

REQUEST FOR PROPOSAL (RFP)

RFP # 25-008

NEW YORK STATE EDUCATION DEPARTMENT

Title: Expanded Math Access Program (K-8)

The New York State Education Department (NYSED) Office of Standards and Instruction is seeking proposals from qualified vendors with demonstrated knowledge, expertise, experience, and capacity to provide an online platform that offers standards-based, mathematics games and activities to promote math fluency and love of math within the elementary- and middle-level grades (K-8) at no cost to students or schools, as well as to develop and facilitate a statewide mathematics tournament for students in grades 1-8 (tournament details outlined within this RFP). The online program will give approximately 3.0 million licenses to students (1.425 million), educators (150,000), and families (1.425 million) throughout New York State (NYS).

Eligible bidders for this RFP include for-profit and not-for-profit organizations and institutions of higher education (IHEs) that own an existing online platform that performs the functions defined in this RFP.

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 for an amount no higher than **\$2,250,000 per year**. Funding beyond Year One will be contingent upon the State Legislature appropriating funds. Please keep in mind that this RFP employs a “best value” method of procurement, with 30 percent of the overall points awarded based on cost. (See “Criteria for Evaluating Bids” section of the RFP for additional information). Bidders are encouraged to submit budgets that are cost-effective.

The contract resulting from this RFP will be for a term anticipated to begin **July 1, 2025**, and to end **June 30, 2030**.

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: New York Statewide

Mandatory Requirements: See Mandatory Requirements section of the RFP.

Components contained in RFP #25-008 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 email to EMAPRFP2025-2030@nysed.gov no later than the close of business **February 13, 2025**. 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 Contracts](#) no later than **February 26, 2025**. The following are the designated contacts for this procurement:

Program Matters

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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 **March 19, 2025. Bids are due by 3:00 PM Eastern Time:**

1. Submission Documents labeled **[name of bidder] Submission Documents RFP #25-008**
2. Technical Proposal labeled **[name of bidder] Technical Proposal RFP #25-008**
3. Cost Proposal labeled **[name of bidder] Cost Proposal RFP #25-008**
4. M/WBE Documents labeled **[name of bidder] M/WBE Documents RFP #25-008**

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. To ensure the timely receipt of your bid, please use the subject line “**BID SUBMISSION RFP 25-008.**” 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 are due by 3:00 pm Eastern Time.**

Each bidder will be scheduled for a mandatory demonstration of the product it proposes. The demonstration will be scheduled in consultation with the bidder. It is anticipated that all demonstrations will be scheduled for one hour on a date mutually agreed upon by NYSED and the bidder. Demonstrations may be conducted either in person at NYSED’s Albany, NY, office or by webinar. This demonstration must take place between **04/10/2025** and **04/23/2025**.

1.) Description of Services to be Performed

Work Statement and Specifications

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

Mandatory Requirements

The eligible bidder must agree to the Mandatory Requirements found below and must submit the Mandatory Requirements Certification Form located in 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 cannot propose more than a total of \$2,250,000 per year, with no more than \$750,000 of the total budget each year allocated for the Statewide Tournament (grades 1-8).
2. The bidder must identify a Project Director by name. The Project Director will be a full-time staff member dedicated to this project and will serve as the lead point of contact with NYSED.
3. The bidder must include in its proposal evidence that the mathematics instructional games/activities available through the online site/platform product being offered have been independently evaluated for effectiveness in a school setting (for grades K-8) by a credible research organization. This documentation must be on letterhead of the credible research organization and signed by the researcher or an individual authorized to speak on behalf of the organization. For this RFP, a credible research organization refers to an institute of higher education or a nonprofit organization that includes independent research as a component of its mission.
4. The bidder must own the product included in its proposal.
5. The bidder must ensure that the product will run at optimal performance on the most current browser version of at least one of the following web browsers: Chrome, Microsoft Edge, Firefox, and/or Safari.

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

New York State is focused on supporting and improving science, technology, engineering, and math (STEM) education.

Over the past several years, NYSED worked with stakeholders to refresh and create New York State (NYS) Learning Standards that are grounded in the most current research and practice to prepare New York State students to be successful in college, careers, and citizenship. The NYS P-12 Science Learning Standards, adopted in 2016, reflect the importance of every student's engagement with natural scientific phenomenon. In 2018, NYSED was directed to bring together a workgroup of stakeholders to create new learning standards for computer science and digital literacy; those standards were adopted by the Board of Regents in 2020. In addition, New York has committed millions of dollars to create a program to provide professional development for educators in the areas of computer science, engineering, and educational technology for K-8 students.

In 2015, NYS began a process of review and revision of its mathematics standards. Through numerous phases of public comment, virtual and face-to-face meetings with committees consisting of NYS educators (including Special Education, Bilingual Education and English as a New Language teachers), parents, curriculum specialists, school administrators, college professors, and experts in cognitive research, the [New York State Next Generation Mathematics Learning Standards](#) (2017) were developed. These mathematics standards, collectively, are focused and cohesive - designed to support student access to the knowledge and understanding of the mathematical concepts that are necessary to function in a world very dependent upon the application of mathematics, while providing educators the opportunity to devise innovative programs to support this endeavor. As with any set of standards, they need to be rigorous; they need to demand a balance of conceptual understanding, procedural fluency and application and represent a significant level of achievement in mathematics that will enable students to successfully transition to post-secondary education and the workforce.

There is still more to do to support STEM education, especially concerning basic math skills. According to the National Assessment of Educational Progress, in 2022 for fourth-graders, only 28 percent of New York students scored at or above proficient, and New York students scored below the national average¹. In 2022, for eighth-graders, only 28 percent of New York students scored at or above proficient, and New York students

¹ [The Nation's Report Card: New York Overview](#)

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scored above the national average¹. According to the Bureau of Labor Statistics, the top 20 jobs with highest median pay require advanced or applied math skills and problem-solving skills². However, “when math homework with their parents is fraught with negativity such as parental feelings of frustration or ineptitude, children are less likely to enjoy math and tackle challenging math problems.”³

To help support math fluency and reinvigorate love of math, NYSED is seeking to contract with a vendor to provide students in grades K-8 with access to online mathematics games/apps/activities. This additional math practice will provide support to assist students in meeting grade-level fluency expectations and will be accessible at school and at home, which will allow for families to help support their students’ math education.

In addition, the vendor will organize a Statewide Tournament (Regional Contests and Statewide Event) for mathematics. This competitive event will bring together students, educators, and families in a friendly and supportive learning environment geared toward encouraging students to strengthen and apply math knowledge and skills.

Reaching students at an early age, and giving families tools to engage with them, will ensure that students are ready for more challenging courses in later years and will be able to take advantage of the opportunities available in a world that increasingly needs individuals with strong STEM skills.

Deliverables and/or Project Description

Through this RFP, NYSED will procure the following:

Deliverable A: Website/Platform Offering Supplemental Math Practice Games

The vendor will provide students, educators, and families with access to its existing website/platform that provides supplemental math practice in the form of online mathematics games for grades K-8. For the purposes of this RFP, the umbrella of “games” may include apps and interactive activities.

