# REQUEST FOR PROPOSAL (RFP)

**RFP #19-005a**

**NEW YORK STATE EDUCATION DEPARTMENT**

## Title: The Museum Shop at the New York State Museum

**Note:** This is a reissue of RFP #19-005. The principal changes are in the required years of experience, the minimum amount of gross sales, and the removal of the minimum revenue share.

The New York State Education Department (NYSED) is seeking proposals for the operation of the Museum Shop at the New York State Museum. Eligible bidders must have at least three (3) years of experience in operating retail establishments, with at least one of their sites achieving gross sales in excess of $1 million (cumulative) during the three most recent fiscal years. Bidders with a minimum of 3 years’ experience operating a retail shop in a cultural institution are preferred. A cultural institution is a museum, historical society, nature center, zoo, botanic garden, arboretum or aquarium.

There are no M/WBE goals for this RFP. However, as part of NYSED's commitment to utilizing M/WBE firms, NYSED strongly encourages bidders to use New York State certified M/WBE firms as suppliers to the greatest extent possible.

NYSED will award **one (1)** contract pursuant to this RFP. The contract resulting from this RFP will be for a term anticipated to begin January 1, 2019 and end, December 31, 2023.

Service Area**: NYS Museum Shop, Albany, NY**

**Mandatory Requirements**: See Mandatory Requirements section of the RFP.

**Components contained in RFP Proposal #19-005a** **are as follows:**

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

Questions regarding the request must be submitted by E-mail to [**ocerfi@nysed.gov**](mailto:ocerfi@nysed.gov)no later than the close of business September 28, 2018. Questions regarding this request should be identified as either Program or Fiscal. A Questions and Answers Summary will be posted to [www.oce.nysed.gov/shoprfp/](http://www.oce.nysed.gov/shoprfp/) no later than October 5, 2018.

Prospective bidders are encouraged to arrange for a tour of the New York State Museum Shop by contacting [nysmexhibits@nysed.gov](mailto:nysmexhibits@nysed.gov). Otherwise, bidders can visit the Museum and Museum Shop on their own accord during normal museum hours. If bidders choose to visit on their own, storage areas will not be accessible. Questions relating to this RFP will not be answered on the premises. Instead, bidders need to submit their questions to the email box above by September 28, 2018.

The following are the designated contacts for this procurement:

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| --- | --- |
| **Program Matters**  **Erin Zielinski**  [**ocerfi@nysed.gov**](mailto:ocerfi@nysed.gov) | **Fiscal Matters**  **Adam Kutryb**  [**ocerfi@nysed.gov**](mailto:ocerfi@nysed.gov) |

The following documents must be submitted in separately sealed envelopes, as detailed in the Submission section of the RFP, and be received at NYSED no later than **October 12, 2018** **by 3:00 PM**:

1. Submission Documents labeled **Submission Documents - RFP #19-005a Do Not Open**
2. Technical Proposal labeled **Technical Proposal - RFP #19-005a Do Not Open**
3. Revenue Proposal labeled **Revenue Proposal – RFP #19-005a Do Not Open**
4. CD-ROM containing the technical, revenue, and submission documents submitted using Microsoft Office. Place in a separate envelope labeled **CD-ROM-RFP#19-005a Do Not Open**.

The mailing address for all the above documentation is:

NYS Education Department

Bureau of Fiscal Management

Attn: Adam Kutryb RFP#19-005a

Contract Administration Unit

89 Washington Avenue, Room 501W EB

Albany, NY 12234

**(Facsimile copies of the proposals are NOT acceptable)**

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| **Calendar of Events** | |
| **Questions Due** | **September 28, 2018** |
| Answers Due | October 5, 2018 |
| **Bids Due** | **October 12, 2018** |
| Anticipated Notice of Tentative Award Made | November 2018 |
| Anticipated Approval of Contract | December 2018 |
| Anticipated Commencement of Work | January 1, 2019 |

## 1.) Description of Services to be Performed

### Work Statement and Specifications

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

### Mandatory Requirements

The eligible bidder must agree to the Mandatory Requirements found below and must submit the Mandatory Requirements Certification Form located in Submission Documents section, signed by an authorized person.

