



**Request for Proposal # SU-121718**

**Performing Arts Center Café Operator**

**July 12, 2019**

**Bids Due: August 16, 2019 1:00 PM EDT**

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## SUMMARY INFORMATION FORM

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

<b>RFP #: SU-121718</b>	<b>RFP Title: Performing Arts Center Café Operator</b>	<b>RFP Release Date: July 12, 2019</b> Electronic copies of this RFP are available at: <a href="https://www.purchase.edu/offices/purchasing/procurement-opportunities/">https://www.purchase.edu/offices/purchasing/procurement-opportunities/</a>
<b>Key Events</b>		
Pre Bid Meeting/Walkthrough	July 26, 2019 11:00 AM EDT	
Questions/Requests for clarification due	August 2, 2019 12:00 PM EDT	
Response to questions/requests for clarifications issued	August 9, 2019 5:00 PM	
Bid Due Date and Time	<b>August 16, 2019 1:00 PM EDT</b>	
Presentation/Demonstration	August 22-23, 2019	
Anticipated Notification of Intent	August 28, 2019	
Anticipated Start Date	October 1, 2019	
Anticipated Term Length of License	Three years with 2 optional 1 year renewals	
<i>SUNY reserves the right, in its sole discretion, to modify the above schedule. Bidders will be notified via email of any changes in a timely manner</i>		
<b>Contact Information</b>		
<b>Primary Contact:</b> Elizabeth Pleva Associate Director of Contract & Procurement Services Purchase College Email: <a href="mailto:Elizabeth.pleva@purchase.edu">Elizabeth.pleva@purchase.edu</a>	<b>Secondary Contact:</b> Seth Soloway Director, Performing Arts Center Email: <a href="mailto:Seth.Soloway@purchase.edu">Seth.Soloway@purchase.edu</a>	<b>Other Contact:</b> F. Edward Herran Interim Director, Procurement and Accounts Payable Purchase College Email: <a href="mailto:edward.herran@purchase.edu">edward.herran@purchase.edu</a>
<b>Restricted Period</b>		
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, listed above, only.		
<b>Bidder Information</b>		
Legal Business Name of Company Bidding:	Bidder's Federal Tax Identification Number:	
D/B/A – Doing Business As (if applicable):	NYS Vendor ID Number (See Exhibit B, Section 16):	
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"/> Disabled Veteran Owned Business <input type="checkbox"/> Women Owned Business (NYS Certified)	
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:	

**THIS FORM MUST BE SIGNED AND RETURNED WITH BIDDER'S RESPONSE 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 bid.**

**State University of New York  
Purchase College  
Request for Proposals for the Operation Of  
Purchase College Performing Arts Center Café**

Purchase College (the College) is seeking Bids for the operation of a café located in its Performance Arts Center (PAC). The successful Bidder (“Licensee or Contractor”) will operate the concession providing services to patrons of the PAC and be completely responsible for the safe and responsible operation of this concession in accordance with the terms and conditions set forth in this Request for Proposals (“RFP”) and the License / Contract subsequently issued by SUNY.

**PART 1: PROCUREMENT SPECIFICATIONS**

**A: Introduction/Overview**

- The College has a Performing Arts Center (PAC) located on campus with a number of different performance spaces hosting a variety of events. The PAC has a café that serves food and beverages during a core of approximately 40 performances annually (Core Events). The College expects the Licensee operate the café during these Core Events. The Core Events for Academic Year 2018-19 with attendance numbers, times, and venue is as follows:

Date	Event	Start	End	Space	Attendance
9/16/2018	Orpheus Chamber Orchestra	3:00 PM	9:30 PM	Concert Hall	250
9/29/2018	Angelique Kidjo Talk	5:00 PM	6:30 PM	PepsiCo Theatre	100
10/6/2018	Jimmy Webb Dinner Cabaret	8:00 PM	10:00 PM	Repertory Theatre	180
10/13/2018	America String Quartet	8:00 PM	10:00PM	PepsiCo Theatre	400
10/20/2018	Lea DeLaria	8:00 PM	10:00PM	PepsiCo Theatre	350
10/21/2018	Westchester Phil	3:00 PM	5:00PM	Concert Hall	600
10/26/2018	Black Violin	8:00 PM	10:00PM	Concert Hall	1,000
10/27/2018	Velvet Caravan - Dinner Cabaret	8:00 PM	10:00PM	Repertory Theatre	180
11/2/2018	NW Dance Project	8:00 PM	9:30 PM	PepsiCo Theatre	250
11/4/2018	Aida Cuevas	3:00 PM	5:00 PM	PepsiCo Theatre	250
11/18/2018	Circa	3:00 PM	5:00 PM	Concert Hall	250

