract to certify to the New York State Department of Taxation and Finance ("DTF") that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specific period of time. The registration requirement applies if the contractor made a

cumulative total of more than \$300,000 in sales during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June – August, September – November, December – February, and March – May. In addition, contractors must certify to DTF that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and

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compensating use taxes. Contractors must also certify to the procuring State entity that they filed the certification with the DTF and that it is correct and complete.

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

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

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

4.) **Assurances**

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

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

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

STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

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

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

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

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

E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program

Workplan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

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

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

II. Payment and Reporting

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

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

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

III. Terminations

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

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

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

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

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

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

IV. Indemnification

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

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

V. Property

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

VI. Safeguards for Services and Confidentiality

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

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

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

Appendix A
STANDARD CLAUSES FOR NYS
CONTRACTS

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

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

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

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

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

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

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

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

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

7. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section

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

8. INTERNATIONAL BOYCOTT PROHIBITION.

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

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

off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for

Payment, must give the reason or reasons why the payee does not have such number or numbers.

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

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

replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does

not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or

undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

20. OMNIBUS PROCUREMENT ACT OF 1992.

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

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

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

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

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

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

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

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the

Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

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

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

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“[Prohibited Entities List](#)”).

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at

the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

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

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

(June 2023)

APPENDIX A-1
AGENCY-SPECIFIC CLAUSES

Payment and Reporting

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

Terminations

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

Responsibility Provisions

- A. General Responsibility Language
The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Education or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- B. Suspension of Work (for Non-Responsibility)
The Commissioner of Education or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Education or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

C. Termination (for Non-Responsibility)

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate SED officials or staff, the Contract may be terminated by the Commissioner of Education or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Education or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

Property

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

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

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

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

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

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

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

- D. The terms and conditions set forth herein regarding non-expendable assets shall survive the expiration or termination, for whatever reason, of this agreement.

Safeguards for Services and Confidentiality

- A. Any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department. The material prepared under the terms of this agreement by the Contractor shall be prepared by the Contractor in a form so that it will be ready for copyright in the name of the New York State Education Department. Should the Contractor use the services of consultants or other organizations or individuals who are not regular employees of the Contractor, the Contractor and such organization or individual shall, prior to the performance of any work pursuant to this agreement, enter into a written agreement, duly executed, which shall set forth the services to be provided by such organization or individual and the consideration therefor. Such agreement shall provide that any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department and that such work shall be prepared in a form ready for copyright by the New York State Education Department. A copy of such agreement shall be provided to the State.
- B. Required Web Accessibility of Delivered Documents and Applications. If applicable, all documentation, applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Education Department IT Policy NYSED-WEBACC-001, Web Accessibility Policy, which requires that documents, web-based information and applications are accessible to persons with disabilities. All delivered documentation and applications must conform to NYSED-WEBACC-001 as determined by quality assurance testing. Such quality assurance testing will be conducted by NYSED employee or contractor and the results of such testing must be satisfactory to NYSED before documents and applications will be considered a qualified deliverable under the contract or procurement.
- C. All reports of research, studies, publications, workshops, announcements, and other activities funded as a result of this proposal will acknowledge the support provided by the State of New York.
- D. This agreement cannot be modified, amended, or otherwise changed except by a writing signed by all parties to this contract.
- E. No failure to assert any rights or remedies available to the State under this agreement shall be considered a waiver of such right or remedy or any other right or remedy unless such waiver is contained in a writing signed by the party alleged to have waived its right or remedy.
- F. Expenses for travel, lodging, and subsistence shall be reimbursed at the per diem rate in effect at the time for New York State Management/Confidential employees.
- G. No fees shall be charged by the Contractor for training provided under this agreement.
- H. Partisan Political Activity and Lobbying. Funds provided pursuant to this Agreement shall not be used for any partisan political activity or for activities that may influence legislation or the election or defeat of any candidate for public office.
- I. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.
- J. This agreement, including all appendices, is, upon signature of the parties and the approval of the Attorney General and the State Comptroller, a legally enforceable contract. Therefore, a signature on behalf of the Contractor will bind the Contractor to all the terms and conditions stated therein.