Eligible bidders must have at least three (3) years’ experience in operating retail establishments. This experience must include at least one of the bidder’s sites experiencing more than $1 million (cumulative) in gross sales over the most recently completed three (3) year period. The vendor must complete the “Vendor Experience Form” contained in Submission Documents section to document compliance with this requirement.

Bidders need to certify that they will be able to comply with the insurance requirements set forth in the Insurance and Indemnity section of this RFP.

In the bidder’s Revenue Proposal, the bidder is requested to provide a proposed percentage of Gross Sales that will be paid to the NYSED. Bidders must complete the “Revenue Proposal” form contained in Submission Documents section.

“Gross Sales” is defined as the total dollar amount received from any and all sales for cash or credit at the Museum Shop of any goods or services (including without limitation, catalog, internet, and telephone sales), or otherwise, less: sales tax receipts and returns, merchant card fees, shipping costs, and amounts received from sales of goods connected with the Partner Organizations, membership fees, and Consignment Sales.

“Partner Organizations” are defined as not-for-profit, single purpose organizations whose mission is to support the programs of the State Museum, Library or Archives and who have a formally established relationship with NYSED.

“Consignment Sales” is defined as sales of publications and merchandise supplied by NYSED. Title to the consignment merchandise will remain with NYSED until sale to the retail customer. Bidders will also be required to submit a percentage proposal for the amount of Consignment Sales that will be returned to NYSED.

### Background

The New York State Education Department (NYSED) seeks proposals from potential vendors to operate the retail shop (Museum Shop) at the New York State Museum (NYSM). The eligible bidders are vendors that can document the ability to operate a retail shop. This documentation must include evidence of successful management of a retail business for a minimum of 3 years. This experience must include at least one of the bidder’s sites experiencing in excess of $1 million (cumulative) in gross sales over the most recently completed three (3) year period. Bidders with a minimum of 3 years’ experience operating a retail shop in a cultural institution are preferred. A cultural institution is a museum, historical society, nature center, zoo, botanic garden, arboretum or aquarium. The goals of the Museum Shop should be to maximize the merchandising income for NYSED, eliminate the risk to NYSED from retail store operation, and support the mission and vision of the NYSED in a retail market.

The NYSM is located on Madison Avenue in Albany, NY at the southern end of the Empire State Plaza, within the Cultural Education Center (CEC). The Museum features exhibits on the natural and human history of New York State and operates an active program of temporary exhibits. The CEC has approximately 350 employees who work in the State Museum, Library and Archives. The Museum averages between 700,000 and 750,000 visitors annually. The other two public institutions in the CEC, the State Archives and State Library, contribute nearly 100,000 visitors annually. These figures were based on a seven-day operating schedule. Museum admission is by suggested donation only, no collected fees. Also, the Museum Shop is easily accessible to patrons approximately 30 feet from the Main Entrance. Parking on weekends is widely available and free. Convenient parking on weekdays can involve a fee. Please refer to the Office of Cultural Education’s website <http://www.oce.nysed.gov/> for a more complete description of the functions and activities of the State Museum, Library, and Archives.

The Museum Shop has been operated within the CEC for decades. The Museum Shop generated over $2.2 million in gross sales from 2012-2017. Currently, the Museum Shop is open six (6) days per week (closed Monday). Museum Shop hours are subject to change.

