

**THE CITY UNIVERSITY OF NEW YORK**

**REQUEST FOR PROPOSALS**

**VIRTUAL BOOKSTORE**

**UCO 630**



Proposal Due Date:

**Wednesday, May 25, 2016 at 12:00 pm Eastern Standard Time**

Proposal Delivery Location:

**Office of the University Controller  
230 West 41st Street, 5<sup>th</sup> Floor  
New York, NY 10036  
Attention: UCO 630-Virtual Bookstore**

**REQUEST FOR PROPOSALS  
CITY UNIVERSITY OF NEW YORK  
VIRTUAL BOOK STORE**

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# 1. INTRODUCTION

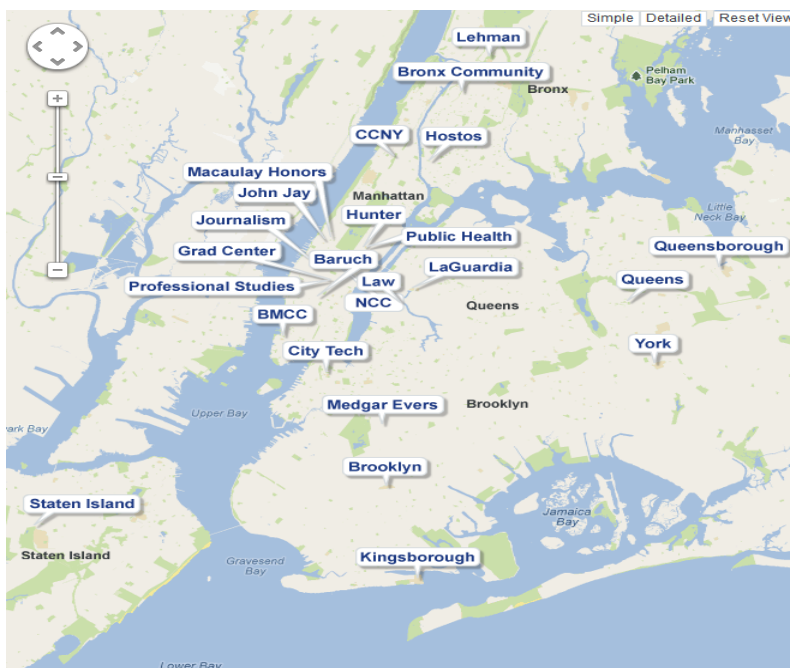
## 1.1. Purpose

The City University of New York (“CUNY” or the “University”) is seeking proposals from qualified companies to provide certain CUNY colleges with a virtual, on-line, substitute to a brick and mortar bookstore (“Virtual Bookstore”). The purpose of the Virtual Bookstore is to support the educational mission of these colleges by providing necessary textbooks (new, used, digital, rental, etc.) and related course materials to students at the lowest possible cost.

## 1.2 CUNY Overview

The City University of New York is the nation’s largest urban public university. Founded in New York City in 1847 as the Free Academy, CUNY currently comprises 25 institutions: 11 senior colleges, seven community colleges, the William E. Macaulay Honors College at CUNY, and six graduate and professional schools. CUNY serves more than 271,000 degree-credit students and 270,000 adult, continuing and professional education students and has nearly 40,000 employees. Student full time equivalent population has averaged growth of 5% over the last six years. Additional data regarding CUNY’s size and diversity is available at our Office of Institutional Research website: <http://www.cuny.edu/about/administration/offices/ira/ir.html>.

**1.2.1 CUNY Locations.** The facilities at CUNY’s 25 modern institutions throughout the five boroughs of New York City include the traditional and the innovative. More than 300 buildings on almost 26 million square feet of space include state-of-the-art computer centers, science and language laboratories, gymnasiums, theaters, greenhouses, astronomy observatories and many more features. See below for a map of most CUNY academic locations.



## **Senior Colleges**

- Baruch College
- Brooklyn College
- The City College of New York (includes the Sophie Davis School of Biomedical Studies)
- College of Staten Island
- Hunter College
- John Jay College of Criminal Justice
- Lehman College
- Medgar Evers College
- New York City College of Technology
- Queens College
- York College

## **Community Colleges**

- Borough of Manhattan Community College
- Bronx Community College
- Hostos Community College
- Kingsborough Community College
- LaGuardia Community College
- Queensborough Community College
- Stella and Charles Guttman Community College (formerly known as and noted as NCC on the map above)

## **Honors College and Graduate & Professional Schools**

- Macaulay Honors College (Multiple Locations)
- The Graduate Center
- CUNY School of Law
- CUNY Graduate School of Journalism
- CUNY Graduate School of Public Health and Health Policy
- CUNY School of Professional Studies
- CUNY School of Medicine (expected opening 2016)

### **1.3 Contract Scope and Objectives**

#### **1.3.1 Objective.**

1.3.1.1 This RFP addresses Virtual Bookstore Operations, described generally below and in greater detail in the Terms and Conditions of Contract (**Attachment A**).

Virtual Bookstore Operations refer generally to the operation of a virtual, on-line substitute to a brick and mortar bookstore on a CUNY college campus with a full range of textbook and course materials services at competitive prices (the “Virtual Bookstore”). The Virtual Bookstore shall support CUNY’s educational mission by providing necessary textbooks (new, used, digital, rental, etc.) and related course materials to CUNY students at the lowest possible cost.

1.3.1.2 As used in this RFP, the term “Virtual Bookstore” refers both to the individual and collective on-line stores and systems to be developed to serve CUNY and the participating colleges.

1.3.1.3 CUNY is committed to providing a level of service and convenience that meets or exceeds that of the on-campus, physical model. A company may submit a proposal either as a single vendor or as a joint venture (multiple vendors coming together to propose a complete solution). All proposed subcontractors are subject to CUNY’s prior approval.

**1.3.1.4 The Contract will initially cover only those CUNY colleges listed on Attachment B (“Participating Colleges”). However, other CUNY colleges may opt into utilizing the Contract as their bookstore operations contracts expire or are terminated.**

1.3.1.5 At present, CUNY college bookstores are managed and operated pursuant to contracts between tax-exempt auxiliary enterprise corporations at the CUNY colleges (“AECs”). It is expected that the AECs of the Participating Colleges will administer this Contract at the campus level. Consequently, references to the Participating Colleges in the Contract include the AECs.

1.3.2 **Rights to be Granted.** The company CUNY chooses, if any, will be granted the following rights and have the following responsibilities, which are described in greater detail in the Contract attached as **Attachment A** to this RFP:

1.3.2.1 the exclusive right and responsibility to operate the official college bookstore at each Participating College as a Virtual Bookstore and to carry out Virtual Bookstore Operations to fulfill the needs of the Participating Colleges; and

1.3.2.2 the non-exclusive right and responsibility to provide course materials publishing (course pack) services through the Virtual Bookstore.

### **1.3.3 Exclusions and Exceptions**

1.3.3.1 The sale and electronic delivery of on-line courses, including access to on-line libraries in conjunction with such on-line courses, is specifically excluded from this RFP.

1.3.3.2 Contractor shall not use the names, addresses, email addresses, phone numbers, credit card information, or other personally identifiable information of users of the Virtual Bookstore for any purpose other than Virtual Bookstore Operations. This

prohibition includes, without limitation, sale, transfer or other distribution to third parties. See also Section 4.1.9 of **Attachment A**.

1.3.3.3 Participating College student governments, student associations, and/or other recognized college student organizations shall have the right to hold on-line and/or on-campus sales and/or exchanges of used textbooks for the benefit of such student group(s).

1.3.3.4 CUNY shall have the right to conduct other activities and enter into other arrangements intended to assist its students' access to affordable textbooks and other course materials, including in particular electronic textbooks. This may include, but is not limited to, arrangements by CUNY to sell or otherwise promote the availability of electronic textbooks and other course materials (including open source materials), and/or the equipment to use them, whether directly or through third parties and whether through physical sales locations or on-line.

## **1.4 Document Overview**

1.4.1 This RFP specifies the qualifications, services, responsibilities and other pertinent information related to Virtual Bookstore Operations.

1.4.2 This RFP document contain the following major sections:

**Section 1 – Introduction.** Provides an overview of CUNY and background information about the services covered by this RFP.

**Section 2 – Summary of Contract Specifics.** Describes Contractor's responsibilities regarding Virtual Bookstore Operations.

**Section 3 – Proposal Format and Contents.** Describes the prescribed format and content for responses to this RFP.

**Section 4 – Proposal Evaluation.** Describes the methodology that will be used to evaluate responses to this RFP.

**Section 5 – Administrative and Legal Specifications.** Contains general administrative information and legal terms regarding this RFP.

## **1.5 Term of Contract**

CUNY anticipates the base term of the Contract to be five years with one three-year and one two-year renewal option as determined in its best interest. See Terms and Conditions of Contract, Section 2 (**Attachment A**).

## 1.6 Minimum Qualifications

In order to be considered for Contract award, Proposers and any subcontractor(s) must meet the minimum qualifications below. Inability or unwillingness to meet the minimum qualifications set forth below will result in the rejection of a Proposal as non-responsive. Qualified Proposers will:

- 1.6.1 Be financially viable;
- 1.6.2 Have at least three (3) years' experience providing Virtual Bookstore Operations to large, multi-site, educational institutions;
- 1.6.3 Have at least three (3) higher educational clients;
- 1.6.4 Have the ability to service at least 270,000 users and to service a minimum of at least 15,000 concurrent users, at the levels required by this RFP (see e.g., Section 2.1.1 and 2.1.8 below and Sections 4.1.3, 4.1.4, and 4.1.8 in Attachment A); and
- 1.6.5 Be compliant with (i) the Payment Card Industry's Data Security Standard, as currently in effect and as may be amended from time to time ("PCI DSS") and (ii) the Fair and Accurate Credit Transaction Act of 2003, as may be amended from time to time ("FACTA").
- 1.6.6 Be ADA compliant.

## 1.7 Schedule of Key Events

CUNY will attempt to adhere to the following schedule with regard to this solicitation:

<b>Event</b>	<b>Date</b>	<b>Time</b>
RFP Release Date	<b>April 21, 2016</b>	
Question Submission Deadline	<b>May 6, 2016</b>	12.00 pm
Proposal Due Date and Time	<b>May 25, 2016</b>	12.00 pm
Oral Presentations	<b>June/July 2016</b>	

**CUNY reserves the right to amend any or all of the above dates and CUNY will issue such amendment in writing.**



## **1.8 Workplace Employment Utilization Reporting Requirements**

- a. The awarded Contractor shall submit a Workforce Report, (see **Attachment H** for sample form) and shall require each of its Subcontractors to submit a Workforce Report, in such format as shall be required by CUNY on a quarterly basis during the term of the contract.
- b. Separate forms shall be completed by Contractor and any Subcontractor.
- c. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- d. The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

## **1.9 Diversity Practices Questionnaire:**

The Empire State Development Department has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement shall be required to include as part of their responses to this procurement, as described in Section 4.2 Proposal Scoring, herein, the Diversity Practices Questionnaire (See **Attachment I**).

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## 2 SUMMARY OF CONTRACT SPECIFICS

This section gives a **summary** description of Contractor’s responsibilities for providing Virtual Bookstore Operations. This section should be read in conjunction with Section 4 “Scope of Services” in the Terms and Conditions of the Contract (**Attachment A**), which provides a detailed description of Contractor’s responsibilities.

- 2.1 **Technical Requirements:** The Contractor will be required to provide the Virtual Bookstore through a website that is compatible with CUNYFirst, Blackboard and the Participating Colleges’ other technological systems, and does not require CUNY to make any changes to its technological infrastructure or software, except for the possible creation or modification of data processing APIs for the purposes of completing integration of necessary course, student, and faculty data in the Virtual Bookstore.

CUNYFirst is the University’s implementation of the Oracle PeopleSoft ERP suite of applications for Financial, Human Resources, and Campus Solutions organizations. CUNYFirst is implemented using Oracle’s PeopleSoft Version 9 suite of Enterprise Resource Planning (ERP) software applications. CUNYFirst is on a hosted architecture that integrates with CUNY’s Computer and Information Service’s data center, application development and support. The hosted architecture is based on Oracle 11G R2 Database and Oracle Enterprise Linux. The PeopleSoft installation is based on Tools 8.5 and Application 9.0 for all the 7 pillars (HCM/CS, Finance, Customer Relationship Management, Enterprise Learning Management, and Enterprise Portal). There are several integration points to enterprise applications like Oracle Identity Management Suite and in-house application (.NET and Java), as well as to third party vendors.

The Virtual Bookstore shall:

- 2.1.1 Offer 24 hours-a-day, seven days-a-week, 365 days-a-year access and use (except for scheduled maintenance periods), via any and all (i) web browsers (e.g., Microsoft *Explorer*, Microsoft *Edge*, Mozilla *Firefox*, Google *Chrome*, Apple *Safari*, Opera Software *Opera*, etc.) and (ii) mobile devices, including without limitation tablets, smartphones, and PDAs, running a mobile OS (e.g., Apple *iOS*, Google *Android*, and Microsoft *Windows Phone*, etc.) via either a dedicated application or as a website optimized for mobile access and via the latest version of mobile browser, if needed;
- 2.1.2 Integrate with the University’s registration function; allowing students to find and purchase all required books and course materials, etc. when they register for the course;
- 2.1.3 Have single sign on integration with the CUNYFirst ERP system, as well as ability to login directly;
- 2.1.4 Have the ability to service at least 270,000 users and to service a minimum of at least 15,000 concurrent users, at the levels required by this RFP (see e.g., Section 2.1.1 and 2.1.8 below and Sections 4.1.3, 4.1.4, and 4.1.8 in Attachment A);
- 2.1.5 Comply with all applicable CUNY security policies and procedures (<http://www.cuny.edu/about/administration/offices/CIS/security/pnp.html>);

- 2.1.6 Have the ability to pass back data to CUNY via the textbook purchasing website including but not limited to ISBN#, author, course #, title and description using an industry standard Application Programming Interface (API);
- 2.1.7 Use a vendor system with industry standard API capability or web services;
- 2.1.8 Have high availability implementation, including redundant system and network components as well as a secondary (disaster recovery) data center;
- 2.1.9 Support auto-return, in which a user is redirected from the virtual bookstore website, upon completion of their shopping, back to the CUNY website; and
- 2.1.10 Be ADA compliant.
- 2.2 **Operational Requirements.** The Virtual Bookstore website must include:
  - 2.2.1 a method for easy on-line searching, comparison and adoption of textbooks and course materials by faculty, including the ability to provide faculty with on-line access to information regarding CUNY- wide selections in comparable courses for at least the preceding school year and the current school year to date;
  - 2.2.2 a method for easy on-line searching and ordering of textbooks and course materials by students and other customers. The method must provide:
    - searching by ISBN#, author, course #, title and professor
    - real-time inventory availability;
    - estimated delivery time; and
    - order acknowledgement and tracking
  - 2.2.3 a tool that permits customers to compare the price of textbooks and other materials based on:
    - format (hardcover, softcover, digital, new, and used);
    - acquisition method (purchase, license, rental);
    - seller; and
    - shipping cost
  - 2.2.4 a customer used book marketplace that permits students and others to easily sell and purchase used textbooks and other materials from other customers;
  - 2.2.5 a method for easy on-line buyback by the Contractor of used textbooks and other materials;
  - 2.2.6 a secure method of accepting credit, debit card, and financial aid payments;
  - 2.2.7 course materials publishing (course pack) services;
  - 2.2.8 the ability to ship to buyer-selected addresses and on-site locations selected by the Participating Colleges with:

- 2.2.8.1 Estimated delivery time to shopper of each item ordered, prior to order submission; and
- 2.2.8.2 The University's expectation is that the cost for shipping will be borne by the Contractor. However, the University will entertain other proposals of how to accomplish minimal costs for shipping.
- 2.2.9 24-7 support, including extended-hour live user and administrative support especially around registration periods;
- 2.2.10 on demand, on line analytics and reporting, with sample reports;
- 2.2.11 a link to the Participating College's web site; and
- 2.2.12 at a Participating College's option, a link to the Participating College's page on the CUNY Store (<http://www.thecunystore.com/>) that sells logo apparel and merchandise.
- 2.3 **Account Manager and Staff:** Contractor must designate an experienced and capable individual to be account manager for this Contract as a whole ("Manager") and a sufficient number of campus representatives to ably and efficiently manage the Contract at the local level. The Manager will be responsible at all times for implementation of this Contract, but the campus representatives and must have the authority to resolve problems with regard to inventory, staff/customer relations, administrative issues and the like at the college level. If Contractor will be providing any Virtual Bookstore Operations services on-campus at a Participating College and proposes to use former CUNY employees to provide such services, Contractor shall comply with **Attachment C** when proposing such former CUNY employees.
- 2.4 **Commissions and other considerations:** In consideration of the rights granted, Contractor shall pay CUNY such commissions, payments and other consideration as agreed to by the parties.
- 2.5 **Reporting and Audit:** Sales and other data must be available to Participating Colleges on-line, on demand. In addition, Contractor shall provide Participating Colleges with a monthly sales and commission report as described in Section 5.3. of **Attachment A**.
- 2.6 **Laws and Regulations.** Contractor shall comply, and ensure that its staff complies, with all laws, rules and regulations governing Virtual Bookstore Operations and all applicable provisions of the Contract.