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

Certifications

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

Notices

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

Miscellaneous

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

By mail: NYS Office of the State Comptroller
 Bureau of Contracts

110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting

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

Reports to DCS are to be transmitted as follows:

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

Reports to NYSED are to be transmitted as follows:

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

By fax: (518) 408-1716

- C. Consultant Staff Changes. If this is a contract for consulting services, Contractor will maintain continuity of the consultant team staff throughout the course of the contract. All changes in staff will be subject to STATE approval. The replacement consultant(s) with comparable skills will be provided at the same or lower hourly rate.
- D. Order of Precedence. In the event of any discrepancy, disagreement, conflict or ambiguity between the various documents, attachments and appendices comprising this contract, they shall be given preference in the following order to resolve any such discrepancy, disagreement, conflict or ambiguity:
1. Appendix A - Standard Clauses for all State Contracts
 2. State of New York Agreement
 3. Appendix A-1 - Agency Specific Clauses
 4. Appendix X - Sample Modification Agreement Form (where applicable)
 5. Appendix A-3 - Minority/Women-owned Business Enterprise Requirements (where applicable)
 6. Appendix B - Budget
 7. Appendix C - Payment and Reporting Schedule
 8. Appendix R – Security and Privacy Mandates (where applicable)
 9. Appendix D - Program Work Plan

Revised 5/23/22

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

ARTICLE I: DEFINITIONS

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

1. **Access:** The ability to view or otherwise obtain, but not copy or save, Student Data and/or APPR Data arising from the on-site use of an information system or from a personal meeting.
2. **APPR Data:** Personally Identifiable Information from the records of an Educational Agency relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of Education Law §§ 3012-c and 3012-d.
3. **Breach:** The unauthorized Access, acquisition, Disclosure or use of Student Data or APPR Data that is (a) accomplished in a manner not permitted by New York State and federal laws, rules, and regulations, or in a manner that compromises its security or privacy, (b) executed by or provided to a person not authorized to acquire, access, use, or receive it, or (c) a Breach of Contractor’s or Subcontractor’s security that leads to the accidental or unlawful alteration, destruction, loss of, Access to or Disclosure of Student Data or APPR Data.
4. **Commercial or Marketing Purpose:** The Disclosure, sale, or use of Student Data for the purpose of directly or indirectly receiving remuneration, including the Disclosure, sale, or use of Student Data for advertising purposes, or the Disclosure, sale, or use of Student Data to develop, improve, or market products or services to Students.
5. **Disclose or Disclosure:** The intentional or unintentional communication, release, or transfer of Student Data and/or APPR Data by any means, including oral, written, or electronic.
6. **Education Record:** An education record as defined in the Family Educational Rights and Privacy Act and its implementing regulations, 20 U.S.C. § 1232g and 34 C.F.R. Part 99, respectively.
7. **Educational Agency:** As defined in Education Law § 2-d, a school district, board of cooperative educational services, school, or the New York State Education Department (“NYSED”).
8. **Eligible Student:** A Student who is eighteen years of age or older.
9. **Encrypt or Encryption:** As defined in the Health Insurance Portability and Accountability Act of 1996 Security Rule at 45 CFR § 164.304, encrypt means the use

of an algorithmic process to transform Personally Identifiable Information into an unusable, unreadable, or indecipherable form in which there is a low probability of assigning meaning without use of a confidential process or key.

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

ARTICLE II: PRIVACY AND SECURITY OF INFORMATION

1. Compliance with Law.

When providing Services pursuant to this contract, Contractor may have Access to or receive Disclosure of Information that is regulated by one or more New York and/or federal

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

2. Authorized Use.

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

3. Contractor's Data Privacy and Security Plan.

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

4. NYSED's Data Privacy and Security Policy

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

[privacy-security/nysed-data-privacy-and-security-policy](#) and other applicable NYSED policies and agrees to contractually require its Subcontractors to comply with NYSED's Data Privacy and Security Policy.

5. Right of Review and Audit.

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

6. Contractor's Employees and Subcontractors.

- (a) Access to or Disclosure of Information shall only be provided to Contractor's employees and Subcontractors who need to know the Information to provide the Services and such Access and/or Disclosure of Information shall be limited to the extent necessary to provide such Services. Contractor shall ensure that all such employees and Subcontractors comply with the terms of this DPA.
- (b) Contractor must ensure that each Subcontractor performing Services where the Subcontractor will have Access to and/or receive Disclosed Information is contractually bound by a written agreement that includes confidentiality and data security obligations equivalent to, consistent with, and no less protective than, those found in this DPA.
- (c) Contractor shall examine the data privacy and security measures of its Subcontractors. If at any point a Subcontractor fails to materially comply with the requirements of this DPA, Contractor shall: (i) notify NYSED, (ii) as applicable, remove such Subcontractor's Access to Information; and (iii) as applicable, retrieve all Information received or stored by such Subcontractor and/or ensure that Information has been securely deleted or securely destroyed in accordance with this DPA. In the event there is an incident in which Information held, possessed, or stored by the Subcontractor is compromised, unlawfully Accessed, or unlawfully Disclosed, Contractor shall follow the Data Breach reporting requirements set forth in Section 11 of this DPA.
- (d) Contractor shall take full responsibility for the acts and omissions of its employees and Subcontractors.