A.1. Curriculum and Instructional Specifications

A.1.1 Aligned to Program Goals

² [U.S Bureau of Labor Statistics Highest Paying Occupations](#)

³ [University of Illinois Urbana-Champaign News Bureau](#)

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- **Goal 1:** The primary goal of the Expanded Math Access Program (EMAP) is to foster a love of math through play. The games available through the vendor's product should be age-appropriate for students in grades K-8.
- **Goal 2:** An additional goal of EMAP is to strengthen NYS students' foundational math knowledge and fluency. The games available through the vendor's product should support grade-level fluency expectations as well as additional computational skills, such as fractional work in grades 3-5 and algebraic work in grades 6-8.
 - Fluency is defined as the ability to perform calculations and solve problems quickly and accurately, but fluency is not synonymous with automaticity, nor is it the same as merely memorizing facts. Fluency in each grade involves a mixture of just knowing some answers, knowing some answers from patterns, and knowing some answers from the use of strategies.
 - Principles and Standards for School Mathematics states: "Computational fluency refers to having efficient and accurate methods for computing. Students exhibit computational fluency when they demonstrate flexibility in the computational methods they choose, understand, and can explain these methods, and produce accurate answers efficiently." (NCTM 2000)
 - Fluency can be looked at as building a student's confidence in their computational strategies. NYS wants students to be efficient, accurate and flexible in their computations and thinking. Fluency allows students to choose strategies that reinforce the conceptual understanding behind the calculation. These strategies (e.g., decomposing, bundling tens) allow for students to calculate without being slowed down by confusing or unnecessary steps in a process. It's important to note that fluency begins with a deep understanding of a concept that leads to efficiency and accuracy. There is no exact definition of "how fast" students should be able to complete fluency exercises.
 - Please see the chart below for grade-level fluency expectations. The [NYS Next Generation Mathematics Learning Standards](#) document provides additional notes that help to clarify the fluency expectation for the grade levels. These additional notes are located with each grade-level standard.

Grade	Required Fluency	Related Standard(s)
K	Add/subtract within 5	NY-K.OA.5
1	Add/subtract within 10	NY-1.OA.6b

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2	Add/subtract within 20* Add/subtract within 100 (pencil and paper)	NY-2.OA.2a, NY-2.OA.2b
3	Multiply/divide within 100† Add/subtract within 1000	NY-3.OA.7a, NY-3.OA.7b, NY-3.NBT.2
4	Add/subtract within 1,000,000	NY-4.NBT.4
5	Multi-digit multiplication	NY-5.NBT.5
6	Multi-digit division Add/subtract/multiply/divide multi-digit decimals	NY-6.NS.2 NY-6.NS.3
7	Solve word problems leading to two-step equations of the form $px + q = r$ and $p(x + q) = r$, where p , q , and r are rational numbers	NY-7.EE.4a
8	Solve systems of two linear equations in two variables with integer coefficients: graphically, numerically using a table, and algebraically	NY-8.EE.8b

* By end of year, know from memory all sums of two one-digit numbers.

† By end of year, know from memory all products of two one-digit numbers.

A.1.2 Utilize Research-Based Instructional Strategies

- The math games, activities, and any curricular materials should utilize current, research-based strategies for elementary mathematics instruction and strategies grounded in current game-based learning theory.

A.1.3 Align to NYS Standards

- The vendor will provide documentation in the form of a crosswalk that will demonstrate the alignment between the math games, activities, and any curricular materials and the NYS Next Generation Mathematics Learning Standards for grades kindergarten through eight.

A.1.4 Additional Content / Functionality

- The product should provide downloadable activities (e.g., practice work) for students, by grade and/or content/skill/standard, that can be completed on paper, offline.
- The product should provide resources for educators (e.g., lesson ideas, professional development).
- The product should provide resources for families (e.g., suggestions for ways to support children at home).
- The vendor's product should offer the following:
 - Ability to track/monitor individual student progress.
 - Formative assessments
 - Reporting features
 - Accommodations / modifications / supports for Students with Disabilities and English Language Learners (ELLs)
 - Please reference the [Blueprint for English Language Learner/ Multilingual Learner Success](#), the [Blueprint for Improved Results for Students with Disabilities](#) and the [Guide to Quality Individualized Education Program \(IEP\) Development and Implementation](#).

A.1.5 Additional Content Development

- The vendor will provide a schedule of projected new development, delineating all content that is currently planned within the five-year period.

A.2. Technical Specifications

A.2.1. Compliance

- The vendor's offered product/services must
 - Comply with the Children's Online Privacy and Protection Act (COPPA)

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- Comply with [Education Law 2-d](#), as well as any and all related, approved Regulations.
- Comply with [New York State Cyber Security Policy P03-002](#)
- Comply with [NYSED Web Accessibility Policy](#)
- Please see the RFP's Appendix R (Data Privacy Appendix)

A.2.2 System Requirements

- In NYS, local school districts choose which technologies to purchase to best meet their needs. The vendor's product should be optimized for multiple platforms. The vendor's website/platform should function as expected on the following:
 - Windows desktops/laptops (Windows OS 8.1+)
 - Apple desktop/laptop (Mac OS 10.10+)
 - Chromebook (Chrome OS v59+)
 - iPad (iOS 11.2.5+)
- The vendor's website/platform should be accessible on mobile phones.
- The vendor's website/platform, and all content and games offered, must be available everywhere, at any time, to students, families, and educators, if the device has connection to the internet, with no cost to the families or schools.
- The product must run at optimal performance on the most current browser version of, at minimum, one of the following browsers: Chrome, Microsoft Edge, Firefox, and Safari.
- The vendor will provide full technical specifications and requirements for their product in the proposal, including the
 - Information on all companies hosting the site and the data, including where data is stored.
 - browser(s) with which it is compatible or which browsers should be used for optimal performance.
- The vendor should ensure:
 - The product is current with all security updates.
 - Content is delivered over secure https.
 - Uptime is 99.99%.
 - It has the current capacity to serve a significant increase in simultaneous users and/or increase capacity to serve a significant increase in simultaneous users. Please note that NYSED will be contracting for approximately 3.0 million new licenses.

A.2.3 Unique User Authentication

- The vendor's offered product should support three categories of users:
 - Student

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- Parent/Family
- Educator
- The vendor will provide a unique log-in and encrypted password (site credentials) for approximately 1.425 million students.
 - Such unique site credentials shall retain each individual student's information and history (all prior activity on the site). Activity is tied to credential, not device. (e.g., Students can see the games/activities already completed; any scores/points/badges persist from session to session, etc.)
 - NYSED will provide, at vendor's request, a data file that will allow the vendor to identify district names/unique identifier number, school names/unique identifier number, and teacher names. NYSED will not provide student names or unique identifiers for students. NYSED will provide the vendor with contact information for every school/district, as well as boards of cooperative educational services (BOCES) Regional Information Centers (RICs). The vendor will contact districts, schools, and/or RICs and request a file (in a common data format) with student names, grade levels, and associated teacher name for each K-8 class in each school. The vendor will provide a method for secure, encrypted (resting and in transmission) data transfer. Schools will not be required to manually input each student license.
 - The site should offer content in languages other than English, and the vendor will not gather any data from users' ELL status based on the language preference chosen on the platform.
 - If the site allows teachers to set accommodation features for students, they can do so without identifying students' special education status.
 - The vendor will give access to all NYS students in grades K-8 including but not limited to students in public school districts, BOCES, religious and independent schools, charter schools, nonpublic schools with approved special education programs, State-Supported Schools, State-Operated Schools, and educational programs administered by a NYS agency.
 - As technology in NYS is decided and purchased locally, some NYS districts and schools provide Single-Sign On (SSO) systems for their students. Some use common protocols (such as Security Assertion Markup Language - SAML), but not all. The vendor will make a best effort to work with NYS districts and RICs to integrate their product with local SSO systems.
 - The vendor will have a process for creating new accounts, resetting student credentials, or updating teacher/student relationships upon request during the school year for students who transfer to another school or district or move to New York from another state or country during the contract period.
 - The vendor will have a process for either resetting all student credentials or updating all teacher/student relationships at the start of every school year during the contract period.