### Deliverables and/or Project Description

Based on the background above, the NYSED is specifically interested in a vendor who can provide the following, including but not limited to:

**Retail Operation**

1. Operate the Museum Shop, including, but not limited to, staffing the store, bearing the operational expenses, and all costs associated with sourcing, storing and carrying inventory. Product selection and overall design, operation, and marketing needs to be consistent with the operation of a retail museum store and reflect the orientation and exhibit focus of the NYSM.
2. Provide on-site management during all hours of operation and periods of inventory.
3. Management of the Museum Shop will meet monthly with assigned NYSED liaison.
4. Obtain all business, sales tax and other licenses or permits as may be required by law in connection with the operation of the Museum Shop.
5. Provide consignment opportunities for the sale of NYSED publications and merchandise with the ability of NYSED to add other consignment opportunities throughout the term of the agreement. NYSED will receive a percentage of Consignment Sales as set forth in the Revenue Proposal.
6. Allocate no less than ten percent (10%) sales space to Partner Organizations. Sales proceeds from these ventures support collection efforts in the respective institutions they are associated with. The vendor will be permitted to retain an eighteen percent (18%) administrative fee from the sale of goods of the Partner Organizations. These sales are not Consignment Sales described in E.
7. Operate on a schedule established by NYSM public hours, and upon request, additional hours in conjunction with special event activities. The NYSM is currently open six (6) days per week from 9:30 a.m. – 5:00 p.m. (Closed Mondays, Independence Day, Thanksgiving, Christmas and New Year’s.) NYSM/ Cultural Education Center is also closed for three electrical test/ shutdown days per year. These days occur on Saturdays. Advance notification will be provided. NYSM hours are subject to change.
8. Hire, train, and manage a professional/qualified retail sales staff within the Museum Shop. Vendor shall be responsible for the recruitment and screening of appropriate personnel and verification of credentials, references and suitability for working with the public, including children. At a minimum, Vendor shall comply with the following:
   1. Vendor will be responsible for screening of all personnel, including substantiating credentials and reference checks. In addition, Vendor will check each prospective personnel against the Statewide Sexual Offenders Registry.
   2. Vendor agrees not to hire or retain any personnel who refuse to:

* provide the names of references;
* provide documentation of credentials;
* provide information on criminal conviction records; or
* provide any other requested information that bears on the individuals fitness to work with or in close proximity to the public, including children.

c. Vendor agrees not to hire or retain any personnel:

* + - who have not completely and truthfully reported information concerning their criminal convictions; or
    - whose criminal convictions record directly bears on their fitness to work with or in close proximity to the public, including children, or whose employment would involve an unreasonable risk to the safety or welfare of the public, including children, subject to and consistent with Article 23-A of the New York State Correction Law; or
    - who have been the subject of an indicated child abuse and maltreatment report on file with the State Central Registry or are the subject of an ongoing investigation pursuant to a child abuse and maltreatment report on file with this Registry.

1. Establish and maintain an online retail presence of the Museum Shop for the sale of non-consumable merchandise items sold at the Museum Shop, including consignment merchandise. The vendor’s proposal should describe the approach for developing and maintaining the online presence and the strategy for selecting items for sales. The Museum Shop Online website will be incorporated into the NYSM website currently located at [www.nysm.nysed.gov](http://www.nysm.nysed.gov). The vendor will bear the cost of designing the layout and maintaining the Museum Shop website. The design, and any changes thereto, are subject to the prior approval of NYSED. Shipping costs connected with the sale of merchandise may be deducted from Gross Sales.
2. Accept payment for sales in cash and by all major credit cards. Vendors will bear the cost of merchant card fees.
3. Promote and/or advertise the Museum Shop and the Museum Shop Online to maximize retail sales. Vendor must review any promotional and/or advertising campaigns with NYSED prior to implementation.

