



**Website Hosting Services
Request for Proposal # C000854**

Deadline for submissions:

08/23/2024, 3:00 pm EST

Designated Contact:

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Director of Procurement Services

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Table of Contents

Section 1: Summary Information Form	4
Section 2: Overview	5
Section 3: Background	5
Section 4: Bidder Qualifications	6
Section 4.1: Minimum Bidder Qualifications	6
Section 4.2: Preferred Bidder Qualifications/Experience	6
Section 5: Scope of Services	7
Section 5.1: Mandatory Services	7
Section 5.2: Desirable Services	9
Section 5.3: Optional Services	9
Section 6: Cost Proposal	9
Section 6.1: Travel Costs	9
Section 7: Key Dates	9
Section 7.1: Bidder Questions	9
Section 7.2: Pre-Bid Conference	9
Section 7.3: Pre-Bid Site Visit	Error! Bookmark not defined.
Section 7.4: Bid Opening	9
Section 8: Method of Award	10
Section 8.1: Evaluation Process	10
Section 8.2: SUNY's Reserved Rights	Error! Bookmark not defined.
Section 9: Proposal Submission Requirements	12
Section 9.1: Proposal Format	12
Section 10: Other Proposal Requirements	13
Section 10.1: Determination of Vendor Responsibility	13
Section 10.2: Procurement Lobbying Act – State Finance Law §§ 139-j and 139-k	14
Section 10.3: Non-Collusive Bidding Certification	15
Section 10.4: Executive Order 162 (EO 162)	15
Section 10.5: Executive Order 177 (EO 177)	15
Section 10.6: New York State Finance Law § 139-l Certification	15
Section 10.7: Diversity Requirements	16
Section 10.7.1: Equal Employment Opportunity Requirements	16

Section 10.7.2: Service-Disabled Veteran-Owned Businesses (SDVOB)	17
Section 10.7.3: Minority and Women-Owned Business Enterprises (MWBE) Error! Bookmark not defined.	
Section 10.7.4: Assessment of Diversity Practices	17
Section 10.8: Subcontracting	18
Section 10.9: General Insurance Requirements	18
Section 10.10: Automobile Insurance Requirements	19
Section 10.11: Compliance with NYS Consulting Services Reporting Requirements	19
Section 11: General Contract Terms & Conditions	20
Attachment 1: Diversity Practices Questionnaire	22
Attachment 2: New York State Human Rights Law Executive Order 177 Certification	24
Attachment 3: New York State Finance Law 139-I Certification	25
Attachment 4: Procurement Lobbying Act Certification	26
Attachment 5: Non-Collusive Bidding Certification.....	28
Exhibit A: State University of New York Standard Contract Clauses	30
Exhibit A-1: State University of New York Affirmative Action Clauses	34
Exhibit B: General Contract Terms and Conditions.....	Error! Bookmark not defined.
Exhibit C: SUNY Institutions	45
Exhibit D, SUNY Proposal Submission Guidelines.....	46

Section 1: Summary Information Form

THIS PAGE MUST BE SIGNED AND RETURNED WITH BIDDER'S RESPONSE

RFP #: C000854	RFP Title: Website Hosting Services	RFP Release Date: 8/2/24
Electronic copies of this RFP are available at: www.nyscr.org		
Key Events		
Requested Submission of Questions and Requests for Clarification	08/12/2024, 3:00 pm EST	
Response to questions/requests for clarification issued	08/14/2024, 3:00 pm EST	
Pre-Bid Conference	N/A	
Pre-Bid Site Visit (if applicable)	N/A	
Notice of Intent to Bid Due (if applicable)	N/A	
Proposal Due Date and Time (Any proposal received after the deadline will not be considered)	08/23/2024, 3:00 pm EST	
Anticipated Notification of Award	8/26/2024	
Anticipated Contract Start Date	10/1/2024	
<i>SUNY reserves the right, in its sole discretion, to modify the above schedule. Bidders will be notified of any changes in a timely manner</i>		
Contact Information		
Primary Contact: Susie Cobb Director of Procurement Services 44 Pierrepont Avenue Potsdam, NY 13676 cobbsm@potsdam.edu	Secondary Contact:	Other Contact:
Restricted Period		
In accordance with the requirements of New York State Finance Law Sections 139j and 139k ("Lobbying Law"), the restricted period for this procurement is now in effect. Therefore, all communications regarding this procurement must be handled through the State University of New York's designated contacts only.		
Bidder Information		
Legal Business Name of Company Bidding:	Bidder's Federal Tax Identification Number:	
D/B/A – Doing Business As (if applicable):	NYS Vendor ID Number:	
Street Address:	City/State:	Zip Code:
If applicable, place an "x" in the appropriate box: <i>(check all that apply)</i>		
<input type="checkbox"/> Small Business (if checked, provide # of employees ____) <input type="checkbox"/> Minority Owned Business (NYS Certified) <input type="checkbox"/> Certified)	<input type="checkbox"/> Disabled Veteran Owned Business <input type="checkbox"/> Women Owned Business (NYS)	
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> We are unable to bid at this time because:		
Bidders Signature:	Title:	
Printed Name:	Date:	

By signing this form, Bidder acknowledges (a) that the RFP instructions are understood; (b) that the Bidder is committed to servicing SUNY's needs in the required time period; and (c) that all information required by this RFP has been included in Bidder's proposal.

Section 2: Overview

This Request for Proposal (RFP) is issued by the State University of New York (herein after referred to as "SUNY") to solicit proposals for Content Management System/Hosted Software-as-a-Service (SaaS) solution for its public domain www.potsdam.edu managed in Drupal 8.

The results of this RFP will be used to award a **3** year contract, with the option to renew for an additional **2**-year term, to the Bidder determined to be most qualified.

Section 3.1: University Background

The State University of New York ("SUNY") is the largest comprehensive public university system in the United States, educating more than 400,000 students in more than 7,500 degree and certificate programs on 64 individual campuses with nearly 3 million alumni around the globe. Enrollments are detailed as follows:

- 13 University Centers and Doctoral Degree Granting Institutions offering academic programs through the doctoral level; each enroll between under 1,000 to over 19,000 undergraduate students;
- 13 University Colleges offering academic programs through master's level; each enrolls between 3,700 to over 9,000 undergraduate students;
- 8 University Colleges of Technology offering academic programs through master's level; each enroll between 1,600 and 6,000 undergraduate students; and
- 30 community colleges offering academic programs through the associate's level; each enrolls between 1,700 to over 26,000 undergraduate students. The SUNY Research Foundation works with the academic and business leadership of campuses to support research and discovery at SUNY through efficient and skillful administration of sponsored projects and adept transfer and sharing of intellectual property for public benefit and economic growth.

SUNY is committed to reducing administrative costs, maximizing efficiencies and increasing the amount of resources allocated to academics and student services. As part of this commitment, SUNY is collaboratively sourcing and streamlining procurement efforts. Bidders doing business with SUNY will also benefit from this streamlined procurement approach, as it saves the time and effort of responding individually to separate campuses and managing multiple agreements.

Section 3.2: Project Description

SUNY Potsdam is looking for a partner to host a Drupal 8 website that service as the primary site for our institution. The primary goals of this website are recruitment and providing information to current students, faculty, and staff. With the current agreement coming to an end, SUNY Potsdam is seeking a continuation of its webhosting services, without interruption.

Project objectives are:

- PHP 8.1+
- Support for Drupal 10+
- Robust platform-supported search with Apache solr integration
- Git integration
- Realtime log viewing
- Automated database backups + restoration
- Support for development, staging, and production environments
- Automatic Git tagging of deployments
- 24/7 support with 1 hour or less SLA
- 99.95% or greater uptime

- Varnish caching
- Ability to handle 5+ million pageviews/year
- 25GH+ database storage
- 50GB+ file system storage

Section 3: Bidder Qualifications

Section 3.1: Minimum Bidder Qualifications

A contract will be awarded only to a responsible, responsive and qualified Bidder, in a financial position to do the work specified. Proposals will be accepted only from Bidders meeting the following minimum qualifications:

1. Please provide valid client information for at least three references, with preference given to higher education clients; the College reserves the right to use reference check responses in its evaluation of proposals.
2. Provide details about company history, size and number of employees.
3. Does your company support other CMS products? If so, describe what they are and the segments they serve. How do those products compare to the solution you intend to propose for SUNY Potsdam?
4. If the vendor uses a third-party application, plug-in, or software, describe the relationship with that party and provide examples of its ability to identify and troubleshoot problems.
5. Provide contacts for any clients that have switched off your system in the past two years.
6. Describe your experience providing systems to higher education institutions or organizations similar in nature and scope to SUNY Potsdam.
7. Describe your experience working with higher education clients.
8. Describe how you solicit feedback from your higher education clients.
- 9. Identify and explain any cancelled or failed implementations of the Bidder's proposed solution resulting in contract termination in the last five (5) years or that are pending litigation.

SUNY reserves the right to contact client references to validate experience and the scope and quality of work. The Bidder is solely responsible for providing contact information for clients that are readily available to be contacted and will respond to questions. If SUNY is unable to contact a client, the Bidder will be provided one opportunity, with a deadline, to assist in obtaining cooperation from those clients that have not responded.

In response to this section complete and submit Attachment 6, Bidder Qualifications Submission Form.

Section 3.2: Preferred Bidder Qualifications/Experience

1. Please provide valid client information for at least three references, with preference given to higher education clients; the College reserves the right to use reference check responses in its evaluation of proposals.
2. Does your company support other CMS products? If so, describe what they are and the segments they serve.
3. If the vendor uses a third-party application, plug-in, or software, describe the relationship with that party and provide examples of its ability to identify and troubleshoot problems.
4. Provide contacts for any client that have migrated away from your system in the past two years.
5. Describe your experience providing systems to higher education institutions or organizations similar in nature and scope to SUNY Potsdam.
6. Describe your experience working with higher education clients.
7. Describe how you solicit feedback from your higher education clients.

Section 4: Scope of Services

Section 4.1: Mandatory Services

Technical Specifications

Technical requirements cover topics such as software installation, load balancing, database, OS, integration with other systems, etc.

Mandatory Technical Specifications

1. Operating System

- a. The system must run in Linux environment.
- b. Does your solution require other operating system services (include version releases)?
- c. Does your solution require other utilities? Please explain.
- d. Specify the mail protocols supported by the system.

2. Database

- a. CMS must be certified and supported on current stable releases of such databases such as Oracle, or MySQL. Specify which releases your solution supports.
- b. List all database connection types that your solution supports (example JDBC).