- (e) Other than Contractor's employees and Subcontractors who have a need to know the Information, Contractor must not provide Access to or Disclose Information to any other party unless such Disclosure is required by statute, court order or subpoena, and Contractor notifies NYSED of the court order or subpoena no later than the time the Information is Disclosed, unless such Disclosure to NYSED is expressly prohibited by the statute, court order or subpoena. Notification shall be made in accordance with the Notice provisions of this contract and shall also be provided to the Office of the Chief Privacy Officer, NYS Education Department, 89 Washington Avenue, Albany, New York 12234.
- (f) Contractor shall ensure that its Subcontractors know that they cannot provide Access to or Disclose Information to any other party unless such Access or Disclosure is required by statute, court order or subpoena. If a Subcontractor is required to provide Access to or Disclose Information pursuant to a court order or subpoena, the Subcontractor shall, unless prohibited by statute, court order or subpoena, notify Contractor no later than two (2) days before any Information is Accessed or Disclosed. Upon receipt of notice from a Subcontractor, Contractor shall provide notice to NYSED no later than the time that the Subcontractor is scheduled to provide Access or Disclose the Information.

7. Training.

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

8. Data Return and Destruction of Data.

- (a) Contractor is prohibited from retaining Disclosed Information or continuing to Access Information, including any copy, summary, or extract of Information, on any storage medium (including, without limitation, hard copies and storage in secure data centers and/or cloud-based facilities) beyond the term of this contract unless such retention is expressly authorized for a prescribed period by this contract, necessary for purposes of facilitating the transfer of Disclosed Information to NYSED, or expressly required by law. As applicable, upon expiration or termination of this contract, Contractor shall transfer the Disclosed Information to NYSED in a format and manner agreed to by the Parties.
- (b) When the purpose that necessitated Contractor's Access to and/or Disclosure of Information has been completed or Contractor's authority to have Access to Information or retain Disclosed Information has expired, Contractor shall ensure that, as applicable, (1) all privileges providing Access to Information are revoked, and (2) all Information (including without

limitation, all hard copies, archived copies, electronic versions, electronic imaging of hard copies) retained by Contractor or its Subcontractors and/or all Information maintained on behalf of Contractor or its Subcontractors in a secure data center and/or cloud-based facilities is securely deleted and/or destroyed in a manner that does not allow it to be retrieved or retrievable, read or reconstructed. Hard copy media must be shredded or destroyed such that Information cannot be read, or otherwise reconstructed, and electronic media must be cleared, purged, or destroyed such that the Information cannot be retrieved. Only the destruction of paper Information, and not redaction, will satisfy the requirements for data destruction. Redaction is specifically excluded as a means of data destruction.

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

9. Commercial or Marketing Use Prohibition.

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

10. Encryption.

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

11. Breach.

Contractor shall promptly notify NYSED of any Breach of Information, regardless of whether Contractor or a Subcontractor suffered the Breach, without delay and in the most expedient way possible, but in no circumstance later than seven (7) calendar days after discovery of the Breach. Notifications shall be made in accordance with the notice provisions of this contract and shall also be provided to the office of the Chief Privacy Officer, NYS Education Department 89 Washington Avenue, Albany, New York 12234, and must, include a description of the Breach which includes the date of

the incident and the date of discovery, the types of Information affected, and the number of records affected; a description of Contractor's investigation; and the name of a point of contact. Violations of the requirement to notify NYSED shall be subject to a civil penalty pursuant to Education Law § 2-d. The Breach of certain Information protected by Education Law § 2-d may subject the Contractor to additional penalties.