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### **3. PROPOSAL FORMAT AND CONTENTS**

#### **3.1. General Procedures**

3.1.1. To be responsive to this RFP, and for the purposes of evaluation, each Proposal must consist of the following parts, as further described below:

- Cover Letter;
- Part I - Technical and Management Proposal; and
- Part II - Financial Proposal

3.1.2. Each part of the Proposal must be complete in itself in order that the evaluation of both Part I and Part II can be accomplished independently and concurrently, and so that the Technical and Management Proposal can be evaluated strictly on the basis of its merits.

3.1.3. Information shall be consistent across submitted documents. CUNY reserves the right to:

3.1.3.1. reject Proposals submitted with conflicting information;

3.1.3.2. determine that a Proposer has substantially met the requirements of the RFP and/or to ask for additional information after the Proposal Due Date; and

3.1.3.3. view non-compliance with this section or failure to provide information and/or required forms as non-responsive.

3.1.4. CUNY will protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law. Accordingly, Proposers should identify those page(s) of their Proposal that contain such information as “confidential and proprietary.” In addition, Proposers need to explain the reason(s) why this information should be considered exempt from public disclosure under FOIL. Include the identification of pages and the reasons for exemption of such “confidential and proprietary information” in the Cover Letter of the Proposal.

3.1.5. Proposers must submit a complete Proposal in response to the RFP, using the format defined herein. Proposers must tabulate and paginate their Proposals, and clearly mark sections with the Section number to which they are responding. The Proposer’s Proposal for the Virtual Bookstore Operations for CUNY must be prepared and presented in the following format and order:

#### **3.2. Cover Letter**

The Proposer must submit the Cover Letter on official business letterhead. The Cover Letter must include the following:

3.2.1. The name, title and contact information of the individual(s) with authority to negotiate and contractually bind the Proposer and who also may be contacted during the period of the Proposal evaluation.

- 3.2.2. A statement certifying that the Proposal, including the technical and financial components, shall remain valid for at least 270 calendar days.
- 3.2.3. A statement that the Proposer and any subcontractor(s) meet all the minimum requirements described in the RFP applicable to them, respectively (see Section 1.6).
- 3.2.4. A statement confirming that any anticipated difficulty or inability of Proposer to meet the requirements of this RFP and any resulting Contract are fully addressed in Proposer's Part II submission.
- 3.2.5. A statement affirming that neither Proposer nor any individual assigned to provide the Virtual Bookstore Operations to CUNY have any conflicts of interest with CUNY or the AECs, or their respective governing bodies, committees or employees. If Proposer cannot provide such a statement because of a conflict of interest, it shall instead state the nature of the conflict and describe the provisions that will be made to address the conflict.

### 3.3. Part I: Technical and Management Proposal

The Proposer must submit to CUNY before the Proposal Due Date:

- Seven (7) paper copies of its Part 1 – Technical and Management Proposal to the address listed on the cover page of this RFP; and
- One electronic copy of its Part I – Technical and Management Proposal to [caron.christian@cuny.edu](mailto:caron.christian@cuny.edu).

The Proposer's name and words "CUNY Virtual Bookstore Operations RFP Part I-Technical and Management Proposal" shall be clearly listed on the cover of the Part I Proposal. Proposals must be securely sealed and clearly labeled. Any outside packaging containing Part I copies must also be clearly marked with the words "CUNY Virtual Bookstore Operations RFP Part I-Technical and Management Proposal". **Package Part II separately from Part I.** Part I shall include the items listed below.

- 3.3.1. Title page. Include the following information: Name, address and phone number of the Proposer including a contact person (also listed in the Cover Letter), and name of the person(s) who prepared the Proposal.
- 3.3.2. Table of Contents
- 3.3.3. Minimum Requirements. Provide evidence that Proposer meets the minimum requirements of this RFP, including:
  - 3.3.3.1. A representative list on **Attachment D** of the types of books and other products that Proposer would make available at CUNY. Indicate the percentage discount off of publisher's list price.

3.3.3.2.Evidence of Proposer's financial viability, including one (1) copy of Proposer's audited financial statements for each of the last three (3) years, including balance sheets, profit and loss statement and cash flow analyses. If the Proposer is a subsidiary of a larger organization, then only financial data pertinent to the subsidiary's financial position is required. CUNY reserves the right to request additional financial information, if necessary, to establish the overall financial viability of the Proposer;

3.3.3.3.Evidence that Proposer has a minimum of three (3) years of successful business experience providing Virtual Bookstore Operations or comparable services to large, multi-site, educational institutions, including at least three (3) higher education clients. Provide a list of Proposer's current education clients. Using **Attachment E**, include at least five references from education clients, with a preference for references from large, multi-site, institutions.

3.3.3.4.Evidence that Proposer currently serves, or has the ability to serve, at least 270,000 users, including a minimum of 15,000 concurrent users, at the levels required by this RFP (see e.g., Section 2.1.1 and 2.1.8 below and Sections 4.1.3, 4.1.4, and 4.1.8 in Attachment A).

3.3.3.5.Evidence of PCI and FACTA compliance.

3.3.3.6.Evidence of ADA compliance. The Virtual Bookstore must allow a person with a disability to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability, in an equally effective and integrated manner, with substantially equivalent ease of use, and satisfy Web Content Accessibility Guidelines 2.0 level AA. Provide a WCAG 2.0 Voluntary Product Accessibility Template (VPAT).

3.3.3.7.Evidence that Proposer presently has sufficient resources, in terms of resources and stock, to carry out the Contract, or a plan for obtaining such resources. If Proposer anticipates using subcontractors, provide details regarding the amount of the business Proposer expects it would need to subcontract and the names and addresses of all proposed subcontractors.

3.3.4 Company Profile. Provide an overview of Proposer, including the following:

3.3.4.1 A brief history of Proposer's presence in the educational virtual bookstore industry and/or textbook marketplace, including revenue levels, number of current accounts, years in business, and number and make up of staff.

3.3.4.2 Former clients: Provide a list of education clients where Proposer's services have been terminated (either by Proposer or by the client) within the past three (3) years. Include the following information regarding these clients:

- Name and address of the company
- Name and title of client contact
- Telephone number of client contact

- Date and reason for termination

3.3.4.3 A description of Proposer's internal administrative systems, including but not limited to, inventory control, reporting of sales, and internal audit.

3.3.4.4 A list of publishers with whom Proposer has copyright agreements and arrangements to secure permissions.

3.3.4.5 Evidence of Proposer's data security practices, including information on what data is stored and how. Include both Proposer's written data security policies and Proposer history of data breaches for the prior three years.

3.3.5 Management Profile. Provide (i) an organizational chart or short profile of Proposer's management structure and (ii) a plan for administrative management and supervision of staffing required to carry out the services under this RFP. This should include a description of any regional or headquarters support and the resumes of key management personnel, including the proposed dedicated Account Manager, campus representatives and other employees who would be responsible for the Contract if it were awarded to Proposer. Resumes should include education, experience, background, specific professional accomplishments and any special qualifications.

3.3.6 Operations Proposal. Describe Proposer's proposal for Virtual Bookstore Operations. Include the following:

3.3.6.1 Ordering, Inventory and Buyback:

- a. Number of titles offered.
- b. List of publishers with whom Proposer has contracted with to provide inventory.
- c. Information regarding electronic books (ebooks) and other digital content including:
  - Information about how your company distributes and manages ebooks;
  - Technologies supported;
  - Licensing/rights management, including license terms, availability of perpetual licenses or ability to purchase to own (rather than license) content, and process for notifying students of license terms and policies, in particular expiration or termination of a license; and
  - Extent and availability of ebooks.
- d. Information regarding book rental programs, including:
  - Information about how your company distributes and manages rentals, including length of rental, ability to convert to purchase, and process for notifying students of rental terms and policies, in particular regarding



- expiration or termination of a rental; and
- Extent and availability of rentals.

- e. Process for ensuring sufficient inventory of all required course materials, including acquisition of new titles in a timely manner and the number of days from faculty member request to availability of book.
- f. Policies for determining and acquiring a mix of new, used and rental books, with an emphasis on having the maximum number of quality used and rental books for each textbook order.
- g. Buy back policy and on-campus presence for buyback periods.

3.3.6.2 Discuss Proposer's faculty course material adoption and ordering process. Your response should include at a minimum the following:

- a. how the process/tool assists faculty adoption based on quality and value;
- b. how the process/tool allows faculty to access and compare textbooks, course materials and digital content across relevant samples. Provide a case example;
- c. the ability to view what other faculty have used for similar or other courses;
- d. the ability to copy course material data from one class to the next and one semester to the next;
- e. the ability to include components of published course materials, such as one chapter from a textbook;
- f. ability of the Participating College/Department Chair to restrict faculty to a predetermined list of approved materials;
- g. efforts and outreach to faculty for information on required course materials and other materials and supplies;
- h. description of reports and data that can be provided (e.g. purchase history by faculty member each semester) and whether such information would be accessible on-line, on-demand by a Participating College; and
- i. link to sample faculty adoption interface for review.

3.3.6.3 Discuss the Student/Purchaser Interface. Your response should include at a minimum the following:

- a. description of the process a student would follow in order to locate and obtain course materials for a particular class, and link to a sample student/purchaser interface for review. Provide a case example;

- b. search capabilities;
- c. availability of direct access to a peer-to-peer market of used books and description of process for using such market;
- d. description of price aggregator software or similar tool that facilitates price comparisons and will allow students to make informed decisions regarding pricing and available book formats;
- e. link to sample student/purchaser interface; and
- f. description of the process a student would follow in order to return course materials for a particular class and link to a sample student/purchaser interface for review. Provide a case example.

3.3.6.4 Description of Course Pack and Other Services. Your response should include at a minimum the following:

- a. custom course material (“course packs”) distribution process that addresses:
  - process for submission of course materials (digitally, physical photocopies, etc.);
  - ability to “print on demand” custom course packs;
  - process for obtaining 100% copyright clearance and permissions;
  - ability to pull content from multiple sources (e.g. chapters from different textbooks) to create a single package (e.g. course package); and
  - on-line and telephone support for creation of course packets.
- b. description of professional, trade, reference book, and general reading material services to be offered, including open source content; and
- c. description of other materials to be offered, such as art supplies, lab equipment, stethoscopes, etc.

3.3.7 Customer Policies and Procedures. Describe your company’s pricing, refund, shipping, discounting, etc. policies for all forms and formats of course materials and other materials and/or services available. If described elsewhere in the proposal, you may include a cross-reference. Include the following:

3.3.7.1 mark-up and pricing policies, including whether your company proposes dynamic or fixed pricing and the advantage of the proposed pricing model;

3.3.7.2 payment methods;

3.3.7.3 delivery options, methods and costs;

- 3.3.7.4 shipping and return process and policies, including whether your company proposes to ship to the College campus, directly to customer address, or both;
  - 3.3.7.5 buy-back policies, including guaranteed buy-back programs, and policies regarding condition of used materials;
  - 3.3.7.6 policy of competitive pricing for textbooks (e.g. within 2% of a competitor on any textbook);
  - 3.3.7.7 policy for replacing defective textbooks or other course materials;
  - 3.3.7.8 any and all proposed discount programs to be offered on a regular basis for Participating College staff, faculty, students, alumni;
  - 3.3.7.9 methods and frequency of notifying customers of policies and procedures; and
  - 3.3.7.10 methods that will ensure users are presented with the lowest cost textbook options.
- 3.3.8 Support Services. Describe your company's resources, systems and plans in each of the following areas:
- 3.3.8.1 marketing, merchandising and promotions, including specific plans for marketing the Virtual Bookstore to students and faculty at the initial rollout and thereafter on a regular basis, and incentives for faculty to upload course text/materials information;
  - 3.3.8.2 on-line and on-site training for faculty and student users of the Virtual Bookstore, including a specific plan to market the Virtual Bookstore to students and faculty, training and incentives for faculty to upload course text/materials information, training for faculty to access on-line reports, and on-site presence during peak textbook ordering, return, and buyback periods;
  - 3.3.8.3 customer satisfaction, including a description of efforts/features to reduce student costs and complaints. Provide a flow chart detailing the customer service process, responsiveness to questions and problems on orders, back orders, returns, partial shipment, claims, delivery problems and special handling on large rush orders;
  - 3.3.8.4 support services, including policies for accepting and fulfilling special orders placed by customers; and
  - 3.3.8.5 other resources, systems and plans you believe will be of value to CUNY.
- 3.3.9 Optional Services
- 3.3.9.1 Apparel and Other General Merchandise and Services. If your company proposes to offer apparel and other general merchandise and services, provide the following:
    - a. listing of the types of items and/or services proposed (e.g., apparel, school

supplies, health and beauty aids, batteries, phone cards, greeting cards, etc.) and an estimate of selection (size and number of brands) per item;

- b. description of your company's process for stocking and selling such items and services, in particular whether a subcontractor would be involved; and
- c. description of discounts (if any) for orders which combine books/course materials with merchandise purchases including combined shipping.

3.3.9.2 On-Campus Kiosk. If your company proposes to include an on-campus kiosk in order to provide some or all of the Virtual Bookstore Operations, provide a complete description, including:

- a. services to be available at the Kiosk.
- b. Hours of operation.
- c. Staffing, including part-time paid student interns
- d. Equipment to be provided for efficient operation of the Kiosk, including point-of-sale (POS) equipment. Contractor's POS system must manage inventory and inventory orders and provide a full and detailed accounting of sales from the Kiosk.
- e. Provide a list, with quantity, brand and model number, of all equipment your company proposes to bring onto the Participating Colleges' campuses. Include complete manufacturer's description, literature regarding any equipment proposed.
- f. Describe your company's program for preventative maintenance and regular replacement of worn, malfunctioning or damaged equipment.
- g. Network requirements of the Kiosk, including bandwidth and firewall placements.
- h. Plan for selling and utilizing environmentally friendly materials at the Kiosk. Please include the following:
  - Sale of products made of recyclable or biodegradable materials;
  - Use of biodegradable bags and/or other means of reducing use of disposable plastic; and
  - Any additional measures your company will undertake to support a sustainable future, and/or reduction of carbon emissions.
- i. Plan for the design, installation and furnishing of the Kiosk. Include a detailed description of the work, the dollar amount of the proposed investment (including a detailed budget) and the basis for cost estimates.

3.3.10 Transition Plan. Describe your company’s transition plan including estimate of time for each phase of the transition plan. Include a training schedule for faculty, administrators and students and the manner in which customers will be served beginning on the start date of the Contract. Indicate any resources you believe will be needed from the Participating Colleges to assist you with the transition.

3.3.11 Additional Information. Provide any other information you believe will be helpful to the Selection Committee in evaluating your Proposal.

### **3.4 Part II: Financial and Contract Proposal**

3.4.1 The Proposer must submit to CUNY before the Proposal Due Date:

- two (2) paper copies of its Part II –Financial and Contract Proposal to the address listed on the cover page of this RFP; and
- one electronic copy of its Part II –Financial and Contract Proposal to [caron.christian@cuny.edu](mailto:caron.christian@cuny.edu).

The Proposer’s name and the words “CUNY Virtual Bookstore Operations RFP Part II – Financial and Contract Proposal” shall be clearly listed on the cover of the Part II Proposal. Proposals must be securely sealed and clearly labeled. Any outside packaging containing the Part II Proposal must also be clearly marked with the words “CUNY Virtual Bookstore Operations RFP Part II—Financial and Management Contract Proposal.” Package Part II separately from Part I.

3.4.2 Contents of Financial and Contract Proposal.

3.4.2.1 Financial Proposal & Pricing. In a separate sealed envelope, provide a financial proposal with a detailed description of the commissions and other consideration and support offered by Proposer. Use **Attachment F**. Include the items listed below:

- Signing bonus
- Guaranteed annual commission amount, regardless of sales volume;
- Additional commission percentage amount based on sales volume;
- Value of the proposed marketing plan for the Virtual Bookstore; and
- Any other discounts, incentives or other financial considerations (including scholarships) that you wish to offer.

3.4.2.2 **Attachment G – Proposer Information and Certifications**, fully completed and signed by an authorized representative of Proposer.

3.4.2.3 If Proposer circles “do not accept” in Section III of **Attachment G**, Proposer must attach to **Attachment G** a document identifying and explaining any exceptions or deviations taken with respect to the Terms and Conditions of Contract (**Attachment A**). Proposer shall not respond by providing a sample agreement.

- Any exceptions or deviations taken must contain sufficient amplification and justification to permit evaluation. The benefit to CUNY shall be explained for each exception taken. Such exceptions will not, of themselves, automatically cause a proposal to be found unacceptable. However, a large number of exceptions or one or more significant exceptions not providing benefit to CUNY may result in rejection of such proposal as unacceptable.
- CUNY reserves the right to require full acceptance of **Attachment A**.

3.4.2.4 **RFP Addenda Acknowledgement Forms** signed by an authorized representative of Proposer acknowledging the receipt and acceptance of each of the Addendum, if any.

3.4.2.5 **Attachment H - Procurement Lobbying Act (PLA) Forms:**

- Offeror's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b); and,
- Offeror Disclosure of Prior Non-Responsibility Determinations

Failure to submit the required PLA forms with the Proposal will result in elimination for consideration for Contract award.

Use solicitation number UCO -630 wherever requested in the forms. Please call or e-mail the person identified as the Designated Contact for this RFP in the Administrative and Legal Specifications, Section 5.2. If you have any questions regarding how to complete this required form.

Per the PLA any person who wishes to contact CUNY regarding the services covered by this RFP during the restricted period (i.e. from advertisement through designation), may only contact the Designated Contact noted in Section 5.2.

More information regarding the PLA is available at:  
<http://www.lobby.state.ny.us/lobby.html>.