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- During the contract period, the vendor will delete the accounts and data on all students who are promoted to 9th grade at the end of each school year.
- During the contract period, the vendor will have a process in place to add accounts for all students entering kindergarten at the start of the school year.
- The vendor will provide one unique log-in and encrypted password (site credentials) for each student's family (one per student, approximately 1.425 million families).
 - The parent-level credential will, at minimum, give access to the games and content that the student-level credential has access to, without impacting student experience.
 - Additional functionality, such as ability to view student progress, should be a component of the family log-in.
 - It is NYSED's expectation that the vendor will have a process in place to give one family log-in per student for all NYS students in grades K-8 for all years of the contract. This includes students in public school districts, religious and independent schools, charter schools, BOCES, nonpublic schools with approved special education programs, State-Supported Schools, State-Operated Schools, and educational programs administered by a NYS agency.
 - During the contract period, the vendor will delete the accounts and data on all families of students who are promoted to 9th grade at the end of each school year.
 - During the contract period, the vendor will have a process in place to add accounts for families of all students entering kindergarten at the start of the school year.
- The vendor will provide a unique log-in and encrypted password (site credentials) to NYS educators who teach math or support math instruction for students in grades K to 8, including classroom teachers, co-teachers, math content specialists, etc. This number is approximately 150,000 educators.
 - The educator-level credential will, at minimum, give access to the games and content that the student-level credential has access to, without impacting student experience.
 - Additional functionality -- such as ability to monitor student progress, assign content, etc. -- should be a component of the educator log-in.
 - The vendor will have a process for creating new accounts, resetting credentials, or updating teacher/student relationships upon request during the school year for teachers who transfer employment to another school or district or begin new employment in New York.
 - The vendor will suspend accounts immediately upon notice by a NYS Administrator that a teacher's employment has been terminated. The account will be deleted as soon as technically possible.
 - The vendor will have a process for either resetting all student credentials or updating all teacher/student relationships at the start of every school year during the contract period.

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- At the end of the contract period, the vendor will delete all data and all accounts from student, family, and teacher accounts.
- The vendor will provide support for lost usernames and passwords. NYSED will not provide support for lost usernames and passwords.

A.2.4 User Experience

- The users will access the games/content/resources through a website/online platform.
- The site must not display any advertisements after user is authenticated. If any advertisements are allowed on the site for non-authenticated users, the vendor must provide details in the proposal on how advertisements are chosen/served to those users.
- External links should be limited in number and should only be utilized where necessary to provide additional resources or information related to the educational mission of the site. If there are external links, the site or platform should clearly label the link as external and provide a “click-through” gate (e.g., pop-up asking user to confirm they wish to leave the site).
- The vendor will provide details on time-out functionality of the authenticated session.

User Experience for Students:

- There should be an element of choice available for students; the students should be able to choose games to play/activities to engage with.
- The games/activities available for students should automatically default to the student’s current grade level.
 - The site may offer “challenging” and/or “foundation” content for students if the content is not marked by grade level.
 - If the system is adaptive and feeds games/content to the student that is above or below grade level, the grade level should not be displayed for the student. For example, if the system has determined that a 2nd grade student needs to revisit 1st grade topics, the games/apps/activities should not display “Grade 1” on the user interface.
 - The student should not be able to choose content by grade level. For example, a second-grade student should not be able to choose “4th grade” content or “kindergarten” content.
- At most, the student should only need to enter name, grade, school name and/or teacher name during the initial user setup. The student should not need to enter any personal information after the initial user setup is complete. The student’s information should persist between sessions.
- Upon authentication, the student should see games/activities available to him or her. If the site/system offers any gamified incentives (points, badges, etc.), that information should be displayed.
- The site must not display to student users any content available for additional cost or allow student users to make purchases.

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- The site must not display to student users any offer of additional support or services. For example, students should not be offered the ability to “sign up” for anything after the initial user setup is complete.

User Experience for Parents/Families:

- Parents should be able to filter and/or search for games/activities by multiple categories, including but not limited to grade level and concept.
 - Search functionality should return relevant results.

User Experience for Educators:

- Educators should be able to filter and/or search for games/activities by multiple categories, including but not limited to grade level and concept.
 - Search functionality should return relevant results.
- NYSED desires to contract with a vendor whose product offers additional features for educators, such as the ability to view the games/activities students have completed, success rate, downloadable reports, ability to serve students specific content, etc.
- Educators should be limited to viewing only those students for whom they are directly responsible for educating.

A.2.5 Current and Future Development

- The vendor’s content and games must be aligned with the NYS Next Generation Mathematics Learning Standards and compatible with above technical specifications.
- The vendor will provide a schedule of projected new development through 2030, delineating development that is currently planned.

A.2.6 Additional Functionality

- It is preferable that the vendor’s product offer the following:
 - Support District SSO
 - Adaptive technology: the system provides content based on students’ performance, rather than on a linear path.
 - Integration with one or more Learning Management System(s) and/or cloud-based platforms such as, but not limited to, Google Classroom/Education Suite or Office 365.

Deliverable B: Support and Professional Development

- The vendor will be responsible for ensuring that schools and districts have the tools to support students as stated in the sections below:

B.1 Product Demonstration for NYSED staff

- The vendor will provide training and access to any designated NYSED staff member within 15 days of contract approval. Each NYSED staff member will be able to view and use the system for each of the three roles – student, parent, and educator.

B.2 “Getting Started” Instructions/Information

- The vendor will provide a digital “Welcome Packet” for NYS schools that provides tools such as video tutorials, instructions for logging in, and downloadable handouts by September 1 of each contract year.
- All materials must have a student, family, and educator version.
 - Information on the product and instructions for logging in should be provided to parents in at least the top ten languages spoken by English Language Learners in New York State. These languages are Spanish, Chinese, Arabic, Bengali, Russian, Haitian-Creole, Urdu, French, Karen, and Uzbek.

B.3 Technical Support

- The vendor must provide technical support for educators and families during normal business hours Monday through Friday (8 a.m. to 6 p.m. Eastern Time). Technical support should be available during extended hours Monday through Friday (7 a.m. to 8 p.m. ET). Contact options must be offered in at least the following ways:
 - Toll-free phone number
 - Email address

B.4 Professional Development

- The vendor will provide or make available (such as in an asynchronous method) professional development for educators on using the website/program.
- Professional development should include video content (such as online tutorials) and downloadable materials.
- The vendor will provide a training on the vendor’s product, either in-person or through online conferencing, specifically for NYSED staff who will be supporting the program.
- The vendor will plan and facilitate five (5) one-day, in-person, train-the-trainer workshops for professional development staff from the BOCES and Big 5 districts (Buffalo, New York City, Rochester, Syracuse, and Yonkers) in the first year of the contract to ensure these trainers can train educators on how to effectively use the product to meet the goals of the EMAP. Each workshop will hold up to 100 staff per session on a first-come, first-served basis.
- The workshops will be conducted in the following regions:

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- Western New York/Buffalo
- Central New York/Syracuse
- Capital Region /Albany
- New York City
- Long Island
- The workshops should be held in August of the first contract year.
- NYSED will assist the Project Director in coordinating the event logistics.
- The vendor is responsible for the costs of the workshops, including the cost of vendor staff/consultant travel expenses, refreshments for participants, materials for participants, etc.
- Any travel must be in accordance with the approved NYS rates. NYS rates are available on the [U.S. General Services Administration](#) website.
- Historically, BOCES/RICs and school districts have provided workshop space at no charge.

Deliverable C: Facilitation of Statewide Tournament

- The vendor will facilitate a mathematics tournament for elementary and middle level school students (Grades 1-8) at the end of each school year of the contract period. The tournament will be composed of 10 Virtual Regional Contests (detailed below) and one Statewide Event per year.