**Product and Pricing**

1. Select, order, stock, replenish, insure, and pay for a sufficient level of merchandise to ensure ample inventory for sale during the term (5 years) and to **exercise its best efforts to maximize gross revenues during this period**. Deliveries of inventory, supplies and equipment to the Museum Shop shall be scheduled and coordinated so as not to conflict with operations of the NYSM. NYSED will receive a percentage of Gross Sales and Consignment Sales.
2. Develop relationships with suppliers and offer for sale a significant (desired minimum of 10% of items listed in inventory) portion of products for sale that provide New York State products, including food products.
3. Provide products for sale that have a direct relationship to exhibits and programs in the State Museum, including temporary exhibits. These items may include posters and books.
4. Maintain a diverse product offering that does not concentrate items in inventory in any one retail area, for example, toys or T-shirts.
5. Maintain a product offering and store layout that is appropriate to a diverse clientele. Diversity reflects age, gender, socio-economic background and educational level. The Museum seeks to appeal to families as well as individuals who are interested in topics in which the Museum and other OCE programs have strong programmatic focus including natural science, New York State History, geography and New York State geology.
6. Provide seasonal product offerings, particularly for the following seasons:
   1. December holidays
   2. Other Seasonal holidays
7. Establish retail prices that are competitive in the marketplace. Advise NYSED about item selections and the preferred retail price points throughout the duration of the contract.
8. Product selection should be conducted with the goal of maximizing Gross Sales and also encompass and reflect the purpose and exhibit focus of the NYSM. Vendor will immediately address any concerns of NYSED regarding retail pricing, item selection, customer concerns, or other issues as they pertain to the Museum Shop operation. Vendor will propose a mechanism to assure NYSED review that selection of products to be offered will be done with sensitivity to the diverse stakeholders of the NYSED and that inappropriate product will not be made available for sale. NYSED reserves the right to immediately remove product deemed inappropriate from shop shelves at no cost to NYSED for such action. Without limiting the foregoing, vendors are barred from selling hazardous materials, alcohol, tobacco, and lottery tickets at the Museum Shop. Vendor is barred from selling food and beverage, except to the extent the items are packaged and are intended to be consumed off premises.

**Installation of Store Fixtures and Building Occupation**

1. Prior to operation of the Museum Shop, at its own cost and expense, vendor must purchase and install the store fixtures, as necessary to maximize retail sales, subject to inspection and approval by NYSED. Store fixtures include shelving, displays, racks, carpeting, furniture, lighting, point of sale equipment, computer systems, telephone service, copiers, etc. for use by staff of the Museum Shop. Fixtures and equipment must be new or in excellent condition. The build-out must be performed with minimal intrusion to the operations of the NYSM and must be scheduled and coordinated so as to not conflict with the operations of the NYSM.
2. NYSED, in its sole discretion, may require a performance bond or other security, to ensure completion of the project. The vendor awarded the contract will submit plans and design for the Museum Shop of 3600 square feet for operations and +/-600 square feet for storage. The plans are due within 30 days of approval of the contract by the Office of the State Comptroller. The plans are subject to NYSED’s approval.
3. Any signage contemplated by vendor is subject to prior approval, in its sole discretion, of NYSED.
4. Vendor will not be permitted to alter or modify the walls, ceilings and flooring of the Museum Shop and its associated storage areas, without the express consent and at the sole discretion of NYSED. The layout of the Museum Shop must comply with all applicable laws, rules and regulations, including but not limited to, access by persons with disabilities.
5. Regarding the timing for completion of the installation and fixtures, the intent is to be without revenue for as short a period as possible. NYSED can be somewhat flexible but expects at least limited operation to occur ninety days after the award of the contract. Installation of fixtures will be required no later than 150 days after award of the contract.
6. Vendor, working under advisement of CEC Building Manager, at its own cost will acquire all necessary building permits and required inspections and be responsible for all associated fees for the installation of store fixtures and any future upgrades to the Museum Shop.
7. Remove trash to designated area, including separation of all recyclables items. Trash will be removed from the designated area at NYSED’s expense. Routine maintenance and cleaning of the Museum Shop and storage area are to be performed by vendor at its own expense.
8. Vendor staff must participate in all building safety exercises. One of the vendor’s staff on premises at all times must be a designated safety officer for that location and fulfill any required training.
9. Keep the Museum Shop in a safe, clean, neat, attractive, and operable condition. NYSED reserves the right to spot check the operations of the Museum Shop and the online store, including but not limited to, performing cash counts at point of sale locations. NYSED and the Office of General Services will be granted access to the Museum Shop as needed for building security, structural repairs, etc.
10. Keep the Museum Shop secure against theft by installing sufficient security devices, subject to approval by NYSED. Vendor will supply NYSED and the Office of General Services with any access device (e.g. pass key) required to enter the Museum Shop.
11. At the termination of the contract, vendor will remove inventory it owns and fixtures and restore the premises to its condition at the time of the start of the contract, less ordinary wear and tear.