3.4.2.6 **Attachment I – Diversity Practices Questionnaire.**

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## **4. PROPOSAL EVALUATION**

### **4.1 Overview**

- 4.1.1 Proposal Evaluation shall be administered by CUNY's Office of the University Controller (OUC).
- 4.1.2 Proposers are required to submit all documents WITH THEIR PROPOSALS.
- 4.1.3 Proposals will be evaluated by the University using a Best Value Award method evaluation process based on the criteria described below.
- 4.1.4 Proposal evaluation will be accomplished by a representative ad hoc committee comprised, as appropriate, of technical, program and management personnel (the "Committee").
- 4.1.5 Proposers responding to this RFP may be requested to clarify issues or to provide additional insights into their proposal through written clarifications. If written clarifications are required to complete the technical evaluation of proposals, Committee members will be allowed to revise their technical scores based on this additional information.
- 4.1.6 Oral presentations and demonstrations will be held for short-listed proposers (see Section 4.4.5, Step 5 for definition). The University reserves the right to request best and final offers from all short-listed proposers.
- 4.1.7 An award shall be made to the Proposer whose Proposal receives the highest total proposal score after considering all the technical and oral evaluation factors.

### **4.2 Debriefings**

At the conclusion of the evaluation period, all Proposers will be notified of their respective status under this solicitation. Unsuccessful proposers may request a debriefing of their Proposal by sending a request Writing, postmarked within fifteen (15) calendar days of being notified of being unsuccessful, to the designated contact for this solicitation (see Section 5.2 for the name and address of the contact).

### **4.3 Best Value Award**

CUNY shall award this Contract, if at all, on the basis of best value to a responsive and responsible offeror as these terms ("responsive" and "responsible") are defined by New York State Finance Law Article 11, Section 163 and in accordance with the terms and conditions of this RFP solicitation.

### **4.4 Proposal Evaluation and Scoring**

The Proposals will be evaluated using the following approach and scoring system:

**Table 1, Proposal Scoring Criteria and Weights**

Step	Title	Scoring Method	Subsection Score Maximum	Section Score Maximum	Points out of 100
<b>1</b>	<b>Pre-Screening &amp; Minimum Requirements Review</b>	Pass/Fail			N/A
<b>2</b>	<b>Technical and Management Proposal</b>	Scored			<b>70</b>
(a)	<b>Product and Capabilities</b>			30	30
	<u>To include quality of:</u> <ul style="list-style-type: none"> <li>• Proposed product’s capabilities and functionality to meet or exceed CUNY’s requirements.</li> <li>• Proposed technical support and maintenance of the system hardware and software; System up-time and performance levels; Annual training for CUNY personnel.</li> <li>• Relevance and quality of any proposed additional features</li> </ul>		15		
			10		
			5		
(b)	<b>Company Experience</b>			15	15
	<ul style="list-style-type: none"> <li>• Experience of the firm</li> </ul>		20		
(c)	<b>Scope of Services and Coordination with CUNY</b>			20	20
	<u>To include:</u> <ul style="list-style-type: none"> <li>• Understanding of the scope of services (tasks &amp; deliverables)</li> <li>• Level of proposed interaction with CUNY, including faculty and students</li> <li>• Proposed coordination with Participating Colleges</li> </ul>		8		
			6		
			6		
(d)	<u>Diversity Practices</u>			5	5
<b>3</b>	<b>Financial Proposal</b>	Scored		20	<b>20</b>
<b>4</b>	<b>Oral Presentation and Demonstration (Short-Listed firms)</b>	Scored		10	<b>10</b>
<b>Total</b>					<b>100</b>

**4.4.2 Step 1: Pre-Screening**

OUC will conduct a Pre-Screening of each Proposal to ensure that all content has been submitted in accordance with the RFP and that Proposers meet the Minimum Qualifications outlined in Section 1.6 of this RFP. Each Proposal will receive a grade of “pass” or “fail”. Those Proposers whose Proposals do not meet the Minimum Qualifications and/or have not submitted their Proposals as per the instructions of this RFP will receive a grade of “Fail”, will be deemed non-responsive under law and shall not be granted any further consideration. OUC will notify non-responsive Proposers in writing.



**4.4.3 Step 2: Technical Scoring (70 Points)**

Members of the Committee will score each Technical Proposal individually and then meet as a group to discuss the Technical Proposals. Committee Members will be allowed to revise their original scores on the basis of Committee discussions. The average Technical Score for each Proposal will consist of the sum of each Committee Member's Technical Score divided by the number of Committee Members.

**4.4.4 Step 3: Part II –Financial Proposal Scoring (20 Points)**

OUC will perform scoring of the Financial Proposals. The Proposer that provides CUNY with the highest annual return based on the following will receive the maximum points and lower returns will receive proportionately lower Financial Proposal Score:

- Signing bonus; plus
- Guaranteed annual commission amount, regardless of sales volume; plus
- Additional commission percentage amount based on sales volume; plus
- Value of the proposed marketing plan for the Virtual Bookstore; plus
- Any discounts, incentives or other financial considerations (including scholarships) that you wish to offer.

**4.4.5 Step 4: Total Score (90 Points)**

OUC will add the average Technical Score to the Financial Proposal Score for each Proposal to arrive at each Proposer's Total Score. The Proposer with the highest Total Score and the next three highest scoring Proposers will be designated as the Short-Listed Proposers, if they are all within 15 points of the highest Total Score.

**4.4.6 Step 5: Oral Presentation (10 Points)**

The Committee will conduct an Oral Presentation with each Short-Listed Proposer at a CUNY facility in New York City at a date and time to be determined by CUNY. Proposers shall not be allowed to change their Proposals during or after this presentation unless responding to a request from CUNY. Each Proposer will be given a separate meeting time schedule to conduct its presentation before the Committee. Each session will last approximately one to one and a half hours. The Proposer will be expected to address specific questions from the Committee shared in advance of the presentation. Oral Presentations will be evaluated and scored by the Committee.

**4.4.7 Step 6: Best and Final Offers**

CUNY reserves the right to request Best and Final Offers ("BAFOs") after the Oral Presentations have been conducted. Should CUNY exercise this right, CUNY will request a BAFO from each Short-Listed Proposer. In the event that CUNY requests BAFOs from Short-Listed Proposers, CUNY will revise the Technical Scores and Financial Proposal Scores of the Short-Listed Proposers, as necessary, based on information submitted in their BAFOs and using the criteria in Table 1.

**4.4.8** Step 7: Calculation of Final Total Proposal Scores – Selection of Proposal for Contract Negotiations

OUC will calculate the Final Total Proposal Score for each Short-Listed Proposer. The Final Total Proposal Score shall be the sum of the scores of each Short-Listed Proposer’s Technical and Management Proposal, Financial Proposal, and Oral Presentation, based on a possible maximum Final Total Proposal Score of one hundred (100) points. The Short-Listed Proposer that has the highest Final Total Proposal Score shall be selected for contract negotiations.

**4.4.9** Step 8: Negotiations

Negotiations will commence with the Short-Listed Proposer with the highest Final Total Proposal Score. Upon notification by CUNY, the selected Short-Listed Proposer must be ready to deploy a senior negotiation team to support contract negotiations. If CUNY and the selected Short-Listed Proposer are unable to reach agreement on all parts of the Agreement, Statement of Work and other project documents, including pricing and other key business terms such as service level agreements, events of default, liabilities, damages, etc. in a timely manner, CUNY reserves the right to terminate negotiations and proceed to the Short-Listed Proposer with the next highest Final Total Proposal Score. If negotiations with that entity are not successful, CUNY may elect to proceed to the Short-Listed Proposer with the third highest Final Total Proposal Score. In the event CUNY is unable to successfully conclude negotiations with the third highest ranked Short-Listed Proposer, CUNY will cancel the solicitation.

**4.5 Recommended Proposer**

Upon successfully concluding negotiations with the selected Short-Listed Proposer, CUNY will take action to secure all required CUNY and state approvals (if any), and award the Contract.

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## **5. ADMINISTRATIVE AND LEGAL SPECIFICATIONS**

### **5.1 Proposal Submission**

- 5.1.1 The Proposal shall be signed by an official authorized to bind the Proposer.
- 5.1.2 Your proposal must be received by CUNY by 12:00 pm (EST) on the day indicated in Section 1.7, Schedule of Key Events (above) (“Proposal Due Date”). The proposal must be addressed to:
- The City University of New York  
Procurement Office, 5<sup>th</sup> Floor  
230 West 41st Street  
New York, NY 10036  
Attention: UCO 630 – Virtual Bookstore
- 5.1.3 Proposers assume all risks in connection with timely, properly delivered Proposals. Proposers are strongly encouraged to arrange for delivery of Proposals prior to the Proposal Due Date.
- a. The University accepts no responsibility for Proposals left at any other location.
  - b. The University accepts no responsibility for Proposals that are sent by mail or by courier.
  - c. Proposals received after the Proposal Due Date will be returned unopened,
  - d. Proposals that are transmitted by facsimile (fax) or e-mail are not acceptable and will not be considered.

### **5.2 Inquiries and Information**

- 5.2.1 All questions concerning this solicitation must be directed to the Designated Contact, Caron Christian by e-mail at [caron.christian@cuny.edu](mailto:caron.christian@cuny.edu).
- 5.2.2 Proposers are reminded that from the date this RFP is advertised until a Contract is signed, NO contact is permitted regarding this solicitation with any CUNY staff except with the Designated Contact named above, unless such contact is permitted under the Procurement Lobbying Act (see **Attachment H**). Any unauthorized contact by a vendor may result in the rejection of its Proposal.
- 5.2.3 The last date to submit questions for this solicitation is indicated in Section 1.7 Schedule of Key Events. All inquiries should be addressed to Caron Christian at [caron.christian@cuny.edu](mailto:caron.christian@cuny.edu).
- 5.2.4 All clarifications, corrections, interpretations, additions, amendments, and answers to all questions of a substantive nature, as well as copies of the questions, will be given in Writing by the University as an addendum to the RFP (“Addendum”) and will be sent by email, facsimile, or courier to each entity recorded as having requested a copy of the RFP. The Addendum shall become a part of the RFP and be binding on all Proposers. No clarifications, corrections, interpretations, additions, amendments,

or answers other than those given by the University in Writing in the form of an Addendum shall be binding.

### 5.3 **Withdrawal of Proposal**

- 5.3.1 A Proposer may withdraw its Proposal at any time before the Proposal Due Date; thereafter, a Proposer may withdraw its Proposal only after the expiration of 180 calendar days from the Proposal Due Date and prior to any actual award. A request to withdraw a Proposal shall be made in Writing and delivered to the Proposal submission location described in Section 5.1 above.
- 5.3.2 Upon discovery of a material error by the Proposer or notification of a material error by CUNY, the Proposer may decide that they do not wish to have the evaluation of their proposal continue. Such request for a withdrawal of their Proposal must be received in Writing from the person who signed the Proposal within 3 business days of such discovery or notification. CUNY shall retain the sole right to determine whether to grant such request for withdrawal of the Proposal and will respond in Writing to the Proposer with its decision.

### 5.4 **General Conditions**

- 5.4.1 This RFP is being conducted in compliance with all requirements of applicable New York State laws, including without limitation New York State Finance Law §139-j and §139-k, and University regulations. This RFP is intentionally structured with broad guidelines and few mandated components in order encourage competition.
- 5.4.2 Proposers shall not make any changes to the documents of this RFP. All Proposers are required to submit Proposals in response to the same terms and conditions. Attempts to make changes to the RFP documents may render a Proposal non-responsive. Changes to the RFP documents by others are not binding on the University.
- 5.4.3 Any prior year sales volume data provided in this RFP is for information purposes only, and is not guarantee. The sales actually earned by a Contractor may be less or more than in prior years. If less, no action for damages or lost profit will accrue to the Contractor because of this.
- 5.4.4 Proposers may not make any public announcement or news releases regarding this RFP or any subsequent Contract without CUNY's prior written approval.
- 5.4.5 Proposers may not use the name or trademark, service mark, or other proprietary mark or logo of CUNY or any constituent college of CUNY without CUNY's prior written approval.
- 5.4.6 Proposers shall indicate on **Attachment G**, Part III any exceptions or deviations from the Terms and Conditions of Contract (**Attachment A**). Unless exceptions or deviations are so indicated, CUNY will assume that a Proposer agrees to the

Terms and Conditions. CUNY reserves the right to accept or reject any exceptions or deviations a Proposer may suggest.

- 5.4.7 Proposers are expected to have assessed the conditions that may affect goods and services to be provided. Proposer shall be conclusively presumed to have full knowledge of any and all conditions affecting in any way the performance of the work to be performed under the Contract that were or should have been discovered by a reasonably prudent proposer. It is each Proposer's responsibility to familiarize itself with relevant facilities at the University, and Proposer assumes full responsibility to provide goods and/or services as specified herein that meet the Contract requirements for the Proposal Price.
- 5.4.8 All Proposals, upon submission to CUNY, shall become its property for use as deemed appropriate. By submitting a Proposal, the Proposer covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information.
- 5.4.9 In accordance with New York State Finance Law, Section 163, contract award is made on the "basis of best value to a responsive and responsible offeror". All selected offerors of contracts valued at \$100,000 or more will be required to provide vendor responsibility information to CUNY before negotiation of a contract. Vendor Responsibility Questionnaire can be found at <http://www.osc.state.ny.us/vendrep/>. Offerors must certify the accuracy of the information provided in the questionnaire. Submission of the completed questionnaire will be required from the successful Proposer within ten business days after notification of selection.
- 5.4.10 Proposers should be aware that per Section 5-a of the NYS Tax Law, all vendors selected for contracts in excess of \$100,000 for the sale of goods or services must complete and submit (Contractor Certifications) Form ST-220-TD to the State and Form ST-220-CA to the University. Proposers can view these forms by visiting the following Web sites:  
<http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>  
[http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)  
[http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)
- 5.4.11 Any contract entered into pursuant to an award of this solicitation shall contain a provision which grants the option to extend the terms and conditions of such contract to any other State agency in New York. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this contract may, in the future, be applicable to other State agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.

- 5.4.12 Under no circumstances shall CUNY be liable for any costs incurred by Proposers in preparation and/or production and/or negotiation of a Proposal; for attending Proposers' conferences and/or site visits, for the preparing or attending an Oral Presentation; or for any Services performed prior to that date set forth in the notice of award CUNY sends to the Proposer awarded the Contract.
- 5.4.13 Receipt of a Proposal by CUNY does not indicate that the University has reviewed the Proposer's qualifications to receive a contract award. The University shall review the Proposal and make a determination of each Proposer's qualifications to receive a contract award after the Proposal Due Date. There will not be a public opening of Proposals.
- 5.4.14 Issuance of this RFP does not commit the University to award a contract for any services.
- 5.4.15 Any contract award shall be subject to all required internal and external oversight approvals, including, as applicable, approvals by the University's Board of Trustees, the Office of the New York State Attorney General, the Office of the New York State Comptroller, the New York City Law Department, and the Office of the New York City Comptroller, and shall be contingent on the availability of funds. The University shall have no obligation or liability whatsoever to the Proposer selected as result of this solicitation unless and until a contract satisfactory to the University is approved and executed by the Proposer and all necessary State officials, if any.
- 5.4.16 By signing and submitting a Proposal, Proposer is affirming that it has read the RFP, including but not limited to the Terms and Conditions of Contract (**Attachment A**), accepts its terms, and is able and willing to sign the Contract if its Proposal is selected, subject only to any changes negotiated and agreed to by both parties. The Terms and Conditions, together with the contents of the selected Proposal, any Addenda, including any formal questions and answers provided during the evaluation process, shall be incorporated into and comprise the Contract. The issuance of a letter of intent to award or similar documentation does not require or commit CUNY to enter into a Contract with a Proposer until all Terms and Conditions are negotiated and acceptable to CUNY.
- 5.4.17 The selected Proposer shall possess the requisite business integrity justifying the confidence of CUNY; to adhere, throughout the duration of the Project, to the highest standards of business conduct and professional responsibility by fulfilling its obligations under the resulting Contract, and as required under Section 139 (j) and (k) and 163(9)(c) of the State Finance Law.

## **5.5 Reservation of Rights**

In addition to any other rights described in this RFP, CUNY reserves the following rights:

- 5.5.1 to accept or reject any or all Proposals, including without limitation to reject a Proposal if:
  - a. the Proposer does not provide any part of the information or documents required by the RFP;
  - b. the Proposer misstates, misleads, or conceals any material fact in its Proposal or at any time in connection with this RFP;
  - c. the Proposal is not in compliance with law;
  - d. the Proposal is not responsive to the requirements of this RFP or the requirements of the Contract terms and conditions;
  - e. any part of the Proposal, such as the Price Proposal, is conditional;
  - f. the Proposal, in the opinion of CUNY, contains unbalanced prices; or
  - g. a determination that the Proposer is not “responsible” (as defined by law) is made in accordance with law or CUNY regulations.
- 5.5.2 to re-issue a solicitation;
- 5.5.3 to correct any arithmetic errors in any or all Proposals;
- 5.5.4 to use or adopt any or all of a successful Proposer’s Proposal;
- 5.5.5 to negotiate Contract terms and conditions and fee with the selected Proposer prior to contract award;
- 5.5.6 to reject Proposals containing material deviations (as that term is construed by New York State law), and/or (b) permit Proposer(s) to amend one or more non-material items in their Proposal(s) to comply with this RFP and/or (c) waive or modify minor irregularities in Proposals;
- 5.5.7 to seek clarifications concerning Proposals;
- 5.5.8 to amend the RFP after its Release Date upon appropriate notification;
- 5.5.9 to issue Requests For Additional Information (“RFAs”) to Proposers;
- 5.5.10 to require Short-Listed Proposers to attend Oral Presentations and Demonstrations;
- 5.5.11 to issue additional questions to Short-Listed Proposers, the answers to such questions shall be returned to CUNY in writing and become part of the Short-Listed Proposers’ Proposal;

5.5.12 to allow Committee members to include in their final score evaluation of Answers to Required Questions and such additional materials as Proposers provide; and

5.5.13 to contact some or all Proposer references during the Proposal Evaluation process.