The [10 Regions](#) have been developed by NYSED to distribute teams evenly based on public school district enrollment. The vendor will coordinate with the BOCES and Big 5 School District included in each Region to encourage school participation. Participation is not required. Please see the list of districts, BOCES, and their respective Regions linked above. Non-component Districts and Charter, Religious, and Independent Schools may participate in the Region in which their district or school (or in NYC, community school district) is located.

- **Region 1:** Cattaraugus-Allegany-Erie-Wyoming, Erie 1, Erie 2-Cattaraugus-Chautauqua, Livingston-Genesee-Steuben-Wyoming (Genesee Valley), Monroe 2-Orleans, Orleans-Niagara, Schuyler-Steuben-Chemung-Tioga-Allegany
- **Region 2:** Broome-Delaware-Tioga, Cayuga-Onondaga, Delaware-Chenango-Madison-Otsego, Franklin-Essex-Hamilton, Jefferson-Lewis-Oneida-Hamilton-Herkimer, Madison-Oneida, Monroe 1, Ontario-Cayuga-Seneca-Wayne-Yates (Wayne-Finger Lakes), Oswego, Saint Lawrence-Lewis, Sullivan, Tompkins-Seneca-Tioga
- **Region 3:** Albany-Schenectady-Schoharie (Capital Region), Clinton-Essex-Warren-Washington, Otsego-Delaware-Schoharie-Greene, Hamilton-Fulton-Montgomery, Herkimer-Fulton-Hamilton-Otsego, Oneida-Madison-Herkimer, Onondaga-Cortland-Madison, Washington-Saratoga-Warren-Hamilton-Essex
- **Region 4:** Dutchess, Orange-Ulster, Rensselaer-Columbia-Greene (Questar III), Ulster, Westchester,
- **Region 5:** Nassau, Putnam-Westchester, Rockland

- **Region 6:** Eastern Suffolk, Western Suffolk
 - **Region 7:** NYC Special Schools - District 75, New York City Geographic District # 1, New York City Geographic District # 2, New York City Geographic District # 3, New York City Geographic District # 4, New York City Geographic District # 5, New York City Geographic District # 6, New York City Geographic District # 7, New York City Geographic District # 8, New York City Geographic District # 9
 - **Region 8:** New York City Geographic District #10, New York City Geographic District #11, New York City Geographic District #12, New York City Geographic District #13, New York City Geographic District #14, New York City Geographic District #15, New York City Geographic District #16, New York City Geographic District #17, New York City Geographic District #18, New York City Geographic District #19
 - **Region 9:** New York City Geographic District #20, New York City Geographic District #21, New York City Geographic District #22, New York City Geographic District #23, New York City Geographic District #32, New York City Geographic District #24, New York City Geographic District #25
 - **Region 10:** New York City Geographic District #26, New York City Geographic District #27, New York City Geographic District #28, New York City Geographic District #29, New York City Geographic District #30, New York City Geographic District #31
- The focus of the Tournament will be to celebrate student achievement in mathematical fluency, conceptual understanding, and application.
 - The problems will be aligned to the NYS Next Generation Mathematics Learning Standards.
 - The Regional Contests will focus on mathematical fluency.
 - The Statewide Event will focus on conceptual understanding and application.
 - The vendor will identify one individual to serve as the Tournament Program Administrator. This individual will be expected to communicate regularly, on a schedule to be determined by NYSED, with NYSED's Office of Standards and Instruction, and provide updates and reports as requested.
 - The Statewide Event will be in-person and the Regional Contests will be an online assessment.
 - For the Statewide Event, teams of three for each grade (1-8) in each of the ten Regions, will compete. One team per grade will be named statewide winner.
 - Regional winning teams will be determined based on criteria to be approved by NYSED. For each grade level, the vendor will identify the winning schools (not districts) based on these criteria. The vendor will work with NYSED to determine winning grade-level teams for the Region.
 - To participate in the Regional Contest, schools must select at least three students from the same grade to take the regional assessment. Students must be enrolled in the same school, not three schools from the same district. There is no maximum number of students who can participate per school.

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- Winning teams must come from the same grade in the same school. Teams do not need to be enrolled in the same class.
- Up to \$750,000 of the total budget each year may be allocated for the Statewide Tournament (Regional Contests and Statewide Event). Included in the \$750,000 maximum total for the statewide tournament must be prizes for students and schools as indicated below.
- The vendor is responsible for developing a process for determining tournament winners (Regional Contests and Statewide Event) according to the scoring rubric (see C.1 and C.2). This process is subject to the approval of NYSED.
- The vendor will provide physical awards for participants and winners of the Statewide Event.
 - Grade level winners (three students per grade) at the Regional Contests and Statewide Event will receive a trophy. The trophy for Regional Contests will be smaller than for the Statewide Event. A “sample” trophy should be available at the Statewide Event for winners to take pictures; students’ actual (individual) trophies are to be engraved with their names and delivered to the students’ schools after the events.
 - NYSED will approve final design and wording.
 - The winning school at each grade level at Regional Contests and the Statewide Event will receive a plaque.
 - The winning school at each grade level (1-8) of the Regional Contest (80 schools total statewide) must receive a \$1,000 award (\$80,000 total).
 - The winning school at each grade level (1-8) at the Statewide Event (8 schools) must receive a \$5,000 award (\$40,000 total).
 - All student participants at both the Regional Contests and Statewide Event will receive a physical award, such as a certificate or ribbon. Students participating in the Statewide Event will also receive a gift bag that contains student-friendly items.
 - The vendor will provide receipts for all awards (certificates, ribbons, trophies/plaques, etc.) to NYSED.

C.1 Statewide Event

- The Statewide Event will focus on conceptual understanding and application.
 - The vendor will create specifications to ensure equitable participation.
 - The vendor will work with elementary and middle level mathematics experts to develop challenging tasks and scoring rubrics, by grade level, aligned with the NYS Next Generation Mathematics Learning Standards. The challenge tasks will require students to demonstrate conceptual understanding and apply knowledge through modeling.
- The Statewide Event will be held on a Friday, Saturday, Sunday, or Monday.
- Within two weeks after determining the regional contest winning teams, the vendor will email the primary contact for each team with a challenge task to assist the team in preparing for the

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Statewide Event. Teams will practice solving and explaining their conceptual understanding of the challenge task.

- Winning teams from the 10 Regional Contests (3 students and 2-4 adult chaperones per grade level per team) will convene in person to participate in the Statewide Event.
 - Each winning team must have at least two adult chaperones (teacher/administrator sponsor and one of the children's legal parent/guardians) and may have up to two additional adult chaperones, including a student's one-to-one aide per their individualized education program (IEP) or Section 504 plan. If the students are of different sexes, the adult chaperones must include adults corresponding to the sex of the children.
- The vendor will reimburse regional student winners (24 students per region) and parent/guardian/teacher chaperones (up to 32 adults per region) for travel, accommodations (one night maximum), and meals to attend the Statewide Event, per the [GSA rates](#) for the city/county where the event will be held that year. If a regional student winner requires a one-to-one aide per their IEP or Section 504 plan, the vendor will also reimburse such individual for travel.
 - Overnight accommodation for one night maximum can be reimbursed for teams traveling more than 90 miles. Teams may be reimbursed for up to 4 rooms.
 - Allowed travel reimbursement: mileage (over 35 miles from home), car rental, tolls, parking, gas, train tickets (coach only), cab/Uber/Lyft. Air travel is not allowable.
 - Please note: Cab/Uber/Lyft use should be limited to travel between:
 - Residence to/from public transportation terminal (bus/train) or to/from car rental agency.
 - Public transportation terminal (bus/train) to/from hotel accommodation.
 - Hotel accommodations to/from site of Statewide Event.
 - Meals not provided at the Statewide Event must be reimbursed at the GSA per diem rate.
- The vendor may choose to subcontract with an experienced and established event-planning organization to ensure success of the Statewide Event.

