REQUEST FOR PROPOSAL (RFP)

RFP #25-005

NEW YORK STATE EDUCATION DEPARTMENT

Title: Scoring Pilot and Field Tests for Select New York State Examinations

The New York State Education Department (NYSED) Office of State Assessment is seeking proposals to score constructed-response items and/or essays on pilot and field tests for examinations including, but not limited to, Regents Examinations in English, Mathematics, Science, and Social Studies. The successful bidder will provide for the scoring of pilot and field tests administered during the five calendar years of 2025, 2026, 2027, 2028 and 2029. Bidders must bid on the scoring of all examinations selected by NYSED in the content areas listed in this RFP.

The eligible applicants are either for-profit or not-for-profit entities that have a minimum of three years of experience scoring secondary-level constructed-response questions included on field tests and/or operational large-scale secondary-level assessments in English, Mathematics, Science, and Social Studies.

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

NYSED will award one (1) contract pursuant to this RFP. The contract resulting from this RFP will be for a term anticipated to begin on January 1, 2025, and end December 31, 2029.

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

Service Area**: Statewide**

Mandatory Requirements: See Mandatory Requirements section of the RFP.

Components contained in RFP Proposal #25-005 are as follows:

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

Questions regarding the request must be submitted by E-mail to AssessmentRFP@nysed.gov no later than the close of business June 26, 2024. Questions regarding this request should be identified as Program, Fiscal or M/WBE. A Questions and Answers Summary will be posted to P-12 Competitive Procurement webpage no later than July 10, 2024. The following are the designated contacts for this procurement:

Program Matters	Fiscal Matters	M/WBE Matters
McKenzie Johnson	Thomas McBride	Brian Hackett
Email Address:	Email Address:	Email Address:
AssessmentRFP@nysed.gov	AssessmentRFP@nysed.gov	AssessmentRFP@nysed.gov

Bidders are requested to submit their bids electronically. The following documents should be submitted by email as detailed in the Submission section of the RFP and must be received at NYSED no later than **July 31, 2024. Bids are due by 3:00 PM Eastern Time.**

1. Submission Documents labeled **[name of bidder] Submission Documents RFP #25-005**
2. Technical Proposal labeled **[name of bidder] Technical Proposal RFP #25-005**
3. Cost Proposal labeled **[name of bidder] Cost Proposal RFP #25-005**
4. M/WBE Documents labeled **[name of bidder] M/WBE Documents RFP #25-005**

The email address for all the documentation is cau@nysed.gov.

Instructions for Submitting an Electronic Bid:

1. The technical and cost proposal documents should be submitted in Microsoft Office. PDF files that are editable and Optical Character Recognition (OCR) searchable are acceptable. Please do not submit the technical or cost proposal as a scanned PDF.
2. Submission documents requiring a signature must be signed using one of the methods listed below and may be submitted as a Microsoft Office, PDF, or JPG document. A scanned PDF is acceptable for these documents.
3. The following forms of e-signatures are acceptable:
    a. handwritten signatures on faxed or scanned documents
    b. e-signatures that have been authenticated by a third-party digital software, such as DocuSign and Adobe Sign
    c. stored copies of the images of signatures that are placed on a document by copying and pasting or otherwise inserting them into the documents
4. Unacceptable forms of e-signatures include:
    a. a typed name, including a signature created by selecting a script or calligraphy font for the typed name of the person "signing"
5. To identify the signer and indicate that the signer understood and intended to agree to the terms of the signed document, the signer will sign beside or provide by email the following attestation: "I agree, and it is my intent, to sign this document by [describe the signature solution used] and by electronically submitting this document to [name of recipient individual or entity]. I understand that my signing and submitting this document is the legal equivalent of having placed my handwritten signature on the submitted document and this attestation. I understand and agree that by electronically signing and submitting this document I am affirming to the truth of the information contained therein."
6. In order to ensure the timely receipt of your bid, please use the subject line **"BID SUBMISSION RFP 25-005"**. Failure to appropriately label your bid or submitting a bid to any email address

other than the one identified above may result in the bid not being received by the deadline or considered for award.

7. **Bids must be received by the due date. Bids should be received by 3:00 p.m. Eastern Time.**

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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 submit the Mandatory Requirements Certification Form located in **5.) Submission Documents.** This required form must be signed by an authorized person. **Bids that do not comply with the Mandatory Requirements will be disqualified.**

1. Bidders must be either for-profit or not-for-profit entities who have a minimum of three years of experience scoring secondary-level constructed-response questions included on field tests and/or operational large-scale secondary-level assessments in English, Mathematics, Science, and Social Studies.
2. Bidders must bid on the scoring of all pilot and field tests selected by NYSED in the content areas listed in the **Scoring Pilot and Field Test Constructed Responses** section of this RFP. Constructed-response items and/or essays on any of the pilot and field tests for the Regents Examinations described in this RFP, but not limited to those titles, will be scored each year that they are administered during the five calendar years of 2025, 2026, 2027, 2028, and 2029. See the chart (**Attachment 1**) in this RFP that indicates the estimated number of answer papers associated with the various pilot and field tests. NYSED expects the bidder to consider these estimated numbers of answer papers when computing a cost per 250 or 500 papers, respectively.
3. Bidders must identify a Project Manager with a bachelor's degree or above to be the central point of contact with NYSED for this contract.

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

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

ACHIEVE FULL COMPLIANCE WITH PARTICIPATION GOALS (PREFERRED)

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

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

DOCUMENTATION OF GOOD FAITH EFFORTS

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

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

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

REQUEST A PARTIAL WAIVER OF PARTICIPATION GOALS

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

REQUEST A COMPLETE WAIVER OF PARTICIPATION GOALS

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

Coordinator is available throughout the procurement process to assist in all areas of M/WBE compliance.

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

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

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

Background

NYSED is seeking proposals to score constructed responses on pilot and field tests for select State examinations. Pilot test forms will be similar or identical in content and format to the field test forms but NYSED expects that each pilot test form will be administered to considerably fewer students. Pilot test forms will be administered in English, Mathematics, Science, and Social Studies. Specific information on the anticipated examinations, number of forms, items per form, and number of students to be tested per form is described in **Attachment 1**. The examination titles that require scoring of pilot and field tests and the actual number of papers to be scored vary during the contract period. It is expected that the vendor will score the constructed-response items and essays for the pilot and field tests included, but not limited to, those listed in the following chart.

Examination	Question Types	Point Values
Global History and Geography II	Essays, Constructed Responses	5 credits 1 or 2 credits
United States History and Government	Essays (Short and Long) Short Answers	5 credits 1 or 2 credits
English Language Arts	Essays	4 or 6 credits
Algebra I	Constructed Responses	2, 4, or 6 credits
Geometry	Constructed Responses	2, 4, or 6 credits
Algebra II	Constructed Responses	2, 4, or 6 credits
Life Science: Biology	Short Answers, Extended Answers, Graphs	1 credit
Earth and Space Sciences	Short Answers, Extended Answers, Graphs	1 credit
Chemistry	Short Answers, Extended Answers, Graphs	1 credit
Physics	Short Answers, Extended Answers, Graphs	1 credit

This test listing is subject to change as examinations may be added, deleted or developed at the discretion of NYSED.

To determine how extensive student responses are likely to be or how much time it will take to score the items as described above and in **Attachment 1**, bidders may refer to sample scoring rubrics, test samplers, and past operational tests on the Office of Assessment website.

Deliverables and/or Project Description

Annual Timeline of Deliverables

The majority of pilot tests and field tests will be administered to students in the spring with the timeline illustrated below. However, some of either may be administered in the fall. For the small proportion of pilot and field tests that NYSED administers in the fall (October or November) the vendor will perform the same tasks an equivalent number of months following the administration and with the same pricing as it is compensated for the scoring of pilot and field tests administered in the spring.

Task #	Annual Tasks	Month
1.	NYSED provides the vendor copies of the pilot or field test formats, booklets, scoring rubrics, and blank answer documents for each pilot or field test form. Vendor provides operational timeline including when NYSED will receive rangefinding letters, returning kit sample, etc. for our review and approval.	May (Year 1) February-May (Years 2-5)
2.	NYSED administers the pilot tests and field tests in selected NYS schools.	May
3.	Vendor arranges for receipt of completed pilot and field test materials directly from schools by providing pre-paid shipping labels or similar return kits.	May
4.	Vendor receives completed pilot and field test materials and sorts into machine-scannable answer documents and constructed-responses. Sample constructed responses for each item are selected for the rangefinding process.	June-July
5.	Machine-scannable answer documents are scanned and an unscored data file for each pilot/field test is provided to NYSED via secure transfer.	July - August
6.	The vendor holds rangefinding meetings for each subject area.	July - August
7.	Vendor scans, batch edits, data enters scoring material.	August
8.	Vendor prepares scoring materials and conducts rater training.	August

9.	Vendor scores pilot and field test constructed responses.	August-September
10.	Vendor provides NYSED with secure electronic transfer of constructed response scores in an agreed-upon format.	September
11.	Vendor provides annual anecdotal reports and scans of all constructed responses to NYSED via secure transfer.	September

Receiving Pilot and Field Tests

NYSED administers pilot and field tests in schools every May through early June. Materials will be printed and shipped to schools by NYSED. Upon request, NYSED can provide a limited number of copies of all materials to the vendor for calibration purposes in May of each year.