3. Web application server

- a. The CMS web/application server must be certified and supported on Apache HTTPD, Tomcat or JBOSS. Specify the releases supported by your solution.
- b. Specify any additional modules that are required in order for the system to function.
- c. Is your solution self-contained? Does it possess a built-in web server or web application server? Please explain.
- d. Explain how your CMS solution is configured. Is it integrated with the web server, or are there two (or more) standalone systems? If separate, describe how content is moved from the CMS to the web server. Describe how the failure of one would affect the other.

4. Load balancing

Business driver: Use existing Layer 4 load balancer systems to provide scalable, highly available services.

- a. Does your solution support load balancing to provide scalable, highly available services? Specify supported methods for load balancing.

5. Testing, Staging and Development

Business driver: Follow industry best practices for management of production services. They system must be supported and installed in multiple instances (i.e. development, testing/staging, production)

- a. Describe how the system supports off-line archive environments.

6. Mirroring and Backup

- a. Describe the system backup process and any specific utilities required.
- b. The system should be capable of supporting mirrored sites (e.g. storage and backup of content on multiple servers) for disaster recovery purposes.

7. Publishing

- a. Is your solution capable of operating with primary storage on a NAS (Network Attached Storage) and/or SAN (Storage Area Network)? Please explain.
- b. Does the solution publish documents to a remote file system or server? If so, does it use a standard encrypted communication channel (ex. WebDAV/SSL, SFTP, etc)? Please explain.

8. Performance and Reliability / Business Continuity

System performance is a critical factor in the acceptance and support of Drupal at SUNY Potsdam. It must scale as the number of documents and subsites increase. This is particularly important when the CMS serves content directly to the end user. With a broad global user base at SUNY Potsdam, the expectation for 24/7 availability continues to grow.

Performance

- a. How does your solution maintain peak performance as the number of content objects increases by orders of magnitude? Please explain.
- b. How does your solution maintain peak performance as the number of concurrent CMS users increases by orders of magnitude? Please explain.
- c. If the CMS serves content to the website visitor (either directly, or as a service of the front-end server), describe how your solution maintains peak performance as the number of concurrent websites hits increases by orders of magnitude.

Reliability

- d. Does the system use any third-party application or components as part of its overall makeup? If so, provide in detail the purpose of using such software, whether it is open-source or proprietary, and, if applicable, the nature of the relationship with that party and its commitment to resolving/troubleshooting issues.
- e. Describe possible single points of failure within the system. Describe what the resolution would be if such a failure occurred.
- f. Can content still be updated even if the CMS goes offline? Please explain.
- g. Does your solution have a proven track record for reliability and stability? Please explain.

Monitoring

- h. Is your solution capable of providing alerts for failures? Please explain.
- i. Does your solution log errors? If so, what error information is documented?
- j. Describe APIs or methods for monitoring system health / status and performance metrics.
- k. Describe how the system monitors status.

A. Training & Support

For this section, specify the types of training and support currently available with our system, including pricing, specific prerequisites, if it's included with certain modules, if it's add-on, all varying levels of support etc. Please be specific, including as much detailed information as possible.

2. Training

- a. Describe the types of online self-help, training materials, tutorials, and any other modules provided by the system.
 1. Is online contextual help available at the time of content entry?
 2. Is online help searchable?
- b. Provide a list of the printed documentation provided for installation, operation, use, and administration of Drupal.
- c. Do you provide an in-person, train-the-trainer program covering all user levels? If so, describe the program and the qualifications of the facilitator.
- d. Describe any skill evaluation tools you provide.
- e. Are there any help files provided by the system? If so, can these be customized for SUNY Potsdam?

3. Support

- a. Do you provide 24 x 7 support? What is the time frame of guaranteed initial response time?
 1. Describe any online user communities that exist.
 2. Describe methods of communicating with your customers.
 3. Describe any client gatherings/conventions that are held.
- b. Describe the process for responding to support emails or calls. Does a hierarchy exist (critical, urgent, normal) to categorize requests? Does response time vary based on each stage?

Section 4.2: Desirable Services

N/A

Section 4.3: Optional Services

N/A

Section 5: Cost Proposal

Complete Attachment D: Cost Proposal Submission Form. **No modifications may be made to the Cost Proposal Submission Form** and Bidders are encouraged to seek clarification. Modifications to the Cost Proposal Response Form may result in disqualification.

Cost proposals must be submitted in separate, sealed envelopes. No mention of cost should appear in the technical proposal. Failure to adhere to this requirement may result in disqualification.

- **Preparation Costs:** Bidder is responsible for all costs, direct or indirect, that it incurs related to the preparation and submission of a proposal in response to this event.
- **Pricing:** All prices and conditions must be included in the original proposal. Prices and conditions not included in the original proposal will be rejected.
- **Tax Exempt:** SUNY is exempt from sales tax. All prices should be quoted without the sales tax.

Section 5.1: Travel Costs

Costs must include all travel and out-of-pocket expenses required to perform the contract. SUNY will make no reimbursement for travel or travel-related expenses.

Section 6: Key Events

Section 6.1: Bidder Questions

If a Question and Answer period is provided for this solicitation, the schedule will be shown on the Summary Information Form, "Key Events," provided on the first page of this RFP. All questions must be submitted in writing, citing the particular RFP page, section, and paragraph numbers where applicable. Bidders should make best efforts to ensure all questions are submitted via email to the Designated Contacts no later than the time listed in the Key Events table in Section 1, Summary Information Form as questions received after the closing date for inquiries may not be responded to prior to the proposal due date. Only written answers are official. All Questions and Answers will be issued as addenda to this RFP and will be provided in writing to all potential Bidders.

It is the responsibility of the Bidder to inquire about any requirement of this event that is not understood.

SUNY will not be bound by oral responses to inquiries or written responses other than addenda.

Section 6.2: Pre-Bid Conference

N/A

Section 6.3: Bid Opening

SUNY reserves the right to not hold a public bid opening or at any time to postpone or cancel a scheduled bid opening. In the event a public bid opening is scheduled, Bidders will be notified.

Section 7: Method of Award

Section 7.1: Evaluation Process

This RFP is part of a competitive procurement process designed to serve the best interests of the State University of New York and the People of the State of New York. It is also designed to provide all Bidders with a fair and even opportunity to have their products and services considered. SUNY will conduct a comprehensive review of each responsive bid submitted in accordance with the terms of this RFP. Proposals will be evaluated on the basis of “best value” by an evaluation committee comprised of SUNY representatives, and shall be conducted in the following steps:

1. Administrative Review

Each proposal received by the due date and time will be screened for completeness and conformance of submission in accordance with Section 9, Proposal Submission Requirements.

2. Minimum Bidder Qualifications Review

Each proposal remaining after Administrative Review will advance to the evaluation committee to review responses for a determination of whether the Bidder has met the Minimum Bidder Qualifications.

Information provided in the proposal will be used to validate Minimum Bidder Qualifications and SUNY reserves the right to contact client references to validate required experience. If review of response and reference checks determine the Bidder does not meet Minimum Bidder Qualifications, the proposal will be deemed non-responsive and will not be considered further.

3. Technical Evaluation

Each proposal remaining after Minimum Bidder Qualifications Review will advance for review and independent evaluation and scoring by the technical review evaluation committee. If the technical evaluation determines the Bidder’s proposal does not meet any mandatory requirements, the proposal will be deemed inadequate and will not be considered further.

4. Diversity Practices

N/A

5. Cost Evaluation

The Cost Proposals of each bid remaining after the Technical Evaluation will be independently evaluated and scored by the designated contract officer.

6. Presentation or Interview

N/A

7. Finalist Review

In accordance with Section 163 (9) f of the NYS Finance Law, prior to making a contract award each contracting agency shall make a determination of responsibility of the proposed Contractor as discussed in Section 8.1, Vendor Responsibility. SUNY will conduct a review of vendor responsibility for the Bidder earning the highest final composite score, and any proposed subcontractors. SUNY will consider any information that raises issues concerning the vendor's responsibility, with consideration given to its relevance to the scope of work. The review will include factors such as financial and organizational capacity, legal authority, integrity and previous contract performance.

8. Selection

Proposals will be evaluated on the basis of "best value" by an evaluation committee comprised of SUNY representatives, utilizing an evaluation methodology that considers the following factors:

Technical Proposal	%
Technical Response (Proposal)	60
Total Technical Proposal	60%
Cost Proposal	40%
Total	100%

The Bidder earning the highest final composite score may be selected for a contract award with SUNY and, if selected, will be notified by SUNY. The contract award shall be made by issuance of an award notice. All Bidders will be notified of the name of the selected awardee. SUNY contracts may be subject to approval by the NYS Attorney General and the Office of the State Comptroller. SUNY reserves the right to award no contract pursuant to this RFP.

9. Reserved Rights

SUNY reserves the right to:

1. Reject any and all proposals received in response to this RFP, make a contract award in whole or in part.
2. Make no contract award.
3. Reject any or all portions of any proposal, to negotiate terms and conditions consistent with this RFP and to make an award for any or all remaining portions.
4. Withdraw the RFP at any time, at SUNY's sole discretion.
5. Disqualify any Bidder whose conduct or proposal fails to conform to the requirements of the RFP.
6. Use proposal information obtained through site visits, management interviews and the state's investigation of a Bidder's qualifications, experience ability or financial standing, and any material or information submitted by the Bidder in response to SUNY's request for clarifying information, in the course of evaluation and/or selection under the RFP.
7. Prior to the bid opening, amend the RFP specifications to correct errors of oversights, or to supply additional information, as it becomes available.
8. Request certified and non-certified audited financial statements for the past three (3) completed fiscal years and/or other appropriate supplementation including, but not limited to, interim financial statements and credit reports.
9. Request references and contact any or all references and perform other related due diligence.

10. Adjust or correct cost or cost figures with the concurrence of the Bidder if mathematical or typographical errors exist.
11. Waive requirements or amend this RFP upon notification to all Bidders. Mandatory requirements may be eliminated if unmet by all Bidders.
12. Negotiate with Bidders responding to this RFP within the requirements necessary to serve the best interests of SUNY.
13. Begin contract negotiations with another Bidder in order to serve the best interests of SUNY should contract negotiations with the Successful Bidder be unsuccessful within a time frame acceptable to SUNY.
14. Require clarifications from Bidders for purposes of assuring a full understanding of responsiveness, and permit revisions from all Bidders determined to be susceptible to contract award prior to award.