C.1.1 Date

- The date of the Statewide Event must fall after the end of make-up administration for the NYS 3-8 Mathematics Assessment and before June 15 of each year of the contract. For reference, NYS Assessment schedules can be found on the [NYSED website](#).
- The date of the Statewide Event must be approved by NYSED and announced no later than January 15 of each year of the contract.

C.1.2 Location

- The [New York State Museum](#) shall be offered first right of refusal to host the Statewide Event during the resulting contract term. If the New York State Museum declines, the Statewide Event must be held within 90 miles of Albany, at a location approved by NYSED. The vendor must first attempt to secure an educational facility, such as a local educational agency (LEA), a BOCES, or an IHE campus, which could include a NYS community college. If such a location cannot be secured, the vendor will collaborate with NYSED to find a location that is satisfactory to NYSED.
- The location must have adequate hotel accommodations for a large event.
 - The Tournament Program Administrator must work with hotel(s) near the Statewide Event location to secure a block of rooms at a discounted rate for teams traveling more than 90 miles.

C.1.3 Facilities/Amenities

The vendor will secure adequate facilities and amenities for one day, to accommodate a large Statewide Event, including amenities adequate and appropriate for children and parents/adult chaperones who will accompany the children, including but not limited to:

- Contest space: The facility must have a large indoor, air-conditioned space(s) that includes a presentation area with digital projection equipment and microphone sound system and will comfortably seat at least 320 people.
- Additional rooms must be available for participants to use as workspaces and for viewing the live-streamed event. Each room must seat, provide working space, and have WiFi available and adequate bandwidth for approximately 35 people.
- Parking: The vendor must ensure sufficient, free parking is available for the event.
- Staff:
 - The individual identified as the Tournament Program Administrator will be present at the Statewide Event and will be available and will manage events throughout the day.
 - The vendor must provide sufficient staff to direct and assist student participants and their families, and the adult chaperones, including teacher proctors.
 - The vendor must arrange to provide at least one Registered Nurse and one assistant with first aid and CPR training to be present and available throughout the entire day.
 - The vendor must ensure security personnel are visible and available throughout the day.
 - The vendor must coordinate with local government/police to ensure adequate traffic assistance and secure any permits, if necessary.
 - The vendor must provide at least one individual who will serve as the contest facilitator, who will introduce the students, read the equations/questions, and perform any necessary duties at the discretion of the tournament program facilitator.
 - The vendor must provide at least three tournament judges for each grade level.

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- Interpreter: The vendor must arrange to provide for American Sign Language (ASL) interpreting services for any participating student(s) requiring such accommodation.
- Food: The following must be provided for free to participating students, parents, judges, volunteers, and teacher proctors on the day of the event. (Approximately 600 people):
 - Coffee, juice/milk, fruit, and packaged breakfast option in the morning.
 - A full catered lunch must be provided in the afternoon, with allergen-free, vegan, and Kosher/Halal options. Attention must be paid to seating options, ensuring lunch is available for an extended period to accommodate for students who may be competing during the designated lunch period, etc.
 - Water and allergen-free, healthy snacks must be available throughout the day.
 - Ice cream/desserts and beverages (water and coffee) must be provided during the reception, with allergen-free, vegan, and Kosher/Halal options.
- Security Measures:
 - The vendor will provide T-shirts in a range of sizes to participating students and any tournament volunteers.
 - The vendor must provide other security measures (e.g., identification bracelets/tags, checkpoints for students and parents/chaperones, etc.) to ensure student safety.
- Other Facilities, including:
 - adequate bathrooms
 - first aid area(s)
 - Seating/waiting spaces
 - a designated “calm room” for students with special needs (in addition to the rooms described above).
- Air conditioning and protection from the elements (rain/sun).
- Entertainment:
 - There will be 240 children approximately ages 6-14 participating in the event. The vendor must coordinate to ensure there are multiple, age-appropriate activities for students to engage in while they wait to compete.
- Adequate indoor/outdoor signage, maps, and printed schedules to ensure participants know where to be and at what time.

C.1.4 Materials

The vendor will provide the materials necessary to conduct the Statewide Event, including but not limited to:

- Grade-specific, problem-based challenge for each grade (1-8).

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- As the Statewide Event is for regional winners, the vendor must assume the students possess high-level mathematical ability and should craft problems to challenge students.
- Multiple variations (including color contrast and multiple languages (see page 17, B.2) and alternate formats (e.g., Braille or large print) of the printed copies for the students to use during the contest as needed.

C.1.5 Reception

The vendor will provide for a reception for the participating students and the parents, judges, and teacher proctors immediately following the Statewide Event competition. (Approximately 600 people).

- The reception must be held in an indoor, air-conditioned space on the site of the Statewide Event location that includes a microphone sound system and adequate seating.
- Ice cream/desserts must be provided during the reception, with allergen-free, vegan, and Kosher/Halal options.
- Beverages (water and coffee) must be available during the reception.

C.2 Regional Contest

- The Regional Contests will be online assessments that focus on fluency. The vendor will work with elementary and middle level mathematics experts to develop challenging assessments and scoring rubrics, by grade level, aligned with the NYS Next Generation Mathematics Learning Standards, that will be delivered digitally.
 - The test delivery platform must record individual sessions, including responses for each item and time stamps. Responses and time stamps must be tied to individual student names so that regional winners can be identified.
 - The online assessments must be based on the vendor's same online math games platform.
- The Statewide Tournament Program Administrator, identified by the vendor, will coordinate with and provide support to one regional facilitator from each of the 10 Regions. NYSED will assist with contacting the regions, identifying the regional designees, and providing contact information to the vendor.

C.2.1 Date

- Regional Contests should be held during March-April of each contract year and must not conflict with the NYS Grades 3-8 Assessment administration schedule. Regional Contests may not be held the week before or during the primary administration window of either the NYS 3-8 ELA or Mathematics Assessments and may not be held on a religious holiday or during the week most NYS students are on Spring Break.

C.2.2 Location

- Students will participate in the online Regional Contest at their home school during the regular school day.

Staffing Requirements and Responsibilities

Project Director

The vendor must designate a Project Director, who will be a full-time staff member dedicated to this project and will serve as the lead point of contact with NYSED.

The Project Director is expected to manage the program and execution of the deliverables. The Project Director is also responsible for ensuring that any organization serving as a subcontractor for this contract is providing services that meet NYSED expectations. NYSED staff will communicate any concerns regarding the quality of the services provided to the Project Director. The Project Director must participate in at least one meeting with NYSED staff each month during the contract period (monthly meetings may be by telephone or video conference).

The Project Director should have project management experience; a background in education is desired but not required.

Tournament Program Administrator

The vendor will designate a Tournament Program Administrator who will serve as the organizer of the Statewide Event and the primary contact to facilitate planning with and providing support for the regional facilitators.

The Tournament Program Administrator will be expected to check in regularly with the Office of Standards and Instruction and provide updates and reports as requested. The Tournament Program Administrator must also be present at the Statewide Event to manage events throughout the day and ensure that all components of the Statewide Event portion of the contract are fulfilled.

Contest Facilitator

The vendor will designate a Contest Facilitator to participate in the Statewide Event. The Contest Facilitator will introduce students during the contest, provide instructions, and perform any other necessary tasks as determined by the Tournament Program Administrator.

Chief Technology Officer or Director of Technology

The vendor will identify a Chief Technology Officer or Director of Technology. This person is responsible for the online website/platform. The Chief Technology Officer or Director of Technology will ensure that the program performs to the expected specifications.

Chief Academic Officer or Director/Mathematics Expert

The vendor will identify a Chief Academic Officer or Director/Mathematics Expert. This person is responsible for the mathematics content on the website/platform. The Chief Academic Officer or Director/Mathematics Expert will ensure that the content aligns to the NYS Next Generation Mathematics Learning Standards and all required fluencies.