## **5.6 Consultant Employment Disclosure Forms**

Proposers may refer to Chapter XI.18.C (Consultant Disclosure Legislation) of the New York State Guide to Financial Operations, available at the State Comptroller's Web site <<http://www.osc.state.ny.us/agencies/guide/MyWebHelp>>, to become familiar with Consultant Employment Disclosure requirements. Each Consultant selected as a result of this solicitation shall be required to complete the "State Consultant Services – Contractor's Planned Employment" form required by CUNY and submit it when their contract is signed. For each contract year thereafter, each Consultant shall complete the "State Consultant Services Contractor's Annual Employment Report" for required by CUNY and submit copies to the Office of the State Comptroller, the University of Civil Service, and the City University of New York on or before May 15<sup>th</sup> of each year the contract is in effect.

## **5.7 Vendor Responsibility When Proposing to Use a Former CUNY Employee**

It is the Vendor's responsibility to ensure they propose staff that is eligible to work on the subject project. Under the attached procedures, before the vendor proposes a former CUNY employee, the individual must obtain an opinion from the New York State Ethics Commission that approves their participation in the subject project. For an outline of the procedure that applies to this situation, see **Attachment C**.

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# ATTACHMENTS

## **ATTACHMENT A: TERMS AND CONDITIONS OF CONTRACT**

THIS CONTRACT is made by and between The City University of New York (“CUNY”) and the company identified on the Contract Signature Page (“Contractor”). In consideration of the mutual stipulations and covenants herein contained, CUNY and Contractor agree with each other as follows:

### **Section 1- DEFINITIONS**

When used in this Contract, the following words have the meanings set forth in this Section:

- 1.1** “**AEC**” means a tax-exempt New York corporation that provides non-curricular support services, also known as “auxiliary enterprises,” to a particular Participating College.
- 1.2** “**approved**”, “**directed**”, “**required**”, “**specified**”, unless specifically stated otherwise, to mean approved, directed, required, or specified, as the case may be, by CUNY through its representative, the Business Manager.
- 1.3** “**Business Days**” means Mondays through Fridays (excluding Saturdays and Sundays), excluding holidays on which CUNY is officially closed.
- 1.4** “**Business Manager**” means CUNY’s Deputy Chief Operating Officer for Management Services or his or her designee.
- 1.5** “**City**” means New York City.
- 1.6** “**College**” means a constituent unit of CUNY.
- 1.7** “**Comptroller**” means the Comptroller of the City or State of New York, as applicable.
- 1.8** “**Contract**” means the following documents: (1) these Terms and Conditions; (2) Contractor’s Proposal; (3) the Contract Signature Page; (4) New York State Appendix A - Standard Clauses for All New York State Contracts; and (5) All other exhibits, attachments and appendices attached hereto and incorporated herein.
- 1.9** “**Contract Signature Page**” means one or more pages that follow the Terms and Conditions and include the signatures of authorized representatives of the CUNY and Contractor and any necessary approvals of the State and the City.
- 1.10** “**Contractor**” means the second party named above.
- 1.11** “**Days**” means calendar days unless otherwise specified.
- 1.12** “**Demo Live Date**” means the mutually agreed date by which a demo site shall be made available to CUNY and the Participating Colleges with integrated student course data and other data necessary for launch of the Virtual Bookstore.

- 1.13** “**Insignia Goods**” means merchandise bearing a Participating College’s name, logo, mascot, seal and other Participating College trademarks and/or trade names.
- 1.14** “**Kiosk**” means Contractor’s physical location on a Participating College campus.
- 1.15** “**Laws**” means all laws, regulations, rules, orders, requirements, and the like, of federal, state, and local governments, courts, governmental authorities, legislative bodies, boards, agencies, commissions, and the like.
- 1.16** “**Marketplace**” means an on-line network of third-party sellers of textbooks and course materials other than those with whom Contractor acts as a direct retailer, including wholesalers, independent booksellers and distributors, and individual sellers (including students), accessible through the Virtual Bookstore.
- 1.17** “**Participating College**” means a CUNY college that is participating in this Contract and is listed on **Attachment B**, as it may be amended from time to time.
- 1.18** “**Person**” means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust or association.
- 1.19** “**Proposal**” means the information provided by Contractor pursuant to Section 3 – Proposal Format and Contents, of the RFP.
- 1.20** “**RFP**” means the request for proposals issued by CUNY for Virtual Bookstore Operations.
- 1.21** “**Staff**” means a Person or Persons furnished by Contractor to perform the work of this Contract. Staff include Contractor’s employees, partners, agents and representatives, as well as Persons engaged by Contractor as consultants, coordinators, independent contractors, subcontractors, franchisees or in any other capacity.
- 1.22** “**State**” means New York State.
- 1.23** “**Term**” is defined in Section 2 below.
- 1.24** “**Virtual Bookstore**” is defined in Section 4.1.1 below.
- 1.25** “**Virtual Bookstore Operations**” means the operation of the Virtual Bookstore and related activities, as further described in Section 4 of these Terms and Conditions.

## **Section 2 – TERM AND APPLICATION OF CONTRACT**

- 2.1** The term of this Contract is five years beginning on [date] and ending on [date], unless (i) mutually extended by written agreement of the parties, or (ii) sooner terminated as provided herein.

- 2.1 CUNY has the right to renew the Contract for an additional three-year period and for a following additional two-year period, each renewal in its best interest. If CUNY elects to renew the Contract, it will provide notice to the Contractor 90 Days prior to the expiration date of the Contract. CUNY's failure to notify the Contractor within this time period will not operate as a waiver of CUNY's right to renew the Contract. Such renewal will be on the same terms and conditions as the original term unless otherwise specified in a written document signed by both parties.
- 2.2 At the end of the initial term or any renewal term, the Contractor must, at CUNY's written request for an additional partial term, provide Virtual Bookstore Operations as specified in the Contract for a period not to exceed six months, on the same terms and conditions as the prior term.
- 2.3 Pursuant to an agreement between CUNY and the AECs entered into with this Contract, this Contract will be administered at the campus level by the AEC that supports each Participating College. Consequently, references to "Participating College" in this Contract include the supporting AEC.

### 3 – GRANT OF RIGHTS

3.1 **Rights.** Subject to the terms and conditions herein, CUNY hereby grants to Contractor, and Contractor accepts from CUNY, the following rights and responsibilities with respect to the performance of Virtual Bookstore Operations for the Participating Colleges and the Discount Purchasing Program during the term of this Contract for the sole purpose of providing the Participating Colleges' communities with a quality, internet-based academic bookstore and CUNY with needed books and educational materials at a discount:

- 3.1.1 the exclusive right and responsibility to operate the official academic bookstore at each Participating College, as an internet-based operation, and to carry out Virtual Bookstore Operations in connection with same, subject to 3.2 below;
- 3.1.2 the non-exclusive right and responsibility to provide course materials publishing (course pack) services (see Section 4.6); and
- 3.1.3 **[optional]** the non-exclusive right to sell in and through the Virtual Bookstore(s) **[and the Kiosk]** merchandise bearing the Participating Colleges' names, logos, mascots, seals and other Participating College trademarks and/or trade names ("Insignia Goods"), so long as such merchandise is purchased from companies licensed by CUNY or its agent to produce Insignia Goods.

### 3.2 Exclusions and Exceptions

- 3.2.1 The sale and electronic delivery of on-line courses, including access to on-line libraries in conjunction with such on-line courses, is specifically excluded from this Contract.

- 3.2.2** Contractor shall not use the names, addresses, email addresses, phone numbers, credit card information, or other personally identifiable information of users of the Virtual Bookstore for any purpose other than Virtual Bookstore Operations. This prohibition includes, without limitation, the sale, transfer or other distribution to third parties. See also Section 4.1.9(B).
- 3.2.3** Participating College student governments, the student associations, and/or other recognized student organizations shall have the right to hold on-line and/or on-campus sales and/or exchanges of used textbooks for the benefit of such student group(s).
- 3.2.4** CUNY shall have the right to conduct other activities intended to assist its students' access to affordable textbooks and other course materials, including in particular electronic textbooks. This may include, but is not limited to, arrangements by CUNY to sell or otherwise promote the availability of electronic textbooks and other course materials (including open source material), and/or the equipment to use them, whether directly or through third parties and whether through physical sales locations or on-line.

## **Section 4 – SCOPE OF SERVICES**

### **4.1 Virtual Bookstore – General Technical Specifications and Warranties**

- 4.1.1 Website. Contractor shall design, develop, implement, operate, maintain and host for each Participating College a College-branded Web site on the World Wide Web portion of the Internet (each such Web site and all the Web sites collectively, the “Virtual Bookstore”), all in accordance with the specifications set forth in this Contract, that is accessible to Participating College students, faculty, staff, alumni and the general public and offers all required and recommended Participating College textbooks and other required and recommended course-related materials and supplies, and other inventory as mutually agreed between Contractor, CUNY and the Participating College. (See also Section 4.3).
- 4.1.2 Domain Name. The Virtual Bookstore shall have its URL under the following domain name, \_\_\_\_\_, which domain name shall be the sole property of the Contractor (the “Primary Domain Name”). Contractor agrees not to re-use or re-purpose the subdomain portion of the URL (“\_\_\_\_\_”) outside of serving the Virtual Bookstore set forth in this Contract. At the conclusion of this Contract, Contractor will either retire the page (\_\_\_\_\_) or place a re-direct on the page of CUNY’s choice.
- 4.1.3 Compatibility.
- (A) The Virtual Bookstore shall be compatible with Peoplesoft, Blackboard and the Participating Colleges’ other registration and technological systems, and must not require CUNY or a Participating College to make any changes to its technological infrastructure or software, except for the possible creation or modification of data processing APIs for the purposes

of completing integration of necessary course, student, and faculty data in the Virtual Bookstore.

- (B) The Virtual Bookstore shall have single sign-on integration with CUNY's CUNYFirst ERP system.
- (C) The Virtual Bookstore and all of its functions shall be accessible 24 hours-a-day, seven days-a-week, 365 days-a year through any and all (i) web browsers (e.g., Mozilla, Firefox, Microsoft Explorer, Microsoft Edge, Google Chrome, Apple Safari, Opera Software Opera, etc.) and (ii) mobile devices, including without limitation tablets, smartphones, and PDAs, running a mobile OS (e.g., Apple iOS, Google Android, Microsoft Windows Phone, etc.) via either a dedicated application or as a website optimized for mobile access and via the latest version of the mobile browser.

#### 4.1.4 Hosting.

- (A) Contractor shall provide sufficient storage space on a server (the "Server"), and related materials, facilities and services, in order to host the Virtual Bookstore and to otherwise make the Virtual Bookstore accessible on demand by users of the World Wide Web.
- (B) Contractor shall, at no cost to CUNY, promptly provide any updates, revisions, necessary patches, fixes, work-arounds, modifications and replacements necessary for the Virtual Bookstore to function and perform in accordance with the requirements of this Contract ("Contract Requirements") when operated on the Server.
- (C) Contractor shall back up the Virtual Bookstore nightly with back-ups stored off-site in a secure facility.
- (D) At no additional charge, Contractor shall monitor and maintain the Virtual Bookstore and the Server in good working order through qualified, on-site personnel, 24 hours-a-day, 7 days-a-week, 365 days-a-year, with 99.99% availability.
- (E) Contractor shall operate and maintain the Server at a locked and secured location and shall provide adequate protection in order to secure the content of the Virtual Bookstore and other proprietary information stored on the Server from unauthorized access by third parties.
- (F) Contractor shall use best efforts to expeditiously replace and/or repair any hardware failure that may occur in connection with the Server.
- (G) Routine maintenance of the Virtual Bookstore shall not occur during peak hours and rush periods at CUNY. Contractor must coordinate with CUNY prior to any maintenance work being performed.

4.1.5 Updates. Following implementation of the Virtual Bookstore, Contractor shall perform weekly updates to the Virtual Bookstore and any other updates reasonably requested by CUNY or a Participating College. All such updates shall become part of the Virtual Bookstore and shall be governed by the terms and conditions of this Contract. These changes will be coordinated with CUNY and the Participating College during a time and date of its choosing.

4.1.6 Look and Feel; Removal of Content.

- (A) The look and feel of the Virtual Bookstore web site, including all text, photos, graphics, and Participating College and CUNY logos, trademarks and trade names, is subject to the written approval of the Participating College and CUNY.
- (B) CUNY will periodically review the content of the Virtual Bookstore for objectionable or inappropriate material. Upon written request by CUNY, Contractor must immediately remove any text or other material that Corporation find deleterious to CUNY's and/or the Participating College's good name.

4.1.7 Bookstore Operational Requirements: The Virtual Bookstore web site must include:

- (A) a method for easy on-line searching, comparison and adoption of textbooks and course materials by faculty (see also Section 4.5);
- (B) a method for easy on-line searching and ordering of textbooks and course materials by students and other customers. The method must provide:
  - real-time inventory availability
  - estimated delivery time; and
  - order acknowledgement and tracking
- (C) a tool that permits customers to compare the price of textbooks and other materials based on:
  - format (hardcover, softcover, digital, new and used);
  - acquisition method (purchase, license, rental);
  - seller; and
  - shipping costs
- (D) a customer used book marketplace that permits students and others to easily sell and purchase used textbooks and other materials from other customers;

- (E) a method for easy on-line buyback by the Contractor of used textbooks and other materials, including a free shipping and shipping labels;
- (F) a secure method of accepting credit, debit card and financial aid payments;
- (G) 24-hour, seven day-a-week customer service, including live chat and/or telephone assistance via a toll free number from 8:00 A.M. to 7:00 P.M., EST, Monday through Saturday;
- (H) prominent links to pages showing contact information, pricing, buy-back, refund and delivery policies, and accepted forms of payment (see also Sections 4.4 and 4.7);
- (I) on-demand, on-line analytics and reporting, so that CUNY and Participating College administrators and faculty can track sales;
- (J) a link to the Participating College web site; and
- (K) at a Participating College's option, a link to the Participating College's on-line store that sells logo apparel and merchandise.

4.1.8 Performance Warranties. Contractor represents and warrants that:

- (A) except as otherwise agreed in writing by the parties, the Virtual Bookstore will be accessible to Internet users 24 hours-per-day, 7 days-per-week, 365 days-per-year, with the sole exception of scheduled maintenance periods, which occur upon at least 24 hours' notice to CUNY, Participating Colleges and users, with an information page concerning the maintenance displayed to site users and which shall last no longer than one (1) hour per day and which shall take place each morning between the hours of 2 a.m. and 6 a.m. Eastern Standard Time;
- (B) the Server will have a response time, measured at the Server from the receipt of the Server of a request until the commencement of the responsive transmission from the Server, of no more than one-half (1/2) of one (1) second; and
- (C) if the Server becomes unavailable to users, other than for scheduled maintenance, Contractor will have qualified Staff respond within one (1) hour of notification of such unavailability and will, to the extent reasonably practicable, remedy such unavailability at such time, and advise CUNY of the remediation status and root cause.

4.1.9 Usage Information & Data Security.

- (A) Contractor shall manage the recordation of and provide to Corporation monthly: (i) all information reflecting access and usage of the Virtual Bookstore, including, without limitation, audited and unaudited hits, visits,



click-throughs and impressions; (ii) all available information about users of the Virtual Bookstore; and (iii) information directly or indirectly obtained from users accessing the Virtual Bookstore (collectively, the “Usage Information”).

- (B) Contractor represents and warrants that it shall not gather, use, store, display or transmit Usage Information (including in a summary, extracted, redacted or de-identified form) other than as necessary to fulfill its obligations under this Contract. Contractor further represents and warrants that it will adhere to all privacy and data protection Laws applicable to the gathering, usage, storing, display and transmitting of the Usage Information and will maintain the strict confidentiality of all Usage Information.
- (C) Contractor shall stay aware of and comply with: (i) security requirements and obligations required by applicable Law; (ii) the CUNY Security Policies and Procedures (currently located online at <http://www.cuny.edu/about/administration/offices/CIS/security/pnp.html>) including internet security policies and procedures; and (iii) Contractor’s security standards, policies, guidelines and procedures, provided that the CUNY Security Policies and Procedures shall take precedence over any inconsistencies or conflicts with Contractor’s security standards, policies, guidelines and procedures.
- (D) In connection with Virtual Bookstore Operations, Contractor may need to operate certain information technology systems not owned by the CUNY (“Non-CUNY Systems”), which may need to interface with or connect to CUNY’s networks, internet access, or information technology systems (“CUNY Systems”). Contractor shall be solely responsible for all Non-CUNY Systems, and CUNY shall be solely responsible for CUNY Systems, including taking the necessary security and privacy protections as are reasonable under the circumstances. Contractor shall serve as the merchant-of-record for all credit and debit card transactions in connection with Virtual Bookstore Operations, and will be responsible for complying with all applicable laws, regulations and payment card industry data security standards related to the protection of cardholder data, including without limitation (i) the Payment Card Industry’s Data Security Standard, as currently in effect and as may be amended from time to time (“PCI DSS”) and (ii) the Fair and Accurate Credit Transaction Act of 2003, as may be amended from time to time (“FACTA”), (collectively, “Data Protection Rules”). Prior to setting up any Non-CUNY System interface with, or connection to, a CUNY System, the parties shall discuss any changes to their respective networks, internet access, and/or information technology systems that each believes is necessary or prudent in order to ensure Contractor’s compliance with the Data Protection Rules and shall mutually agree on any changes to be made to Non-CUNY Systems and/or CUNY Systems and the payment of costs thereof. Contractor shall indemnify, defend and hold harmless CUNY from all claims, liabilities,

damages and costs (including reasonable attorneys' fees) to the extent caused by Contractor's failure to comply with its obligations in this section.