Section 8: Proposal Submission Requirements

A Bidder's proposal shall address the Bidder's ability and methodology for providing SUNY with the requested services. To be deemed "responsive" to this RFP, a Bidder must meet all mandatory requirements and qualifications and its written proposal must address all points and questions appearing in this RFP. In the event a Bidder's proposal is determined by SUNY to be "non-responsive," SUNY may disqualify the proposal. A disqualified proposal will not be further evaluated or considered for contract award. To facilitate SUNY's review of proposals, Bidders must address all points and questions that appear in this RFP, and should do so in the order that they appear. Responses should be labeled to correspond to the numbers/letters of the sections and subsections of this RFP.

Bidders must adhere to the Exhibit D, SUNY Proposal Submission Guidelines when submitting a proposal in response to this bid event.

Section 8.1: Proposal Format

1. Prepare a clearly readable proposal that includes all required information.
2. Bidders must submit all information requested by SUNY in written form. Proposals must be complete, accurate, and in the form requested.
3. Indicate any deviations from the technical specifications and if necessary, attach separate documents and/or explanation.
4. Proposal Packages:
 - a. Proposals should be submitted in sealed packages clearly labeled on the exterior addressed to the SUNY Primary contact, with the RFP number and title. Proposals not labeled as instructed risk being opened prior to the bid opening date, which may result in the proposal being rejected. All proposals and accompanying documentation shall become the property of SUNY and shall not be returned.
 - b. Cost proposals should be submitted in separate sealed envelopes. No mention of cost should appear in the technical proposal. Failure to adhere to this requirement may result in disqualification.
5. No telephone, facsimile, emailed or otherwise electronically submitted proposals will be accepted unless explicitly allowed in the RFP.
6. The proposal must be fully and properly executed by an authorized person. By signing, you certify (i) your express authority to sign on behalf of yourself, your company, or other entity; (ii) your full knowledge and acceptance of contents of this RFP, Exhibit A (State University of New

York Standard Contract Clauses), Exhibit A-1 (State University of New York Affirmative Action Clauses), State Finance Law §139-j and §139-k (Procurement Lobbying Certification); and (iii) that all information provided is complete, true and accurate. By signing you further affirm that you understand and agree to comply with the procedures on permissible contacts relating to this procurement as required by State Finance Law §139-j (3) and §139-j (6) (b). These procedures may be accessed at Procurement Lobbying:

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

7. Submit four (4) hard copies of your proposal and one (1) flash drive. Proposals must be by the due date and time and to the primary contact provided on the Summary Information Form. Bidders mailing their proposals must allow sufficient time to ensure receipt by the due date and time. Bidders are cautioned that even when using a trackable mailing/courier/messenger service, proposals must be received by the due date and time. While proposals may be signed for by personnel at SUNY prior to the due date and time, this does not guarantee that the identified office will receive the proposal by the due date and time.
8. Late Proposals For purposes of Bid openings, a Bid must be received at the contact's address as set forth in the Summary Information Form on or before the proposal due date as set forth in the Summary Information Form. A Late Bid is one that is not received at the location, date and time specified in this RFP. Any Bid received at the specified location after the time specified in this RFP will be considered a Late Bid. A Late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of this RFP are received, or; (ii) in the case of a multiple award, an insufficient number of timely bids were received to satisfy the multiple award; (iii) and acceptance of the Late Bid is in the best interest of SUNY. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of SUNY shall not excuse Late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse Late Bid submissions. Determinations relative to bid timeliness shall be at the sole discretion of the SUNY Chancellor or her designee.
9. All prices and conditions must be included in the original proposal. Prices and conditions not included in the original proposal will be rejected.
10. The submission of a proposal constitutes a non-revocable, binding offer to perform and provide said services. Such binding offer shall be firm and not revocable for a period of one-hundred eighty (180) days from the proposal due date. After one-hundred eighty (180) days, the proposal may remain in effect, subject to withdrawal communicated in writing signed by the Bidder. If this RFP is for the sale of goods pursuant to §2-205 of New York State Uniform Commercial Code, the proposal shall be firm, binding and not revocable for a period of ninety (90) days from proposal due date.
11. Bidder is responsible for all costs that it incurs, direct or indirect, related to the preparation and submission of a proposal in response to this RFP.
12. Each copy of the proposal must be accompanied by the documents listed in Attachment 1, Bid Submission Checklist.

Section 9: Other Proposal Requirements

Section 9.1: Determination of Vendor Responsibility

New York State procurement law requires that state agencies award contracts only to responsible Bidders. Additionally, the New York State Comptroller must be satisfied that a proposed Contractor is responsible before approving a contract award under Section 112 of the State Finance Law. Section

163 of the New York State Finance Law (“SFL”) requires that contracts for services and commodities be awarded on the basis of lowest price or best value “to a responsive and responsible Bidder.” Section 163 (9)(f) of the SFL requires that prior to making a contract award, each contracting agency shall make a determination of responsibility of the proposed Contractor. In accordance with these procurement laws, SUNY will conduct an affirmative review of vendor responsibility for all organizations or firms with which it conducts business.

In response to this section, Bidders and all proposed subcontractors who may receive more than \$100,000 over the life of the contract are required to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the VendRep System, see the VendRep System Instructions on the Office of State Comptroller (OSC) website, available at: www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Bidders opting to file a paper questionnaire may obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact SUNY System Administration for a copy of the paper form.

Section 9.2: Procurement Lobbying Act – State Finance Law §§ 139-j and 139-k

Prior to approval of the contract for which this RFP has been issued by SUNY, or if applicable, the Office of the State Comptroller, a Bidder shall not communicate with SUNY other than with the persons identified in this RFP as Designated Contacts or with a person who the Designated Contacts has advised the Bidder in writing is also a Designated Contact. Generally, the New York State Finance Law restricts communications between a Bidder or a person acting on behalf of a Bidder, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a “Contact”) which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the “restricted period” (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a vendor involved in a knowing and willful Contact.

SUNY has developed procedures regarding Contacts and their reporting, review and investigation. SUNY’s procurement record must demonstrate compliance with these procedures. A determination that a Bidder or a person acting on behalf of a Bidder has intentionally made a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§139-j and 139-k, is likely to result in denial of the award of contract under this RFP. Additional sanctions may apply. A complete copy of SUNY’s Procurement Lobbying Policy and Procedure and its accompanying forms is available for review at http://www.suny.edu/sunypdp/documents.cfm?doc_id=430

In response to this section, complete and submit Attachment 6, Procurement Lobbying Act Certification.

Section 9.3: Non-Collusive Bidding Certification

In response to this section, complete and submit a completed Attachment 7, Non-collusive Bidding Certification.

Section 9.4: Executive Order 162 (EO 162)

Governor Cuomo's Executive Order 162 requires state contractors to disclose data on the gender, race, ethnicity, job title, and salary of employees performing work on state contracts. Bidder agrees to submit Workforce Utilization Report (Form 7557-110) and to require the same information to be submitted by any of their subcontractors on the state contract, in such format as shall be required by SUNY on a monthly basis for all construction contracts and quarterly basis for all other contracts during the term of the contract. Empire State Development has provided specific details on this requirement at <https://esd.ny.gov/doing-business-ny/mwbe/mwbe-executive-order-162>.

Section 9.5: Executive Order 177 (EO 177)

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status. The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices. Generally, the Human Rights Law applies to: (i) all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment; (ii) employers with fewer than four employees in all cases involving sexual harassment; and (iii) any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, prior to contract award, selected Awardee must submit a certification that it does not have institutional policies or practices that fail to address harassment and discrimination as described above. SUNY is electing to obtain the certification with the bid documents to avoid unnecessary delay in the contract award process.

In response to this section, complete and submit Attachment 2, NYS Human Rights Law Executive Order 177 Certification.

Section 9.6: New York State Finance Law § 139-I Certification

Pursuant to N.Y. State Finance Law § 139-I, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and

sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate Bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such Bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the Bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, SUNY may reject the bid or decide that there are sufficient reasons to accept the bid without such certification.

In response to this section, complete and submit Attachment 3, New York State Finance Law § 139-I Certification.

Section 9.7: Diversity Requirements

Section 9.7.1: Equal Employment Opportunity Requirements

- a. Pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Bidder will not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin, military status, sexual orientation, gender identity or expression, age, disability, predisposing genetic characteristics, domestic violence victim status, familial status or marital status. The Bidder 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. The Bidder will state in all solicitations or advertisements for employees that, in the performance of this Contract, all qualified applicants will be afforded equal employment opportunities without discrimination.
- b. The Bidder will undertake, or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, if awarded a Contract pursuant to this solicitation, will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force during its legal engagement with SUNY.
- c. By submission of a bid or proposal in response to this solicitation, the Bidder agrees with all of the terms and conditions of SUNY Exhibit A including Clause 12 - Equal Employment Opportunities for Minorities and Women and acknowledges that, if the Bidder is awarded a Contract, The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall

apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

In response to this section, complete and submit SUNY Equal Employment Opportunities (EEO) Requirements 7557-108 identifying the anticipated work force to be utilized on the Contract. If awarded a Contract, vendor will, upon request, submit to SUNY, a workforce utilization report identifying the workforce actually utilized on the Contract, if known.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

Section 9.7.2: Service-Disabled Veteran-Owned Businesses (SDVOB)

SUNY is committed to the State's policy of encouraging the development of service-disabled veteran-owned businesses (SDVOB). The Service-Disabled Veteran-Owned Business Act (the "Act") became effective on May 12, 2014, and SUNY has implemented the State's comprehensive plan and operational guidelines to promote SDVOBs and to assist them in obtaining opportunities to participate in the procurement of goods and services by the State. SUNY will employ applicable measures and procedures provided by the Director of the Division of Service-Disabled Veterans' Business Development in the Office of General Services (the "Division"), to ensure that SDVOBs are afforded the opportunity for meaningful participation in the performance of SUNY's contracts and to assist in achieving the Act's statewide goal for participation on state contracts by SDVOBs. Any contractor who willfully and intentionally fails to comply with the SDVOB participation requirements shall be liable to SUNY for damages, calculated based on costs for administration of SUNY's SDVOB program.

For additional information please refer to the SDVOB requirements outlined in SDVOB Prospective Bidder's Notice (Forms 7564-121A, 7564-121B and 7564-121C). A SDVOB Utilization Plan must be submitted with all bids, utilizing Form 7564-107. All Forms are available at: http://www.suny.edu/sunypp/documents.cfm?doc_id=816.

Bidders are encouraged to apply to the Division for certification as a Service-Disabled Veteran-Owned Business, and to provide such documentation necessary to establish their status as such in accordance with the rules of the Director of the Division. For purposes of this solicitation, SUNY hereby establishes an overall goal of 6% for SDVOB participation.