12/1/2018	Jazz - Joe Lovano	8:00 PM	10:00 PM	PepsiCo Theatre	200
12/1/2018	CMS	5:00 PM	7:00 PM	Recital Hall	250
12/2/2018	Rainbow Fish	3:00 PM	4:00 PM	Concert Hall	400
12/8/2018	Orpheus	5:00 PM	7:00 PM	Concert Hall	250
12/9/2018	Boston Brass	3:00 PM	5:00 PM	Concert Hall	450
12/14/2018	Rob Mathes	8:00 PM	11:00 PM	PepsiCo Theatre	700
12/15/2018	Rob Mathes	8:00 PM	11:00 PM	PepsiCo Theatre	700
12/16/2018	West Phil	3:00 PM	5:15 PM	Concert Hall	550
1/19/2019	Gina Chavez	8:00 PM	9:30 PM	PepsiCo Theatre	400
1/26/2019	CMS	5:00 PM	7:00 PM	Recital Hall	250
2/2/2019	Diavolo	8:00 PM	10:00 PM	PepsiCo Theatre	700
2/10/2019	Westchester Phil	3:00 PM	5:30 PM	Concert Hall	600
2/16/2019	Robin Speilberg - Dinner Cabaret	8:00 PM	10:00 PM	Repertory Theatre	150
3/2/2019	CMS	5:00 PM	7:00 PM	Recital Hall	250
3/9/2019	Lea DeLaria	8:00 PM	9:30 PM	PepsiCo Theatre	200
3/16/2019	Aspen Santa Fe	8:00 PM	10:00 PM	PepsiCo Theatre	320
3/23/2019	Portland Cello	8:00 PM	10:00 PM	PepsiCo Theatre	350
4/20/2019	Triplets of Bellville	8:00 PM	8:00 PM	PepsiCo Theatre	300
4/25/2019	BodyTraffic	8:00 PM	10:00 PM	PepsiCo Theatre	300

- The College has currently booked 33 Core Events for Academic Year 2019-20 which may be found at: [https://www.artscenter.org/?xdgp\\_series=center-series&xdgp\\_genre=0&post\\_type=0&s=.](https://www.artscenter.org/?xdgp_series=center-series&xdgp_genre=0&post_type=0&s=)
- It is the College's desire to partner with a provider of concession services to manage the café, utilizing the Licensee's own staff, and provide food and beverages (including beer, wine and optionally liquor choices served in a lidded container) for all Core Events for at least one hour prior to performances and during intermission.



- The College will issue a License to operate this café concession and expects remuneration from the café operator (Licensee) in consideration for the right to operate the café. This remuneration shall be in the form of an annual Licensing fee paid to the College equal to the amount in the bidder's cost proposal.
- In addition to these core events, the PAC has other events taking place on an almost daily basis. The College expects that the selected Licensee will work closely with PAC representatives in scheduling of events that the café will be open and the beverage and menu choices to be offered.
- The Licensee will review any proposed changes to beverage and menu items with PAC representatives and receive their approval prior to implementing any changes during scheduled monthly meetings.
- The Licensee will be capable of providing additional product offerings, outside of core menu items, depending on season and type of event.
- The Licensee will meet at least monthly with PAC representatives to evaluate Licensee's overall performance and discuss opportunities for improvements.
- The College understands that the café space, as currently configured, may not be sufficient for the Licensee to meet the vision outlined in this RFP and may need to alter the space to ensure suitable operation and profitability for the Licensee. The Licensee will be responsible for any and all necessary alterations to the space. The Licensee will work directly with and receive approval from PAC and College Facilities representatives for any and all alterations proposed for the PAC café. Additionally, the Licensee must meet current Purchase College and SUNY requirements for contractor selection and construction requirements which will be provided by the College.

## **PART 2: PROJECT SPECIFICATIONS**

### **A: Scope of Services**

The Licensee shall meet the following requirements:

- The café must be open and ready to serve agreed upon food and beverage choices at least one hour prior to all Performing Arts Series Core Events and during intermission.
- The café must be open and ready to serve agreed upon food and beverage choices at least one hour prior to the beginning and during intermission of Core Events.
- The Licensee will maintain a core menu that will be offered at all events. These items should include beverages such as water, coffee, tea, soft drinks, beer, and wine and food

choices such as packaged snacks, brownies, cookies, etc. These items will be determined by mutual agreement of the Licensee and PAC representatives.