The vendor will arrange for the receipt of test materials directly from the schools. This includes both machine-scannable answer sheets (i.e., where students record responses to selected-response questions) and constructed responses. Materials such as reference sheets, teacher directions, and security forms will also be included in shipments from schools. The vendor must provide each participating school with prepaid shipping labels or another form of return kit that includes the necessary support material for shipping the pilot and field test materials to the vendor at no cost to the schools. This should be completed no later than May 31 each year.

The vendor will track the receipt of materials from schools. Upon request, the vendor must be able to provide NYSED with confirmation that materials were or were not returned by a school. Schools are assigned 1-3 subjects and the vendor should be able to include information regarding how many subjects were returned.

Scanning Machine-Scorable Answer Sheets

Machine-scorable answer sheets should be separated from the shipments received by the vendor. NYSED will provide specifications of these answer sheets to aid in scanning (a current answer sheet is provided as **Attachment 3**). The vendor will scan the answer sheets and provide NYSED with an unscored data file for each pilot/field test in an agreed-upon format. The file layout will be specified by NYSED, and variables included in the file will be test form number, booklet number, and item response array. The vendor is not expected to score the machine-scorable responses, only to provide a data file showing which responses students selected.

Constructed Responses

Depending on the content area, students will record their constructed responses within the test booklet or use a separate answer document. The pilot and field test answer documents are somewhat similar to operational tests except that they contain fewer questions. For Science tests, answer documents (i.e., the pages where student constructed responses are recorded) are likely to be 1-3 pages. For Mathematics tests, answer documents are likely to be 3-4 pages. For English Language Arts tests, answer documents are likely to be 2-6 pages. For Social Studies tests, answer documents are likely to be 6-20 pages. For English Language Arts and Social Studies essays, the number of pages actually used by the student will vary. In all cases the test booklet will contain more pages than just those

written on by students. The vendor will be responsible for scanning only those pages containing student constructed responses.

It is anticipated that the paper specifications to be used in printing the answer documents is very bright, most often 20-24 lb. opaque or occasionally 50 or 60 lb. opaque. Black scannable ink will be used. There will likely not be timing marks on the booklets. Each scoring document will have a booklet number so that the form number and booklet number combined create a unique identifier. The booklet number, test type, form, and year will be printed on each page in each book. The form number and booklet number will need to be captured by the vendor for each pilot or field test scoring document. It is not anticipated that answer documents will be labeled or overprinted with pre-ID information/barcodes or manually bubbled for student demographic information. Unique lithocodes will not be printed on scoring documents. The last page of each book is usually left blank. The vendor will not have the ability to change the design of the answer documents used for this program.

The vendor will be required to scan the student constructed responses for both scoring purposes and for provision to NYSED following scoring. Constructed responses are to be available by content area and searchable by booklet and form number. Image files (format to be agreed upon by the vendor and NYSED) are to be provided via secure file transfer once all responses are scanned.

Rangefinding Meetings

The vendor is responsible for conducting the rangefinding process as well as for all of the necessary logistical arrangements associated with meetings of NYS educator committees that will participate in the process. Rangefinding meetings will be held every year for each subject area in **Attachment 2** within twenty-five (25) miles of Albany. The vendor will plan the rangefinding meeting agenda in consultation with NYSED. The participants will be New York State teachers from across the state. In the spring, NYSED will provide the names of teachers that can be invited to participate in the rangefinding meetings. The vendor will send initial invitations no later than early May each year and follow up to ensure that committees are fully staffed with NYS educators (see **Attachment 2** for committee sizes and duration). Once participants have been confirmed, the vendor should inform them of the logistics of the rangefinding meeting.

The vendor is responsible for all of the costs of the meeting rooms sufficient in size for all participants and for the payment of an honorarium of $250 per full day to all of the participating New York State teachers. The vendor is also responsible for reimbursing all participating New York State teachers for their lodging (if they reside 50 or more miles from the meeting location), meals, and travel expenses associated with the rangefinding meetings. The vendor is expected to provide meals during the meetings and reimbursement for other meals for participants. Travel expense reimbursement must be at the approved New York State rates that are in effect on the dates of rangefinding. Current rates are available on the U.S. General Services Administration website.

To prepare for the rangefinding meetings, the vendor will identify a sample of student responses to every constructed-response and essay question. Each sample set should include sufficient student papers to illustrate the multitude of ways that students responded to the question, including both correct and incorrect answers. In past years, NYSED has found that samples of 20-40 papers are necessary to meet this goal, although the number of needed papers is dependent on the point-value of the question.

The vendor will need to bring materials to the Rangefinding site as appropriate to the needs of each content area. This will include the test forms, rubrics/scoring guides, and other scoring materials

identified by NYSED. This will include a number of hard copies of materials, even if the rangefinding process is being conducted using technology.

Before the Rangefinding session starts, the vendor must set up any required technology to ensure that it is in working order before participants arrive. If training on the technology will be necessary, this should be provided by the vendor before the rangefinding session begins. The vendor will work with NYSED to establish the first-day training by content area.

The vendor will provide staffing in the form of notetakers at each committee table to record and summarize key details of the scored item including suggested item edits, created papers, rubric changes, and any information that would support the scoring process following Rangefinding. Please note that each subject area will have multiple tables as 4-5 educators comprise a table, dependent on subject area (see **Attachment 2** for committee sizes). For English Language Arts only, the vendor will provide lead facilitators in addition to notetakers at each table. Both table leaders and notetakers should have direct knowledge of the sample papers chosen for the table activities.

The vendor will establish security procedures for the meeting, including shipping beforehand and afterward, to ensure that secure materials are protected in accordance with NYSED policies.

Scoring Pilot and Field Test Constructed Responses

The vendor is responsible for hiring, providing training to pilot and field test raters, and facilitating the scoring of the constructed-response and essay questions by the raters. The raters hired by the vendor should have at least a bachelor's degree **and** a minimum of 15 college credits or teaching certification from any state in the subject area of the pilot or field test being scored. In conducting the scoring in the content areas of English, Math Social Studies and Science, the vendor will ensure that the raters use the process, rubrics, and scoring materials provided by NYSED to score the constructed-response and essay questions. Rater quality should be checked throughout the process, and the vendor should have accountability steps in place to ensure that raters making errors or scoring inconsistently are retrained or removed. Inter-rater reliability will be established by having fifteen percent of the responses scored independently by two separate raters. For each item, the vendor will record anecdotal reports of how students appear to relate to the stimulus, any problems the students appear to have in undertaking the task, items that were misunderstood, and comments on the effectiveness of the training materials. NOTE: blank papers are not acceptable for use in calculating the fifteen percent.

Destruction

Upon approval from NYSED, the vendor will securely destroy all used and unused test booklets and answer documents. Should NYSED request, the vendor will arrange for return shipment of used test booklets, at NYSED's expense.

Project Management

The bidder will identify a project manager to be the central point of contact with NYSED for this contract. The project manager and all other key personnel of the vendor will be identified by name and experience in writing to NYSED and approved by NYSED. Current resumes will be included as part of the proposal.

The project manager must have a minimum of a bachelor's degree, and project management certification is preferred. The project manager should have at least three years' experience, including

experience working with K-12 educational projects. The project manager is expected to have strong organizational and managerial skills.

The vendor should submit thorough documentation demonstrating personnel experiences and expertise congruent with staff assignments for all aspects of the tasks outlined in the contract. The vendor will provide plans and procedures for ensuring that staffing is commensurate with the project's scope of work throughout the duration of the contract and immediately notify NYSED of any changes in key staffing, including any subcontractors.

Detailed and sufficient information should be presented to NYSED as to the efficacy of the proposed staffing solutions for this project and organizational arrangements of the same. This information should include:

1. An organizational diagram that indicates staffing arrangements for this project.
2. The time commitments of the proposed staff. Time commitments should be described in terms of projected hours per week devoted exclusively to this contract.
3. A detailed description of responsibilities for all proposed staff.
4. Detailed resumes for all key staff members associated with this project.