**Regulations**

1. Comply with all federal, state, and local laws, rules, ordinances and regulations including, but not limited to, all applicable provisions of workers’ compensation laws, employment compensation laws, federal social security law, the Fair Labor Standards Act, and all other applicable federal, state, and local laws and regulations relating to vendor’s obligations under this contract.

**Data Reporting**

1. Supply NYSED with monthly customer demographics reports from information acquired at time of sales.
2. Furnish NYSED with detailed reports of retail sales activity with each monthly payment or at any time the information is requested. NYSED may audit vendor’s books at any time given reasonable notice at NYSED’s expense. In the event that an audit reflects a five (5%) percent or greater discrepancy from the accounting furnished by vendor, the vendor shall be responsible for the payment of costs of such audit.

**Insurance and Indemnity**

The winning vendor will be required to obtain liability insurance of at least $1,000,000 for each occurrence. The policy must cover bodily injury and property damage at a minimum. The policy must name NYSED as an additional insured. The policy must provide that NYSED receive a minimum of thirty days prior notice of cancellation. All other terms of the policy will be decided at the time of awarding the contract. A copy of the insurance policy will be furnished to NYSED after the preliminary contract award.

Vendor shall provide fire legal liability insurance with an endorsement of $250,000 per occurrence.

Vendor is responsible to maintain Worker’s Compensation Insurance and Disability Insurance on its employees at the Museum Shop. Upon request, Vendor will furnish NYSED with proof of coverage.

As will be more fully set forth in the contract awarded pursuant to this RFP, Vendor will indemnify and hold harmless NYSED, its employees, officers and agents against any and all claims, suits, losses, damage or injury to persons or property of whatsoever kind and nature arising from vendor’s operation of the Museum Shop, including but not limited to internet sales.

Vendor acknowledges that it is an independent contractor and will not hold itself out in any way to be a part of NYSED.

**Trademarks and Logos**

1. Neither vendor nor NYSED shall obtain or claim any right, title or interest in or to the other’s name, trademark or logo, other than specified in a contract.
2. Any names, trademarks or logos developed in association with the Museum Shop will become the sole and exclusive property of the NYSED.
3. Provide advice and guidance on appropriate branding for the Museum Shop and utilize branding and trademark information approved by NYSED.
4. During the term of the contract, vendor will have a limited right to use the NYSED, NYSM or Archives or Library names, logo in connection with the operation and promotion of the Museum Shop. This right will terminate immediately upon termination of the contract. Notwithstanding the foregoing, in all marketing materials or in the operation of the Museum Shop, vendor will disclose itself as an independent contractor.

**Compensation**

1. The winning bidder will make a monthly concession payment to NYSED based upon a percentage of Gross Sales as proposed in the bidder’s Revenue Proposal. NYSED will also receive a percentage of Consignment Sales as set forth in the bidder’s Revenue Proposal.

Gross Sales and Consignment Sales are defined in Mandatory Requirements section.

In return, vendor will be provided exclusive rights to the Museum Shop during the contract term, power, lighting, heat, air conditioning, access to necessary phone and network cable lines, after hour’s staff access, access to the loading dock, and building security.

The exclusive rights do not include publications and other goods and services developed and owned by NYSED nor does it include sales of goods or services of the Partner Organizations.

1. On a per transaction basis, NYSED- mandated store discount for Cultural Education Center (New York State Archives, Library, and Museum) employees shall reduce the vendor’s payment obligation by an amount equal to the discount percentage. For example a 20% payment due would be reduced to 10% for a transaction executed with a 10% discount.
2. Payments shall be made by the 10th day of every month for the previous month’s sales. If the 10th day falls on a weekend or State recognized holiday, the payment will be due on the next business day.
3. Payments shall be made by bank or cashier check. Cash and electronic transfers cannot be accepted.