12. Cooperation with Investigations.

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

13. Notification to Individuals.

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

14. Termination.

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

ARTICLE III: PARENT AND ELIGIBLE STUDENT PROVISIONS

1. Parent and Eligible Student Access.

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

2. Bill of Rights for Data Privacy and Security.

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

EXHIBIT 1 - Contractor's Data Privacy and Security Plan

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

1. Contractor Name:

2. Outline how you will implement the data privacy requirements of this Contract.

3. Outline how you will implement the security requirements of this Contract by specifying the administrative, operational, and technical safeguards and practices that you have in place to protect the information provided to you under this Contract.

(a) Explain how your Data Privacy and Security Policy aligns with the NIST CSF and [NYSED's Data Privacy and Security Policy](#).

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

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

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

7. Describe your activities upon the expiration of the Contract as they relate to:

(a) notifying NYSED of its right to have the Disclosed Information and any data created using the Disclosed Information transitioned to NYSED and the process of transitioning that data to NYSED;

(b) your secure destruction practices and how you will certify to NYSED that all Access to Disclosed Information and, if applicable any data created or generated using the Disclosed Information has been revoked by you and, as applicable, your Subcontractors, and

(c) that all Disclosed Information, and if applicable any data created or generated using the Disclosed Information has been securely destroyed by you and your Subcontractors.

8. Describe your use of Generative AI, if any, to fulfill your obligations under the Contract.

(a) Is Generative AI being used to fulfill your obligations under the Contract? If yes, describe how generative AI is being used.

i) what are your procedures for maintaining the confidentiality of NYSED data provided to you pursuant to the Contract;

ii) please explain how the generative AI is trained, without the inclusion of NYSED data so that it can evolve;

iii) please explain your procedures for clients and customers to report AI bias and hallucinations;

iv) please explain your procedures for correcting hallucinations; and

v) please explain how you mitigate AI bias.

(b) If no, describe any plans to incorporate generative AI into the provision of service pursuant to the Contract.

9. Are cloud services being utilized to fulfill your obligations under this Contract?

(a) If yes, describe what cloud services (i.e. AWS; Azure; Google) and how you plan to maintain the confidentiality, integrity, and availability of Disclosed Information provided to you pursuant to the Contract.

i) Provide an overview of the Cloud Service Provider's (CSP) Disaster Recovery (DR) Process (All agreements should establish terms for DR, and the CSP must demonstrate its ability to fulfill the terms.)

ii) Provide an overview of the Cloud Service Provider's (CSP) Access Control Policy (Required identity and access management policies, practices, and technologies to ensure authorization, secure authentication, role-based access, auditable access, and timely access termination.)

iii) Provide an overview of the Cloud Service Provider's (CSP) Data Protection Policy (A documented baseline of security configurations implemented that demonstrates annual testing of the same.)

(b) If no, describe any plans to use cloud services to fulfill your obligations under this Contract.

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

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

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

9. NYSED contracts with vendors that receive Student PII will address statutory and regulatory data privacy and security requirements.

Supplemental Information

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

1. Name of Contractor:

2. Purpose of Contract:

3. Contract Term:

Contract Start Date:

Contract End Date:

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

Student Data Yes No

APPR Data Yes No

5. For what purpose is Student Data or APPR Data being used?

6. Subcontractor use and written agreement requirement:

Will Contractor be using Subcontractors? Yes No

By certifying below, Contractor agrees that it 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.

7. Data Transition and Secure Destruction

By certifying below, 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 Disclosed Information provided to Contractor pursuant to this Contract; and

- Securely transfer Disclosed Student Data and/or APPR Data to NYSED, or at NYSED's option and written discretion, a successor contractor in a format agreed to by the Parties; **and**
- Securely destroy Disclosed Student Data and APPR Data.

8. Challenges to Data Accuracy

By certifying below, 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.

9. 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:

10. Encryption Requirement

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

11. Contractor Certification

Contractor certifies that it will comply with the above described requirements, and require its Subcontractors to comply with, applicable State and Federal laws, regulations and NYSED policies.

Contractor's Name

Signature

Printed Name

Title

Date

Attachment A- 361.57 Review of determinations made by designated [State](#) unit personnel.