Section 9.7.3: Assessment of Diversity Practices

SUNY seeks to engage contractors that have a demonstrated history of hiring, training, developing, promoting and retaining minority group members and women. Under 5 New York Code, Rules and Regulations (NYCRR) Part 141.1(o), diversity practices are the efforts of contractors to include New York State certified MWBEs in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with private entities and governmental units other than the State of New York.

In response to this section, complete and submit Attachment 3, Diversity Practices Questionnaire. This questionnaire elicits information about each prospective bidder in order to verify that its work environment demonstrates a strong commitment to diversity.

If this solicitation is for the services of an executive search firm, the SUNY Board of Trustees adopted a policy to establish diversity, equity and inclusiveness throughout the SUNY system. Diversity is broadly defined under that policy to include race, ethnicity, religion, sexual orientation, gender, gender identity and expression, age, socioeconomic status, status as a veteran, status as an individual with a disability, students undergoing transition (such as transfer, stop-out, international student acclimation), and first-generation students. In furtherance of this policy, all executive search firms are required to provide the following:

- Information about the diversity of your Firm's staff; and
- The Firm's success rate in placing diverse candidates.

Certification.

Section 9.8: Subcontracting

Bidders choosing to utilize the services of subcontractors' partners, joint venturers or other third parties to meet the scope of services set forth in this RFP, must provide detailed information as part of their proposal. Bidders must comply with the SUNY subcontracting contractual terms as set forth in Section 23, General contract Terms and Conditions, attached and incorporated into this RFP as Exhibit B.

When proposed subcontractor(s) are NYS Certified Minority and/or Women-Owned Business Enterprises (MWBE) firms or NYS Certified Service-Disabled Veteran-Owned Businesses (SDVOB) in compliance with requirements set forth in Section 10.7, the bidder must also complete appropriate forms as described in that section.

In response to this section, bidders must complete and submit Attachment 5: Proposed Subcontractor Information Submission Form, for each proposed subcontractor. Additionally, proposed subcontractors must file the required Vendor Responsibility Questionnaire as set forth in Section 10.1, when applicable. Bidders are encouraged to utilize NYS firms, as set forth in Exhibit D, Proposal Submission Guidelines.

Section 9.9: General Insurance Requirements

During the term of the awarded contract, the Successful Bidder (Contractor) must obtain and maintain insurance coverage at its own expense as provided in this paragraph and shall deliver Certificates of Insurance in a form satisfactory to SUNY before commencing any work under this contract. Certificates shall reference the Contract Number. Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Certificates shall be mailed to: State University of New York @ **Potsdam, Susie Cobb, 44 Pierrepoint Avenue, Potsdam, NY 13676.**

The policies of insurance set forth below shall be written by companies authorized by the New York Department of Financial Services to issue insurance in the state of New York ("admitted" carriers) with an A.M. Best company rating of "A-" or better. Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed

without at least thirty (30) days prior written notice except for non-payment as required by law to State University of New York @ Potsdam, Susie Cobb, 44 Pierrepont Avenue, Potsdam, NY 13676.

All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to SUNY for any claim arising from the Successful Bidder's work under the awarded contract, or as a result of the Successful Bidder's activities. Any other insurance maintained by SUNY shall be excess of and shall not contribute with the Successful Bidder's insurance, regardless of any "other insurance" clause contained in any SUNY policy of insurance.

At least two weeks prior to the expiration of any policy required by the awarded contract, evidence of renewal or replacement of insurance policies with terms no less favorable to SUNY than the expiring policies shall be delivered to SUNY in the manner required for service of Notice under the contract.

A professional liability policy (errors and omissions) in the amount of One Million Dollars (\$1,000,000.00), which shall be maintained for a period of three (3) years after completion of this contract. If said policy is issued on a claims-made policy form, the policy shall be purchased with extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

Workers Compensation, Disability Benefits and Paid Family Leave coverage for the life of this Agreement for the benefit of employees required to be covered by the New York State Workers Compensation Law and the New York State Disability Benefits and Paid Family Leave Law. Evidence of coverage must be provided on forms specified by the Commissioner of the Workers Compensation Board.

General Liability Insurance with limits no less than One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) in the aggregate. Such policy shall name the State University of New York as an additional insured and shall contain a provision that the State University of New York shall receive at least thirty (30) days written notice prior to material change, cancellation or expiration of such policy.

Section 9.10: Automobile Insurance Requirements

N/A

Section 9.11: Compliance with NYS Consulting Services Reporting Requirements

State Finance Law sections 8 and 163 requires that contractors annually report certain employment information to the contracting agency, the Department of Civil Service (DCS) and Office of the State Comptroller (SUNY). State contractors are required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor. State Finance Law Section 163(4)(g) imposes certain reporting requirements on contractors doing business with New York State. In furtherance of these reporting requirements, if applicable, Contractor agrees to complete and submit an initial planned employment data report and an annual employment report.

Section 10: General Contract Terms & Conditions

Any contract awarded resulting from this RFP shall include Exhibit A (State University of New York Standard Contract Clauses) and, for contracts in excess of \$25,000, Exhibit A-1 (State University of New York Affirmative Action Clauses). The provisions of Exhibit A and Exhibit A-1 shall take precedence over any provision in this RFP or any provisions in the contract awarded. Exhibits A and A-1 are attached to this RFP.

By submitting a proposal in response to this RFP, Bidder expressly agrees that, if awarded the Contract, such Contract will contain language substantially in accordance with the Terms and Conditions listed on Exhibit B, attached to this RFP.

**State University of New York
Notary Acknowledgement
(ACKNOWLEDGEMENT BY INDIVIDUAL)**

STATE OF NEW YORK)

COUNTY OF) ss.:

On this _____ day of _____, 20____, before me personally came

_____, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

Notary Public

(ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION)

STATE OF NEW YORK)

COUNTY OF) ss.:

On this _____ day of _____, 20____, before me personally came

_____, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of

_____ and that he/she executed the foregoing instrument in the firm name of _____ and that he/she

had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of _____ for the uses and purposes mentioned therein.

Notary Public

(ACKNOWLEDGEMENT BY CORPORATION)

STATE OF NEW YORK)

COUNTY OF) ss.:

On this ___ day of _____, 20____, before me personally came

_____, to me known, who being duly sworn, did depose and say that he/she resides in _____; that he/she is the

_____ (title) of

_____ (firm), the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

THIS PAGE MUST BE SIGNED IN THE ORIGINAL AND MUST ACCOMPANY EACH COPY OF YOUR BID.

Attachment 1: 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? Circle one: **Yes / No**

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

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? _____%

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?¹ _____%

4. Does your company provide technical training² to minority- and women-owned business enterprises? Circle one: **Yes / 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.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program? Circle one: **Yes / No**

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.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Circle one: **Yes / 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.

¹ Do not include onsite project overhead.

² 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.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Circle one: **Yes / No**

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

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Circle one: **Yes / No**

If Yes, complete the MWBE Utilization Plan, Form No. 7557-107.

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

Attachment 2: New York State Human Rights Law Executive Order 177 Certification

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Bidder Name: _____

By (signature): _____

Name: _____

Title: _____

Date: _____, 20__

Attachment 3: New York State Finance Law 139-I Certification

By submission of this bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such a policy shall, at a minimum, meet the requirements of section two hundred one-g of the Labor Law.

If the Bidder cannot make the foregoing certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification.

Bidder Name: _____

By (signature): _____

Name: _____

Title: _____

Date: _____, 20__

Attachment 4: Procurement Lobbying Act Certification

State Finance Law §§139-j and 139-k, enacted by Ch. 1 L. 2005, as amended by Ch. 596 L. 2005, effective January 1, 2006, regulate lobbying on government procurement, including procurements by State University to obtain commodities and services and to undertake real estate transactions.

Generally, the law restricts communications between a potential vendor or a person acting on behalf of the vendor, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a "Contact") which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the "restricted period" (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a vendor involved in a knowing and willful Contact. Each agency must develop guidelines and procedures regarding Contacts and procedures for the reporting and investigation of Contacts. The agency's procurement record must demonstrate compliance with these new requirements.

Accordingly, neither a potential vendor nor a person acting on behalf of the vendor should contact any individual at State University other than the person designated in this solicitation as State University's Designated Contact, nor attempt to unduly influence award of the contract. State University will make a record of all Contacts, and such records of Contact will become part of the procurement record for this solicitation. A determination that a vendor or a person acting on behalf of the vendor has made intentionally a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§139-j and 139-k is likely to result in denial of the award of contract under this solicitation. Additional sanctions may apply.

Please complete the following:

1. As defined in State Finance Law §§ 139-j (1)(a), has a governmental agency made a determination of non-responsibility with respect to the Offeror within the previous four years where such a finding was due to a violation of State Finance Law §§ 139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility? NO YES If yes, attach explanation
2. Has a governmental entity terminated or withheld a procurement contract with the Offeror because of violations of State Finance Law §§ 139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility? NO YES If yes, attach explanation.

CERTIFICATION:

By signing below the Bidder affirms and certifies that it: (1) has reviewed and understands the Policy and Procedure of SUNY, related to SFL §§ 139-j and 139-k, (2) agrees to comply with SUNY's procedure relating to Contacts with respect to this procurement, and (3) has provided information that is complete, true, and accurate with respect to SFL §§ 139-j and 139-k. Bidder understands that SUNY reserves the right to terminate any resulting contract in the event it is found that the certification filed by the Bidder in accordance State Finance Law §§139-j and 139-k was intentionally false or intentionally

incomplete. Upon such finding, SUNY may exercise its termination right by providing written notification to the Bidder in accordance with the written notification terms of the contract.

Firm Name and Address:	
FEIN #:	
Telephone Number:	
Fax Number:	
Email Address:	
Bidder's Name and Title:	
Bidder's Signature:	
Date:	

Attachment 5: Non-Collusive Bidding Certification

By Submission Of This Bid, Bidder And Each Person Signing On Behalf Of Bidder Certifies, And In The Case Of Joint Bid, Each Party Thereto Certifies As To Its Own Organization, Under Penalty Of Perjury, That To The Best Of His/Her Knowledge And Belief:

1. The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
3. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A Bid Shall Not Be Considered For Award Nor Shall Any Award Be Made Where [1], [2], [3] Above Have Not Been Complied With; Provided However, That If In Any Case The Bidder(s) Cannot Make The Foregoing Certification, The Bidder Shall So State And Shall Furnish Below A Signed Statement Which Sets Forth In Detail The Reasons Therefor:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this ____ day of _____, 20__ as the act and deed of said corporation of partnership.