### 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.

### Consultant Staff Changes

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

### 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 January 1, 2019 and end, December 31, 2023.

### Electronic Processing of Payments

In accordance with a directive dated January 22, 2010 by the Director of State Operations - Office of Taxpayer Accountability, all state agency contracts, grants, and purchase orders executed after February 28, 2010 shall contain a provision requiring that contractors and grantees accept electronic payments. Additional information and authorization forms are available at the [State Comptroller's website](http://www.osc.state.ny.us/epay/index.htm).

## 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 sub-contractor is also bound by these terms. The submission will become the basis on which NYSED will judge the respondent’s ability to perform the required services as laid out in the RFP. This will be followed by various terms and conditions that reflect the specific needs of this project.

### Project Submission

The proposal submitted in response to this RFP must include the following documents:

1. Submission Documents—Two (2) copies (one bearing an original signature)

2. Technical Proposal—Five (5) copies

3. Revenue Proposal—Three (3) copies (one bearing an original signature)

4. Microsoft Office (CD format)—One (1) electronic version with the submission, technical, and revenue, proposals. Please place the CD-ROM in a separate envelope.

The proposal must be received by **October 12, 2018,** **by** **3:00 PM** at NYSED in Albany, New York.

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

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

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

**Any proprietary material considered confidential by the bidder 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.**

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

### Technical Proposal 60 Points

The original plus five (5) copies of the completed Technical Proposal must be mailed in a separate envelope labeled **RFP #19-005a-Technical Proposal-Do Not Open** and must include the following:

Project Description as outlined below:

Each Technical Proposal submitted in response to this RFP must be organized in a folder or binder and clearly labeled with tabs by individual sections in the following order:

1. Provide a 1-2 page Executive Summary of highlights of the key elements of the proposal for operation a retail service operation at the Museum (not scored).
2. Submit the Vendor Experience Form and images of other venues (10 points) including an outline of three or more years’ experience in cultural institution retail sales (5 points). See Submission Documents section.
3. Describe the Plan of Operation (40 points) to meet the criteria set forth in Deliverables and/or Project Description section. **In your Plan of Operation, bidders should follow the same alphabetical order in their responses as the items set forth in the RFP.**

Responses must address:

a. Retail Operation (A-K) 15 points

b. Product Offerings (L-S) 15 points

c. Installation of Store Fixtures and Building Occupation (T-DD) 10 points. In connection with the Installation of Store Fixtures and Building Operation, the narrative needs to be supplemented with a sketch layout and a description of proposed fixtures.

In responding to this section, the proposal should not just repeat the item list and state that your organization will comply with the requirements. Rather, the proposal should expand on the items to describe in detail the concept and operational plan (including staffing, marketing plan, efforts to ensure customer satisfaction) for the proposed retail operation. Provide resumes or job descriptions of key personnel and the potential shop manager involved in the proposed retail service operation. The description should also include operational policies, practices and hours of operation; equipment needs (installation of new equipment and use of existing equipment). Bidders should ensure that they specify how they will meet each of the requirements set forth in the Deliverables and/or Project Description section of this RFP.

1. Provide the contact information of a minimum of three (3) business references (5 points). References will be called upon submission of the proposal and are expected to respond within one week.

**The technical proposal must not refer to figures/percentages contained in the bidder’s Revenue Proposal.**

### Revenue Proposal 40 points

The original plus three (3) copies of the completed Revenue Proposal must be mailed in a separate envelope labeled **RFP #19-005a-Revenue Proposal-Do Not Open** and must include the following:

The revenue proposal form which is contained in the submission documents.

## 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.

Evaluation will be made on a scale of 100 points.

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

### Technical Criteria (60 Points)

1. Vendor Experience and images of other venues (15 points)

2. Plan of Operation (40 points)

3. References (5 points)

### Financial Criteria (40 Points)

The financial portion of the proposal represents 40 points of the overall score.