Project Manager Responsibilities

The project manager will have the following responsibilities:

1. Travel to Albany for an introductory meeting with NYSED staff within thirty days of final contract approval. After the initial introductory meeting, the project manager and other staff, as needed, will be required to meet with NYSED staff quarterly either virtually or in person.
2. Develop and submit an annual detailed project plan timeline to NYSED for review and sign-off. The purpose of the plan is to provide NYSED with an overall analysis of the methods the vendor will utilize to perform all aspects of the contract within the required timeframe. The vendor will work in good faith to resolve any concerns NYSED has about the plan.
3. Coordinate and participate in quarterly status meetings and at least monthly conference calls with NYSED staff. Quarterly status meetings are one full day in duration. At peak times in planning and conducting scoring of Pilot and Field Test items, conference calls should be conducted weekly. At least two of the quarterly status meetings every year must be conducted face-to-face in Albany; it may be possible to arrange for one or two of the quarterly meetings each year to coincide with rangefinding. The vendor will provide minutes of these meetings to NYSED for review and approval. These quarterly meetings can be scheduled to coincide with rangefinding, or other activities being held in Albany.
4. Maintain accurate, up-to-date information on the current status of all work on the project and communicate such to NYSED in a timely manner.
5. Produce monthly status reports on the implementation and progress of their work for NYSED. During peak scoring periods, status reports should be provided weekly. Status reports must include the following:
    - A current detailed listing of all work and activities completed and in progress with corresponding dates;
    - A detailed list of upcoming work, with critical work flagged and tracked;
    - A list of all information needed from NYSED in order to proceed with work;
    - External dependencies, if any, that may affect the schedule, and the variance by which it would affect the schedule; and

- Dates that correspond to all timelines and schedules for deliverables.

6. Submit materials to NYSED according to a mutually agreed upon timeline to allow for NYSED's review of any forms, training materials, etc. to be used during these activities. NYSED must have sufficient time to provide feedback to the vendor and give final approval on the deliverables.
7. Submit all deliverables and other work products in the manner designated by NYSED for review and approval prior to any release or distribution by the vendor. The project manager will submit materials to NYSED allowing twenty days for NYSED for appropriate review and feedback when necessary.
8. Oversee the development and implementation of changes as necessary to ensure that the project remains within specified scope and is within time, cost, and quality objectives.
9. Refine and develop procedures and materials for scoring of the pilot and field tests.

Approval Procedures

NYSED will have approval authority over all aspects of this project, including but not limited to the following:

1. All materials, products, and services produced by the vendor. This includes, but is not limited to, all brochures, guides, student information labels, manuals, and all other printed materials produced for this project.

2. All development plans and timelines, scoring, and reporting.

3. All schedules, including but not limited to training schedules, implementation schedules, and scoring/reporting schedules.

4. All reports, including but not limited to statistical data and anecdotal reports.

5. Any changes to staff assigned to the project, including project manager, on and after award of the contract and commencement of work for the duration of the contract.

Notification Procedures

If a problem or potential problem arises with regard to the quality, timeliness, or any other issue with respect to deliverables and services at any time during the contract term, regardless of when the problem arises, the project manager must immediately notify the Director of State Assessment or his designee, via telephone, e-mail, or fax of the issue and the vendor's proposed solution and shall also include the issue and the NYSED-approved solution on any subsequent report(s).

If the vendor encounters a student response of a sensitive nature (e.g., student expressing a desire to harm himself or others), the project manager will immediately notify the Director of State Assessment or their designee via telephone or e-mail.

Monitoring and Evaluation

NYSED will monitor and evaluate the progress of the vendor in meeting contract specifications through pre-arranged conference calls and quarterly status meetings. This evaluation will emphasize the vendor's ability to continue to meet timelines and supply deliverables.

Quality Control

NYSED has exacting standards for its assessment program and will impose stringent quality controls on the contract work resulting from this RFP. NYSED requires the vendor who conducts contract work to agree to:

1. Work cooperatively with other vendors performing work for NYSED as requested by NYSED;
2. Produce deliverables as appropriate, and according to the work plan agreed upon with NYSED; and
3. Produce monthly status reports on the progress of their work on this contract for NYSED and weekly reports during peak scoring periods.

Construction of Examination/Defense of Examination

The vendor agrees to cooperate with NYSED with respect to any challenge to an examination and, if necessary, provide at no expense to NYSED, experts, evidence, witness testimony or other documentation necessary, within reason, to refute a challenge to the validity, reliability or any other aspect of the scoring of the examination that pertains to the vendor's responsibilities for the scoring of pilot and field tests for five (5) years from the date the scoring activity occurred.

Ownership

1. All rangefinding and test-related materials developed under the contract become the exclusive property of NYSED.

2. NYSED is the sole owner of outputs resulting from the work proposed hereunder this contract. The vendor should be prepared to deliver all or parts of the items to NYSED at any point during the contract. Materials can only be used by the vendor or other parties with written permission of NYSED. The vendor cannot use NYSED materials for any of their other contracts within New York State or for contract work in other states.

3. All such outputs are to be turned over to NYSED in print and electronic form, as specified by NYSED, on a basis of no less frequently than once per year.

4. The vendor shall reproduce, use, display, and include copies of NYSED's trademarks, trade name, logos, copyrights and other intellectual property (collectively, the "Marks") on all copies of materials produced for NYSED. The bidder acknowledges that the Marks are owned solely and exclusively by NYSED, and nothing contained in the resulting contract gives the bidder any ownership right or interest in such Marks.

5. Notwithstanding the above, all pre-existing processes, procedures, methodologies, software, intellectual property and other trade secrets or property owned by vendor, prior to this contract, in the performance of its obligations under this Agreement, including any revisions or modifications thereof, are and remain the sole property of the vendor.

6. All materials written or revised under this Agreement, are to be held strictly confidential and may not be copied, duplicated or disseminated in any manner other than as authorized in writing by NYSED.

Payments and Reports

The vendor will be paid based upon the actual volume of student answer documents scored for each field test form. The volume to be scored will vary from year to year, and NYSED makes no guarantee as to the amount to be scored in any given year.

In the Cost Proposal, bidders shall indicate the cost for scoring the first 250 student answer documents for any given pilot test form, as well as the cost for each subsequent 250 answer documents or part thereof, and the cost for scoring the first 500 student answer documents for any given field test form, as well as the cost for each subsequent 500 answer documents or part thereof. If fewer than 250 papers for any given pilot test form or fewer than 500 papers for any given field test form are sent to the vendor for scoring, the vendor will be paid the full amount proposed for the first 250 or 500 documents respectively. These costs will include all costs associated with the deliverables specified in the RFP, including contractor-staff travel to Albany, developing score training materials, conducting rangefinding, scoring all forms, returning test forms to NYSED, transmitting scoring data, providing anecdotal scoring reports, and all security-related costs incurred.

The chart below is provided to illustrate how payment would be determined. Costs listed are for illustrative purposes only.

Examination	Cost for First 500 Field Test Documents Scored	Cost Per Subsequent 500 Documents Scored or Part Thereof	Form	Actual # of Student Answer Documents Scored	Payment
Global History & Geography CRQ	$5,000	$2,000	1	800	$7,000
Global History & Geography CRQ	$5,000	$2,000	2	1,000	$7,000
Global History & Geography CRQ	$5,000	$2,000	3	1,100	$9,000
Global History & Geography CRQ	$5,000	$2,000	4	700	$7,000
Global History & Geography CRQ	$5,000	$2,000	5	400	$5,000

Payment to the vendor will be based upon invoices submitted to NYSED after the activity is completed and/or deliverables have been submitted to NYSED. Payments will be made based upon receipt of deliverables that have been approved by NYSED.

An invoice for payment may be submitted after an annual anecdotal report and flash or hard drive with score data have been received and approved by NYSED.

Requirements of Education Law Section 2-d

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

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

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

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

Accessibility of Web-Based Information and Applications

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

Subcontracting Limit

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

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

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

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

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

Staff Changes

The contractor will maintain continuity of staff throughout the course of the contract. All changes in staff will be subject to NYSED approval.

Contract Period

NYSED will award one contract pursuant to this RFP. The contract resulting from this RFP will be for a term anticipated to begin January 1, 2025, and to end December 31, 2029.

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.

M/WBE and Equal Employment Opportunities Requirements:
Contractor Requirements and Obligations under New York State Executive Law, Article 15-A (Participation by Minority Group Members and Women with Respect to State Contracts)

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

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

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

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

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

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

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

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

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

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

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

4. Contractors and subcontractors shall undertake programs of affirmative action and equal employment opportunity as required by this section[1]. In accordance with the provision of the Article, the bidder will submit, with their proposal, Staffing Plan (EEO 100).

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

6. Contractor shall make a good faith effort to solicit active participation by enterprises identified in the Empire State Development ("ESD") directory of certified businesses. The contractor must document its good faith efforts as set forth in 5 NYCRR 142.8. This document, Contractors Good Faith Efforts, can be found in the M/WBE Submission Documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1) fully comply with the participation goals specified in the RFP; OR

2) partially comply with the participation goals specified in the RFP, and include a request for partial waiver, and document their good faith efforts to fully comply with the percentage goals specified in the RFP; OR

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

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

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

2.) Submission

Documents to be submitted with this proposal

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

Project Submission

The proposal submitted in response to this RFP must include the following documents submitted by email to **cau@nysed.gov** in Microsoft Office or editable PDF per the electronic proposal submission procedures outlined above, preferably with each of the following sets of documents attached as a single file (i.e. one email with four attachments):

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

The proposal must be received by **July 31, 2024. Bids are due by 3:00 PM** by email to **cau@nysed.gov**.