- The Licensee will offer beer and wine at events and optionally liquor sales.
- The Licensee will prepare all food offsite and transport it to the PAC as necessary at their expense.
- The Licensee will provide everything necessary to operate the café including, but not limited to, beverage containers with lids, food containers, customer utensils, napkins, and anything necessary to serve the food and beverages and operate the café at their expense.
- The Licensee shall meet all applicable federal, state and local laws, rules and guidelines, ensuring the safety of their customers.
- The Licensee shall appoint a designated representative for communications with College personnel. The Licensee will schedule meetings with the College administrator at least quarterly to review License performance.
- The Licensee shall keep expense and revenue records to be reviewed by the administrator during regularly scheduled meetings.
- The Licensee shall be solely responsible for satisfying customer complaints. The Licensee shall keep a log of all customer complaints to be reviewed with the administrator during scheduled meetings.
- All Licensee vehicles and employees are to be registered with Office of Parking and Transportation. The Licensee shall document that all vehicles meet the College's insurance requirements, and that all drivers are properly licensed and vehicles properly registered.
- The Licensee shall be responsible for ensuring that all New York State labor laws and guidelines for employees are met, including without limitation to payment of prevailing wages (should they apply), Workers' Compensation Insurance, Disability Insurance and Paid Family Leave.
- The College will provide Licensee with telephone and internet services if necessary. Licensee will be billed monthly by the College for these optional services.
- The Licensee shall be liable to ensure that all required taxes and fees are paid to the appropriate agencies.
- No inventory is provided with this License.
- All additional required equipment not currently residing in the café space must be supplied by the Licensee.
- Minimal storage facilities are provided.
- The College grants only a right to use the Licensed Premises "as is/where is" and without warranty, and subject to Licensee performing all obligations contained in the concession license.
- The College will enter into a concession License with the successful bidder (Licensee) for a duration of three (3) years with two (2) optional one (1) year renewals.
- In return for the exclusive right to operate this service, the Licensee shall remunerate the College annually the Licensing fee set forth in the bidder's bid.

## **B: Technical Specifications**

### **I. Core Specifications menu, licenses etc.**

- a. Proposal Overview – The proposal overview will condense and highlight the contents of the proposal to document to the technical review committee the bidder’s broad understanding of the entire project.
- b. Understanding of the Project – Bidders must demonstrate their understanding of the needs of the College, the capabilities of their company regarding the project, and why they believe they are best qualified to meet the needs of the project and the College.
- c. Proposal Detail – In this section, bidders must address each of the following by number:
  1. Licenses: The bidder must document that they are fully licensed to provide the services as envisioned by this RFP. These licenses will include any and all licenses necessary to serve food, wine and beer.
  2. Experience: The bidder must document that they have the relevant experience and capabilities to meet the expectations specified in this RFP.
  3. Staffing: The bidder must document that they have the appropriate staffing to meet the performance requirements set forth in this RFP. The bidder will provide specific proposed event staffing to document that they are capable of meeting the requirements of the RFP. The bidder will also document the capabilities and professionalism of proposed staff and specify contingency plans in the event that PAC representatives report poor employee performance.
  4. Menu: The bidder will provide sample menus, including prices, that they would propose offering at the café.
  5. Proposed Strategy: The bidder will provide a detailed outline of how they intend to provide the services envisioned by this RFP. This will include specifics of the operation including, but not limited to, communication with PAC representatives, café operation, product selection and delivery, café operation and cleanup.
  6. Buildout: The bidder will provide details of any proposed physical changes, if any, to the existing café space, including but not limited to physical alteration of the space and any additional equipment the bidder intends to bring into the PAC café.
  7. References: Provide at least three relevant references where bidder has a concession operation of similar scope and nature and their contact information with your proposal.

### **II. Elective Specifications**

1. Liquor license: It is desirable that the vendor also has a license to sell liquor in addition to the core specification of beer and wine license.
2. Credit Cards and Alternate Payments: It is desirable that the café operator be capable of accepting payments other than cash. This would include credit cards, Apple Pay, etc.

## **PART 3: METHOD of AWARD**

This RFP is part of a competitive procurement process designed to serve the best interests of Purchase College, 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 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 of submission in accordance with this RFP and for determination of whether the bidder has met the requirements of the RFP.

### **2. Technical Evaluation**

Each proposal remaining after the Administrative Review, will be advanced for independent review, evaluation and scoring by a technical review evaluation committee. A bidder’s technical score will be the average of the committee members’ scores.