- (D) The Virtual Bookstore Operations may require Contractor to have access to certain personally identifiable information regarding CUNY's students. CUNY hereby appoints Contractor as its agent for the sole purpose of assuming duties in connection with the processing of student records that would otherwise be provided by CUNY. As the agent of CUNY, Contractor is subject to and shall comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) and its prohibitions against disclosure of personally identifiable information regarding students to third parties, except where permitted by the regulations of the United States Department of Education. CUNY shall assure that any personally identifiable information about its students not considered "directory information", as defined under FERPA, is appropriately designated in any information provided by CUNY to Contractor.

#### 4.1.10 ADA and Related Compliance.

- (A) Contractor represents and warrants that the Virtual Bookstore, including any updates and/or upgrades, shall at all times during the term of this Contract, including any renewals, comply with Section 508 of the Rehabilitation Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act of 1990, as amended, and NYS Policy NYS-P08-005 (Accessibility of Web Based Information and Applications). The Virtual Bookstore must allow a person with a disability to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability, in an equally effective and integrated manner, with substantially equivalent ease of use, and satisfy Web Content Accessibility Guidelines 2.0 level AA.
- (B) If Contractor is or becomes during the term of this Contract, including any renewals, a publisher of printed instructional materials that are available for purchase through the Virtual Bookstore, Contractor shall comply with New York State Education Law Section 715.
- (C) Contractor represents and warrants that it will not modify from a publisher's ADA-compliant version electronic materials that it makes available for purchase through the Virtual Bookstore

## **4.2 Test Website**

- 4.1.1 Prior to the start of this Contract, the Contractor will consult with CUNY and the Participating Colleges and agree upon a schedule for the integration of PeopleSoft student and faculty information and any other data necessary for the launch of the Virtual Bookstore. This integration schedule shall provide a date ("Demo Live

Date”) by which CUNY and the Participating Colleges will have access to a test Virtual Bookstore web site (“Demo Site”) and shall demonstrate to Contractor’s sole satisfaction that the Demo Site conforms to the requirements of this Contract (“Contract Requirements”).

- 4.1.2 In the event that the Demo Site meets Contract Requirements, CUNY shall notify Contractor in writing that the Demo Site has passed the Acceptance Test (“Acceptance”).
- 4.1.3 In the event the Demo Site fails to pass the Acceptance Test, CUNY will advise Contractor in writing as to which aspects of the Demo Site failed to meet Contract Requirements. Contractor shall, at no cost to CUNY, remedy such failure and deliver the corrected Demo Site to CUNY for review within five (5) Days following receipt by Contractor of notice of the failure. This process will be repeated until the Demo Site meets the Contract Requirements and achieves Acceptance, or until CUNY exercises its right to terminate this Contract due to the continued failure of the Demo Site to meet Contract Requirements, which right is hereby conferred upon CUNY.
- 4.1.4 Time is of the essence with respect to all aspects of this Contract and the subject matter hereof.

## **4.2 Inventory**

- 4.2.1 Contractor must source and offer for sale in the Virtual Bookstore, in sufficient quantities to meet customer demand:
  - (A) all required and recommended Participating College course textbooks and all other required and recommended Participating College course-related materials, as specified by the Participating College faculty. If textbooks are published in multiple formats and/or are available for acquisition through a variety of means (hard cover, soft cover, digital, new, used, direct sale, license, rental, etc.) Contractor must make available to customers all such formats and means of acquisition;
  - (B) common non-text course materials and supplies, such as art supplies, lab equipment, safety goggles, etc., as mutually agreed upon by the parties;
  - (C) other merchandise compatible with the educational mission of CUNY and Virtual Bookstore Operations, such as trade, general paperback, and technical and reference books; and
  - (D) other materials and supplies, including, at a Participating College’s request, licensed Insignia Goods, of quality and character consistent with a first class college bookstore, and as mutually agreed upon by the parties.

- 4.2.2 Contractor may not sell or offer items such as cigarettes, smoking paraphernalia, pornographic magazines, and any other materials that may be deemed inappropriate to CUNY. Contractor shall withdraw promptly from the Virtual Bookstore any such item at CUNY's request.
- 4.2.3 Contractor represents and warrants that to the best of its knowledge, based on written certifications from the manufacturers, all apparel and equipment sold in the Virtual Bookstore will have been manufactured in compliance with all applicable labor and occupational safety Laws, including, but not limited to, child labor Laws, wage and hour Laws and workplace safety Laws.
- 4.2.4 Contractor must use its best efforts to ensure timely availability of a sufficient quantity of all textbooks and course materials to meet customer need.
- 4.3 **Pricing, Refund and Delivery Policies.** Contractor must maintain the following policies:
  - 4.3.1 **[Pricing policies for textbooks and other course materials to be negotiated.]**
  - 4.3.2 Other Virtual Bookstore merchandise offered for sale directly by Contractor will be sold at no more than markups standard to the college bookstore industry or at the suggested retail price, whichever is lower.
  - 4.3.3 Contractor must purchase used textbooks, academic books and trade books back from students, faculty and staff on a time schedule convenient to the Participating College community and based on the following policies:
    - (A) Contractor must purchase back used textbooks at no less than [%] percent of the current publisher's list price, if a faculty book order indicates that the textbook will be used in a course offering for the current or following semester. Lower purchase prices may be allowed if faculty orders for such textbooks are filled or if a book is in poor condition.
    - (B) In all other cases, Contractor must pay no less than the highest national wholesale price.
  - 4.3.4 Except for merchandise purchased through the Marketplace, which is subject to the third-party seller's own return policies, Contractor must accept Virtual Bookstore merchandise for refund, exchange or store credit at full purchase price within **[number of Days]** of the date of purchase, so long as such merchandise is returned to Contractor in the same condition as sold and is accompanied by a sales receipt. Refunds or exchanges after this time period shall be at Contractor's discretion. All defective material

must be promptly replaced without cost to the customer.

4.3.5 **[Delivery policies, including shipping prices, to be negotiated.]**

4.3.6 Contractor may not change Virtual Bookstore pricing, refund or delivery/shipping policies without CUNY's prior approval.

4.3.7 Contractor must offer throughout the academic year, in accordance with sound business practices, special sale prices on books, supplies and other Virtual Bookstore merchandise, except Marketplace merchandise.

4.3.8 At CUNY's request, Contractor must provide documentation of its compliance with the policies described in this Section 4.4.

4.4 **Textbook Adoption Interface and Procedures.**

4.4.1 The Virtual Bookstore website must include a method for Participating College faculty to easily search, compare and adopt textbooks and other course materials. Contractor's textbook adoption tool shall include, among other things, the following functionality:

- (A) search pages and sort functionality that allows faculty to compare textbooks from various publishers by price; used, eBook and open source availability; adoption rates; and other points;
- (B) ability to copy course material from one class and one semester to the next; and
- (C) ability of Participating College departments to restrict faculty to a pre-determined list of approved course materials.

4.4.2 The Virtual Bookstore website must include on-line tutorials and FAQs that explain how to use the adoption tool. Contractor must provide in-person training at such times and frequency as reasonably requested by a Participating College.

4.4.3 With the assistance of each Participating College, Contractor must use its best efforts to encourage faculty to enter their textbook and other course material information into the Virtual Bookstore adoption tool sufficiently in advance of the semester in order to ensure the timely availability of such materials in a variety of formats at low costs.

4.4.4 Contractor must provide timely reports to Participating College faculty concerning problems that may affect orders, such as unavailability, new editions or delay in delivery, and explain contingency plans the Contractor will make in the event that demand exceeds available supply.

4.4.5 In general, Contractor shall maintain close communications with

Participating College academic departments and administrative staff to ensure a regular and timely exchange of information regarding textbooks and other course materials used by the faculty.

4.4.6 At the end of each semester, Contractor shall provide each Participating College academic department with the textbook and course materials purchase history for each of the department's classes.

4.4.7 Contractor will not be responsible for the unavailability of textbooks or course materials on the first day of classes due to Participating College faculty failure to input course materials information into the Virtual Bookstore adoption tool in a timely manner.

#### 4.5 **Course Materials Publishing (Course Packs).**

4.5.1 Contractor must provide course materials publishing (course pack) services through the Virtual Bookstore as further described in Contractor's Proposal.

4.5.2 Course pack services must be consistent with the highest professional standards, and Contractor must maintain documentation of all copyright permissions, and consistently follow all copyright Laws. Absolutely no duplicated material may be sold in the Virtual Bookstore without copyright permission or proof that the texts are in the public domain on file with Contractor.

4.5.3 Contractor must provide such course pack services at competitive prices.

4.6 **Methods of Payment.** Contractor must accept payment through the Virtual Bookstore website [**and the Kiosk**] by major credit card, debit card (including the CUNY Scholar Support card and any Participating College cards), or student financial aid (should a Participating College make this option available).

#### 4.7 **Staff; Subcontracting.**

4.7.1 Contractor shall employ only competent personnel for this Contract. If Contractor is notified in writing that, in the reasonable opinion of CUNY, any Staff member of Contractor, or any employee, agent, or representative of its subcontractors, is incompetent or otherwise unacceptable, then Contractor shall promptly replace such person and shall not assign such person to this Contract again. Nothing in this Contract shall be construed to impose any liability or duties upon CUNY for the performance of services by any third party hired or otherwise engaged by Contractor.

4.7.2 Contractor's Staff must comply fully with all security and administrative requirements of CUNY in performance of this Contract, including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols. Contractor shall at all times enforce and

maintain discipline, order, and cooperation between and among its Staff. CUNY reserves the right to conduct a security background check or otherwise approve any Staff member furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work, or change in security status or non-compliance with CUNY's security or other requirements. Such approval shall not relieve Contractor of the obligation to perform Virtual Bookstore Operations in compliance with this Contract.

4.7.3 Contractor must designate an experienced and capable individual to be account manager for this Contract as a whole ("Manager") and a sufficient number of campus representatives to ably and efficiently manage the Contract at the local level. The Manager will be responsible at all times for implementation of this Contract, but the campus representatives must have the authority to resolve problems with regard to inventory, staff/customer relations, administrative issues and the like at the college level. The Manager must be available to CUNY and Participating Colleges during all hours that the Virtual Bookstore [**and the Kiosk**] is open. Contractor must provide CUNY and the Participating Colleges with the Manager's and the campus representatives' office telephone and cell phone numbers and e-mail addresses. Contractor must keep this information current at all times.

4.7.4 Contractor's obligations under this Contract may not be subcontracted or transferred without the prior written consent of an authorized representative of CUNY. CUNY reserves the right to reject any proposed subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: the subcontractor or supplier is on the Department of Labor's list of companies with which the State cannot do business; CUNY determines that the subcontractor or supplier is not qualified; CUNY determines that the subcontractor or supplier is not responsible; or the subcontractor or supplier has previously provided unsatisfactory work or services.

#### 4.8 **Kiosk (Optional)**

4.8.1 Investment. Contractor shall supply, install, equip, furnish, maintain and operate, at its sole cost, a Kiosk for the on-campus provision of selected Virtual Bookstore Operations. Contractor agrees to invest a minimum of [\$] in constructing, equipping and furnishing the Kiosk.

(A) Within 30 Days of its signing of this Contract, Contractor must provide full particulars of its plan for constructing and installing the Kiosk, including detailed drawings, samples of materials and prices, and a proposed schedule for completion of construction and installation work ("Kiosk Plan"). Any construction work must conform to any and all construction restrictions and exigencies

imposed by CUNY and/or the Dormitory Authority of the State of New York. All such work must be in strict compliance with City and State building codes and restrictions and must meet ADA requirements.

- (B) Contractor may not begin the work of the Kiosk Plan prior to its written approval by the Participating College. Following approval by the Participating College, Contractor must complete the Kiosk Plan pursuant to the approved schedule.
- (C) Upon or before conclusion of the work of the Kiosk Plan, Contractor must submit to CUNY and the Participating College detailed and readily verifiable invoices showing Contractor's expenditure of the minimum Plan amount set forth above.
- (D) Upon expiration or termination of this Contract, title to Kiosk, including furnishings and fixtures, will transfer to CUNY, free of liens.
- (E) Contractor must depreciate its investment in the Kiosk over a **[number]**-year period consistent with the initial term of this Contract, using the "straight line" depreciation method. If CUNY terminates this Contract without cause prior to the expiration of the initial term, CUNY will reimburse Contractor for the nondepreciated portion of the capital investment, principal only, excluding any interest, finance charges or other surcharges. Contractor is not entitled to this reimbursement if Contractor terminates this Contract without cause or if CUNY terminates this Contract with cause.

4.8.2 Schedule. Contractor must provide operate the Kiosk on a year-round basis at times mutually agreed by Contractor and the Participating College. The Kiosk must be open at hours convenient to students, faculty and the Participating College community. Kiosk hours must be extended during the first three weeks of the fall and spring semesters, and during days of the week designated by the Participating College for evening student extended service. All changes in Kiosk hours are subject to the Participating College's approval.

4.8.3 POS and Other Equipment.

- (A) Contractor must provide and install at no cost to CUNY and the Participating College [**describe POS system**] as well as all other equipment necessary to efficiently operate the Kiosk ("Contractor Property").
- (B) With the exception of those items of Contractor Property that are included in the Kiosk Plan, Contractor Property will not become



the property of CUNY and may be removed, at any time and from time to time during the term of this Contract and any renewals.

4.8.4 Housekeeping and Maintenance.

- (A) Contractor must keep the Kiosk, as well as all furnishings, fixtures and equipment therein, in a clean, neat, and safe condition.
- (B) Contractor must coordinate time and routing of deliveries with the Participating College.
- (C) Contractor must maintain, repair and protect Contractor Property, including but not limited to obtaining and paying for the cost of preventative maintenance and repairs.
- (D) The Participating College will provide rubbish and recycling receptacles for Contractor's use and will provide for the carting and disposal of rubbish and recycled materials.

4.8.5 Sustainability. Contractor acknowledges that in June 2007 CUNY's Chancellor accepted the Mayor's challenge to the City's colleges and universities to reduce their greenhouse gas emissions 30% by 2017, and that CUNY is committed to incorporating sustainability into the fabric of CUNY. Contractor further acknowledges that on April 24, 2008, the Governor issued Executive Order Four that requires CUNY to develop and implement a Sustainability and Environmental Stewardship Program that is designed to reduce the environmental impact of the activities and operations of CUNY. Contractor agrees to assist CUNY in achieving its sustainability goals by carrying out the activities described below, as well as through such other activities and programs that the Contractor may implement: **[To be negotiated.]**

4.8.6 Utilities.

- (A) The Participating College will furnish at no cost to Contractor all necessary electricity and wireless internet access for the efficient performance of the Kiosk and its equipment except that (i) Contractor will be responsible for any costs that result from changes in existing electrical and wired/wireless internet services required by Contractor to operate the Kiosk and (ii) CUNY does not guarantee of uninterrupted supply of electricity or network connectivity, and CUNY will not be liable for any damages or compensation should the provision of electricity or internet services be interrupted.
- (B) Contractor must use best efforts to comply with energy conservation measures when operating the Kiosk.

4.8.7 Kiosk Security. Contractor is responsible for security of the Kiosk and its equipment, furnishings and inventory.

- (A) Contractor must immediately report to the Participating College all fires, thefts, break-ins and other law enforcement and security matters, as well as accidents involving its Staff or customers.
- (B) Contractor bears the risk of loss or damage to Kiosk inventory, whether in transit, on display or in storage. Contractor also bears the risk of loss for monies collected pursuant to Kiosk operations.
- (C) Contractor bears the risk of loss or damage to Contractor Property and the Kiosk. CUNY and AECs assume no responsibility for any losses Contractor may incur due to damage to Contractor Property or the Kiosk arising from any cause. CUNY and the AECs assume no responsibility for the protection of Contractor Property and the Kiosk against loss arising from vandalism, theft, fire, water or other causes.
- (D) CUNY has the right of access to the Kiosk at all times during emergencies and at other times with reasonable notice to Contractor.

## 5 -COMMISSIONS, PAYMENTS AND FINANCIAL MATTERS

### 5.1 Commissions and Other Support. [To be negotiated.]

### 5.2 Gross Sales.

5.2.1 “Gross Sales” as used in this Contract means aggregate revenues from Virtual Bookstore Operations, excluding the following: (A) sales, use or excise taxes imposed and collected by Contractor directly from customers and paid over to any governmental agency; (B) sales, if any, to CUNY or a Participating College community by Contractor at cost; and (C) refunds.

5.2.2 In the event that Contractor extends credit/charge sales to CUNY and/or Participating College departments, offices and organizations, these credit/charge sales must be included in Gross Sales figures at the time the sale was made, regardless of when Contractor receives payment. Contractor shall pay all merchant fees associated with credit card payments.

### 5.3 Quarterly Payments and Reports

5.3.1 Contractor shall compute and make commissions and other payments due on a quarterly basis within thirty (30) Days of the quarter’s end via electronic funds transfer to: Citibank ABA#021000089, CUNY Non Tax Levy A/C# 4977135206 or by check payable to The City University of

New York, Office of the University Controller, 230 West 41st Street, 5th Floor, New York, NY 10036, Attn: Treasurer.