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

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

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

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

Technical Proposal	**(70 points)**

The completed Technical Proposal should be emailed and labeled **[name of bidder] Technical Proposal – RFP #25-005** and include the following:

1. Project Description as outlined below.
2. Plan of Work
3. Resumes

The Technical Component for each content area should be organized and clearly labeled by individual sections (i.e., 1a, 1b, 2a, 2b) in the following order:

Section 1. Experience in Successful Scoring Activities	**(35 points)**

Section 1a. Development of Scoring Training Materials	**(5 points)**

The proposal should describe the experience, competence and timeliness of the vendor in the development of scoring training materials for pilot and field tests.

Section 1b. Receiving and Processing Materials	**(5 points)**

The proposal should include a plan for providing schools with prepaid return shipping labels or kits as well as details on how the vendor will receive, sort, and process the pilot and field test materials. This will include both machine-scorable answer sheets and open-ended responses in test booklets. The plan must also include tracking the receipt of materials.

Section 1c. Conducting Rangefinding Meetings	**(10 points)**

The proposal should describe the experience, competence and timeliness of the vendor in conducting rangefinding meetings, including a description of how committees will be convened and a description of the rangefinding process.

Section 1d. Scoring Pilot and Field Tests	**(15 points)**

The proposal should describe the experience, competence and timeliness of the vendor in scoring pilot and field tests for large-scale assessments, including a description of how scorers will be selected and trained and a description of the scoring process. For each test item, the vendor will record anecdotal reports of how students appear to relate to the stimulus, any problems the students appear to have in undertaking the task, items that were misunderstood, and comments on the effectiveness of the training materials.

Section 2. Return of Files to NYSED	**(10 points)**

The proposal should include a plan for scanning machine-scorable answer sheets and providing an unscored data file to NYSED for each pilot/field test in an agreed-upon format. The vendor will be required to scan the student constructed responses for both scoring purposes and for provision to NYSED following scoring. Constructed responses are to be available by content area and searchable by booklet and form number. Image files (format to be agreed upon by the vendor and NYSED) are to be provided via secure file transfer once all responses are scanned.

Section 3. Appropriateness of Work Plans	(15 points)

The proposal should include a detailed work plan that describes the major activities, deliverables and timelines described in the RFP. The work plan should demonstrate the vendor's recognition of the importance of deadlines being met and security of the test materials in their possession. The work plan should be aligned with a detailed timeline for each year of the contract. Bidders should demonstrate the capacity to complete the project using their own hardware and software.

Section 4. Staffing Plan	(5 points)

The proposal should provide a plan that shows all roles to be filled during the contract period and commits to fully staffing the project as described in the RFP. Names, resumes, qualifications, experience, and job responsibilities of the individual(s) identified as key staff (e.g., project manager) for this project should be included. The resumes should reflect the content knowledge necessary to be assigned to this project. Please include project management certification for the project manager assigned to this project.

Section 5. Appropriateness of Security Measures	(5 points)

The technical proposal should describe the bidder's software and hardware capabilities and the organization's ability to receive and transmit data files and other information electronically via a secure, password-protected portal (SFTP).

The technical proposal should include a security plan that describes procedures for handling secure tests and student data, in accordance with the protocols set forth in this RFP and Appendix R: Data Security and Privacy Plan Provisions. The security plan should specifically address confidentiality, where the activities described in this RFP will occur and how test materials and student data will remain secure at all times when receiving, storing, and processing student responses.

The proposal should describe how the bidder will use encrypted files and design, host, and maintain a secure file transfer protocol (SFTP) site as a means of file transfer. The plan should include how any secure data will be purged at the end of the contract term and should also include a data disaster recovery plan.

Cost Proposal	(Total 30 Points)

The completed Cost Proposal should be emailed and labeled **[name of bidder] Cost Proposal – RFP #25-005** and include the following:

1.) Years 1-5 Cost Proposal
2.) 5 Year Budget Summary
3.) Subcontracting Form
4.) M/WBE Purchases Form

Budgets must be submitted using whole dollar numbers.

The bidder will indicate specific costs by submitting the bid form posted with the RFP which reflects the cost for the first 500 student answer documents scored for each field test form, as well as the cost per 500 subsequent field test student answer documents scored per field test form and the cost for the first

250 student answer documents scored for each pilot test form, as well as the cost per 250 subsequent field test student answer documents scored per pilot test form. This cost will include all costs associated with the deliverables specified in the RFP, including contractor-staff travel to Albany, developing score training materials, conducting rangefinding, scoring all forms, returning test forms to NYSED, transmitting scoring data, providing anecdotal scoring reports, and all security-related costs incurred by the bidder. Costs should be submitted using whole dollar numbers.

Bidders are asked to submit unit costs only. An estimated contract maximum will be calculated based upon the unit costs submitted. Actual payment under the contract will be based upon the actual volume of work performed.

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

M/WBE Documents

The completed M/WBE Documents should be emailed and labeled **[name of bidder] M/WBE Documents – RFP #25-005.** Please return the documents listed for the compliance method bidder has achieved:

Full Participation-No Request for Waiver
1. M/WBE Cover Letter, **Signatures Required**
2. **M/WBE 100** Utilization Plan
3. **M/WBE 102** Notice of Intent to Participate
4. **EEO 100** Staffing Plan

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

No Participation-Request for Complete Waiver
1. M/WBE Cover Letter, **Signatures Required**
2. **EEO 100** Staffing Plan
3. **M/WBE 10**1 Request for Waiver
4. **M/WBE 105 Contractor's Good Faith Efforts**

3.) Evaluation Criteria and Method of Award

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

Criteria for Evaluating Bids

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

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

The committee will review each proposal to determine compliance with the requirements described in the RFP. 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 (70 Points)

Each proposal received by the deadline will be reviewed and rated on the quality and extent to which the bidder meets the following criteria:

	Technical Score Evaluation	Points
Section 1.	Experience in Successful Scoring Activities	
Section 1a	Development of Scoring Training Materials	5 points
Section 1b.	Receiving and Processing Materials	5 points
Section 1c.	Conducting Rangefinding Meeting	10 points
Section 1d.	Scoring Pilot and Field Tests	15 points
Section 2	Return of Files to NYSED	10 points
Section 3.	Appropriateness of Work Plans	15 points
Section 4.	Staffing Plan	5 points
Section 5.	Appropriateness of Security Measures	5 points
	Technical Evaluation Total Points	**70**

Financial Criteria (30 Points)

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

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

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

Method of Award

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

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

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

NYSED's Reservation of Rights

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

Post Selection Procedures

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

Debriefing Procedures

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

1. All unsuccessful bidders may request a debriefing within fifteen (15) calendar days of receiving notice from NYSED of non-award. Bidders may request a debriefing by submitting a written request to the Fiscal Contact person at AssessmentRFP@nysed.gov.

2. Upon receipt of a timely written request from the unsuccessful bidder, NYSED will schedule the debriefing to occur within a reasonable time following receipt of the request. Debriefings will be conducted in person, unless NYSED and the bidder mutually agree to utilize other means, including but not limited to telephone, video-conferencing or other types of electronic communication.

3. The debriefing will include: a) the reasons that the proposal submitted by the unsuccessful bidder was not selected for an award; b) the qualitative and quantitative analysis employed by NYSED in assessing the relative merits of the proposals; c) the application of the selection criteria to the unsuccessful bidder's proposal; and d) when the debriefing is held after the final award, the reasons for the selection of the winning proposal. The debriefing will also provide, to the greatest extent practicable, general advice and guidance to the unsuccessful bidder concerning potential ways that their future proposals could be more responsive.

Contract Award Protest Procedures

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

1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by NYSED.

2. The protest must be filed within ten (10) business days of receipt of a debriefing or disqualification letter. The protest letter must be filed with the Contract Administration Unit by emailing AssessmentRFP@nysed.gov attention Thomas McBride.

3. The NYSED Contract Administration Unit (CAU) will convene a review team that will include at least one staff member from each of NYSED's Office of Counsel, CAU, and the Program Office. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within ten (10) business days of the receipt of the protest. The original

protest and decision will be filed with OSC when the contract procurement record is submitted for approval and CAU will advise OSC that a protest was filed.

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

Vendor Responsibility

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

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

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

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

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

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

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

Procurement Lobbying Law

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the New York State Education Department ("NYSED") and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of the solicitation through final award and approval of the Procurement Contract

by NYSED and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified below. NYSED employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at NYSED's Procurement Lobbying Law Policy Guidelines webpage.

Designated Contacts for NYSED
Program Office – **McKenzie Johnson**
Contract Administration Unit – **Thomas McBride**
M/WBE – **Brian Hackett**

Consultant Disclosure Legislation

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

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

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

Form A is available on OSC's website.