(a) *Procedures.* The designated [State](#) unit must develop and implement [procedures](#) to ensure that an applicant or recipient of services who is dissatisfied with any determination made by personnel of the designated [State](#) unit that affects the provision of [vocational rehabilitation](#) services may request, or, if appropriate, may request through the [individual's representative](#), a timely review of that determination. The [procedures](#) must be in accordance with paragraphs (b) through (k) of this section:

(b) *General requirements.*

(1) *Notification.* [Procedures](#) established by the [State](#) unit under this section must provide an applicant or recipient or, as appropriate, the [individual's representative](#) notice of—

(i) The right to obtain review of [State](#) unit determinations that affect the provision of [vocational rehabilitation](#) services through an impartial due process hearing under [paragraph \(e\)](#) of this section;

(ii) The right to pursue [mediation](#) under [paragraph \(d\)](#) of this section with respect to determinations made by designated [State](#) unit personnel that affect the provision of [vocational rehabilitation](#) services to an applicant or recipient;

(iii) The names and addresses of individuals with whom requests for [mediation](#) or due process hearings may be filed;

(iv) The manner in which a mediator or impartial hearing officer may be selected consistent with the requirements of paragraphs (d) and (f) of this section; and

(v) The availability of the client assistance program, established under [34 CFR part 370](#), to assist the applicant or recipient during [mediation](#) sessions or [impartial due process hearings](#).

(2) *Timing.* Notice described in [paragraph \(b\)\(1\)](#) of this section must be provided in writing—

(i) At the time the individual applies for [vocational rehabilitation](#) services under this part;

(ii) At the time the individual is assigned to a category in the [State's](#) order of selection, if the [State](#) has established an order of selection under [§ 361.36](#);

(iii) At the time the individualized plan for employment is developed; and

(iv) Whenever [vocational rehabilitation](#) services for an individual are reduced, suspended, or terminated.

(3) *Evidence and representation.* [Procedures](#) established under this section must—

(i) Provide an applicant or recipient or, as appropriate, the [individual's representative](#) with an opportunity to submit during [mediation](#) sessions or due process hearings evidence and other information that supports the applicant's or recipient's position; and

(ii) Allow an applicant or recipient to be represented during [mediation](#) sessions or due process hearings by counsel or other advocate selected by the applicant or recipient.

(4) Impact on provision of services. The [State](#) unit may not institute a suspension, reduction, or termination of [vocational rehabilitation](#) services being provided to an applicant or recipient, including evaluation and assessment services and individualized plan for employment development, pending a resolution through [mediation](#), pending a decision by a hearing officer or reviewing official, or pending informal resolution under this section unless—

(i) The individual or, in appropriate cases, the [individual's representative](#) requests a suspension, reduction, or termination of services; or

(ii) The [State](#) agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the [individual's representative](#).

(5) Ineligibility. Applicants who are found ineligible for [vocational rehabilitation](#) services and previously eligible individuals who are determined to be no longer eligible for [vocational rehabilitation](#) services pursuant to [§ 361.43](#) are permitted to challenge the determinations of [ineligibility](#) under the [procedures](#) described in this section.

(c) Informal dispute resolution. The [State](#) unit may develop an informal process for resolving a request for review without conducting [mediation](#) or a formal hearing. A [State's](#) informal process must not be used to deny the right of an applicant or recipient to a hearing under [paragraph \(e\)](#) of this section or any other right provided under this part, including the right to pursue [mediation](#) under [paragraph \(d\)](#) of this section. If informal resolution under this paragraph or [mediation](#) under [paragraph \(d\)](#) of this section is not successful in resolving the dispute within the time period established under [paragraph \(e\)\(1\)](#) of this section, a formal hearing must be conducted within that same time period, unless the parties agree to a specific extension of time.

(d) Mediation.

(1) The [State](#) must establish and implement [procedures](#), as required under [paragraph \(b\)\(1\)\(ii\)](#) of this section, to allow an applicant or recipient and the [State](#) unit to resolve disputes involving [State](#) unit determinations that affect the provision of [vocational rehabilitation](#) services through a [mediation](#) process that must be made available, at a minimum, whenever an applicant or recipient or, as appropriate, the [individual's representative](#) requests an impartial due process hearing under this section.

(2) [Mediation procedures](#) established by the [State](#) unit under [paragraph \(d\)](#) of this section must ensure that—

(i) Participation in the [mediation](#) process is voluntary on the part of the applicant or recipient, as appropriate, and on the part of the [State](#) unit;

(ii) Use of the [mediation](#) process is not used to deny or delay the applicant's or recipient's right to pursue resolution of the dispute through an impartial hearing held within the time period specified in [paragraph \(e\)\(1\)](#) of this section or any other rights provided under this part. At any point during the [mediation](#) process, either party or the mediator may elect to terminate the [mediation](#). In the event [mediation](#) is terminated, either party may pursue resolution through an impartial hearing;

(iii) The [mediation](#) process is conducted by a qualified and impartial mediator, as defined in [§ 361.5\(c\)\(43\)](#), who must be selected from a list of qualified and impartial mediators maintained by the State—

(A) On a random basis;

(B) By agreement between the director of the designated [State](#) unit and the applicant or recipient or, as appropriate, the recipient's representative; or

(C) In accordance with a procedure established in the [State](#) for assigning mediators, provided this procedure ensures the neutrality of the mediator assigned; and

(iv) [Mediation](#) sessions are scheduled and conducted in a timely manner and are held in a location and manner that is convenient to the parties to the dispute.