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS

LEGAL RESIDENCE

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAME

LEGAL RESIDENCE

President:

Secretary:

Treasurer:

President:

Secretary:

Treasurer

Identifying Data

Potential Contractor	
Address	
Telephone	
Name of Responsible Corporate Officer	
Title of Responsible Corporate Officer	
Signature:	

Joint or combined bids by companies or firms must be certified on behalf of each participant.

Legal name of person, firm or corporation

Legal name of person, firm or corporation

By _____

By _____

Name:

Name:

Title:

Title:

Address:

Address:

Exhibit A: State University of New York Standard Contract Clauses

1: Standard Contract Clauses

EXHIBIT A

State University of New York

June 21, 2023

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "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 or State University of New York, whether a Contractor, licensor, licensee, lessor, lessee or any other party; the State University of New York shall hereinafter be referred to as "SUNY"):

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. PROHIBITION AGAINST ASSIGNMENT. 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 SUNY 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. SUNY retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with SUNY. The Contractor may, however, assign its right to receive payments without SUNY'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. (a) In accordance with Section 112 of the State Finance Law, the State Comptroller's approval is required for the following contracts: (i) goods, services, construction, and construction-related services for State University hospital or healthcare facilities which exceed \$150,000; (ii) purchases utilizing an Office of General Services (OGS) centralized contract which exceed \$200,000 (iii) goods, services, construction, and construction-related services not described in (i) or (ii) and which exceed \$75,000;

(b) If this contract exceeds the threshold amounts listed above in Paragraph 3(a), or, if this is an amendment for any amount to a contract which, as so amended, exceeds said threshold amounts, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State, and the State shall bear no liability, until it has been approved by the State Comptroller and filed in his or her office.

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

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

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

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

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of competitive 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 SUNY a non-collusive bidding certification on Contractor's behalf.

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

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

with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by SUNY, 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 SUNY and any other 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. SUNY 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 SUNY 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, SUNY's or 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 SUNY 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 SUNY or 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 SUNY contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

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

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women its workforce 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, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at SUNY's request, 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 sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. SUNY 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, SUNY 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 Exhibit A, the terms of this Exhibit 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 State Finance Law §165 (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 Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

20. OMNIBUS PROCUREMENT ACT OF 1992.

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by

signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

(b) The Contractor has complied with the Federal Equal Employment 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 of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain.

NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa, § 899-bb, and State Technology Law § 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT.

In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

25. PROCUREMENT LOBBYING.

To the extent this contract is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this contract the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be

intentionally false or intentionally incomplete, the State may terminate the contract by providing written notification to the Contractor in accordance with the terms of the contract.

26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this contract is a contract as defined by Tax Law § 5-a, if the Contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY 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 contract, if SUNY determines that such action is in the best interests of the State.

27. IRAN DIVESTMENT ACT. By entering into this contract, 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: <https://ogs.ny.gov/iran-divestment-act-2012>.

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 SUNY receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, SUNY 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 SUNY 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.

SUNY 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.

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

THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY

29. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

30. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

31. Hospital Retained Authority: Hospital Retained Authority: The Hospital retains direct, independent authority over the appointment and/or dismissal, in its sole discretion, of the facility's management level employees (including but not limited to, the Facility/Service Administrator/Director, the Medical Director, the Director of Nursing, the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer) and all licensed or certified health care staff. The Hospital retains the right to adopt and approve, at its sole discretion, the facility's operating and capital budgets. The Hospital retains independent control over and physical possession of the facility's books and records. The Hospital retains independent control over and physical possession of the facility's operating policies and procedures. The Hospital retains full authority and responsibility for, and control over, the operations and management of the facility. The Hospital retains the right and authority to independently adopt, approve and enforce, in its sole discretion, policies affecting the facility's delivery of health care services. The Hospital retains the right to independently adopt, approve and enforce, at its sole discretion, the disposition of assets and authority to incur debts. The Hospital retains the right to approve, at its sole discretion, contracts for administrative services, management and/or clinical services. The Hospital retains the right to approve, at its sole discretion, any facility debt. The Hospital retains the right to approve, at its sole discretion, settlements of administrative proceeding or litigation to which the facility is a party. No powers specifically reserved to the Hospital may be delegated to, or shared by, the Contractor or any other person. In addition, if there is any disagreement between the parties to this Agreement regarding control between the Hospital and the Contractor, the terms of this Section shall control.

Exhibit A-1: State University of New York Affirmative Action Clauses

Affirmative Action Clauses

March 31, 2020

1. DEFINITIONS. The following terms shall be defined in accordance with Section 310 of the Executive Law:

STATE CONTRACT herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an 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.

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken or assumed by a business enterprise not controlled by the prime contractor.

WOMEN-OWNED BUSINESS ENTERPRISE herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed fifteen million dollars (\$15,000,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed fifteen million dollars (\$15,000,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

MINORITY GROUP MEMBER shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

2. TERMS. The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University):

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and 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; (ii) 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; (iii) At the request of the University 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, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Form 108 - Staffing Plan To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(e) Form 112 - Workforce Employment Utilization Report ("Workforce Report")

(i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to SUNY of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the

specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

(ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

(iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, 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 Contractor's and/or subcontractor's total workforce, Contractor shall submit the workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

(f) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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.

(g) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(h) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(i) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(j) If a Contractor or Subcontractor does not have an existing affirmative action program,

the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(k) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

3. Contractor Identification. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority-and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

4. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN. The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring,

assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

5. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

6. MWBE Utilization Plan. (a) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan prior to the execution of the contract.

(b) MWBE Utilization Plan (Form 7557-107). Contractors are required to submit a Utilization Plan on Form 7557-107 with their bid or proposal. Complete the following steps to prepare the Utilization Plan:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
 - ii. insert a description of the contract scope of work which the Contractor intends to structure to increase the participation by NYS Certified minority- and women-owned enterprises on the State contract;
 - iii. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and
- (c) Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the SUNY University-wide MWBE Program Office.
- (d) The University will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:
- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
 - ii. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;
 - iii. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program Office has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and
 - iv. other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.
- (e) The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the University a written remedy in response to the notice of deficiency.
- i. If the written remedy that is submitted is not timely or is found to be inadequate, the University-wide MWBE Program Office shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by the University-wide MWBE Program Office.
 - ii. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- (f) The University may disqualify a Contractor as being non-responsive under the following circumstances:
- i. If a Contractor fails to submit a MWBE Utilization Plan;
 - ii. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;

- iii. If a Contractor fails to submit a request for waiver; or
 - iv. If the MWBE Program Office determines that the Contractor has failed to document Good Faith Efforts.
- (g) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- (h) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, SUNY shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.
- 7. Waivers.**
- (a) For Waiver Requests Contractor should use (Form 7557-114) – Waiver Request.
- (b) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete the University shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- (c) If University, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the University may issue a notice of deficiency to the Contractor. The contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.
- 8. MWBE Contractor Compliance Report.** Contractor is required to submit an MWBE Contractor Compliance Report (Form 7557-112) to the University by the 5th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract. Compliance Reports for construction contracts (Form 7557-110) must be submitted on a monthly basis.
- 9. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.**
- (i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.
- (ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.
- (b) **GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.** For all State Contracts in

excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of ____percent (____%) for Certified Minority-owned Business Enterprises and ____ percent (____%) for Certified Women-Owned Business Enterprises.

10. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, remedies or enforcement proceedings as allowed by the Contract.

11. DAMAGES FOR NON COMPLIANCE.

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

- a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.

Exhibit B General Contract Terms and Conditions

State University of New York

November 17, 2021

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "Agreement") 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 or State University of New York, whether a Contractor, licensor, licensee, lessor, lessee or any other party; the State University of New York shall hereinafter be referred to as "SUNY"):

1. **Binding Effect:** The Agreement shall be binding upon its execution by both parties and, if required, upon the written approvals of the New York State Office of the Attorney General (OAG) and the Office of the State Comptroller (OSC).
2. **Commodity Contract Sales Reports:** Upon written request by SUNY, the Contractor shall furnish reports of detailed sales transactions including, but not limited to, the following: Campus, Product Number (or SKU), Product Description, Manufacturer, quantity purchased, unit price and total dollar volume of purchases.
3. **Compliance with SUNY Policies:** At all times when on SUNY premises, all Contractor and subcontractor personnel shall be required to comply with SUNY regulations, policies and procedures including, but not limited to:
 - a. The requirement to wear an identity tag clearly identifying them as being an employee or agent of the Contractor or subcontractor, as applicable.
 - b. The prohibition against smoking within the buildings or on the grounds owned or leased by SUNY.
 - c. The parking regulations. Parking violations are subject to fines and are the sole responsibility of the Contractor. All vehicles must be registered with SUNY.The Contractor must communicate these policies to its employees, subcontractors, and any other individuals assigned to enter upon SUNY grounds and premises to perform the contract services.
4. **Amendments:** The Agreement may be amended at any time only upon mutual consent of the parties in writing. Such written amendment will not be effective until signed by both parties, and if required, approved by the OAG and OSC.
5. **Entirety/Order of Precedence:** The following documents will be annexed to, and incorporated into, and made part of, the Agreement:
 - a. Exhibit A, State University of New York Standard Contract Clauses
 - b. Exhibit A-1, State University of New York Affirmative Action Clauses (for contracts valued at greater than \$25,000)
 - c. The Agreement, including any attachments and schedules thereto
 - d. This Exhibit B, State University of New York General Contract Terms & Conditions
 - e. [IF APPLICABLE] Exhibit C, SUNY's solicitation (e.g. Request for Proposals, Invitation for Bids, Request for Quotes, or Request for Qualifications)
 - f. [IF APPLICABLE] Exhibit D, The Contractor's proposal.
 - g. [IF APPLICABLE] Exhibit E, Service Level Agreement

In the event of any inconsistency in, or conflict among, the document elements described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the order set forth above.

6. Contractor's Representations and Warranties:

- a. The Contractor warrants that the Services it provides under this Agreement will conform substantially to the specifications set out in the Agreement and that all work will be performed in a professional and workmanlike manner, in accordance with the highest applicable industry standards. For purposes of this Agreement, "highest applicable industry standards" shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances.

b. Contractor represents that it is fully capable and willing to provide the Services required by the Agreement; that it has full right and authority to enter into the Agreement; that consent, authorization, order or approval of, or filing or registration with any governmental agency, commission, board, other regulatory body, any person or entity or any corporate affiliates is either not required or has been obtained for or in connection with the execution and delivery of the Agreement by Contractor and the performance of the work hereunder; that it is not a party to, subject to, or bound by, any agreement, judgment, order, writ, injunction or decree which would prevent the carrying out of the Agreement.