Please note that although this form is not required as part of the bid submission, NYSED encourages bidders to include it in their bid submission to expedite contract execution if the bidder is awarded the contract. Note also that only the form listed above is acceptable.
Chapter 10 of the Laws of 2006 mandates that State agencies must now require State contractors to **report annually** on the employment information described above, including work performed by subcontractors. The legislation mandates that the annual employment reports are to be submitted by the contractor to the contracting agency, to OSC and to the Department of Civil Service. State Consultant Services Contractor's Annual Employment Report (Form B) is to be used to report the information for all procurement contracts above $15,000. Please note that, in contrast to the information to be included on Form A, which is a one-time report of planned employment data for the entire term of a consulting contract on a projected basis, ***Form B will be submitted each year the contract is in effect and will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31).***

Form B is available on OSC's website.

For more information, please visit OSC Guide to Financial Operations.

Public Officer's Law Section 73

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

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

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

Review Public Officer's Law Section 73.

NYSED Substitute Form W-9

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

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

Workers' Compensation Coverage 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. 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 website. Forms are available through these links:

• ST-220 CA

• ST-220 TD

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

4.) Assurances

The State of New York Agreement, Appendix A (Standard Clauses for all New York State Contracts), Appendix A-1 (Agency-Specific Clauses), and Appendix R (Data Security and Privacy Plan Provisions) **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
9. Certification Under Executive Order No. 16

M/WBE Documents **– (the forms below are included in 5.) Submission Documents)**
Please return the documents listed for the compliance method bidder has achieved:

Full Participation-No Request for Waiver
1. M/WBE Cover Letter
2. **M/WBE 100** Utilization Plan
3. **M/WBE 102** Notice of Intent to Participate
4. **EEO 100** Staffing Plan

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

No Participation-Request for Complete Waiver
1. M/WBE Cover Letter
2. **EEO 100** Staffing Plan
3. **M/WBE 101** Request for Waiver
4. **M/WBE 105** Contractor's Good Faith Efforts

STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

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

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

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

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

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

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

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

II. Payment and Reporting

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

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

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

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

III. Terminations

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

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

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

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

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

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

IV. Indemnification

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

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

V. Property

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

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, if this contract exceeds $50,000 (or $75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and $150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed $85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed $125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds $200,000.

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

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

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

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

executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

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

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

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

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

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State

contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway

Albany, New York 12245
Telephone: 518-292-5100

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

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

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

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

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

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

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

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

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

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

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

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

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

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

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be

appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

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

(June 2023)

APPENDIX A-1
AGENCY-SPECIFIC CLAUSES

Payment and Reporting

A. In the event that Contractor shall receive, from any source whatsoever, sums the payment of which is in consideration for the same costs and services provided to the State, the monetary obligation of the State hereunder shall be reduced by an equivalent amount provided, however, that nothing contained herein shall require such reimbursement where additional similar services are provided and no duplicative payments are received.

B. For each individual for whom costs are claimed under this agreement, the contractor warrants that the individual has been classified as an employee or as an independent contractor in accordance with 2 NYCRR 315 and all applicable laws including, but not limited to, the Internal Revenue Code, the New York Retirement and Social Security Law, the New York Education Law, the New York Labor Law, and the New York Tax Law. Furthermore, the contractor warrants that all project funds allocated to the proposed budget for Employee Benefits, represent costs for employees of the contractor only and that such funds will not be expended on any individual classified as an independent contractor.

Terminations

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

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

Responsibility Provisions

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

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

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

Property

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

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

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

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

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

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

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

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

Safeguards for Services and Confidentiality

A. Any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department. The material prepared under the terms of this agreement by the Contractor shall be prepared by the Contractor in a form so that it will be ready for copyright in the name of the New York State Education Department. Should the Contractor use the services of consultants or other organizations or individuals who are not regular employees of the Contractor, the Contractor and such organization or individual shall, prior to the performance of any work pursuant to this agreement, enter into a written agreement, duly executed, which shall set forth the services to be provided by such organization or individual and the consideration therefor. Such agreement shall provide that any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department and that such work shall be prepared in a form ready for copyright by the New York State Education Department. A copy of such agreement shall be provided to the State.

B. Required Web Accessibility of Delivered Documents and Applications. If applicable, all documentation, applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Education Department IT Policy NYSED-WEBACC-001, Web Accessibility Policy, which requires that documents, web-based information and applications are accessible to persons with disabilities. All delivered documentation and applications must conform to NYSED-WEBACC-001 as determined by quality assurance testing. Such quality assurance testing will be conducted by NYSED employee or contractor and the results of such testing must be satisfactory to NYSED before documents and applications will be considered a qualified deliverable under the contract or procurement.

C. All reports of research, studies, publications, workshops, announcements, and other activities funded as a result of this proposal will acknowledge the support provided by the State of New York.

D. This agreement cannot be modified, amended, or otherwise changed except by a writing signed by all parties to this contract.

E. No failure to assert any rights or remedies available to the State under this agreement shall be considered a waiver of such right or remedy or any other right or remedy unless such waiver is contained in a writing signed by the party alleged to have waived its right or remedy.

F. Expenses for travel, lodging, and subsistence shall be reimbursed at the per diem rate in effect at the time for New York State Management/Confidential employees.

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

H. Partisan Political Activity and Lobbying. Funds provided pursuant to this Agreement shall not be used for any partisan political activity or for activities that may influence legislation or the election or defeat of any candidate for public office.

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

J. This agreement, including all appendices, is, upon signature of the parties and the approval of the Attorney General and the State Comptroller, a legally enforceable contract. Therefore, a signature on behalf of the Contractor will bind the Contractor to all the terms and conditions stated therein.

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

Certifications

A. Contractor certifies that it has met the disclosure requirements of State Finance Law §139-k and that all information provided to the State Education Department with respect to State Finance Law §139-k is complete, true and accurate.

B. Contractor certifies that it has not knowingly and willfully violated the prohibitions against impermissible contacts found in State Finance Law §139-j.

C. Contractor certifies that no governmental entity has made a finding of non-responsibility regarding the Contractor in the previous four years.

D. Contractor certifies that no governmental entity or other governmental agency has terminated or withheld a procurement contract with the Contractor due to the intentional provision of false or incomplete information.

E. Contractor affirms that it understands and agrees to comply with the procedures of the STATE relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6)(b).

F. Contractor certifies that it is in compliance with NYS Public Officers Law, including but not limited to, §73(4)(a).

Notices

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

Miscellaneous

A. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful

acts or omissions of Contractor's agents, officers, employees or subcontractors.

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

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

By mail: NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting
By fax: (518) 474-8030 or (518) 473-8808

Reports to DCS are to be transmitted as follows:

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

Reports to NYSED are to be transmitted as follows:

By mail: NYS Education Department
Contract Administration Unit
Room 505 W EB
Albany, NY 12234
By fax: (518) 408-1716

C. Consultant Staff Changes. If this is a contract for consulting services, Contractor will maintain continuity of the consultant team staff throughout the course of the contract. All changes in staff will be subject to STATE approval. The replacement consultant(s) with comparable skills will be provided at the same or lower hourly rate.

D. Order of Precedence. In the event of any discrepancy, disagreement, conflict or ambiguity between the various documents, attachments and appendices comprising this contract, they shall be given preference in the following order to resolve any such discrepancy, disagreement, conflict or ambiguity:

1. Appendix A - Standard Clauses for all State Contracts
2. State of New York Agreement
3. Appendix A-1 - Agency Specific Clauses
4. Appendix X - Sample Modification Agreement Form (where applicable)
5. Appendix A-3 - Minority/Women-owned Business Enterprise Requirements (where applicable)
6. Appendix B - Budget
7. Appendix C - Payment and Reporting Schedule
8. Appendix R – Security and Privacy Mandates (where applicable)
9. Appendix D - Program Work Plan

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

ARTICLE I: DEFINITIONS

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

1. **Access:** The ability to view or otherwise obtain, but not copy or save, Student Data and/or APPR Data arising from the on-site use of an information system or from a personal meeting.
2. **APPR Data**: Personally Identifiable Information from the records of an Educational Agency relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of Education Law §§ 3012-c and 3012-d.
3. **Breach:** The unauthorized Access, acquisition, Disclosure or use of Student Data or APPR Data that is (a) accomplished in a manner not permitted by New York State and federal laws, rules, and regulations, or in a manner that compromises its security or privacy, (b) executed by or provided to a person not authorized to acquire, access, use, or receive it, or (c) a Breach of Contractor's or Subcontractor's security that leads to the accidental or unlawful alteration, destruction, loss of, Access to or Disclosure of Student Data or APPR Data.
4. **Commercial or Marketing Purpose:** The Disclosure, sale, or use of Student Data for the purpose of directly or indirectly receiving remuneration, including the Disclosure, sale, or use of Student Data for advertising purposes, or the Disclosure, sale, or use of Student Data to develop, improve, or market products or services to Students.
5. **Disclose or Disclosure**: The intentional or unintentional communication, release, or transfer of Student Data and/or APPR Data by any means, including oral, written, or electronic.
6. **Education Record:** An education record as defined in the Family Educational Rights and Privacy Act and its implementing regulations, 20 U.S.C. § 1232g and 34 C.F.R. Part 99, respectively.
7. **Educational Agency**: As defined in Education Law § 2-d, a school district, board of cooperative educational services, school, or the New York State Education Department ("NYSED").
8. **Eligible Student:** A Student who is eighteen years of age or older.
9. **Encrypt or Encryption**: As defined in the Health Insurance Portability and Accountability Act of 1996 Security Rule at 45 CFR § 164.304, encrypt means the use of an algorithmic process to transform Personally Identifiable Information into an unusable, unreadable, or indecipherable form in which there is a low probability of assigning meaning without use of a confidential process or key.
10. **Information:** Student Data and APPR Data from an Educational Agency that is Disclosed or made available to the Contractor pursuant to this contract with NYSED to which this DPA is attached and incorporated.
11. **NIST Cybersecurity Framework**: The U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1.
12. **Parent:** A parent, legal guardian, or person in parental relation to the Student.