(3) Discussions that occur during the [mediation](#) process must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the [mediation](#) process may be required to sign a confidentiality pledge prior to the commencement of the process.

(4) An agreement reached by the parties to the dispute in the [mediation](#) process must be described in a written [mediation](#) agreement that is developed by the parties with the assistance of the qualified and impartial mediator and signed by both parties. Copies of the agreement must be sent to both parties.

(5) The costs of the [mediation](#) process must be paid by the [State](#). The [State](#) is not required to pay for any costs related to the representation of an applicant or recipient authorized under [paragraph \(b\)\(3\)\(ii\)](#) of this section.

(e) Impartial due process hearings. The [State](#) unit must establish and implement formal review [procedures](#), as required under [paragraph \(b\)\(1\)\(i\)](#) of this section, that provide that—

(1) Hearing conducted by an impartial hearing officer, selected in accordance with [paragraph \(f\)](#) of this section, must be held within 60 days of an applicant's or recipient's request for review of a determination made by personnel of the [State](#) unit that affects the provision of [vocational rehabilitation](#) services to the individual, unless informal resolution or a [mediation](#)

agreement is achieved prior to the 60th day or the parties agree to a specific extension of time;

(2) In addition to the rights described in [paragraph \(b\)\(3\)](#) of this section, the applicant or recipient or, if appropriate, the [individual's representative](#) must be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence;

(3) The impartial hearing officer must—

(i) Make a decision based on the provisions of the approved [vocational rehabilitation](#) services portion of the Unified or Combined [State](#) Plan, the Act, Federal [vocational rehabilitation](#) regulations, and [State](#) regulations and policies that are consistent with Federal requirements; and

(ii) Provide to the individual or, if appropriate, the [individual's representative](#) and to the [State](#) unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing; and

(4) The hearing officer's decision is final, except that a party may request an impartial review under [paragraph \(g\)\(1\)](#) of this section if the [State](#) has established [procedures](#) for that review, and a party involved in a hearing may bring a [civil action](#) under [paragraph \(i\)](#) of this section.

(f) Selection of impartial hearing officers. The impartial hearing officer for a particular case must be selected—

(1) From a list of qualified impartial hearing officers maintained by the [State](#) unit. Impartial hearing officers included on the list must be—

(i) Identified by the [State](#) unit if the [State](#) unit is an independent commission; or

(ii) Jointly identified by the [State](#) unit and the [State](#) Rehabilitation Council if the [State](#) has a Council; and

(2)

(i) On a random basis; or

(ii) By agreement between the director of the designated [State](#) unit and the applicant or recipient or, as appropriate, the [individual's representative](#).

(g) Administrative review of hearing officer's decision. The [State](#) may establish [procedures](#) to enable a party who is dissatisfied with the decision of the impartial hearing officer to seek an impartial administrative review of the decision under [paragraph \(e\)\(3\)](#) of this section in accordance with the following requirements:

(1) A request for administrative review under [paragraph \(g\)](#) of this section must be made within 20 days of the mailing of the impartial hearing officer's decision.

(2) Administrative review of the hearing officer's decision must be conducted by—

(i) The chief official of the [designated State agency](#) if the [State](#) has established both a [designated State agency](#) and a designated [State](#) unit under [§ 361.13\(b\)](#); or

(ii) An official from the office of the [Governor](#).