Professional Development Facilitator

The vendor will identify a Professional Development Facilitator. This person is responsible for developing content/materials and facilitating the professional development, including the “Welcome Packet” and the train-the-trainer workshops. The Professional Development Facilitator will also be responsible for facilitating the training for the NYSED staff that will have access to the website/platform.

Ownership

To the extent that Contractor is providing and State is procuring a license to use a commercially available product, the parties agree that such pre-existing commercially available product shall remain the property of the Contractor.

The Contractor or third parties shall retain all right, title and interest in the Licensed Products and shall grant to State a non-exclusive, royalty-free license to use the Licensed Products for the term of this agreement. The State acknowledges that the Contractor or its licensors shall retain all ownership and intellectual property rights to the Licensed Products, including the proprietary code offered to the State under any applicable licensing agreement. Any property or material furnished or provided by the State to the Contractor hereunder is and will remain the property of the State.

Payments and Reports

Payments for deliverables will be made upon completion and approval by NYSED as identified in the winning vendor’s cost proposal. Payments to the vendor will only be made in accordance with properly submitted invoices. All invoices submitted for payment must include dates of services and an itemized list of activities and costs consistent with the deliverables contained in the executed contract. Invoices with incomplete information will be returned to the vendor. Payments to subcontractors should be listed on invoices. Payment for subcontractors must list the subcontractor’s name, payment amount, and nature of services provided separately on the invoice submitted.

All travel related to contractual services will be included in the deliverable price and in accordance with the approved NYS rates. New York State rates are available at the [U.S. General Services Administration](#) website.

Vendors will be required to submit quarterly and annual reports to NYSED in accordance with a format and schedule to be determined at the discretion of NYSED.

Requirements of Education Law Section 2-d

The Contractor agrees to comply with FERPA and New York State Education Law § 2-d. The NYSED is required to ensure that all contracts with a third-party contractor that receives personally identifiable information (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

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complete the following or provide a plan that materially addresses its requirements, including alignment with the NIST Cybersecurity Framework, which is the standard for educational agency data privacy and security policies in New York state.

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

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

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

Accessibility of Web-Based Information and Applications

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

Subcontracting Limit

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

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

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

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

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

Staff Changes

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

Contract Period

NYSED will award **one** (1) contract pursuant to this RFP, dependent on continuing NYS budget appropriation. The contract resulting from this RFP will be for a term anticipated to begin **July 1, 2025**, and to end **June 30, 2030**.

Electronic Processing of Payments

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

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 section⁶. 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.

⁶ 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.

7. Contractor shall agree, as a condition of entering into said contract, to be bound by the provisions of Article 15-A, §316.
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
3. Cost Proposal
4. M/WBE Documents bearing signatures

The proposal must be received by **March 19, 2025. Bids are due by 3:00 PM ET.**

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.

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Technical Proposal

(70 points)

The completed Technical Proposal should be labeled **[Name of Bidder] Technical Proposal – RFP #25-008** and include the following:

- I. Organizational Capacity and Experience (10 Points)
- II. Independent Evaluation by a Credible Research Organization (10 Points)
- III. Deliverable A: Website/Platform (20 Points)
- IV. Deliverable B: Support and Professional Development (10 Points)
- V. Deliverable C: Statewide Mathematics Tournament (20 Points)

I. Organizational Capacity and Experience (10 points Maximum)

The proposal should show evidence of adequate human, organizational, technical, and professional resources, and associated abilities to meet the needs of this RFP.

The proposal should provide detailed information explaining the vendor's experience and expertise in areas specific to the services and support to be provided, and its capacity to successfully undertake the scope of work this project entails.

A response that meets the standard for this section will provide comprehensive, detailed information on the following:

- A description of the bidder's organization, including mission/vision, number of years in business, areas of expertise, awards/accolades, partnerships/endorsements, and other relevant information to demonstrate how the bidder's organization compares with other vendors offering similar products and services.
- Provide the name(s) of the staff person(s) who will be responsible for the activities below. For all persons listed, include a description(s) of their relevant experience and expertise demonstrating they are qualified for these positions, as well as the number of years employed by the bidder. Resumes should be included as appendices.
 - Project Director (mandatory requirement)
 - Chief Technology Officer or Director of Technology responsible for online website/platform
 - Chief Academic Officer or Director/Mathematics Expert responsible for mathematics content
 - Professional Development Facilitator responsible for developing content/materials and facilitating professional development.
 - Individual who will serve as the Statewide Mathematics Tournament Program Administrator.
- How the bidder will ensure continuity of project staff for the entire contract period.

RFP #25-008

- How the bidder has and will maintain adequate resources (human, organizational, technical, professional, and financial) to offer the product and services proposed – at the same or higher quality-level proposed – throughout the length of the contract period.

II. Evidence of Independent Evaluation by a Credible Research Organization (10 points Maximum)

The bidder must include evidence that the mathematics instructional games/activities available through the online site/platform product being offered have been independently evaluated for effectiveness in a school setting by a credible research organization. For this RFP, a credible research organization refers to an institute of higher education or a nonprofit organization that includes independent research as a component of its mission.

This documentation must be on letterhead of the credible research organization and signed by the researcher or an individual authorized to speak on behalf of the organization.

After the mandatory requirement has been verified, this section will be scored based on the quality of the independent evaluation.

III. Deliverable A: Website/Platform (20 Points Maximum)

The proposal should provide detailed information on the vendor's existing website/platform and the supplemental math practice, in the form of online mathematic games.

A response that meets the standard for this section will align with all program requirements and provide detailed information on the following:

Curriculum and Instructional Specifications (10 Points Maximum)

- How the product and content meet the goals of the EMAP program, including
 - Fostering a love of math through play.
 - Strengthening NYS students' foundational math knowledge and fluency.
- How the math games, activities, and any curricular materials utilize current, research-based strategies for elementary mathematics instruction and strategies grounded in current game-based learning theory.
- How the math games, activities, and any curricular materials are aligned to the NYS Next Generation Mathematics Learning Standards for grades kindergarten through eight.
- The availability of downloadable activities (e.g., practice work) for students, by grade and/or content/skill, that can be completed on paper, offline.
- The available resources for educators (e.g., lesson ideas, professional development).
- The available resources for families (e.g., suggestions for ways to support children at home).
- The vendor's product should also offer the following:
 - Ability to track/monitor individual student progress.
 - Formative assessments

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- Reporting features
- Accommodations / modifications / supports for students with disabilities and ELLs.
- A schedule of projected new development, delineating all content that is currently planned within the five-year period.

Technical Specifications (10 Points Maximum)

- How the vendor's offered product/services comply with Federal and NYS Law and NYS/NYSED policy outlined in the Project Description and Deliverables Section.
- The platforms that the vendor's product is optimized for, and if it functions on mobile phones and the four required platforms (Windows desktops/laptops [Windows OS 8.1+], Apple desktop/laptop [Mac OS 10.10+], Chromebook [Chrome OS v59+], iPad [iOS 11.2.5+])
- Full technical specifications and requirements for their product in the proposal, including:
 - Information on all companies hosting the site and the data, including where data is stored.
 - browser(s) with which it is compatible or which browsers should be used for optimal performance.
 - Evidence that the product is current with all security updates.
 - Evidence that content is delivered over secure https.
 - Evidence that uptime is 99.99%.
- How the system has the current capacity to serve a significant increase in simultaneous users and/or increase capacity to serve a significant increase in simultaneous users. Please note that NYSED will be contracting for approximately 3.0 million new licenses.
- The proposed process to give access to approximately 3.0 million new users in NYS, in three categories of users (Student, Parent/Family, Educator).
- The vendor will detail its process for creating new accounts, resetting student credentials, or updating teacher/student relationships upon request during the school year for students who transfer to another school or district or move to New York from another state or country during the contract period.
- The vendor will detail its process for either resetting all student credentials or updating all teacher/student relationships at the start of every school year during the contract period.
- The vendor will detail its process for adding accounts for all students entering kindergarten at the start of the school year and for deleting all accounts and data for students who are promoted to 9th grade.
- The vendor will describe all the functionality of the educator-level credential, including access to the games and content of the student-level credential, ability to monitor student progress, and assigning content.