5.3.2 Monthly Payments must be accompanied by a management report for each Participating College signed by the controller or comparable officer of the Contractor, accessible online at CUNY's option, and showing the following for each Participating College:

- College Name;
- Gross Sales and permitted deductions by store (Virtual Bookstore and Kiosk, if any) and category (new textbooks, used textbooks, digital content, rentals, course packs, trade books, apparel, school and art supplies, and other items), by month and YTD;
- commissions paid to by month and YTD; and
- such other information as may be reasonably requested by Corporation.

5.4 **Year-End Reconciliation.** One year from the effective date of this Contract, and each full year thereafter during the life of this Contract, Contractor must pay CUNY that portion of commissions that may as yet be due so as to equal the commission percentage required by this Contract. Payment must be made by the thirtieth (30th) Day of the first month of the following Contract year and recorded as commissions paid in the year due. On expiration or termination of this Contract, commissions due, if any, must be calculated and paid based on that portion of a full year for which Virtual Bookstore Operations were provided.

5.5 **Late Payments.** Delinquent payments are subject to a late payment fee of one-and-one-half percent (1-1/2%) per month, or portion thereof, of any balance due.

5.6 **Records.** Contractor must maintain complete, accurate and separate books of account together with appropriate, detailed, supporting data and documents, in accordance with generally accepted accounting principles, for all transactions relating to Virtual Bookstore Operations (the "Records"). These Records must include written documentation of all transactions at the Virtual Bookstore website [and daily cash register tapes or equivalent documentation of all transactions from the Kiosk]. Such Records must be held in compliance with Section 10 of Appendix A, Standard Clauses for New York Contracts attached to these Terms and Conditions.

5.7 **Inspection.** CUNY, each AEC, and/or their auditors may inspect and review Records, and may require Contractor to furnish such other financial information related to the Virtual Bookstore Operations, as CUNY and/or each AEC deems appropriate. In the event of any question as to the dollar amounts due CUNY or Contractor, the decision of CUNY's auditors will be final and binding upon both parties to this Contract. Contractor shall be responsible for the cost of the audit in the event that CUNY's auditors find a shortage of 10% or more of the amount due to CUNY.

5.8 The receipt or acceptance by CUNY of any statements furnished or payments made hereunder to CUNY (or the cashing of any royalty or commission checks paid hereunder) shall not preclude CUNY from questioning the correctness thereof at any time and, in the event that any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified by Contractor and the appropriate payment shall be made by Contractor.

5.9 **Meetings.** CUNY and Contractor will meet from time to time at either party's request to review reports, explain deficiencies, discuss problems and mutually agree on courses of action to improve the results of the Virtual Bookstore Operations. Any adjustments to a commission report required as a result of review and/or audit will be identified and reflected on the next report.

## 6 - CONTRACTOR'S REPRESENTATIONS, WARRANTIES & CERTIFICATIONS

6.1 Contractor hereby represents and warrants that:

6.1.1 it has carefully examined the Contract, including, but not limited to, these Terms and Conditions, and will perform the Contract faithfully following all the terms and conditions thereof;

6.1.2 all of the Virtual Bookstore Operations to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel. Where no specific requirements are given, Contractor shall at a minimum provide the Virtual Bookstore Operations to the level of the latest applicable standards of nationally recognized associations which sponsor such work and provide and install materials that conform to such standards;

6.1.3 the Virtual Bookstore will appear, function and perform in accordance with the terms of this Contract;

6.1.4 all obligations owed to third parties with respect to the activities contemplated to be undertaken by Contractor pursuant to this Contract are or will be fully satisfied by Contractor, so that Corporation will not have any obligations with respect thereto;

6.1.5 at all times during the term of the Contract, Contractor is and will be the owner of or otherwise have the right to use and distribute the Virtual Bookstore and any other materials and methodologies used in connection with the Virtual Bookstore Operations;

6.1.6 the Virtual Bookstore and other materials and methodologies used by Contractor in fulfilling its obligations under this Contract shall not infringe upon any third party copyright, trademark, patent, trade secret or other third party right; and the Virtual Bookstore shall not contain any Trojan horses, worms, viruses or other disabling devices;

- 6.1.7 its proposal for providing Virtual Bookstore Operations was arrived at independently and is: (a) in all respects fair; (b) made without collusion or fraud; (c) that no public officer or employee, CUNY or AEC officer or employee, or person whose salary is payable in whole or in part, directly or indirectly, from the City Treasury or State Treasury, or a City-affiliated or State-affiliated entity, is directly or indirectly interested in the Contract or in Virtual Bookstore Operations to which it relates or in any portion of the profits thereof;
  - 6.1.8 it has completed and submitted all required information and documents and that all such information and documents in connection with this Contract, are true, accurate, not misleading, and complete, including the information and documents in connection with:
    - 6.1.8.1 The Office of State Comptroller's State of New York Vendor Responsibility Questionnaire
    - 6.1.8.2 State Tax Law 5-a (Form ST-220-CA and ST-220-TD)
    - 6.1.8.3 Procurement Lobby Law, State Finance Law §§ 139-j and 139-k.
  - 6.1.9 it pays prevailing wages;
  - 6.1.10 it will comply with all applicable Equal Employment Opportunity and Affirmative Action programs, and all subcontracts entered into for the purposes of this Contract shall contain provisions binding such subcontractor to compliance with such programs;
  - 6.1.11 Contractor hereby represents and warrants that Contractor is not in arrears to CUNY, any AEC, the City, the State, any agency, or any quasi-agency thereof upon a debt, contract, or taxes. Contractor is not a defaulter as surety, or otherwise upon any obligation to CUNY, any AEC, the City, State, or any agency, or quasi-agency thereof, except as set forth herein. Contractor hereby agrees that if any of the information, events, or representations set forth or described in this Section 6, occur after Contractor executes this Contract, or if there are any changes to the information provided by Contractor in connection with this Contract prior to, or during performance of this Contract, Contractor shall promptly submit written notice to CUNY of all such changes pursuant to the Notice provision; and
  - 6.1.12 it possesses the requisite business integrity justifying the confidence of CUNY and will adhere, throughout the Term to the highest standards of business conduct and professional responsibility by fulfilling its obligations under the Contract.
- 6.2 Contractor certifies, under penalty of perjury, to the best of its knowledge and belief that this Contract and the representations contained herein, have been properly authorized by its governing body and such authorization shall be deemed to include

the signing and submission of the Contract and that Contractor is the only one interested in this Contract and no Person other than Contractor has any interest in this Contract.

## 7 - INSURANCE

7.1 Contractor must procure and maintain at its own cost throughout the Term with companies satisfactory to the University, the following minimum insurance coverage (the "Required Insurance"):

Workers' Compensation Insurance	Statutory Workers Compensation limits as required by the New York State Law on behalf of all employees of Contractor providing Virtual Bookstore Operations.
Employer's Liability Insurance	\$1,000,000 per accident on behalf of all employees of Contractor providing Virtual Bookstore Operations and for whom Workers' Compensation coverage is not a statutory requirement.
Commercial General Liability	\$1,000,000 combined single limit for bodily injury and property damage, with an aggregate minimum for this Contract of \$3,000,000.
Automobile Liability Insurance	\$1,000,000 combined single limit per accident for bodily injury and property damage.
Professional Liability/Errors & Omissions and Internet Policies	Coverage for professional services, security and privacy, in an amount not less than \$2,000,000 per occurrence
ID Theft and Cyber Extortion Policy	Coverage for crisis management and public relations expense in an amount not less than \$2,000,000 per occurrence.
Umbrella or Excess Liability Insurance	Coverage of not less than \$5,000,000

7.2 Each Required Insurance policy must specifically include liability assumed by Contractor under this Contract.

7.3 Contractor shall ensure that no Required Insurance policy may be canceled, terminated, or modified by Contractor's insurer unless (A) Contractor has sent thirty (30) Days' prior written notice by certified mail to CUNY and (B) CUNY has given its prior written consent.

7.4 No Required Insurance policy shall be invalidated by reason of any of the terms of any policy issued by the insurance company to Contractor.

- 7.5 Each Required Insurance policy (except Workers' Compensation and Employers Liability) must be endorsed to include as additional insureds each AEC, The City University of New York, New York City, New York State, and The Dormitory Authority of the State of New York, and their respective trustees, directors, officers, employees and agents (the "Additional Insureds"). Such policies must stipulate that the insurance provided is primary insurance in respect of the Additional Insureds, and that any other insurance or self-insurance maintained by the Additional Insureds is excess and not contributory insurance. The Required Insurance must apply separately to each Additional Insured against whom a claim is made or suit is brought, subject to each policy's limit of liability. Additional Insureds must be covered as respects: (i) liability arising out of activities performed by or on behalf of Contractor, (ii) products and completed operations of Contractor, (iii) premises owned, leased or used by Contractor, and (iv) automobiles owned, leased, hired or borrowed by Contractor.
- 7.6 Contractor must ensure that each Required Insurance policy (except Workers' Compensation and Employers Liability) includes a waiver of all rights of subrogation against the Additional Insureds for losses arising from Virtual Bookstore Operations.
- 7.7 Contractor must furnish certificates to CUNY evidencing all Required Insurance and endorsements naming the Additional Insureds, before commencing Virtual Bookstore Operations. CUNY reserves the right to request certified complete copies of Required Insurance policies at any time. Contractor shall provide such copies within three (3) Days of CUNY's request for same.
- 7.8 Contractor must promptly notify CUNY of any accidents arising in the course of performance of Virtual Bookstore Operations causing bodily injury or property damage.
- 7.9 Notwithstanding the limits of Required Insurance, Contractor is liable for any and all injury as set forth in Section 8.1.
- 7.10 Contractor must ensure that its subcontractors and agents comply with this Section. Contractor must include all subcontractors and agents as insureds under the Required Insurance policies, or furnish separate certificates for such subcontractors and agents indicating compliance with the Required Insurance.
- 7.11 Failure on the part of Contractor to procure or maintain Required Insurance constitutes a material breach of this Contract. Upon such breach, CUNY may immediately terminate this Contract, or, in its sole discretion, procure or renew such insurance, and pay any and all premiums in connection therewith. CUNY may charge the costs thereof to money due or that may become due to Contractor, or if there is no money due, Contractor agrees to promptly pay CUNY such costs.

## **8 – INDEMNIFICATION**

**8.1** Contractor shall be fully liable for the actions of its Staff and shall fully indemnify and save harmless CUNY, each AEC, City, State, The Dormitory Authority of the State of New York, and each trustee, director, officer, agent and employee of any of them, from all suits, claims, demands, damages, fines, penalties, liens, actions and costs of any kind, including attorneys' fees, to which any or all of them may be subjected by reason of (i) the untruth of any of Contractor's representations and warranties under this Contract or (ii) any or all of Contractor's operations under this Contract, and shall be solely responsible for any and all injuries to persons including death and all damage to property resulting from negligence or carelessness on the part of Contractor or its Staff in the performance of the Virtual Bookstore Operations or by or on account of any act or omission of Contractor or its Staff during performance of the Virtual Bookstore Operations, without limitation; provided, however, that Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or negligent failure to act of CUNY or any AEC.

8.2 The provisions of this Section will survive the expiration of this Contract.

## **9 - CONTRACTOR'S INDEPENDENT STATUS**

**9.1** Contractor is an independent entity. Nothing contained in the Contract, nor any act of the parties, will be construed as creating a partnership, joint venture, agency or association of any kind, between CUNY or any AEC and Contractor, nor as making CUNY or any AEC in any way responsible for the debts or losses of Contractor.

9.2 All personnel furnished by Contractor as required under this Contract are Staff of Contractor, and not of CUNY, any AEC, City or State, nor of any affiliated entity, agency, department, board, authority or instrumentality of any of them and Contractor alone is responsible for their work, their personal conduct while performing this Contract and their direction and compensation. Nothing included in this Contract imposes any liability or duty upon CUNY, any AEC, City or State to Contractor's Staff, nor makes CUNY, any AEC, City or State liable to any other Person or government for the acts, omissions, liabilities, debts, liens, obligations or taxes of whatever nature, including but not limited to unemployment insurance and Social Security taxes, of Contractor or Contractor's Staff.

9.3 Contractor acknowledges that for the purposes of the Immigration Reform and Control Act of 1986 (the "Act"), Contractor is an "independent contractor" as defined in the Act and its regulations, and that no AEC or CUNY is an "employer" under the terms of the Act and its regulations with regard to Virtual Bookstore Operations. As a result, the responsibility of complying with the provisions of the Act lie solely with Contractor.

9.3.1 Contractor expressly represents that it is aware of the requirements of the Act with regard to the employer's responsibility for ensuring compliance with the Act and its regulations, and for maintaining the proper forms



showing that the verification process was completed.

9.3.2 Contractor expressly represents to CUNY Contractor's intention to abide by the provisions of the Act.

9.3.3 Contractor agrees that to the extent permitted by Law, Contractor will defend, indemnify and hold harmless CUNY, each AEC, City and the State, and each trustee, director, officer, employee, agent, successor and assign of any or all of them, for any penalty which may be applied to any one or all of them as the result of the hiring by Contractor of an unauthorized alien during the term of this Contract.

9.4 Contractor will permit no liens whatsoever to be placed against CUNY property and, should such liens attach, Contractor will take all steps necessary to accomplish the prompt removal of them.

## **10 - PROPRIETARY RIGHTS; ADVERTISING**

**10.1** All rights, title and interest in and to the any content provided by CUNY including as digitized or otherwise reformatted by Contractor for the Virtual Bookstore, in all media now known or hereafter developed, and any trademarks, trade names, logos, characters and other materials provided by CUNY ("CUNY Materials") are owned and retained exclusively by CUNY.

**10.1.1** Contractor shall not use the CUNY Materials or any portion thereof for any purpose other than that of fulfilling Contractor's obligations under this Contract. Neither the CUNY Materials nor any portion thereof may be used, disclosed, transmitted, transferred, sold, assigned, leased or otherwise disposed of, made available for access by third parties, or be commercially exploited by or on behalf of Contractor, its employees or agents, except as expressly provided in this Contract.

**10.1.2** Contractor shall not use the name, or any logo, mascot, seal, trademark, trade name or other proprietary mark of CUNY, any Participating College, or any AEC for brand or product endorsement. Any other use is subject to CUNY's or the applicable AEC's prior written approval.

**10.2** Subject to Corporation's and College's ownership of all rights, title and interest in and to the CUNY Materials, all techniques, algorithms and methods, the Virtual Bookstore, the look and feel of the Virtual Bookstore, including, without limitation, all copyrights, trademarks, trade names and other proprietary rights inherent therein or appurtenant thereto, not in the public domain or licensed by Contractor from any third party and the rights thereto owned by Contractor as of the starting date of the term of this Contract are and shall remain the property of Contractor.

**10.3** Contractor must not include commercial advertising or links to non-College or non-CUNY websites on the Virtual Bookstore without the express written permission of Corporation. In the event that Corporation permits such advertising or links,

Contractor must include a disclaimer of Corporation's association with such advertising or linked site, at Corporation's request.

10.4 Contractor must obtain the prior written approval of CUNY before Contractor or any of its officers, Staff, or agents makes any statement to the press or issues any communication or publication bearing on the Virtual Bookstore Operations.

10.5 **[If there is a Kiosk:** Contractor may not post any signs or posters on, or visible from, the exterior or in common areas of College buildings or grounds, or distribute any fliers or brochures outside the Kiosk, without advance approval of Corporation. The replacement, maintenance, safety, and removal of such materials are Contractor's responsibility.

## 11 – CONFIDENTIALITY

11.1 Contractor shall not provide copies of the Contract, or otherwise disclose its terms, to any third party without the prior written consent of CUNY, except as may be required by Law, including by the New York Freedom of Information Law (FOIL) (Public Officers Law §87 et. seq.).

11.2 Contractor acknowledges and agrees that the Contract is a public record that may be made available to the public pursuant to Public Officers Law Section §87(2)(c) and State Finance Law Section §163(9)(c).

11.3 Contractor acknowledges that Contractor and Contractor's Staff may, in the course of the performance of this Contract, be exposed to or acquire information that is confidential to CUNY, or its employees or students, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of CUNY hereunder or received from a third party. Contractor shall treat all information obtained from CUNY or disclosed to Contractor while performing this Contract ("Confidential Information") in accordance with this paragraph, except for any such information that CUNY designates to Contractor in writing as excluded from Confidential Information.

11.4 This obligation of confidentiality does not extend to any information that: (i) was in the possession of or rightfully known by Contractor prior to the time of disclosure by CUNY without any obligation to maintain its confidentiality; (ii) is or becomes available to the general public without violation of this Contract; (iii) is obtained by Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; (iv) is independently developed by Contractor without the participation of individuals who have had access to it; (v) is required to be disclosed by court order, provided Contractor gives CUNY prior written notice of such required disclosure (to the extent legally permitted) and reasonable assistance if CUNY wishes to contest the disclosure; or (vi) otherwise obtained under the Freedom of Information Act or applicable State Law.

11.5 Contractor shall treat the Confidential Information with the same degree of care that Contractor would treat Contractor's own confidential information, and with no less

than reasonable care. Contractor shall not use the Confidential Information for purposes other than rendering the Virtual Bookstore Operations and shall limit access to Confidential Information to those of Contractor's Staff having a need to know such Confidential Information to perform the Virtual Bookstore Operations. Contractor shall not directly or indirectly disclose, distribute, republish or allow any third party to have access to any Confidential Information without such third party's executing a confidentiality and non-disclosure agreement with CUNY under the same terms, or terms at least as restrictive, as set forth in this Contract. Contractor shall take appropriate steps as to its Staff and such third parties to ensure compliance with the confidentiality obligations under this paragraph.