(3) The reviewing official described in [paragraph \(g\)\(2\)\(i\)](#) of this section—

(i) Provides both parties with an opportunity to submit additional evidence and information relevant to a final decision concerning the matter under review;

(ii) May not overturn or modify the hearing officer's decision, or any part of that decision, that supports the position of the applicant or recipient unless the reviewing official concludes, based on [clear and convincing evidence](#), that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to the approved [vocational rehabilitation](#) services portion of the Unified or Combined [State](#) Plan, the Act, Federal [vocational rehabilitation](#) regulations, or [State](#) regulations and policies that are consistent with Federal requirements;

(iii) Makes an independent, final decision following a review of the entire hearing record and provides the decision in writing, including a full report of the findings and the statutory, regulatory, or policy grounds for the decision, to the applicant or recipient or, as appropriate, the [individual's representative](#) and to the [State](#) unit within 30 days of the request for administrative review under [paragraph \(g\)\(1\)](#) of this section; and

(iv) May not delegate the responsibility for making the final decision under [paragraph \(g\)](#) of this section to any officer or employee of the designated [State](#) unit.

(4) The reviewing official's decision under [paragraph \(g\)](#) of this section is final unless either party brings a [civil action](#) under [paragraph \(i\)](#) of this section.

(h) Implementation of final decisions. If a party brings a [civil action](#) under [paragraph \(h\)](#) of this section to challenge the final decision of a hearing officer under [paragraph \(e\)](#) of this section or to challenge the final decision of a [State](#) reviewing official under [paragraph \(g\)](#) of this section, the final decision of the hearing officer or [State](#) reviewing official must be implemented pending review by the court.

(i) Civil action.

(1) Any party who disagrees with the findings and decision of an impartial hearing officer under [paragraph \(e\)](#) of this section in a [State](#) that has not established administrative review [procedures](#) under [paragraph \(g\)](#) of this section and any party who disagrees with the findings and decision under [paragraph \(g\)\(3\)\(iii\)](#) of this section have a right to bring a [civil action](#) with respect to the matter in dispute. The action may be brought in any [State](#) court of competent jurisdiction or in a district court of the United [States](#) of competent jurisdiction without regard to the amount in controversy.

(2) In any action brought under [paragraph \(i\)](#) of this section, the court—

- (i)** Receives the records related to the impartial due process hearing and the records related to the administrative review process, if applicable;
- (ii)** Hears additional evidence at the request of a party; and
- (iii)** Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(j) *State fair hearing board.* A [fair hearing board](#) as defined in [§ 361.5\(c\)\(21\)](#) is authorized to carry out the responsibilities of the impartial hearing officer under [paragraph \(e\)](#) of this section in accordance with the following criteria:

- (1)** The [fair hearing board](#) may conduct due process hearings either collectively or by assigning responsibility for conducting the hearing to one or more members of the [fair hearing board](#).
- (2)** The final decision issued by the [fair hearing board](#) following a hearing under [paragraph \(j\)\(1\)](#) of this section must be made collectively by, or by a majority vote of, the [fair hearing board](#).
- (3)** The provisions of paragraphs (b)(1), (2), and (3) of this section that relate to due process hearings and of paragraphs (e), (f), (g), and (h) of this section do not apply to [fair hearing boards](#) under this paragraph (j).

(k) *Data collection.*

(1) The director of the designated [State](#) unit must collect and submit, at a minimum, the following data to the Secretary for inclusion each year in the annual report to Congress under section 13 of the Act:

- (i)** A copy of the standards used by [State](#) reviewing officials for reviewing decisions made by impartial hearing officers under this section.
- (ii)** The number of [mediations](#) held, including the number of [mediation](#) agreements reached.
- (iii)** The number of hearings and reviews sought from impartial hearing officers and [State](#) reviewing officials, including the type of complaints and the issues involved.
- (iv)** The number of hearing officer decisions that were not reviewed by administrative reviewing officials.
- (v)** The number of hearing decisions that were reviewed by [State](#) reviewing officials and, based on these reviews, the number of hearing decisions that were—
 - (A)** Sustained in favor of an applicant or recipient;
 - (B)** Sustained in favor of the designated [State](#) unit;

(C) Reversed in whole or in part in favor of the applicant or recipient; and

(D) Reversed in whole or in part in favor of the [State](#) unit.

(2) The [State](#) unit director also must collect and submit to the Secretary copies of all final decisions issued by impartial hearing officers under [paragraph \(e\)](#) of this section and by [State](#) review officials under [paragraph \(g\)](#) of this section.

(3) The confidentiality of records of applicants and recipients maintained by the [State](#) unit may not preclude the access of the Secretary to those records for the purposes described in this section.

(Authority: Sections 12(c) and 102(c) of the [Rehabilitation Act of 1973](#), as amended; [29 U.S.C. 709\(c\)](#) and [722\(c\)](#))