7. Data Privacy and Security Requirements

When Contractor creates, receives, maintains or transmits data on behalf of SUNY ("SUNY Data"), Contractor will comply with the following requirements to safeguard SUNY Data:

7.1. Data Privacy

- i. Contractor will use any SUNY Data only for the purpose of fulfilling its duties under the Agreement and will not share such data with, or disclose it to, any third party without the prior written consent of SUNY, except as required by the Agreement or as otherwise required by law.
- ii. Contractor will provide access to SUNY Data only to its employees and subcontractors who need to access the data to fulfill its obligations under the Agreement.
- iii. Contractor will ensure that employees who perform work under the Agreement have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of the Agreement.
- iv. **Location of Data:** SUNY Data will not be stored outside the United States without prior written consent from SUNY and signing of the Agreement is not considered prior written consent.
- v. **FERPA Compliance:** In addition to any other confidentiality obligations herein, Contractor agrees that any disclosure of student education records by SUNY is subject to applicable law including Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and any implementing regulations. With respect to any such disclosure, Contractor agrees to the following: (1) that Contractor's use of student education records will be limited to those purposes expressly authorized in this Agreement; and (2) that Contractor will abide by the limitations on re-disclosure of education records and/or personally identifiable information from education records as set forth in FERPA and (3) that, unless the parties designate another exception in the Agreement, any disclosure of student education records is done so pursuant to the "school official" exception to FERPA, Contractor is a "school official" with a "legitimate educational interest" in any student education records disclosed, and Contractor is under the direct control of SUNY with respect to the use and maintenance of any such student education records. Education records are any and all records, data, or information related to any student or students of SUNY. This obligation shall survive termination of this Agreement.
- vi. **European Union ("EU") General Data Protection Regulation ("GDPR"):** Unless otherwise agreed in writing by the parties, Contractor, as well as any subcontractors Contractor may employ to perform any of its obligations under this Agreement, shall be solely responsible for compliance with the EU GDPR 2016/679, if applicable.
- vii. **Gramm-Leach-Bliley Act:** Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314) ("GLBA"), and to the extent Contractor is a financial institution or service provider of SUNY under these regulations with respect to student or customer information, Contractor will comply with the Safeguards Rule including the requirement to implement and maintain a written Information Security Program ("Program") in order to protect such nonpublic customer information (any record containing nonpublic personal information as defined in 16 CFR §313.3(n), whether in paper, electronic, or other form that is handled or maintained by or on behalf of SUNY or SUNY affiliates (16 CFR §314.2)).
- viii. **HIPAA:** The Contractor will comply with all personal health information protection requirements, if applicable, outlined in the Health Insurance Portability and Accountability Act (HIPAA) and complete the HIPAA Business Associate Agreement.

7.2. Data Security Requirements:

Contractor agrees at all times to maintain industry standard information and critical infrastructure security features and protocols which at a minimum, include: network firewall provisioning, intrusion detection, Distributed Denial of Service Scrubbing and regular (at least annually) third party vulnerability assessments, or equivalent.

Further, Contractor agrees to maintain information and critical infrastructure security that conforms to generally recognized "Industry Standards" and best practices that Contractor applies to its own network, infrastructure, applications and data. Generally recognized industry standards include but are not limited to the current standards and benchmarks set forth and maintained by the Center for Internet Security (See, <http://www.cisecurity.org>) or Payment Card Industry/Data Security Standards (PCI/DSS) (See, <http://www.pcisecuritystandards.org>).

Contractor will maintain a data security plan ("Data Security Plan"), or equivalent, which will comply with PCI DSS requirements and all applicable legal and regulatory requirements for data protection. In addition, the Data Security Plan will protect against any anticipated threats or hazards to the security or integrity of information stored on its servers and unauthorized access to or use of such information that could result in harm or inconvenience to the person who is the subject of such information. Contractor will review, at least annually, its Data Security Plan and update and revise it as needed. A copy of Contractors' Data Security Plan, or equivalent, will be made available to SUNY upon request.

Contractor shall maintain mandatory procedures and protocols outlined in its "Information Security Incident Response Policy" to be undertaken in the event of an identified or suspected breach of credit card information or current or former student information that is not Directory Information. A copy of Contractor's Information Security Incident Response Policy, or equivalent, will be made available to SUNY upon request. In the event a breach is suspected, Contractor will: (i) immediately contain the possible exposure while not compromising any data on its system; (ii) contact all members of its Corporate Security Committee; (iii) initiate a local analysis within 24 hours of the suspected breach to determine the type of information that has been potentially compromised, the individuals and SUNY institutions at risk, the incident time frame at risk and the suspected cause of the incident; and (iv) if a breach is identified, immediately contact affected parties with details of the breach.

Contractor shall, upon request:

1. Complete and submit the appropriate version of the Higher Education Community Vendor Assessment Tool (HECVAT).
2. Complete a SOC 2 Type 2 report, or equivalent, recognized information security audit report performed by an independent, certified 3rd party auditor covering the principles of Security, Availability, Confidentiality, and Privacy. The equivalent audit report must be based on a recognized information security standard.
3. Address the ability to provide the same levels and types of security through multiple data access methods (e.g., Web, mobile devices, or network)

Both the HECVAT and SOC 2 Type 2 report must be completed by the appropriate experts in this area.

7.3. Other Information Security and Service Requirements

7.3.1.COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS: Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa; State Technology Law § 208) ("ISBNA") and shall also comply with General Business Law § 899-bb ("SHIELD"). Contractor agrees to maintain the security of private information (as defined in ISBNA) and to prevent unauthorized use and/or disclosure of that private information; and implement administrative, physical, and technical safeguards required by law. Contractor agrees to fully disclose to SUNY pursuant to the ISBNA, SHIELD, FERPA, GLBA and any other applicable law any breach of the security of a system where Contractor creates, receives, maintains or transmits private information on behalf of SUNY following discovery or notification of the breach in the system as to any resident of New York State whose private information was, or is reasonably believed to have been, acquired by a person without valid authorization ("Security Incidents"). The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the system. Contractor shall be liable for the costs associated with such Security Incidents if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors. In the event of a Security Incident involving SUNY Data, pursuant to the ISBNA/SHIELD, SUNY has an obligation to notify every individual whose private information has been or may have been compromised. In such an instance, Contractor agrees that SUNY will

determine the manner in which such notification will be provided to the individuals involved pursuant to the ISBNA/SHIELD and agrees to indemnify SUNY against any cost arising from the Security Incident including, but not limited to, the cost of investigating the incident and of providing notice to the affected individuals. Upon termination or expiration of the Agreement, Contractor will follow SUNY's instructions relating to any SUNY Data remaining in Contractor's possession. Upon authorization from SUNY, Contractor will use data and document disposal practices that are reasonable and appropriate and in compliance with ISBNA/SHIELD and any other applicable law to prevent unauthorized access to or use of SUNY Data and will render the private information so that it cannot be read or reconstructed.

7.3.2. Service Levels (Applicable to Cloud Based, Remotely Hosted or Technology as A Service

Contracts): Contractor will ensure availability of the Services in accordance with the Agreement and the provisions of the Service Level Agreement annexed to the Agreement as Exhibit D and incorporated herein by reference.

7.3.3. Disaster Recovery: Contractor shall maintain disaster recovery services at the dedicated facility that is able to handle SUNY Data and business continuity needs under the Agreement in the event disaster recovery is needed. Throughout the term of the Agreement, Contractor shall maintain contracts or arrangements that are substantially equivalent or an improvement to those currently in effect. Contractor shall test disaster recovery capabilities, at least once every calendar year and provide SUNY with a copy of its disaster recovery plan, or equivalent, upon request.

7.3.4. Business Continuity: Contractor at all times must have a business continuity plan in place designed to minimize the risks associated with a disaster or similar incident impacting Contractor's ability to provide Services under the Agreement.

7.3.5. Data Portability: Contractor agrees that SUNY owns the SUNY Data in the solution and that Contractor will take all steps and actions, at the direction of SUNY, that are necessary and reasonable to facilitate and complete the orderly, efficient, expedient and professional transfer of the Services and SUNY Data, in whole or in part, in the format and on the media requested during the Term and/or upon the expiration or termination of the Agreement to SUNY, a SUNY Institution, or third-party that SUNY may select. The cost of any such transfer services are included in the Contractor's proposal.

8. Diesel Emissions Reduction Act of 2006 (the "Act"): If Contractor operates any diesel powered heavy duty vehicle(s) pursuant to the Agreement, Contractor certifies and warrants that all such heavy duty vehicles, as defined in New York State Environmental Conservation Law (ECL) Section 19-0323, will comply with the specifications and provisions of ECL Section 19-0323 and any regulations promulgated pursuant thereto, including but not limited to, 6 NYCRR Part 248, which requires the use of best available retrofit technology and ultra-low sulfur fuel. If needed, qualification for a waiver will be Contractor's responsibility. If applicable, annually, but no later than March 1st, Contractor shall complete and submit directly to SUNY, via electronic mail, the "Regulated Entity and Contractor Vehicle Inventory Form" and "Regulated Entity and Contractors Annual Report Form" that can be found at the New York State Department of Environmental Conservation ("DEC") website: <http://www.dec.ny.gov/chemical/4754.html>. SUNY reserves the right to require Contractor to periodically certify compliance with the provisions of ECL Section 19-0323.

9. Dispute Resolution: At the option of SUNY, the parties shall use good faith efforts to amicably resolve any dispute arising under this Agreement. If the parties are unable to amicably resolve the dispute within thirty (30) days, then either party may seek legal or equitable redress.

10. Electronic and Information Technology ("EIT") Accessibility:

- a) SUNY is committed to providing an accessible, usable, and integrated experience for all its students, staff and community. Electronic and information technology ("EIT") consists of information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information that will be deployed in connection with such technology, equipment or systems. Further, EIT includes, but is not limited to, telecommunications products, information kiosks and transaction machines, Internet and Intranet websites, web-delivered content, software, electronic books and electronic book reading systems, search engines and databases, multimedia, classroom technology, and office equipment.
- b) Contractor warrants that (i) Web-based EIT products provided under this Agreement shall conform to Web Content Accessibility Guidelines ("WCAG") 2.1 AA and (ii) non-web-based EIT products provided under this

Agreement shall meet or exceed the applicable accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194.

- c) Contractor agrees to provide evidence of compliance with these requirements before this Agreement becomes effective and any other time upon reasonable request of SUNY. Contractor will provide accessibility testing results and written documentation verifying accessibility. In the event EIT provided under this Agreement does not fully conform to the standards set forth above, Contractor will promptly advise SUNY in writing of the non-conformance and provide detailed information regarding the plans to achieve conformance, including but not limited to an intended timeline. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services.
- d) Failure to comply with these accessibility standards shall constitute a breach of this Agreement. Contractor agrees to indemnify and hold harmless SUNY from any claims arising out of its failure to comply with the foregoing accessibility standards.