11.6 If Contractor becomes aware of any unauthorized use or disclosure of Confidential Information, Contractor promptly and fully shall notify CUNY of all facts known to it concerning such unauthorized use or disclosure. In addition, if Contractor or any of its employees or agents are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, Contractor shall not disclose the Confidential Information without providing CUNY with reasonable prior written notice of any such request or requirement so that CUNY may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of the agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by CUNY, Contractor or any of its employees are nonetheless, in the written opinion of Contractor's counsel (a copy of which opinion shall be delivered to CUNY), legally compelled to disclose Confidential Information to any tribunal or otherwise stand liable for contempt or suffer other censure or penalty, Contractor or its employees may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information that such counsel advises Contractor that it is legally required to disclose. Notwithstanding the foregoing, Contractor shall exercise its best efforts to preserve the confidentiality of the Confidential Information, including by cooperating with CUNY to obtain an appropriate protective order or other reliable assurance that confidential treatment shall be accorded the Confidential Information by such tribunal.

11.7 Upon termination or completion of the Virtual Bookstore Operations, or at any time CUNY requests, Contractor shall return to CUNY, or destroy, all copies of the Confidential Information, in whatever media, and shall provide CUNY with a sworn certification that Contractor has complied with Contractor's obligations under this paragraph. It is understood and agreed that, in the event of a breach, threatened or actual, of this paragraph, damages may not be an adequate remedy and CUNY shall be entitled to injunctive relief to restrain any such breach without having to post an undertaking.

## 12 -TERMINATION

### 12.1 Termination for Cause.

12.1.1 CUNY may terminate this Contract for cause immediately on notice to the Contractor if:

12.1.1.1 Contractor fails to make any payment due to CUNY pursuant to this Contract, and this default remains unremedied for a period of ten (10) Days after notice or demand from CUNY or any AEC to Contractor;

12.1.1.2 Contractor becomes insolvent or otherwise discontinues business;

12.1.1.3 Contractor defaults in the performance or observation of any material term or condition of this Contract (other than a default as described in 12.1.1 (A) above), or persistently or repeatedly defaults in the performance or observance of any other term or condition of this Contract, and in each case such default remains unremedied for a period of thirty (30) Days after notice from CUNY, or in the case of a default which cannot reasonably be remedied within such period, Contractor fails to immediately and diligently carry out steps to remedy such default in accordance with instructions of CUNY. The failure to exercise any remedy accruing upon the default of Contractor will not be deemed a waiver of or acquiescence in any future default;

12.1.1.4 It is found that the certification filed by Contractor in accordance with New York State Finance Law §139-j and §139-k was intentionally false or intentionally incomplete; or

12.1.1.5 It is found that the certification filed by Contractor in accordance with §5-a of the State Tax Law is not timely filed during the term of this Contract or the certification furnished was intentionally false or intentionally incomplete.

12.1.2 CUNY's or any AEC's failure to exercise any remedy accruing upon the default of Contractor will not be deemed a waiver of or acquiescence in any future default.

### 12.2 Other Termination.

12.2.1 This Contract will automatically terminate upon the mutual written consent of the parties.

12.2.2 CUNY may terminate this Contract for its convenience, without cause, upon ninety (90) Days prior written notice to Contractor.

12.2.3 CUNY may suspend or terminate the Contract with respect to a particular Participating College upon immediate notice to Contractor should the facilities used for Virtual Bookstore Operations at that Participating College be destroyed or damaged, either in whole or in part, or rendered unusable. Contractor will not be relieved of any obligations hereunder with respect to the other Participating Colleges, or obligations with respect to the affected Participating College which have accrued on or prior to the effective date of the suspension or termination. Should the Contract be so suspended or terminated, Contractor hereby expressly waives any claim for damages or compensation, including but not limited to loss of use, lost profits or actual, special, incidental, indirect or consequential damages of any kind or nature.

12.3 **[If there is a Kiosk: Removal of Contractor.** Upon expiration or termination of this Contract, Contractor shall remove the Contractor Property (except that provided pursuant to the Kiosk Plan) from the Participating Colleges within fifteen (15) Days of the date of expiration or notice of termination, as the case may be. Contractor must repair all damage caused by the removal of the Contractor Property. The Participating College will permit Contractor reasonable access to their premises during normal business hours for the purpose of removing the Contractor Property. Contractor Property not removed from a Participating College during the said fifteen (15) Days will be deemed abandoned unless Contractor has made prior arrangements with the Participating College for the Participating College to remove the Contractor Property and place it in storage solely at the cost and expense of Contractor.

12.4 **Non-exclusive Rights.** The rights of termination referred to in this Contract are not intended to be exclusive and are in addition to any other rights available to CUNY and the AECs in Law or in equity.

## 13 - COMPLIANCE WITH LAW

13.1 Contractor and Contractor's Staff must comply with all federal, state and local Laws governing Virtual Bookstore Operations, including without limitation the New York State Textbook Access Act, as well as all applicable Corporation, College, and CUNY rules and regulations, and must timely secure, maintain and pay for all federal, state and local licenses, permits, certificates or other authorizations required for the proper and lawful conduct of Virtual Bookstore Operations. Contractor shall assist CUNY to comply with the textbook provisions of the Higher Education Opportunity Act (HEOA), including by disclosing to CUNY and the Participating Colleges, at their request and in electronic format, the ISBN and retail price information of required and recommended textbooks and supplemental materials for each course listed in the Participating College's course schedule.

13.2 Prior to award and during the Term and any renewals thereof, Contractor must establish to the satisfaction of CUNY that it meets or exceeds all requirements of this Contract and any applicable Laws, including but not limited to, permits,

insurance coverage, licensing, and proof of coverage for workers' compensation, and shall provide such proof as required by CUNY. Failure to comply or failure to provide proof may constitute grounds for CUNY to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by CUNY. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

13.3 If there is a conflict between or among any Laws and specific requirements of this Contract, then Contractor shall comply with the most stringent law in each instance. By noting any specific law with particularity in this Contract or in any other prior or future communication, Contractor is not relieved of any obligation to comply with all Laws, and CUNY does not waive any rights it may have with respect to such compliance.

13.4 Contractor is solely responsible for taxes, assessments and fees required or assessed in connection with Virtual Bookstore Operations, including, but not limited to, sales, use, excise and payroll taxes, and federal, state and local income taxes and must make timely applications, reports and returns required in connection therewith.

13.5 Contractor affirms that to the best of Contractor's knowledge there exists no actual or potential conflict between the Virtual Bookstore Operations and Contractor's family, business, or financial interests, or those of any employee of Contractor, and no trustee, officer, or employee of CUNY, or other director, officer, employee, or person whose salary is payable in whole or in part from the treasury of the City or the State, is directly or indirectly interested in this Contract or in any portion of the profits thereof. Should this situation change during the Term, Contractor shall promptly notify CUNY. CUNY reserves the right in its sole discretion to determine whether any of the interests required to be disclosed under this Section 13.5 shall disqualify Contractor from performing the Virtual Bookstore Operations.

#### 14 - **PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS**

CUNY reserves the right to investigate or inspect at any time whether or not the Virtual Bookstore Operations, qualifications or facilities offered by Contractor meet the requirements set forth in this Contract. Contractor shall at all times during the Contract term remain responsible and responsive. Contractor must be prepared, if requested by CUNY, to present evidence of legal authority to do business in the State, integrity, experience, ability, prior performance, and organizational and financial capacity. If CUNY determines that the conditions and terms of this Contract are not complied with, or that the Virtual Bookstore Operations proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity, experience, ability, prior performance, or organization and financial capacity or facilities are not satisfactory, then CUNY may terminate this Contract.

#### 15 - **GUARANTEE**

15.1 Contractor guarantees the Virtual Bookstore against any defect within one (1) year from the go-live date.

15.2 All manufacturers' and subcontractors' warranties and guarantees shall run directly to CUNY as well as to Contractor and its subcontractor(s). Contractor shall obtain all manufacturers' warranties and guarantees in writing in the name of CUNY and will deliver same to CUNY.

## **16 -CONFLICT OF TERMS**

The matters and items comprising this Contract are intended to mutually explain and complement one another. Unless otherwise set forth in this Contract, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (Standard Clauses for New York State Contracts)
2. Contract Signature Page
3. These Terms and Conditions
4. Other exhibits, attachments and appendixes attached hereto and incorporated herein
5. Contractor's Proposal

## **17 - NOTICES**

17.1 All notices, letters, orders or other communications ("Notices"), when deposited in a postpaid wrapper in any post office box regularly maintained by the United States Postal Service, delivered by courier service, or sent by electronic mail, shall be deemed received as of date and time of such deposit, delivery, or sending. The place so designated may be changed at any time by an instrument in writing executed and acknowledged by Contractor and delivered to the Business Manager in the manner set forth below. Nothing in this Section shall be deemed to be a waiver of any requirements for service as provided by Law.

17.2 Notices to Contractor shall be sent to:

**[Name]**  
**[Address]**  
**[email]**

17.3 Notices to CUNY: (a) to CUNY, Attention: Office of University Contracting, 230 W. 41<sup>st</sup> Street, New York, NY 10036 or by electronic mail to virtual [caron.christian@cuny.edu](mailto:caron.christian@cuny.edu); and (b) to the Office of General Counsel, The City University of New York, 205 East 2<sup>nd</sup> Street, 11<sup>th</sup> Floor, New York, New York 10017.

**18 – PUBLICITY.** Each party agrees that it will not make any statement to the press or issue any communication or publicity relating to the Virtual Bookstore Operations and the Contract without the prior review and written approval of the other party; provided however that each party may make such disclosures as are required by applicable Law after making reasonable efforts in the circumstances to consult in advance with the other party.

**19 – SURVIVAL OF OBLIGATIONS.** Any provision of the Contract which by its nature impliedly or expressly involves performance following termination of the Contract, including but not limited to those regarding insurance, indemnification, and FOIL, shall survive any

termination of the Contract and shall be continuing obligations.

20 – **ARBITER OF DISPUTES.** Contractor shall direct questions arising during the performance of the Contract and concerning its performance to the Business Manager. Decisions of the Business Manager shall be made in the best interest of CUNY and shall be final, conclusive, and binding.

21 – **ANTITRUST.** Contractor hereby assigns, sells, and transfers to CUNY all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the City, the State, or the United States relating to this Contract.

## 22 – **CLAIMS**

22.1 In order for Contractor to make a claim for compensation for any damage sustained by reason of any act or omission of CUNY, an AEC, or the employees or agents of any of them, or of any other persons, it must provide written notice regarding the damage sustained by it in writing to the Business Manager within five (5) Business Days after sustaining such damage.

22.2 In order for Contractor to make a claim that any work required of it is not required to be performed by Contractor under the provisions of this Contract, it must give provide written notice regarding such work performed to the Business Manager within five (5) Business Days after being required to perform such work. Claims tendered without such prior written notice and claims tendered untimely shall be deemed waived.

23 – **PERIOD OF LIMITATION.** No action shall lie or be maintained against CUNY or any AEC upon any claim arising out of this Contract unless such action be commenced within six (6) months from the date when the cause of action has accrued.

24 – **CHOICE OF FORUM.** All claims and actions brought under or arising from this Contract shall be brought either in the courts of the United States located in the City or in the courts of the State.

25 – **SEVERABILITY.** The terms, clauses and provisions of this Contract are intended to be severable. The unconstitutionality, illegality or unconscionability of any term, clause or provision shall in no way defeat the effect or validity of any other term, clause, or provision.

26 - **PARAGRAPH HEADINGS.** The paragraph headings contained herein are for reference only and shall not be considered substantive parts of this Contract. The use of the singular or plural form shall include the other form. The use of the female or male form shall include the other form.

27 - **WAIVER.** Waiver by CUNY of a breach of any provision of or right under this Contract shall not operate or be construed as a waiver of any other or subsequent breach of the same provision or right or of any other provision or right of this Contract.

28 - **MERGER.** This Contract contains all the terms and conditions agreed upon by the parties



hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

**29 - ALL LAWFUL PROVISIONS DEEMED INCLUDED.** It is the intent and understanding of the parties to this Contract that each and every provision of Law required to be inserted in this Contract shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted herein, and if through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Contract shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

**30 - NEW YORK STATE AND NEW YORK CITY REQUIREMENTS.**

30.1 The terms and conditions Appendix A-Standard Clauses for all New York State Contracts, attached hereto (“Appendix A”) are hereby incorporated.

30.2 All references in Appendix A to “New York State” or “the State” may be deemed to refer to New York City for those contracts for which funds are appropriated by New York City. References to provisions of State law in Appendix A shall be deemed to refer to the equivalent provisions of New York City law, rules, regulations, memoranda, mayoral executive orders, Charter, and Administrative Code.

**31 - INVESTIGATION CLAUSE**

**32.1** The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit, or inquiry.

32.2.1 If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding, refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State; or;

32.2.2 If any person refuses to testify for a reason other than the assertion of his or her privilege against self- incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered

into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then:

32.3.1 The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not fewer than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

32.3.2 If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 31.5, below, without the City, the State or CUNY, or any or all of them incurring any penalty or damages for delay or otherwise.

32.4 The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

32.4.1 The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City, the State, or CUNY, or any or all of them; and/or

32.4.2 The cancellation or termination of any and all such existing City, State and/or CUNY contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City, the State or CUNY, or any or all of them incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City, the State or CUNY.

32.5 The commissioner or agency head shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors in paragraphs 32.5.1 and 32.5.2 below. S/he may also consider, if relevant and appropriate, the criteria established in paragraphs 32.5.3 and 32.5.4 below in addition to any other information which may be relevant and appropriate:

32.5.1 The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

32.5.2 The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

32.5.3 The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City, the State and/or CUNY.

32.5.4 The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to the penalties under Section 32.4 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 32.3.1 above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

32.6.1 The term “license” or “permit” as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

32.6.2 The term “person” as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal, or employee.

32.6.3 The term “entity” as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, the State or CUNY, or any or all of them or otherwise transacts business with the City, the State, or CUNY, or any or all of them.

32.6.4 The term “member” as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

32.7 In addition to and notwithstanding any other provision of this Contract, the Commissioner or agency head may in his or her sole discretion terminate this Contract upon not fewer than three (3) Days’ written notice in the event Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York and CUNY any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City, the State, or CUNY, or any or all of them or other person, firm, corporation, or entity for any purpose which may be related to the procurement or obtaining of this Contract by Contractor, or affecting the performance of this Contract.

## APPENDIX A

### STANDARD CLAUSES FOR NEW YORK STATE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were

made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

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

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

action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884 email: opa@esd.ny.gov

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
Email: mwbecertification@esd.ny.gov <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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



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

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

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

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

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

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

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

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

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.

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.

**CONTRACT SIGNATURE PAGE**

Error! Bookmark not defined.

IN WITNESS WHEREOF, the parties, by their duly authorized representative, have executed this Contract.

**FOR THE CONTRACTOR** (signature must be notarized):

Contractor \_\_\_\_\_  
(print or type corporation/partnership/individual name)

FEIN: \_\_\_\_\_

By: \_\_\_\_\_  
(signature of authorized representative)

Name: \_\_\_\_\_  
(print or type name of authorized representative)

Title: \_\_\_\_\_  
(print or type title of authorized representative)

*Instruction to Contractor: Sign in the presence of a notary; have Certificate of Acknowledgment (next page) completed and signed.*

**FOR THE CITY UNIVERSITY OF NEW YORK:**

By: \_\_\_\_\_  
Frederick P. Schaffer  
General Counsel

**CERTIFICATE OF ACKNOWLEDGMENT OF THE CONTRACTOR - CORPORATION,  
PARTNERSHIP, or LIMITED LIABILITY COMPANY:**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 201\_\_\_, before me personally came  
\_\_\_\_\_ to me known, who, being by me duly sworn, did say, that \_he  
resides at \_\_\_\_\_, Town of \_\_\_\_\_,  
County of \_\_\_\_\_, State of \_\_\_\_\_; and  
further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

[ ] (If a corporation): \_he is the \_\_\_\_\_  
of \_\_\_\_\_, the corporation described in said instrument; that, by  
authority of the Board of Directors of said corporation, \_he is authorized to execute the  
foregoing instrument on behalf of the corporation for purposes set forth therein; and that,  
pursuant to that authority, \_he executed the foregoing instrument in the name of and on  
behalf of said corporation as the act and deed of said corporation.

[ ] (If a partnership): \_he is the \_\_\_\_\_  
of \_\_\_\_\_, the partnership described in said instrument; that, by the  
terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf  
of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he  
executed the foregoing instrument in the name of and on behalf of said partnership as the  
act and deed of said partnership.

[ ] (If a limited liability company): \_he is a duly authorized member of  
\_\_\_\_\_ LLC, the limited liability company  
described in said instrument; that \_he is authorized to execute the foregoing instrument  
on behalf of the limited liability company for purposes set forth therein; and that,  
pursuant to that authority, \_he executed the foregoing instrument in the name of and on  
behalf of said limited liability company as the act and deed of said limited liability  
company.

Notary Stamp

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

\_\_\_\_\_  
Registration No.