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- The vendor will detail its process for creating new accounts, resetting credentials, or updating teacher/student relationships upon request during the school year for teachers who transfer employment to another school or district or begin new employment in New York.
- The vendor will describe the process for allowing accommodations for ELLs and students with disabilities without collecting any data on those accommodations.
- The vendor will describe how they will provide support for lost usernames and passwords.
- The vendor will describe the process for deleting all data and accounts at the end of the contract period.
- Please see the Project Description and Deliverables Section for additional requirements for authenticated log-ins. The vendor should address how it will meet those requirements.
- A description of the user experience at the student-, family- and educator-level credentials.
- The vendor will provide full technical specifications and requirements for their product, including:
 - The information on all companies hosting the site and the data, including where data is stored.
 - The browser(s) with which it is compatible or which browsers should be used for optimal performance.
- The vendor will provide details on time-out functionality of the authenticated session.
- The vendor will describe how advertisements are chosen for non-authenticated users.
- External links should be limited to educational resources or information. If the website/platform has external links, the vendor will explain what the external links would be, the purpose of the external links and the click-through gate that would be used.

Student:

- The vendor will describe the process by which students can access the games and content, including whether the interface will be adaptive.
- The vendor will describe the process for ensuring that student information persists between sessions.
- The vendor will describe what information is displayed to the student after authentication.

Parent:

- The vendor will describe the user interface for the parents, including the search and/or filter functionality.

Educators:

- The vendor will describe the user interface for the educators, including the search and/or filter functionality.

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- The vendor will detail any additional features available for educators, including the ability to view game completion, success rate, downloadable reports, and the ability to serve student-specific content.
- The vendor will describe the process for ensuring that educators are only able to see the students for whom they are responsible.
- Please see the Project Description and Deliverables Section for additional requirements for user experience. The vendor should address how it will meet those requirements.
- The vendor will provide dates for the most recent update to the system and the math games, as well as a schedule of projected new development through 2030, delineating all development that is currently planned.
- A description of how the vendor will be able to meet NYSED's desire for Additional Functionality, such as:
 - Support District SSO.
 - Adaptive technology: the system provides content based on students' performance, rather than on a linear path.
 - Integration with one or more Learning Management System(s) and/or cloud-based platforms such as, but not limited to, Google Classroom/Education Suite or Office 365.
- Scores for the Technical Proposal for Deliverable A: Website/Platform are subject to change following the mandatory demonstration of the bidder's system. Demonstrations will be used for Validation/Adjustments to the final scores for this section.
- Each bidder submitting a proposal will be scheduled (between 04/10/2025 and 04/23/2025) to demonstrate to NYSED's RFP proposal reviewers the product it proposes to be used. The demonstration will be scheduled in consultation with the bidder. Such bidder demonstration (conducted either in person at NYSED's Albany office or by webinar) shall help NYSED's reviewers understand what features are being offered and any additional features that the bidder plans to develop for this product.

IV. Deliverable B: Support and Professional Development (10 Points Maximum)

- The proposal should detail how the vendor will provide support and professional development to ensure that educators, schools, districts, and families have the tools to support students as stated in Deliverable B.

A response that meets the standard for this section will describe:

- The digital "Welcome Packet" for NYS schools that will be provided, and what will be included.
- How the vendor will provide information for parents and families in multiple languages (see page 17, B.2) and alternate formats (e.g., Braille or large print) as needed.
- How the vendor will provide technical support for educators and families during normal business hours and/or extended hours.

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- How the vendor will provide or make available professional development for educators on using the website/program.
- How the vendor will provide training and access to NYSED personnel.
- How the vendor will plan and facilitate five (5) one-day, in-person, train-the-trainer workshops for professional development staff from the BOCES and Big 5 districts in the first year of the contract to ensure these trainers can train educators on how to effectively use the product to meet the goals of the EMAP. Each workshop will hold up to 100 staff per session on a first-come, first-served basis.

V. Deliverable C: Statewide Mathematics Tournament (20 Points Maximum)

- The vendor will facilitate a mathematics tournament for elementary and middle school students (Grades 1-8) at the end of each school year of the contract period. The tournament will be composed of 10 Virtual Regional Contests and one Statewide Event per year.
- The Regional Contests will present a series of challenging mathematics problems for each grade level that assesses fluency. The Statewide Event will present a task for each grade level that merges content with practice, reinforces grade-level computational fluency (built through interaction with the vendor's product), and allows students the opportunity to fully engage with the [Standards for Mathematical Practice](#) (pages 7-9).

A response that meets the standard for this section will provide detailed information on how the vendor will address all aspects noted in Deliverable C: Facilitation of Statewide Tournament.

The vendor will describe the process for developing the challenge problems and rubrics for the Statewide Event and Regional Contests.

Statewide Event

- The name and qualifications of the individual to serve as the Tournament Program Administrator. This individual will be expected to check in regularly with the NYSED Program Office and provide updates and reports as requested.
- The vendor will detail the process for determining who will serve as the three judges, including at least one elementary mathematics content specialist for grades 1-5 and one middle-level mathematics content specialist for grades 6-8.
- The vendor will describe the process by which students will submit their work to contest judges.
- The vendor will provide a plan for the Statewide Event that includes information about how the vendor will address all the requirements listed in Section C.1 and Subsections C.1.1 – C.1.4 and below:
 - Alignment with the NYS Next Generation Mathematics Learning Standards.
 - Providing reimbursement for student and adult travel, accommodations, and meals.
 - Providing trophies, computing devices, and technology to winning students and school.

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- Providing awards for all participants.
- Announcing the date of the event.
- Choosing a location if the New York State Museum declines to host the event. The event must be held within 90 miles of Albany, at a location approved by NYSED. The vendor must first attempt to secure an educational facility, such as an LEA, a BOCES, or an IHE campus, which could include a NYS community college. The location must have an adequate large indoor space, large Wi-Fi capacity, and sufficient free parking. If such a location cannot be secured, the vendor will collaborate with NYSED to find a location that is satisfactory to NYSED.
- Providing sufficient staff to assist participants.
- Providing appropriate security measures to ensure the safety of students.
- Providing at least one Registered Nurse in first aid area(s).
- Ensuring security personnel are visible and local government/police are aware of the event.
- Providing a contest facilitator.
- Providing breakfast, lunch, snacks, and ice cream/desserts.
- Providing adequate facilities, including:
 - Clean restrooms
 - Seating/waiting areas
 - a designated “calm room”
 - air conditioning
 - protection from the elements (rain/sun).
- Providing signage, maps, and schedules.
- Providing entertainment for students waiting to participate.
- Providing paper, pencils, and possibly mathematical tools based on the content of the challenge problems created.
- Providing multiple variations (including color contrast and multiple languages) and alternate formats (e.g., Braille or large print) of the printed copies for the students to use during the contest.

Regional Contests

- The vendor will provide a plan for the Regional Contests that includes information about how the vendor will address all the requirements listed in Section C.2 and Subsections C.2.1 – C.2.2 and below:
 - Enlisting the help of elementary and middle level mathematics experts to design challenging assessments focusing on mathematical fluency.