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

ARTICLE II: PRIVACY AND SECURITY OF INFORMATION

1. **Compliance with Law.**

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

2. **Authorized Use.**

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

3. **Contractor's Data Privacy and Security Plan**.

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

4. **NYSED's Data Privacy and Security Policy**

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

5. **Right of Review and Audit.**

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

6. Contractor's Employees and Subcontractors.

(a) Access to or Disclosure of Information shall only be provided to Contractor's employees and Subcontractors who need to know the Information to provide the Services and such Access and/or Disclosure of Information shall be limited to the extent necessary to provide such Services. Contractor shall ensure that all such employees and Subcontractors comply with the terms of this DPA.

(b) Contractor must ensure that each Subcontractor performing Services where the Subcontractor will have Access to and/or receive Disclosed Information is contractually bound by a written agreement that includes confidentiality and data security obligations equivalent to, consistent with, and no less protective than, those found in this DPA.

(c) Contractor shall examine the data privacy and security measures of its Subcontractors. If at any point a Subcontractor fails to materially comply with the requirements of this DPA, Contractor shall: (i) notify NYSED, (ii) as applicable, remove such Subcontractor's Access to Information; and (iii) as applicable, retrieve all Information received or stored by such Subcontractor and/or ensure that Information has been securely deleted or securely destroyed in accordance with this DPA. In the event there is an incident in which Information held, possessed, or stored by the Subcontractor is compromised, unlawfully Accessed, or unlawfully Disclosed, Contractor shall follow the Data Breach reporting requirements set forth in Section 11 of this DPA.

(d) Contractor shall take full responsibility for the acts and omissions of its employees and Subcontractors.

(e) Other than Contractor's employees and Subcontractors who have a need to know the Information, Contractor must not provide Access to or Disclose Information to any other party unless such Disclosure is required by statute, court order or subpoena, and Contractor notifies NYSED of the court order or subpoena no later than the time the Information is Disclosed, unless such Disclosure to NYSED is expressly prohibited by the statute, court order or subpoena. Notification shall be made in accordance with the Notice provisions of this contract and shall also be provided to the Office of the Chief Privacy Officer, NYS Education Department, 89 Washington Avenue, Albany, New York 12234.

(f) Contractor shall ensure that its Subcontractors know that they cannot provide Access to or Disclose Information to any other party unless such Access or Disclosure is required by statute, court order or subpoena. If a Subcontractor is required to provide Access to or Disclose Information pursuant to a court order or subpoena, the Subcontractor shall, unless prohibited by statute, court order or subpoena, notify Contractor no later than two (2) days before any Information is Accessed or Disclosed. Upon receipt of notice from a Subcontractor, Contractor shall provide notice to NYSED no later than the time that the Subcontractor is scheduled to provide Access or Disclose the Information.

7. **Training**.

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

8. **Data Return and Destruction of Data**.

(a) Contractor is prohibited from retaining Disclosed Information or continuing to Access Information , including any copy, summary, or extract of Information, on any storage medium (including, without limitation, hard copies and storage in secure data centers and/or cloud-based facilities) beyond the term of this contract unless such retention is expressly authorized for a prescribed period by this contract, necessary for purposes of facilitating the transfer of Disclosed Information to NYSED, or expressly required by law. As applicable, upon expiration or termination of this contract, Contractor shall transfer the Disclosed Information to NYSED in a format and manner agreed to by the Parties.

(b) When the purpose that necessitated Contractor's Access to and/or Disclosure of Information has been completed or Contractor's authority to have Access to Information or retain Disclosed Information has expired, Contractor shall ensure that, as applicable, (1) all privileges providing Access to Information are revoked, and (2) all Information (including without limitation, all hard copies, archived copies, electronic versions, electronic imaging of hard copies) retained by Contractor or its Subcontractors and/or all Information maintained on behalf of Contractor or its Subcontractors in a secure data center and/or cloud-based facilities is securely deleted and/or destroyed in a manner that does not allow it to be retrieved or retrievable, read or reconstructed. Hard copy media must be shredded or destroyed such that Information cannot be read, or otherwise reconstructed, and electronic media must be cleared, purged, or destroyed such that the Information cannot be retrieved. Only the destruction of paper Information, and not redaction, will satisfy the requirements for data destruction. Redaction is specifically excluded as a means of data destruction.

(c) Contractor shall provide NYSED with a written certification of, as applicable, (1) revocation of Access to Information granted by Contractor and/or its Subcontractors, and (2) the secure deletion and/or secure destruction of Information held by the Contractor or Subcontractors to the contract at the address for notifications set forth in this contract.

(d) To the extent that Contractor and/or its Subcontractors continue to be in possession of any de-identified data (i.e., data that has had all direct and indirect identifiers removed), Contractor agrees that it will not attempt to re-identify de-identified data and/or transfer de-identified data to any person or entity, except as provided in subsection (a) of this section and that it will contractually prohibit its Subcontractors from the same.

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

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

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

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

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

14. **Termination**.
    The confidentiality and data security obligations of Contractor under this DPA shall survive any termination of this contract to which this DPA is attached but shall terminate upon Contractor's certifying that it and its' Subcontractors, as applicable (a) no longer have the

ability to Access any Information provided to Contractor pursuant to this contract to which this DPA is attached and/or (b) that Contractor and its' Subcontractors have destroyed all Disclosed Information provided to Contractor pursuant to this contract to which this DPA is attached.

ARTICLE III: PARENT AND ELIGIBLE STUDENT PROVISIONS

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

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

EXHIBIT 1 - Contractor's Data Privacy and Security Plan

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

1. Contractor Name:

2. Outline how you will implement applicable data privacy and security contract requirements over the life of the Contract.

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

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

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

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

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

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

9. Outline how your data privacy and security program/practices align with NYSED's applicable policies.

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

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

1. A Student's Personally Identifiable Information ("Student PII") cannot be sold or released for any Commercial or Marketing purpose. Student PII, as defined by Education Law § 2-d and the Family Educational Rights and Privacy Act ("FERPA"), includes direct identifiers such as a student's name or identification number, parent's name, or address; and indirect identifiers such as a student's date of birth, which when linked to or combined with other information can be used to distinguish or trace a student's identity. Please see FERPA's regulations at 34 CFR § 99.3 for a more complete definition.

2. The right to inspect and review the complete contents of the student's education record stored or maintained by an educational agency. This right may not apply to Parents of an Eligible Student.

3. State and federal laws such as Education Law § 2-d; the Regulations of the Commissioner of Education at 8 NYCRR Part 121, FERPA at 12 U.S.C. § 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. §§ 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. § 1232h (34 CFR Part 98); and the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. § 1400 et seq. (34 CFR Part 300) protect the confidentiality of Student PII.

4. Safeguards associated with industry standards and best practices including, but not limited to, encryption, firewalls and password protection must be in place when Student PII is stored or transferred.

5. A complete list of all student data elements collected by New York State Education Department ("NYSED") is available at www.nysed.gov/data-privacy-security/student-data-inventory and by writing to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.

6. The right to have complaints about possible breaches and unauthorized disclosures of Student PII addressed. Complaints should be submitted to the NYS Education Department at www.nysed.gov/data-privacy-security/report-improper-disclosure, by mail to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234; by email to privacy@nysed.gov; or by telephone at 518-474-0937.

7. To be notified in accordance with applicable laws and regulations if Student PII is either unlawfully accessed or unlawfully disclosed.

8. NYSED workers that have access to or receive disclosure of Student PII will receive training on applicable state and federal laws, policies, and safeguards associated with industry standards and best practices that protect PII.