11. Electronic Payment Authorization: Contractor shall provide complete and accurate billing invoices to SUNY in order to receive payment for its services. Billing invoices submitted to SUNY must contain all information and supporting documentation required by SUNY and OSC. Payment for invoices submitted by Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Vice Chancellor for Business and Finance of the State University of New York or designee, in her/his sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary New York State procedures and practices. Contractor shall comply with the OSC procedures to authorize payments. Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the OSC's electronic payment procedures, except where the Vice Chancellor or designee has expressly authorized payment by paper check as set forth above.

12. FOIL: Contractor acknowledges that this Agreement is subject to the New York State Freedom of Information Law ("FOIL") as set forth in Article 6 of the New York State Public Officers Law, and that only Contractor's proprietary information that satisfies the requirements of §87(2)(d) of the Public Officers Law shall be excepted from disclosure thereunder.

13. Independent Contractor: Contractor and its agents or employees or any entity or person acting on behalf of Contractor engaged in the performance of work shall at all times be deemed to be performing as an independent contractor. Contractor hereby covenants and agrees to act in accordance with that status. Contractor and its agents or employees or any entity or person acting on behalf of Contractor shall neither hold themselves out as, nor claim to be, officers or employees of SUNY and shall make no claim for, nor be entitled to, Workers' Compensation coverage, medical, unemployment, social security, retirement membership, or any other employment-related benefits from SUNY. Neither party shall have the right or authority to enter into binding contracts on behalf of the other.

14. Force Majeure:

Neither Contractor, SUNY, nor the State of New York shall be deemed in default of this Agreement, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, an act of war whether declared or undeclared, acts or threats of terrorism, contamination by radioactivity, pressure waves from devices travelling at supersonic speeds or damage caused by any aircraft or similar device, armed conflict, labor strike, lockout, boycott, electrical, internet or telecommunications outage that is not caused by the obligated party; or government restrictions, or other force majeure or other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected party to take precautions and which the affected party cannot avoid even by using its best efforts, provided that the Party relying upon this provision: (i) gives prompt written notice thereof to the other Party; and (ii) takes all steps reasonably necessary to mitigate the effects of the force majeure event. a) If a force majeure event extends for a period in excess of more than 90 days, either party may terminate all or any agreed upon portion of the Agreement immediately upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures, or SUNY's obligation to pay for Services provided by Contractor which have been approved by SUNY.

15. Liability and Indemnification:

- a) Contractor shall be fully liable for any act or omission of Contractor and its Staff (officers, employees, agents, subcontractors or licensees) and shall fully indemnify, defend, and hold harmless SUNY and the State, their

officials, agents, and employees, without limitation, from suits, actions, damages, and costs of every name and description (including reasonable attorney's fees and expenses) arising from any act or omission of Contractor or its Staff, including bodily or personal injury (including wrongful death); damage to real or tangible personal property (including electronic systems, software and databases); damage to intellectual property; and infringement or violation of a third party's patent, copyright, license, or other proprietary or intellectual property right; provided however that Contractor shall not be obligated to indemnify SUNY for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act of SUNY. For third party claims, SUNY shall give Contractor:

- i. Prompt written notice of any action, claim, suit, proceeding, or threat of such action for which Contractor is liable relating to this Agreement;
- ii. The opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at the Contractor's sole expense; and
- iii. Reasonable assistance in the defense of any such action, claim, suit, or proceeding at the expense of the Contractor.

Notwithstanding the foregoing, the State of New York reserves the right to join such action, claim, suit or proceeding at its sole expense, if it determines there is an issue involving a significant public interest.

- b) For all other claims, liabilities, and expenses arising under or related to this Agreement where liability is not otherwise set forth in this Agreement as being without limitation, and regardless of the basis on which the claim is made, the Contractor shall be liable for any act or omission of Contractor and its Staff, in an amount not to exceed, in aggregate, the greater of the dollar amount of this Agreement, or two times the charges paid to the Contractor. The Contractor shall not be responsible for loss of records or data unless the Contractor is required to back-up the records or data.
- c) Notwithstanding the above, neither party shall be liable for any consequential, indirect, or special damages of any kind that may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by SUNY, the Contractor, or by others.

16. Office of Federal Contract Compliance Programs: The Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

17. OSHA: If applicable, the Contractor shall provide all necessary safeguards for safety and protection as set forth by the United States Department of Labor, Occupational Safety and Health Administration.

18. Piggybacking: Other New York government entities as authorized by State Finance Law and General Municipal Law, and other departments, agencies or instrumentalities of the United States government as well as any department, agency, office, political subdivision, or instrumentality of any state or state(s) who are permitted to do so by their procurement laws and regulations, may utilize the Agreement upon securing all legally-required approvals. Private entities, cooperatives and consortia may also utilize the Agreement with the express approval of SUNY and the Contractor.

19. Public Announcements: Public announcements or news releases regarding this Agreement must not be made by the Contractor without the prior written approval of SUNY.

20. Restrictions on the Activities of Current and Former State Officers and Employees: All Contractor employees must be aware of and comply with the requirements of the New York State Public Officers Law, all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State. The Contractor and their employees are cautioned that the hiring of former state employees may violate the Ethics Law. The governing provisions are set forth in the New York State Public Officers Law §§ 73 and 74, and the underlying principle of law is to prevent conflicts of interest and encourage ethical behavior. The law may be found on the following website:
http://www.jcope.ny.gov/about/laws_regulations.html. Failure to comply with those provisions may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

- 21. Rights in Deliverables:** The Contractor hereby assigns to SUNY ownership of all materials created by the Contractor specifically for SUNY hereunder and required to be delivered to SUNY by virtue of their description or specification as a deliverable in the Statement of Work, upon SUNY's payment in full of applicable invoices. Deliverables exclude the Contractor's proprietary tools, methodologies, and any enhancements made to such tools and methodologies, which shall remain the sole property of the Contractor, and exclude any third-party components whether or not included or embedded therein. Deliverables shall be deemed to be "works made for hire" under federal copyright laws. Notwithstanding anything to the contrary, the Contractor retains all rights to its knowledge, experience and know-how (including processes, ideas, concepts and techniques) acquired in the course of performing the Services.
- 22. Severability and Enforceability:** If any provision of this Agreement is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the Agreement, unless it prevents accomplishment of the objectives and purposes of the Agreement, which determination shall be submitted as a dispute herein. In the event of any holding that the illegality or invalidity prevents accomplishment of the objectives and purposes of the Agreement, the Parties will immediately commence negotiations to remedy such illegality or invalidity.
- 23. Subcontractors, Partners, Joint Ventures and other Third Party Participants ("Subcontractor"):**
- a. Prior to commencing services, the Contractor shall submit a statement to SUNY describing the portion of the work and materials which subcontractors are to perform and must furnish any other information to document that such subcontractors have the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and provisions of the Agreement. If SUNY finds that the subcontractors are qualified, it will so notify the Contractor within ten (10) business days following receipt of Contractor's written statement described above. If SUNY determines that a subcontractor is not qualified, it will so notify the Contractor. The Contractor must, within ten (10) business days thereafter, submit a written statement as described above with respect to other proposed subcontractors, unless the Contractor decides to do such work itself and in SUNY's opinion is qualified to do such work.
 - b. SUNY's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under the Agreement. The Contractor shall be solely responsible to SUNY for the acts, omissions or defaults of such subcontractors and of such subcontractors' officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. No provisions of the awarded contract shall create or be construed as creating any contractual relation between SUNY and any subcontractor or with any person, firm or corporation employed by, contracted with or whose services are utilized by the Contractor.
 - c. The Contractor shall be fully responsible for the administration, integration, coordination, direction and supervision of all of its subcontractors and of all work. Contractor shall check requirements of the work and coordinate and adjust as required so that conflicts in time, work space, equipment and supplies do not occur in the work being performed by the Contractor with its own employees and the work being performed by its subcontractors.
 - d. No subcontractor shall be permitted to work until it has furnished satisfactory evidence to SUNY of the insurance required by law.
 - e. The Contractor shall execute a written agreement with each of its subcontractors and shall require all subcontractors to execute with their sub subcontractors a written agreement which shall bind each to the terms and provisions of the prime contract awarded, insofar as such terms and provisions are applicable to the work to be performed by such subcontractors. The Contractor shall require all subcontractors and sub subcontractors to promptly, upon request, file with SUNY a copy of such agreements upon request, from which the price and terms of payment may be deleted.
- 24. SUNY Requirements for Contractor Responsibility:**
- a. **General Responsibility:** The Contractor shall at all times during the Agreement term remain responsible. The Contractor agrees, if requested by the SUNY Chancellor or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
 - b. **Suspension of Work for Non-Responsibility:** The SUNY Chancellor, in his or her sole discretion, reserves the right to suspend any or all activities under the Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Agreement activities may resume at such time as the SUNY Chancellor or his or her designee issues a written notice authorizing a resumption of performance of the Agreement.

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

25. Termination: The Agreement awarded to the Contractor may be terminated by SUNY for any of the following reasons:

a. Convenience of SUNY: The Agreement may be terminated at any time upon receipt of 30 days prior written notice given by SUNY for any reason or no reason.

b. Event of default: The Agreement may be terminated in the event of breach of any of its provisions by the Contractor, or if the Contractor's Services are deemed unsatisfactory in SUNY's sole discretion, due to Contractor's fault or negligence, or that of its officers, employees, subcontractors, agents, licensees, licensors, or affiliates. In such event, SUNY will send a written cure notice in accordance with the Notice provisions of the Agreement, and the Contractor shall have 30 days to correct the deficiencies noted. If the deficiencies are not corrected, SUNY may terminate this Agreement immediately upon written notice.

c. Deficient Certifications: If the Agreement has a value greater than \$15,000, SUNY shall have the right to terminate in the event the State Finance Law sections 139-j and 139-k certifications executed by the Contractor are found to be false or incomplete. If the Agreement has a value of greater than \$100,000 and Contractor's sales for the immediately preceding four quarters were greater than \$300,000, or if the Agreement has a value of \$125,000 or greater, the University shall have the right to terminate in the event the Contractor's Department of Taxation and Finance Contractor Certification form, ST 220-CA, statements are found to be false or incomplete.

d. Lack of Funds: If for any reason the State of New York terminates or reduces its appropriations to SUNY, the Agreement may be terminated or reduced at SUNY's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to SUNY for payment of such costs. In any event, no liability shall be incurred by the State (including SUNY) beyond monies available for the purposes of the awarded contract.

e. SUNY may terminate the Agreement, upon written notice, in the event of any of the following: (i) The Contractor makes an assignment for the benefit of creditors; (ii) a petition in bankruptcy or any insolvency proceeding is filed by or against the Contractor and is not dismissed within 30 days from the date of filing; or (iii) all or substantially all of Contractor's property is levied upon or sold in any judicial proceeding.

f. Upon expiration or termination of this Agreement, the Contractor shall provide SUNY with all necessary records, electronic and otherwise, in the Contractor's possession relating to the Services provided under this Agreement. At SUNY's request, the Contractor shall also make appropriate Staff available to SUNY during normal business hours to answer questions regarding such records and the Services which have been provided by the Contractor under this Agreement. The Contractor shall cooperate to the fullest extent with any successor contractor in order to accomplish a smooth and orderly transition, so that the Services are uninterrupted and are not adversely impacted.