35 points of the 40 points will be awarded pursuant to the following formula:

Percentage of Gross Sales

(Bid amount) X 35 points = \_\_\_\_\_\_ points

(Highest bid amount)

5 of the 40 points will be awarded based upon the best Consignment Sales percentage offered according to the following formula:

(Bid amount) X 5 points = \_\_\_\_\_\_ points

(Highest bid amount)

These calculations will be computed by the Contract Administration Unit upon completion of the technical scoring by the technical review panel.

* + - **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 revenue 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 with the highest financial score. If a tie still exists, then the contract will be awarded to the vendor with the highest bid amount for the percentage of Gross Sales.

### NYSED’s Reservation of Rights

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

### Post Selection Procedures

Upon selection, the successful bidder will receive a proposed contract from NYSED. The selected bidder may be given an opportunity to reduce its revenue 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 request a debriefing by submitting a written request to the Fiscal Contact person at:

NYS Education Department

Contract Administration Unit

89 Washington Avenue

Room 501W EB

Albany, NY 12234

1. 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.
2. 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:

NYS Education Department

Contract Administration Unit

89 Washington Avenue

Room 501W EB

Albany, NY 12234

1. 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 seven (7) business days of the receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and CAU will advise OSC that a protest was filed.

4. The NYSED Contract Administration Unit (CAU) may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts.

### Vendor Responsibility

State law requires that the award of state contracts be made to responsible vendors. Before an award is made to a not-for-profit entity, a for-profit entity, a private college or university or a public entity not exempted by the Office of the State Comptroller, NYSED must make an affirmative responsibility determination. The factors to be considered include: legal authority to do business in New York State; integrity; capacity- both organizational and financial; and previous performance. Before an award of $100,000 or greater can be made to a covered entity, the entity will be required to complete and submit a [Vendor Responsibility Questionnaire](http://osc.state.ny.us/vendrep/). 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](http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm).

NYSEDrecommends that vendorsfile 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](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the [VendRep System on the Office of the State Comptroller's website](https://portal.osc.state.ny.us).

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

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

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

### Procurement Lobbying Law

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

Designated Contacts for NYSED

Program Office – **Erin Zielinski & Nancy Kelley**

Contract Administration Unit – **Adam Kutryb**

### 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](http://www.jcope.ny.gov/about/ethc/PUBLIC%20OFFICERS%20LAW%2073%20JCOPE.pdf).

### 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 and Debarment

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

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

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

### PROOF OF COVERAGE REQUIREMENTS

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

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

**Proof of Workers’ Compensation Coverage**

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

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

**Proof of Disability Benefits Coverage**

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

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

For additional information regarding workers’ compensation and disability benefits requirements, please refer to the [New York State Workers’ Compensation Board website](http://wcb.ny.gov/content/main/Employers/busPermits.jsp). Alternatively, questions relating to either workers’ compensation or disability benefits coverage should be directed to the NYS Workers’ Compensation Board, Bureau of Compliance at (518) 486-6307.

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

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

Tax Law § 5-a requires contractors awarded State contracts for commodities or services valued at more than $100,000 over the full term of the contract to certify to the New York State Department of Taxation and Finance (“DTF”) that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000, measured over a specific period of time. The registration requirement applies if the contractor made a cumulative total of more than $300,000 in sales during the four completed sales tax quarters which immediately precede the sales tax quarter in with the certification is made. Sales tax quarters are June – August, September – November, December – February, and March – May. In addition, contractors must certify to DTF that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also certify to the procuring State entity that they filed the certification with the DTF and that it is correct and complete.

The selected bidder must file a properly completed Form ST-220-CA (with 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](http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf) website. Forms are available through these links:

• [ST-220 CA](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

• ST-220 TD

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

## 4.) Assurances

The State of New York Agreement, Appendix A – Standard Clause for all New York State Contracts, and Appendix A-1 **WILL BE INCLUDED** in the contract that results from this RFP. Vendors who are unable to complete or abide by these assurances should not respond to this request.