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

Supplemental Information

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

1. Name of Contractor:

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

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

Student Data ☐ Yes ☐ No

APPR Data ☐ Yes ☐ No

4. Contract Term:

Contract Start Date: Contract End Date:

5. Subcontractor use and written agreement requirement:

Contractor will use Subcontractors ☐ Yes ☐ No

Contractor will not use Subcontractors ☐ Yes ☐ No

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

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

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

6. Data Transition and Secure Destruction

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

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

7. **Challenges to Data Accuracy**

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

8. Secure Storage and Data Security

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

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

☐ Yes ☐ No Using Contractor owned and hosted solution

☐ Yes ☐ No Other:

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

9. Encryption requirement

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

☐ Yes ☐ No

10. Contractor Certification.

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

Contractor's Name

Signature

Printed Name

Title

Date

Attachment 1

Pilot (PT) and Field Test (FT) Rating

Social Studies

Examination	Estimated Number of Forms	Estimated Number of Items per Form for Field Test (FT) Scaffold Questions, Stimulus-Based, Constructed Response (**CRQ**), Short – Essay Enduring Issues Essay (**EI**), Civic Literacy Document- Based Essay		Estimated Range of Students Tested per Form	Month of Administration
		FT Scaffold / Short Answer	**FT EI / DBQ**	**FT**	**FT**
Global History and Geography II (Grade 10) (Framework)	CRQ: 4 - 6	2 stimuli with 3 – 4 questions per pair of stimuli 1 credit per question		700 - 900	May
	EI: 4 – 6		1 essay item: Max. 5 credits		
United States History and Government (Framework)	CRQ: (Short Essay) 12 – 14	2 stimuli with 1 short essay per pair of stimuli; 5 credits per question		700 - 900	May
	DBQ: 4 – 6	6 - 8 total scaffold questions 1 - 2 credits per question	1 essay item: Max. 5 credits		

Attachment 1 - Continued
Pilot (PT) and Field Test (FT) Rating
Social Studies

Examination	Estimated Number of Forms	Estimated Number of Items per Form for Pilot Test (PT) Stimulus-Based, Constructed Response (**CRQ**), Short – Essay Enduring Issues Essay (**EI**), Civic Literacy Document-Based Essay		Estimated Range of Students Tested per Form	Month of Administration
		PT Scaffold / Short Answer	**PT EI / DBQ**	**PT**	**PT**
Global History and Geography II (Grade 10) (Framework)	CRQ: 6 – 12	2 stimuli with 3-4 questions per pair of stimuli. 1 credit per question		350 - 400	May
	EI 4 – 8		1 essay item: Max. 5 credits	350 - 400	May
US History and Government (Framework)	CRQ: (Short Essay) 6 -12	2 stimuli with 1 short essay per pair of stimuli 5 credits per question		350 – 400	May
	DBQ 4 – 8	6 – 8 total scaffold questions 1 – 2 credits per question	1 Essay item: Max. 5 credits	350 - 400	May

Attachment 1 Continued
Pilot (PT) and Field Test (FT) Rating
English

Examination	Estimated Number of Forms	Estimated Number of Items per Form	Estimated Range of Students Tested per Form	Month of Administration
	FT	FT	FT	FT
English Language Arts	7 - 12	1 item – 6 credit essay	550 - 800	May
	7 - 12	1 item – 4 credit essay	550 - 800	May
	PT	PT	PT	PT
English Language Arts	5 - 7	1 item – 6 credit essay	350 – 500	May
	5 - 7	1 item – 4 credit essay	350 – 500	May

Attachment 1 Continued
Field Test (FT) Rating
Mathematics

Examination	Estimated Number of Forms	Estimated Number of Items per Form	Estimated Range of Students Tested per Form	Month of Administration
	FT	FT	FT	FT
Algebra I	30 -40	2, 4, and/or 6 credits; 3-5 total items	700 – 950	May
Geometry	30 - 40	2, 4, and/or 6 credits; 3-5 total items	700 -950	May
Algebra II	30 - 40	2, 4, and/or 6 credits; 3-5 total items	700 – 950	May
	PT	PT	PT	PT
Algebra I	5 - 6	6 credits; 2 total items	350-500	May
Geometry	5 – 6	6 credits; 2 total items	350-500	May
Algebra II	5 - 6	6 credits; 2 total items	350-500	May

Attachment 1 - Continued
Pilot (PT) and Field Test (FT) Rating
Sciences

Examination	Estimated Number of Forms	Estimated Number of Items per Form	Estimated Range of Students Tested per Form	Month of Administration
	FT	FT	FT	FT
Life Science: Biology	15 - 25	10 – 15 items	650 - 900	May
Earth and Space Sciences	15 - 30	10 – 15 items	700 - 900	May
Chemistry	15 -30	10 – 15 items	800 - 900	May
Physics	9 - 15	10 - 15 items	850 - 950	May

	PT	PT	PT	PT
Life Science: Biology	2 - 5	10 – 15 items	350 – 450	May
Earth and Space Sciences	2 - 5	10 – 12 items	350 – 450	May
Chemistry	2 - 5	10 – 12 items	350 – 450	May
Physics	2 - 5	8 – 12 items	350 – 450	May

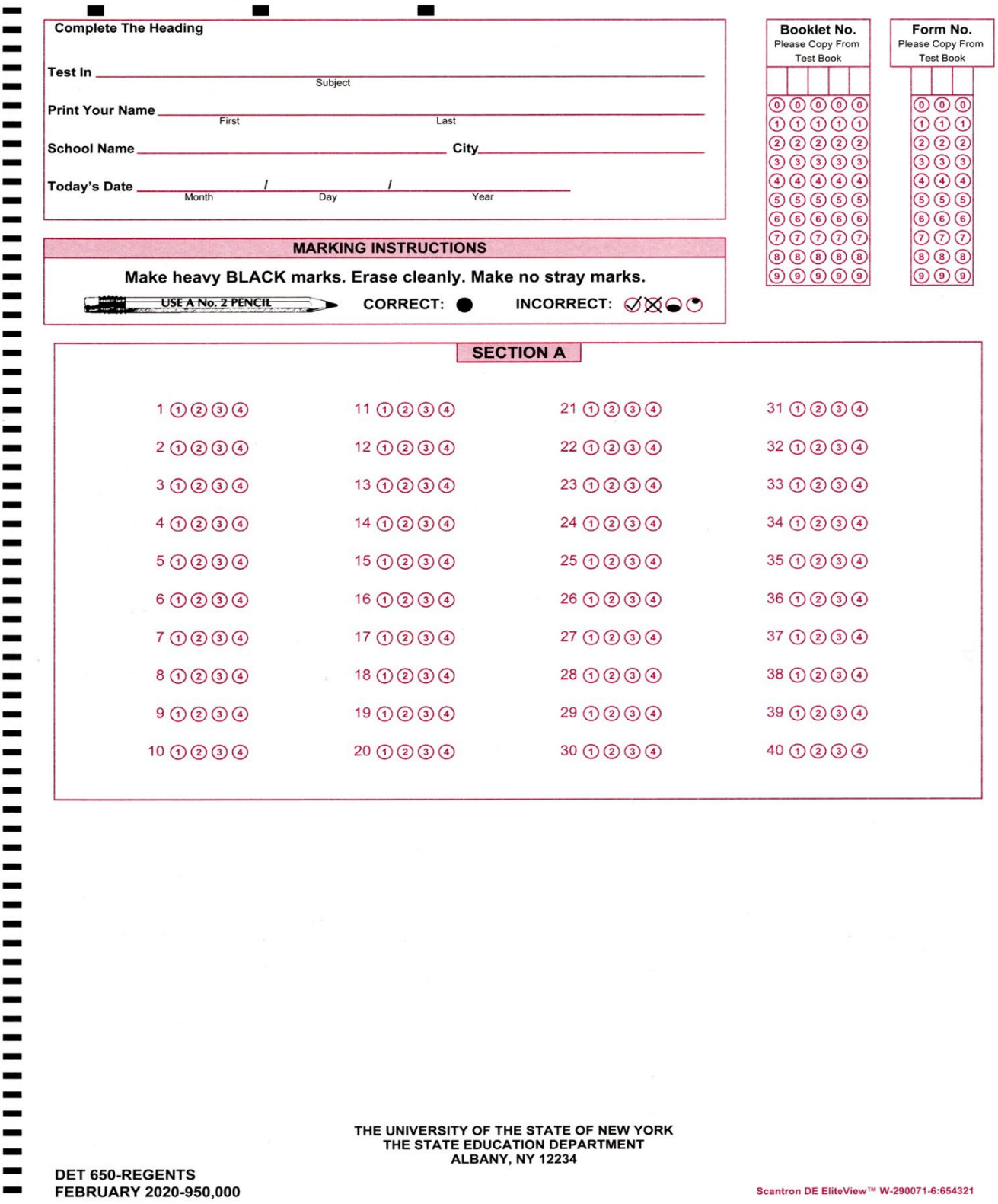
Attachment 2

Approximate Numbers of Days and Teachers Needed to Conduct Rangefinding for Scoring Pilot and Field Tests

Examination	Month Rangefinding Is Usually Conducted by Vendor	Approximate Number of Days	Approximate Number of Teachers Needed
Global History and Geography II (Grade 10) (Framework) (Pilot and Field Tests combined)	August	5	20
United States History and Government (Framework) (Pilot and Field Tests combined)	August	5	20
English Language Arts (ELA) (Pilot and Field Tests combined)	August	5	20
Algebra I (Pilot and Field Tests combined)	August	5	20
Geometry (Pilot and Field Tests combined)	August	5	20
Algebra II (Pilot and Field Tests combined)	August	5	20
Life Science: Biology (Pilot and Field Tests Combined	August	5	20
Earth and Space Sciences (Pilot and Field Tests combined)	August	5	20
Chemistry (Pilot and Field Tests combined)	August	5	20
Physics (Pilot and Field Tests combined)	August	5	20

Attachment 3

Scanning Machine-Scorable Answer Sheet



Complete The Heading

Test In _____ (Subject)

Print Your Name _____ (First) _____ (Last)

School Name _____ City _____

Today's Date ____ / ____ / ____ (Month / Day / Year)

Booklet No. Please Copy From Test Book

Form No. Please Copy From Test Book

MARKING INSTRUCTIONS

Make heavy BLACK marks. Erase cleanly. Make no stray marks.