26. Trademarks and Service Marks: The Contractor understands and agrees that SUNY trademarks, service marks and logos are registered trademarks or owned by SUNY (the "Licensed Marks"). To the extent required by this Agreement, SUNY hereby grants to the Contractor a license to use the Licensed Marks only in connection with its work for SUNY under this Agreement. Such license shall limited to the use identified herein and shall not be construed as permission by SUNY to use its name or the Licensed Marks for any other purpose. The Contractor agrees not to use, reproduce, copy, or create materials bearing the SUNY name, logos or Licensed Marks without prior written approval and review of such materials by SUNY.

Exhibit C: SUNY Institutions

State-Operated Campuses:

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| <ol style="list-style-type: none">1. Albany, University at2. Alfred State College3. Binghamton, University at4. Brockport, College at5. Buffalo State College6. Buffalo, University at7. Canton8. Cobleskill9. Cortland10. Delhi11. Downstate Medical Center Hospital (Brooklyn)<ol style="list-style-type: none">i. University Hospital at Bay Ridge12. Empire State College13. Environmental Science & Forestry (Syracuse)14. Farmingdale15. Fredonia16. Geneseo17. Maritime18. Morrisville | <ol style="list-style-type: none">19. New Paltz20. Old Westbury21. Oneonta22. Optometry23. Oswego24. Plattsburgh25. Potsdam26. Purchase27. Stony Brook University<ol style="list-style-type: none">i. Campus Operationsii. University Medical Centeriii. Long Island State Veterans Home28. SUNY IT<ol style="list-style-type: none">i. Utica-Romeii. Albany, College of Nanoscale Science & Eng.29. SUNY System Administration (Albany & NYC)30. Upstate Medical University (Syracuse)<ol style="list-style-type: none">i. Upstate Golisano Children's Hospitalii. Upstate University Hospital at Community Campus (4900 Broad Road, Syracuse) |
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Statutory Colleges:

The SUNY System includes the following statutory colleges, schools that are a component of an independent, private university designated to receive public funds. SUNY Statutory Colleges may utilize SUNY University-wide agreements to support the functions of specific statutory schools, or their university as a whole.

1. Alfred University, NYS College of Ceramics at
2. Cornell University
 - NYS College of Agriculture & Life Sciences
 - NYS College of Human Ecology
 - NYS College of Veterinary Medicine
 - NYS School of Industrial and Labor Relations

Community Colleges:

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| <ol style="list-style-type: none">1. Adirondack2. Broome3. Cayuga4. Clinton5. Columbia-Greene6. Corning7. Dutchess8. Erie9. Fashion Institute of Technology10. Finger Lakes | <ol style="list-style-type: none">11. Fulton-Montgomery12. Genesee13. Herkimer County14. Hudson Valley15. Jamestown16. Jefferson17. Mohawk Valley18. Monroe19. Nassau20. Niagara County | <ol style="list-style-type: none">21. North Country22. Onondaga23. Orange Count24. Rockland25. Schenectady County26. Suffolk County27. Sullivan County28. Tompkins Cortland29. Ulster County30. Westchester |
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Other Affiliates:

1. SUNY Research Foundation

*Listing of State University of New York Institutions does not include related organizations such as campus foundations or auxiliary services which may be eligible to utilize the Agreement

Exhibit D, SUNY Proposal Submission Guidelines

- 1. Article XI of NYS Finance Law:** SUNY shall receive proposals pursuant to the provisions of Article XI of the State Finance Law. All proposals and accompanying documentation shall become the property of the SUNY and shall not be returned.
- 2. Bid Protest Procedures:** Bidders wishing to file a bid protest may do so in accordance with SUNY's procedures, available at http://www.suny.edu/sunypp/documents.cfm?doc_id=699.
- 3. Confidentiality/Freedom of Information Law:** All proposals submitted for SUNY's consideration will be held in confidence and will become the property of SUNY. However, the resulting contract is subject to the New York State Freedom of Information Law (FOIL), contained in Article 6 of the New York State Public Officer's Law. Therefore, if a Bidder believes that any information in its proposal constitutes a trade secret, should be treated as confidential and should not be disclosed upon a request pursuant to FOIL, Bidder shall submit with its proposal a separate letter addressed to SUNY (find contact information for FOIL Officers here: <https://www.suny.edu/contact/foil/campus-foil-officers/>), specifically (i) identifying the page number(s), line(s) or other appropriate designation(s) containing such information; (ii) explaining in detail why such information is a trade secret or confidential; and (iii) formally request that such information be held as confidential. Bidder's failure to submit such a letter with its proposal will constitute a waiver by the Bidder of any rights it may have under Section 89(5) of the Public Officers' Law relating to protection of trade secrets. The proprietary nature of the information designated confidential by the Bidder may be subject to disclosure if ordered by a court of competent jurisdiction. A request that an entire proposal be kept confidential is not advisable, because a proposal cannot reasonably consist exclusively of proprietary information.
- 4. Conflict of Interest:** Bidder may be requested to provide evidence that the award of a contract will not result in (i) a conflict of interest with regard to other work performed by Bidder; or (ii) a potential conflict of interest among Bidder's staff.
- 5. Contract Award:** Receipt of this event does not indicate that SUNY has predetermined Bidder's qualifications to receive a contract award. A contract award, if made, shall be based on evaluation of the proposal in accordance with the method of award and criteria set forth in this event. The Successful Bidder will be notified by SUNY by telephone and confirmed by letter.
- 6. Encouraging Use of New York State Businesses:** New York State businesses have a substantial presence in SUNY contracts and strongly contribute to the economies of New York and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders need to be aware that to the maximum extent practical and consistent with legal requirements, they are strongly encouraged to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology.

Utilizing New York State businesses in SUNY contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under this contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The SUNY therefore expects Bidders to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to New York State and its taxpayers.

- 7. Acceptance of RFP Content:** The terms and conditions included in this RFP, as well as the applicable portions of Bidder's proposal shall become contractual obligations if a contract is awarded with the exception of permitted extraneous terms as described under Extraneous Terms. **BIDDER'S FAILURE TO ACCEPT THESE TERMS AND CONDITIONS AND OBLIGATIONS SHALL RESULT IN REJECTION OF BIDDER'S PROPOSAL.**
- 8. Extraneous Terms:** Bids must conform to the terms set forth in this event. Extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection of the bid. Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.
- 9. Free and Open Competition:** SUNY encourages free and open competition. Whenever possible, terms, specifications, and conditions are designed to accomplish this objective, consistent with the necessity to satisfy the SUNY's needs.
- 10. Late Bids:** A bid must be received by the date and time set forth on the Summary Information Form. A late bid is one that is not received at the location, date and time specified in this event. Any bid received at the specified location after the time specified in this event will be considered a late bid. A late bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of this event are received; or; (ii) in the case of a multiple award, an insufficient number of timely bids were received to satisfy the multiple award; (iii) and acceptance of the late bid is in the best interest of SUNY. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of SUNY shall not excuse late bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse late bid submissions. Determinations relative to bid timeliness shall be at the sole discretion of the SUNY Chancellor or her designee.
- 11. No Claims or Rights:** By submitting a proposal, Bidder agrees that it will not make any claims for, or have any right to damages because of any misinterpretation or misunderstanding of the specifications or because of any misinformation or lack of information.
- 12. Notification of Errors, Inquiries, and Interpretation:** A Bidder is responsible to bring to SUNY's attention any deviations in the technical specifications and to make recommendations for any additional requirements deemed necessary as standard, or for work indicated in the specifications contained in this event. If SUNY in its discretion finds the deviations to be significant so as to require a change in the necessary specifications for the work, SUNY will notify all Bidders in writing of the change in specifications. No deviations from the technical specifications provided herein shall be made without written approval of SUNY.
- 13. Post Award Procedures, Debriefing, and Protests:** Bidders who responded to this event will be given written notice as to whether their bid was successful or unsuccessful. Upon being notified of their unsuccessful bid, Bidders may request a debriefing in writing within 15 calendar days of such notice. The 15-day period starts once unsuccessful Bidders are notified. Upon a Bidder's request for a debriefing:
- a. SUNY will schedule the debriefing within a reasonable time of such request.
 - b. The debriefing will be conducted in person with the Bidder, unless SUNY and the Bidder mutually agree to use another method such as by telephone, video conference or another type of electronic communication.
 - c. Bidders' written request must state whether the Bidder will be attending with counsel, to allow SUNY to arrange for SUNY counsel attendance if so determined.
 - d. The debriefings will cover, but not be limited to the following:
 - i. The reason why the bid was unsuccessful.
 - ii. The quantitative and qualitative analysis that was used by the campus to assess the relative merits of the bid, proposal or offer.
 - iii. How the selection criteria was applied to the unsuccessful bid.

- iv. If the request for debriefing is made prior to contract award, the debriefing shall be limited to review of that Bidder's bid.
- v. If the debriefing is held after the final award (which means OSC approval, if applicable), it, may cover the reason for the selection of the winning proposal.
- vi. To the extent practicable, general advice and guidance on the ways the Bidder can improve future proposal submission or be more responsive.

14. Services Outside the Scope of the Contract Awarded: SUNY shall not be responsible for any services provided by the Successful Bidder that are outside the scope of the contract awarded. SUNY shall not be responsible for any additional costs other than the costs for the services outlined herein, or for any work performed that has not been properly authorized in writing by SUNY.

15. Single Bid: More than one bid from an individual, firm, partnership, corporation or association under the same or different names will not be considered. Reasonable grounds for believing that a Bidder is interested in more than one proposal for the same work will cause the rejection of all proposals in which such Bidders are believed to be interested.