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- Developing an online platform to deliver the assessment.
- Coordinating with regional facilitators.
- Determining the date range for the Regional Contests.
- Providing trophies to winning students.
- Providing awards for all participants.

Cost Proposal (30 points)

The completed Cost Proposal should be labeled **[Name of Bidder] Cost Proposal – RFP #25-008** and include the following:

- 1.) 5-year Cost Proposal
- 2.) Subcontracting Form
- 3.) M/WBE Purchases Form

Budgets must be submitted using whole dollar numbers.

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

M/WBE Documents

The completed M/WBE Documents should be labeled **[Name of Bidder] M/WBE Documents – RFP #25-008**. Please return the documents listed for the compliance method the 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 101** 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. NYSED retains the right to determine whether any deviation from the requirements of this RFP is substantial in nature and may reject in whole or in part any and all proposals, waive minor irregularities and conduct discussions with all responsible bidders.

- Scores for the Technical Proposal for Deliverable A: Website/Platform are subject to change following the mandatory demonstration of the bidder’s system. Demonstrations will be used for Validation/Adjustments to the final scores for this section.
- Each bidder submitting a proposal will be scheduled (between 04/10/2025 and 04/23/2025) to demonstrate to NYSED’s RFP proposal reviewers the product it proposes to use. The demonstration will be scheduled in consultation with the bidder. Such bidder demonstration (conducted either in person at NYSED’s Albany office or by webinar) shall help NYSED’s reviewers understand what features are being offered and any additional features that the bidder plans to develop for this product.

Technical Criteria (70 Points)

Technical Proposal	Points
Organizational Capacity and Experience	10
Independent Evaluation	10
Deliverable A: Website/Platform	20
Deliverable B: Support and Professional Development	10
Deliverable C: Statewide Mathematics Tournament	20

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TOTAL	70
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Financial Criteria (30 Points)

Cost Proposal

TOTAL	30
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The Financial Criteria portion of this RFP will be scored based upon the grand total for the 5-year Cost Proposal.

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

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any of the scheduled dates; (10) waive any requirements that are not material; (11) negotiate with the successful bidder within the scope of the RFP in the best interests of the state; (12) conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder; (13) utilize any and all ideas submitted in the proposals received; (14) unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 90 days from the bid opening; (15) require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation; (16) request best and final offers.

Post Selection Procedures

Upon selection, the successful bidder will receive a proposed contract from NYSED. The selected bidder may be given an opportunity to reduce its 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 EMAPRFP2025-2030@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.

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2. The protest must be filed within ten (10) business days of receipt of a debriefing or disqualification letter. The protest letter must be submitted by email to EMAPRFP2025-2030@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

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- 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 – **Andrea Faoro**

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.

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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](#).

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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:

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- **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 which the certification is made. Sales tax quarters are June – August, September – November, December – February, and March – May. In addition, contractors must certify to DTF that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and 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.

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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

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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.

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

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

IV. Indemnification

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

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

V. Property

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

VI. Safeguards for Services and Confidentiality

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

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

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

APPENDIX A
Standard Clauses for NYS Contracts

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

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

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

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

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

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its

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

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

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract

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

8. INTERNATIONAL BOYCOTT PROHIBITION.

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

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

audit by the State agency, its representatives, or the State Comptroller.

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

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

the payee does not have such number or numbers.

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

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

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

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

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

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

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated

to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

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

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

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize

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

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

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

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

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

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this

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

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

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

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

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

report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

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

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

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

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

that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

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

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

(June 2023)

APPENDIX A-1
AGENCY-SPECIFIC CLAUSES

Payment and Reporting

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

Terminations

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

Responsibility Provisions

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

C. Termination (for Non-Responsibility)

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

Property

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

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

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

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

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

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

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

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

Safeguards for Services and Confidentiality

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

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

Certifications

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

Notices

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

Miscellaneous

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

By mail: NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting

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

Reports to DCS are to be transmitted as follows:

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

Reports to NYSED are to be transmitted as follows:

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

By fax: (518) 408-1716

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

Revised 5/23/22

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

ARTICLE I: DEFINITIONS

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

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

unusable, unreadable, or indecipherable form in which there is a low probability of assigning meaning without use of a confidential process or key.

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

ARTICLE II: PRIVACY AND SECURITY OF INFORMATION

1. Compliance with Law.

When providing Services pursuant to this contract, Contractor may have Access to or receive Disclosure of Information that is regulated by one or more New York and/or federal laws and regulations, among them, but not limited to, the Family Educational Rights and

Privacy Act ("FERPA") at 12 U.S.C. § 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. §§ 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. § 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. § 1400 et seq. (34 CFR Part 300); New York Education Law § 2-d; and the Regulations of the Commissioner of Education at 8 NYCRR Part 121. Contractor agrees to maintain the confidentiality and security of Information in accordance with (a) applicable New York, federal and local laws, rules, and regulations, and (b) NYSED's Data Privacy and Security Policy. Contractor further agrees that neither the Services provided nor the manner in which such Services are provided shall violate New York, federal and/or local laws, rules, and regulations, or NYSED's Data Privacy and Security Policy.

2. Authorized Use.

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

3. Contractor's Data Privacy and Security Plan.

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

4. NYSED's Data Privacy and Security Policy

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

policies and agrees to contractually require its Subcontractors to comply with NYSED's Data Privacy and Security Policy.

5. Right of Review and Audit.

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

6. Contractor's Employees and Subcontractors.

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

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

7. Training.

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

8. Data Return and Destruction of Data.

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

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

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

9. Commercial or Marketing Use Prohibition.

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

10. Encryption.

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

11. Breach.

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

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

12. Cooperation with Investigations.

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

13. Notification to Individuals.

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

14. Termination.

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

ARTICLE III: PARENT AND ELIGIBLE STUDENT PROVISIONS

1. Parent and Eligible Student Access.

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

2. Bill of Rights for Data Privacy and Security.

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

EXHIBIT 1 - Contractor's Data Privacy and Security Plan

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

1. Contractor Name:

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

3. Outline how you will implement the security requirements of this Contract by specifying the administrative, operational, and technical safeguards and practices that you have in place to protect the information provided to you under this Contract.
 - (a) Explain how your Data Privacy and Security Policy aligns with the NIST CSF and [NYSED's Data Privacy and Security Policy](#).

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

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

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

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

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

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

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

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

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

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

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

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

iv) please explain your procedures for correcting hallucinations; and

v) please explain how you mitigate AI bias.

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

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

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

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

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

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

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

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

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

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

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

Supplemental Information

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

1. Name of Contractor:

2. Purpose of Contract:

3. Contract Term:

Contract Start Date:

Contract End Date:

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

Student Data Yes No

APPR Data Yes No

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

6. Subcontractor use and written agreement requirement:

Will Contractor be using Subcontractors? Yes No

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

7. Data Transition and Secure Destruction

By certifying below, Contractor agrees that the confidentiality and data security obligations under this DPA will survive the expiration or termination of this Contract but shall terminate upon Contractor’s certifying, that Contractor and its Subcontractors:

- Are unable to Access any Disclosed Information provided to Contractor pursuant to this Contract; and

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

8. Challenges to Data Accuracy

By certifying below, Contractor agrees that parents, eligible students, teachers, or principals who seek to challenge the accuracy of Student Data or APPR Data will be referred to NYSED and if a correction to data is deemed necessary, NYSED will notify Contractor. Contractor further agrees to facilitate such corrections within 21 days of receiving NYSED’s written request.

9. Secure Storage and Data Security

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

- Yes No Using a cloud or infrastructure owned and hosted by a third party.
- Yes No Using Contractor owned and hosted solution.
- Yes No Other:

10. Encryption Requirement

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

11. Contractor Certification

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

Contractor’s Name

Signature

Printed Name

Title

Date