## ATTACHMENT B: PARTICIPATING COLLEGES AND PAST SALES STATISTICS

### Participating Colleges and Their Population Statistics

College	Undergraduate and Graduate	Adult Continuing Education	Faculty Headcount –full and part-time	Total	Past Sales
Bronx Community College	11,368	12,749	1,595	25,712	\$1,120,320.00
Brooklyn College	17,004	-	2,959	19,963	\$1,655,559.30
City College	15,331	20,570	2,973	38,874	\$1,300,000.00
Graduate School of Public Health and Health Policy					
Guttman Community College	493	-	-	493	N/A
Hostos Community College	7,006	12,998	1,053	21,057	\$1,072,231.00
Hunter College	23,019	10,861	3,558	37,438	\$2,370,495.07
John Jay College	15,010	2,353	2,133	19,496	\$781,771.00
Law School	383	-	242	625	\$374,674.29
Medgar Evers College	6,941	2,980	1,045	10,516	\$257,226.37
Queens College	18,974	5,139	2,954	27,067	\$2,512,174.00
School of Journalism	192	-	91	283	N/A
School of Professional Studies	2,128	13,612	272	16,012	N/A
York College	8,307	15,811	1,333	25,451	\$1,070,000.00

### Colleges that may participate in the future and their population statistics

College	Undergraduate and Graduate	Adult Continuing Education	Faculty Headcount –full and part-time	Total	Past Sales
Baruch College	17,505	10,163	2,192	29,860	\$2,247,904.24
Borough of Manhattan Community College	24,186	9,639	2,603	36,428	\$3,816,611.27
College of Staten Island	14,441	7,286	2,306	24,033	\$2,063,052.00
New York City College of Technology	16,860	13,081	2,253	32,194	\$1,880,960.92
Graduate Center	4,416	-	1,877	6,293	N/A
Kingsborough Community College	18,634	25,344	2,673	46,651	\$2,350,484.00
LaGuardia Community College	19,773	63,696	2,282	85,751	\$2,718,307.00
Lehman College	12,085	13,003	1,986	27,074	\$1,360,610.16
Queensborough Community College	16,291	8,413	2,190	26,894	\$3,146,147.00

These sales numbers are given as a guide only and are not a guarantee of future volume or sales.

Any College not currently participating in this RFP or the Contract who chooses to participate at a later date shall become a “Participating College” at that time.

## **ATTACHMENT C: CONTRACTOR'S RESPONSIBILITY WHEN PROPOSING FORMER CUNY EMPLOYEES**

### **Contractor's responsibility when proposing former CUNY Employees**

It is the contractor's responsibility to ensure it proposes staff that is eligible to work on the proposed project. It is an individual's responsibility to comply with the Public Officer's Law.

The following procedure applies if either of the following criteria is met.

- It is two years or less between the date that the individual is proposed and the individual's date of separation from the State.
- The individual proposed has worked on the project while employed by CUNY regardless of how long ago they left CUNY.

### Procedure

- Before the contractor proposes an individual, the individual must obtain an opinion from the New York State Ethics Commission that approves their participation in the project as they are proposed.
- A copy of this opinion must be on file in the contractor's office and available for review by CUNY if requested.
- Failure to obtain New York State Ethics approval for an individual's participation in a project may jeopardize the firm's designation for that project.

## **ATTACHMENT D: REPRESENTATIVE LIST OF BOOKS**

See attached Attachment D to this RFP for a list of books. This represents a snapshot of the current list of books that CUNY uses.

**ATTACHMENT E: REFERENCE FORM**

<b>ITEM</b>	<b>PROPOSER RESPONSE</b>
PROPOSER NAME:	
CLIENT FOR WHOM SERVICES WERE PERFORMED:	
CONTACT NAME:	
PHONE NUMBER:	
E-MAIL ADDRESS:	
NATURE OF CLIENT'S BUSINESS:	
DATES DURING WHICH SERVICES WERE PROVIDED TO CLIENT:	
COMPLEXITY OF CLIENT'S BUSINESS (REVENUES, NUMBER OF LOCATIONS ETC.)?	
STAFF PROPOSED TO WORK ON CUNY'S PROJECT THAT WORKED FOR THIS CLIENT:	



## ATTACHMENT F: FINANCIAL PROPOSAL

### I. PAYMENTS AND COMMISSIONS - PARTICIPATING COLLEGES

<b>(A) INITIAL TERM (YEARS 1 – 5)</b>	
<b>1. One-time Signing Bonus (due at Contract signing)</b>	<b>1. \$</b> _____
2. Guaranteed Annual Commission (non-volume related)	2. \$ _____
<b>3. Five Year Amount (#2 x five)</b>	<b>3. \$</b> _____
4. Additional Percentage Commission on Gross Sales of text and non-text Course Materials	4. _____ %
5. Estimated Annual Course Materials Sales	5. \$10,000,000*
6. Annual Course Materials Commission (#4 x #5)	6. \$ _____
<b>7. Five Year Amount (#6 x five)</b>	<b>7. \$</b> _____
8. Additional Percentage Commission on Gross Sales of General Merchandise and non-Course Materials	8. _____ %
9. Estimated Annual General Merchandise and non-Course Material Sales	9. \$1,000,000*
10. Annual General Merchandise and non-Course Material Commission (#8 x #9)	10. \$ _____
<b>11. Five Year Amount (#10 x five)</b>	<b>11. \$</b> _____
12. Year One marketing and promotion expenditure	12. \$ _____
13. Years Two – Five marketing and promotion expenditures	13. \$ _____
<b>14. Five Year Amount (#12 + #13)</b>	<b>14. \$</b> _____
<b>15. TOTAL FIVE YEAR INITIAL TERM PAYMENTS (#1+#3+#7+#11+#14)</b>	<b>15. \$</b> _____

\*numbers are for calculation purposes only and actual annual sales may differ.

<b>(B) FIRST RENEWAL OPTION (YEARS 6 – 8)</b>	
<b>1. One-time Signing Bonus (due at Contract signing)</b>	<b>1. \$ _____</b>
2. Guaranteed Annual Commission (non-volume related)	2. \$ _____
<b>3. Three Year Amount (#2 x three)</b>	<b>3. \$ _____</b>
4. Additional Percentage Commission on Gross Sales of text and non-text Course Materials	4. _____ %
5. Estimated Annual Course Materials Sales	5. \$10,000,000*
6. Annual Course Materials Commission (#4 x #5)	6. \$ _____
<b>7. Three Year Amount (#6 x three)</b>	<b>7. \$ _____</b>
8. Additional Percentage Commission on Gross Sales of General Merchandise and non-Course Materials	8. _____ %
9. Estimated Annual General Merchandise and non-Course Material Sales	9. \$1,000,000*
10. Annual General Merchandise and non-Course Material Commission (#8 x #9)	10. \$ _____
<b>11. Three Year Amount(#10 x three)</b>	<b>11. \$ _____</b>
<b>12. Years Six - Eight marketing and promotion expenditures</b>	<b>12. \$ _____</b>
<b>13. TOTAL THREE YEAR FIRST RENEWAL PAYMENTS (#1+#3+#7+#11+#12)</b>	<b>13. \$ _____</b>

\*numbers are for calculation purposes only and actual annual sales may differ.

<b>(C) SECOND RENEWAL OPTION (YEARS 9 – 10)</b>	
<b>1. One-time Signing Bonus (due at Contract signing)</b>	<b>1. \$</b> _____
2. Guaranteed Annual Commission (non-volume related)	2. \$ _____
<b>3. Two Year Amount (#2 x two)</b>	<b>3. \$</b> _____
4. Additional Percentage Commission on Gross Sales of text and non-text Course Materials	4. _____ %
5. Estimated Annual Course Materials Sales	5. \$10,000,000*
6. Annual Course Materials Commission (#4 x #5)	6. \$ _____
<b>7. Two Year Amount (#6 x two)</b>	<b>7. \$</b> _____
8. Additional Percentage Commission on Gross Sales of General Merchandise and non-Course Materials	8. _____ %
9. Estimated Annual General Merchandise and non-Course Material Sales	9. \$1,000,000*
10. Annual General Merchandise and non-Course Material Commission (#8 x #9)	10. \$ _____
<b>11. Two Year Amount (#10 x two)</b>	<b>11. \$</b> _____
<b>12. Years Nine &amp; Ten marketing and promotion expenditures</b>	<b>12. \$</b> _____
<b>13. TOTAL TWO YEAR SECOND RENEWAL PAYMENTS (#1+#3+#7+#11+12)</b>	<b>13. \$</b> _____

\*numbers are for calculation purposes only and actual annual sales may differ.

## II. RETAIL PRICING STRUCTURE & COMMITMENT

Provide a minimum of a 5-year pricing structure for all course materials, general merchandise and any other proposed sale items. Include specific pricing commitment and incentives.

You may use the form below for part A or provide your own form, but include at least the information listed below. For the two option periods describe any proposed changes to your pricing plan.

### A. General Pricing Structure

Item	Pricing
<i>Example: Hard cover new textbooks</i>	<i>20% discount off publisher's suggested retail price</i>
Hard cover new textbooks	
Soft cover new textbooks	
Hard cover used textbooks	
Soft cover used textbooks	
E-textbooks	
Textbook rentals	
Course packs and custom course texts	
Hard cover professional, trade and reference books	
Soft cover professional, trade and reference books	
E-books (non textbook)	
Art supplies	
Lab equipment	
Medical equipment for students (stethoscopes)	
Other (list)	

### B. Volume Discounts

While CUNY cannot at this time guarantee the purchase of any specific number of particular titles, certain titles are used across the Participating Colleges. Describe any volume discounts that are available to CUNY, such as a larger discount than that listed in II.A for individual titles that will be assigned to courses that have historically attracted a large number of students.

### **III. PAYMENTS AND COMMISSIONS - NON-PARTICIPATING COLLEGES THAT JOIN THE CONTRACT IN THE FUTURE**

Propose a formula for determining the payments and commissions to be made to colleges that are not listed on Attachment B as Participating Colleges, but join the Contract in the future.

One option is to calculate a Unit College Payment for each of the three terms by dividing the proposed aggregate Signing Bonus and Guaranteed Annual Commission payments by the number of Participating Colleges.

For example, if an aggregate Signing Bonus of \$600,000 is proposed for the initial term of the Contract, the Signing Bonus Unit College Payment for purposes of this calculation will be \$42,857.00 ( $\$600,000/14$ ).

Similarly, an aggregate \$1,400,000 Guaranteed Annual Commission payment equates to a \$100,000 Guaranteed Annual Commission Unit College Payment ( $\$1,400,000/14$ ).

Each currently non-participating college that joins the Contract at a later date would be allocated the Unit College Signing Bonus and Guaranteed Annual Royalty payments, as well as the proposed percentage commission.

You may accept this option or propose another formula.

#### **IV. OTHER CONSIDERATION**

**Use additional sheets if necessary. Include:**

- Donations, such as for student scholarships
- Career development programs, including internships
- Any discounts, incentives or other financial or other consideration that Proposer wishes to offer
- Advertising proposals

# ATTACHMENT G: PROPOSER INFORMATION AND CERTIFICATIONS

(Please submit this with your Volume II: Contract Proposal)

**CONTRACT NUMBER: UCO - 630**

**PROJECT TITLE: Virtual Book Store**

---

## **I. PROPOSER INFORMATION**

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_

ZIP CODE: \_\_\_\_\_ - \_\_\_\_\_

TELEPHONE : (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

Proposer's Federal Identification Number (FIN): \_\_\_\_\_

- Please indicate below the name, title, address, and telephone/fax numbers of the person who prepared this proposal, as well as any other individual(s) with authority to negotiate and contractually bind the offeror and also who may be contacted during the period of proposal evaluation:

Preparer's Name/Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone:(\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Other Authorized Individual(s):

Name/Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone:(\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

**II. PROPOSER CERTIFICATIONS**

By signing below, I, \_\_\_\_\_, an authorized individual  
(NAME)

of \_\_\_\_\_, make the following certifications  
(FIRM)

regarding the subject proposal:

- 180-Day Offer: This proposal is a firm offer for a 180-day (or more) period from the date of submission.
- The firm has complied with the requirements of the Procurement Lobbying Act.
- M/W/DBE Status - **check all that apply** (NOTE: If you, or any sub-consultant, are claiming status as a certified minority-owned or women-owned business enterprise in New York State, you may be asked to produce copies of documentation of your status):

- \_\_\_ Minority-Owned
- \_\_\_ Women-Owned
- \_\_\_ Neither of the above

Signature: \_\_\_\_\_

**III. ACCEPTANCE OF AGREEMENT\***

By signing below, I, \_\_\_\_\_, authorized individual  
(NAME)

Of \_\_\_\_\_ hereby (ACCEPT/DO NOT ACCEPT) (circle one)  
(FIRM)

all the Terms and Conditions of Contract contained **Attachment A** to this Request for Proposals.

Signature: \_\_\_\_\_  
(NAME OF ACCEPTOR)

\* Any exceptions or deviations taken must contain sufficient amplification and justification to permit evaluation. The benefit to CUNY shall be explained for each exception taken. **List any exceptions on a separate sheet(s) of paper and attach to this form.** Such exceptions will not, of themselves, automatically cause a proposal to be termed unacceptable. However, a large number of exceptions - or one or more significant exceptions not providing benefit to CUNY - may result in rejection of such proposal as unacceptable.



## ATTACHMENT H: PROCUREMENT LOBBYING ACT AND FORMS

### Procurement Lobbying Act

1. **Required Forms:** The consultant shall sign and e-mail/fax the following forms. These forms are part of and due with the consultant's proposal.
  - a) **“Offeror’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)”**
  - b) **“Offerer Disclosure of Prior Non-Responsibility Determinations”.**

2. **CUNY Guidelines and Procedures**

Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through the Office of the University Controller (\*Designated Contacts). Until a designation is made, communication with any other CUNY employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.

Refer to “CUNY PROCUREMENT LOBBYING ACT GUIDELINES AND PROCEDURES” – see the Consultant’s page at CUNY’s “Doing Business with DOT” web site: <https://www.CUNY.gov/portal/page/portal/main/business-center/consultants/forms-publications-and-instructions>

3. **Summary of the policy and prohibitions regarding permissible contacts**

- a) **Contacts prior to designation:**

Any communications involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons:

The Office of the University Controller designation analyst  
The Office of the University Controller Assistant Controller

These are some communications exempted from this restriction:

Participation in a pre-proposal conference  
Protests, complaints of improper conduct or misrepresentation

If any other CUNY employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the CUNY employee. If the University determines an impermissible contact was made, that offeror cannot be awarded the contract. A second violation would lead to a four year bar on the award of public contracts to the offeror.

- b) **Contacts after designation**

CUNY identifies its primary negotiation contacts. The designated contacts include:

The Office of the University Controller designation analyst  
The Office of the University Controller Assistant Controller

The law does not limit who may be contacted during the negotiation process. However, if any CUNY employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the CUNY employee.

**c) Information Required from Offerers that contact CUNY staff, prior to contract approval by the Office of the State Comptroller:**

The individuals contacting CUNY should refer and shall be prepared to provide the following information, either by e-mail or fax as directed by CUNY:

Person's name, firm person works for, address of employer, telephone number, occupation, firm they are representing, and whether owner, employee, retained by or designated by the firm to appear before or contact the CUNY.

**d) Applicability to an executed contract**

Restrictions similar to those described above apply to approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offeror. The staff noted above as well as the project manager and consultant manager are considered designated contact persons. The University may identify other contact persons for each of these processes.

**4. Rules and regulations and more information on this law, please visit:**

<http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/Faq.htm> (Advisory Council FAQs)

<http://www.nylobby.state.ny.us/>

<http://www.nylobby.state.ny.us/lobbying.html> (New York State Lobbying Act)

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

For more information contact:

Paul Fallon

City University of New York

230 W. 41<sup>st</sup> Street

New York, N. Y. 10036

Attention: Vending Operations RFP

**Offeror's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)**

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

Contract Procurement No. UCO-630

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

***Form 1***

# Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

\_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

Contract Procurement Number: UCO-630

Date: \_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

(Please circle): No Yes

*If yes, please answer the next three questions:*

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle): No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle): No Yes

4. If you answered **yes** to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

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

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle): No Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

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

(Add additional pages as necessary)

**Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Form 2*

## ATTACHMENT I

### **Diversity Practices Questionnaire**

I, \_\_\_\_\_, as \_\_\_\_\_ (title) of \_\_\_\_\_ firm or company (hereafter referred to as the “company”), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

- (1) Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

*Diversity Scoring Matrix: 5 points*

- (2) What percentage of your company’s gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company’s clients or customers?

*Diversity Scoring Matrix: 16 points*

- (3) What percentage of your company’s overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company’s clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?<sup>1</sup>

*Diversity Scoring Matrix: 25 points*

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<sup>1</sup> Do not include onsite project overhead.

- (4) Does your company provide technical training<sup>2</sup> to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

*Diversity Scoring Matrix: 16 points*

- (5) Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

*Diversity Scoring Matrix: 12 points*

- (6) Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

*Diversity Scoring Matrix: 20 points*

- (7) Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

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<sup>2</sup> Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

If Yes, provide documentation of program activities and a copy of policy or program materials.

*Diversity Scoring Matrix: 6 points*

NOTE: Pursuant to Section 4.2 Proposal Scoring, the maximum possible weighed score for responses related to the “Diversity Practices Questionnaire” will be 5 points of the “Technical and Management Proposal”. The Diversity Scoring Matrix above reflects the unweighted score. For additional information, proposers are advised to review Section 4. Proposal Evaluation.

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of  
Owner/Official \_\_\_\_\_

Printed Name of  
Signatory \_\_\_\_\_

Title \_\_\_\_\_

Name of Business \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

\_\_\_\_\_  
Notary Public