USE A No. 2 PENCIL CORRECT: ● INCORRECT: ⊘ ⊗ ◒ ◔

SECTION A

1 ① ② ③ ④	11 ① ② ③ ④	21 ① ② ③ ④	31 ① ② ③ ④
2 ① ② ③ ④	12 ① ② ③ ④	22 ① ② ③ ④	32 ① ② ③ ④
3 ① ② ③ ④	13 ① ② ③ ④	23 ① ② ③ ④	33 ① ② ③ ④
4 ① ② ③ ④	14 ① ② ③ ④	24 ① ② ③ ④	34 ① ② ③ ④
5 ① ② ③ ④	15 ① ② ③ ④	25 ① ② ③ ④	35 ① ② ③ ④
6 ① ② ③ ④	16 ① ② ③ ④	26 ① ② ③ ④	36 ① ② ③ ④
7 ① ② ③ ④	17 ① ② ③ ④	27 ① ② ③ ④	37 ① ② ③ ④
8 ① ② ③ ④	18 ① ② ③ ④	28 ① ② ③ ④	38 ① ② ③ ④
9 ① ② ③ ④	19 ① ② ③ ④	29 ① ② ③ ④	39 ① ② ③ ④
10 ① ② ③ ④	20 ① ② ③ ④	30 ① ② ③ ④	40 ① ② ③ ④

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
ALBANY, NY 12234

DET 650-REGENTS
FEBRUARY 2020-950,000

Scantron DE EliteView™ W-290071-6:654321

Attachment 4: Security Guidelines for the New York State Assessment Program

1. Staff of NYSED and of contractors working with the Office of State Assessment who are responsible for transporting, receiving, or handling secure test materials or confidential data, distributing such materials to consultants, work groups, and committees, and/or coordinating and overseeing related activities with consultants must be provided appropriate guidance to convey the importance of maintaining the security of materials.

2. Secure test materials and data must either be under the direct physical control of authorized NYSED personnel or their designated consultants or contractor personnel or in a secure storage area, which is inaccessible to other than authorized staff, always. Materials may never be left at a vacant desk, in an unattended conference room, or in an unattended hotel conference room.

3. Contractors must discuss with their NYSED contact person and receive prior approval of arrangements for delivery and storage of secure materials to locations other than NYSED or the contractor's place of business.

4. Contractors must plan for the secure destruction of any secure materials used during the contract process of which they wish to dispose.

5. The contractor's security procedures will include shipment of all tests in NYSED's locked boxes. The locked containers will be provided to the contractor by NYSED. When shipping of all non-secure test materials, the contractor must use a carrier with ground-tracking capability, to test centers and to NYSED, whenever shipment of printed materials is necessary. The contractor, may not utilize electronic transfer to ship individual student information or any secure test materials, unless as authorized by NYSED on a case-by-case basis. Electronic transfer includes transfer via e-mail, Internet, or facsimile (FAX).

6. Secure materials may never be emailed or faxed. If there appears to be a compelling reason to do so, prior approval must be obtained in writing from the NYSED Office of State Assessment.

7. The contractor will host and maintain a secure file transfer protocol (SFTP) site as a means of file transfer. Access to the New York State test information on the site must be limited to the contractor and NYSED unless further sharing with other parties is authorized in writing by NYSED.

8. Photocopying of secure or confidential material must be undertaken with care. Paper jams may result in paper containing secure or confidential materials being lodged in the copier and later discovered by another user. Extreme caution must be used. The contractor's plan for photocopying must be approved by NYSED.

9. The contractor will require all staff and consultants who review secure materials, including but not limited to secure test questions, scoring materials, and related materials that reference secure test questions, or confidential data, must sign a Non-Disclosure Agreement (NDA) to be provided by NYSED (see next page). The contractor must retain the signed forms for at least one year beyond the end date of the contract, and promptly submit the signed forms to NYSED upon request.

Attachment 5: Non-Disclosure Agreement
New York State Education Department
Office of State Assessment

Name: _____
Title: _____
Organization: _____
Examination Title(s): _____
_____
Type of work to be performed: _____
_____
Date(s) of work to be performed: _____

The purpose of all New York State assessments is to provide a fair and equitable assessment system that reliably measures the State learning standards. The expert opinions of consultants, educational organizations, and test development companies are vital to guiding our continuing efforts to develop fair, valid, and reliable State assessments that measure what each student knows and can do. Because you will have access to secure and/or confidential materials as part of your participation in the test development process, you also have the responsibility to assist the Office of State Assessment (OSA) in ensuring the security and confidentiality of these materials. Therefore, by signing this agreement, you agree to abide by the following security restrictions and ownership provisions. Please retain a copy of this non-disclosure agreement for your records.

Secure and Confidential Information

I acknowledge that information provided by OSA or developed by me, or my organization related to the work described above includes secure and confidential information that is the property of the New York State Education Department ("Department"). I acknowledge that such secure and confidential information includes many items, including but not limited to the following information types:

a) all oral or written information in draft or final form relating to the development, review, and/or scoring of a New York State Assessment, including operational tests, field tests, and pretests,
b) all test items or test forms, whether in draft or final form, prior to public release by the Department,
c) all statistical analyses, whether provided to me by OSA or developed by me or my organization, prior to public release by the Department,
d) any reports, prior to public release by the Department,
e) the results of any analyses or studies, whether provided to me by OSA or developed by me or my organization, prior to public release by the Department; and
f) any other confidential information that has not been made available to the public by the Department.

****

By signing this agreement, I agree to maintain and honor the security of test materials and to abide by the following security restrictions:

1) I agree not to disclose any secure or confidential materials, including test questions, technical reports, whether in draft or final form, to anyone other than OSA staff or other person(s) participating in the work described above, unless specifically authorized to do so by OSA. I also agree not to disclose such materials to any Department staff other than OSA staff without the prior permission of OSA.
2) If I am responsible for supervising other staff or subcontractors, I agree to limit the access and use of secure and confidential materials to only those individuals who have a legitimate need to access such materials to perform the work described above.

3) I agree to provide appropriate training, guidance, and oversight to any staff or subcontractors under my supervision who may work with secure or confidential materials to maintain the security of such materials.
4) I agree to follow all guidelines and instructions provided by OSA regarding the transfer of the secure and confidential materials in my possession. Such transfer may include secure electronic transfer using encrypted files, shipment of materials using a carrier with ground-tracking capabilities, and/or the use of locked boxes when shipping. At no time will I transfer or store any secure and confidential materials in a location other a secure area within my organization's facility without the authorization of OSA.
5) Upon completion of the work described above, I agree to securely store, destroy, or return all secure and confidential materials provided to or prepared by me, including all copies thereof and all notes prepared by me, in accordance with the instructions given to me by OSA.
6) I understand that secure and confidential materials are not to be copied or duplicated in any way, shared with, or discussed with anyone other than OSA staff or other person(s) participating in the work described above, unless specifically authorized to do so by OSA.
7) I agree to immediately report to OSA if I learn of or suspect any potential misuse of secure and confidential information.

Ownership and Return of Secure Test Materials

All secure test materials are the property of the Department, including all materials prepared by me during my participation in the work described above. All such materials prepared by me are being commissioned by the Department and shall be works made for hire as defined by the United States Copyright Law. If such materials prepared by me are deemed not to be works made for hire, I hereby assign to the Department all right, title, and interest I may have, including but not limited to any copyright, in the work commissioned by the Department.

I, _____, have read the non-disclosure agreement above and agree to abide by the security restrictions and ownership provisions described herein.

Signature: _____
Please Print: Date: _____
Name: _____
Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone:(_____) _____
Email: _____