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

1. Non-Collusion Certification
2. MacBride Certification
3. Certification-Omnibus Procurement Act of 1992
4. Certification Regarding Lobbying; Debarment and Suspension; and Drug-Free Workplace Requirements
5. Offerer Disclosure of Prior Non-Responsibility Determinations
6. NYSED Substitute Form W-9 (If bidder is not yet registered in the SFS centralized vendor file.)
7. Iran Divestment Act Certification
8. Sexual Harassment Policy Certification

## STATE OF NEW YORK AGREEMENT

This AGREEMENT is hereby made by and between the People of the State of New York, acting through MaryEllen Elia, 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 Al.

VI. Safeguards for Services and Confidentiality

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

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

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

## Appendix A

**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

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

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

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of 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 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor’s equal employment opportunity policy that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development

Division for Small Business

Albany, New York 12245

Telephone: 518-292-5100

Fax: 518-292-5884

email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

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

NYS Department of Economic Development

Division of Minority and Women's Business Development

633 Third Avenue

New York, NY 10017

212-803-2414

email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)

[NYS M/WBE Directory](https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp)

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

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

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by

State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS**. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

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

(January 2014)

APPENDIX A-1

Payment and Reporting

1. 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.

1. 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

1. The State may terminate this Agreement without cause by thirty (30) days prior written notice. In the event of such termination, the parties will adjust the accounts due and the Contractor will undertake no additional expenditures not already required. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder.

B. SED reserves the right to terminate this Agreement in the event it is found that the certification by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, SED may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

Responsibility Provisions

A. General Responsibility Language

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Education or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

B. Suspension of Work (for Non-Responsibility)

The Commissioner of Education or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Education or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

C. Termination (for Non-Responsibility)

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

Property

A. The Contractor shall maintain a complete inventory of all realty, equipment and other non-expendable assets including, but not limited to, books, paintings, artifacts, rare coins, antiques and other collectible items purchased, improved or developed under this agreement. The Contractor shall submit a copy of the inventory in a form identical to or essentially similar to, Exhibit A annexed hereto. The term "non-expendable assets" shall mean for the purposes of this agreement any and all assets which are not consumed during the term of this agreement and which have a cost of One Thousand Dollars ($1,000) or more.

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

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

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

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

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

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

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

Safeguards for Services and Confidentiality

1. 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.
2. 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.
3. 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.
4. This agreement cannot be modified, amended, or otherwise changed except by a writing signed by all parties to this contract.
5. 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.
6. 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.
7. No fees shall be charged by the Contractor for training provided under this agreement.
8. 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.
9. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.
10. 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

1. 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.
2. Contractor certifies that it has not knowingly and willfully violated the prohibitions against impermissible contacts found in State Finance Law §139-j.
3. Contractor certifies that no governmental entity has made a finding of nonresponsibility regarding the Contractor in the previous four years.
4. 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.
5. 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).
6. 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

1. 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.
2. If required by the Office of State Comptroller (“OSC”) Bulletin G-226 and State Finance Law §§ 8 and 163, Contractor agrees to submit an initial planned employment data report on Form A and an annual employment report on Form B. State will furnish Form A and Form B to Contractor if required.

The initial planned employment report must be submitted at the time of approval of this Agreement. The annual employment report on Form B is due by May 15th of each year and covers actual employment data performed during the prior period of April 1st to March 31st. Copies of the report will be submitted to the NYS Education Department, OSC and the NYS Department of Civil Service at the addresses below.

By mail: NYS Office of the State Comptroller

Bureau of Contracts

110 State Street, 11th Floor

Albany, NY 12236

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 – Data Security and Privacy Plan (where applicable)

9. Appendix S – Parents’ Bill of Rights for Data Privacy and Security (where applicable)

10. Appendix S-1 - Attachment to Parents’ Bill of Rights (where applicable)

11. Appendix D - Program Work Plan

Revised 6/12/17