### **3. Revenue Evaluation**

The Revenue Proposal (Attachment 2: Revenue Bid) will be independently scored by the College’s Contracts Office. Attachment 2: Revenue Bid attached to this RFP must be completed by the bidder in accordance with the instructions provided on it. Bidders must not modify Attachment 2: Revenue Bid. Remuneration quoted is exclusive of Licensees costs of operation. Licensee is responsible for all expenses required to perform the contract. SUNY makes no reimbursement for travel or travel-related expenses. Cost Proposals must be placed in a separate sealed envelope and clearly labeled “Cost Proposal”. Under no circumstances shall costs be included or discussed in the technical proposal.

### **4. Presentation, Demonstration, Interview**

The top 3 bidders following the summation of the technical scoring and the cost scoring may be invited to make a presentation to discuss their proposal. If such presentations are to be held, SUNY will notify the bidders and schedule the time, location and format. The presentation will provide an opportunity for these bidders to clarify or elaborate on their proposals and provide tasting samples of menu items, but shall in no way change their original proposals. The presentation/demonstration/interview will be evaluated and scored by a presentation review evaluation committee. A bidder’s presentation score will be the average of the committee members’ scores. All costs associated with the bidder’s presentation will be borne by the bidder.

### **5. 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:

<b>Technical Proposal</b>	<b>Points</b>	<b>%</b>
Core Specifications	40	40%
Elective Specifications	10	10%
<b>Total Technical Proposal</b>	<b>50</b>	<b>50%</b>
<b>Vendor Demonstration / Presentation</b>	<b>20</b>	<b>20%</b>
<b>Cost Proposal</b>	<b>30</b>	<b>30%</b>
<b>Total</b>	<b>100</b>	<b>100%</b>

The bidder receiving the highest final composite score will be selected as tentative awardee and will be notified by the college as such. The college will enter into negotiations for the final contract with the awardee.

## 6. Notification of Award

Upon selection of the responsive and responsible bidder as noted above, all bidders will be notified of the award decision by the date specified in the Summary Information Form.

## PART 4: BIDDER QUALIFICATIONS

### A. Minimum Bidder Qualifications

Interested firms must: (1) be in the food service or catering industry; (2) have extensive experience in food service and/or catering with a minimum of three (3) years' experience providing such services; (3) employ experienced staff.

Proposals must address the bidder's ability and methodology for providing the College with the requested services. To be deemed "responsive" to this RFP, a bidder must meet all the mandatory requirements of this RFP and its written proposal must address all the points and questions appearing in this RFP. The College reserves the right to investigate or make any inquiries into the capabilities of any bidder to properly perform under any resultant contract.

### B. Bidder References

All Bidders must complete and submit **Attachment 3: Bidder Qualifications Submission Form**. Provide a minimum of three (3) references from similar-sized or larger organizations as the PAC. The references will demonstrate the bidder's capability with projects similar in scope, size and nature of this RFP. Provide a list of accounts where a contract was terminated by the customer within the past 5 years.

Each bidder must provide a narrative in **Attachment 3: Bidder Qualifications Submission Form (attaching additional pages as necessary)** addressing its ability and experience in the business of food service and/or catering services. Bidder must document its ability to service a contract with a volume similar to the scope of this RFP, by submitting financial statements and

documenting past sales history. SUNY reserves the right to reject any bidder who does not demonstrate financial stability sufficient for the scope of this RFP.

## **PART 5: GENERAL INFORMATION AND INSTRUCTIONS**

### **A. Bid Submission**

1. When submitting a Bid, you must:
  - a. Prepare a clearly readable paper document.
  - b. Print the name of your company on each page of the bid documents sent.
  - c. Complete and include all required Attachments and Exhibits as noted throughout this RFP.
2. Sign the bid. By signing you indicate full knowledge and acceptance of this Request for Proposal ("RFP") including Exhibits A and A-1 and all governing New York State Finance and Education Laws. The Bid must be completed in the name of the Bidder, Corporation or otherwise, and must be fully and properly executed by an authorized person. By signing, you also indicate your acceptance of terms and conditions substantially in accordance with those in Exhibit B.
3. Submit four (4) complete paper bids, all of which must have original signatures.
4. Bids must be sealed and submitted as specified in Section D. Bid Delivery below.

### **B. Bidder Questions**

A question and answer period is provided for this solicitation. The schedule is indicated on the Summary Information Page of this RFP. All questions must be submitted in writing. Questions must be **EMAILED** to arrive no later than 12:00 PM Eastern Time on the date indicated and must be directed to the designated contacts identified on the Summary Information Page. Questions received after the closing date for inquiries will not be answered. Only written answers are official. All questions and answers will be provided in writing to all potential bidders.

### **C. Bid Deviation**

If your bid differs from the specifications explain such deviation(s) or qualification(s) and if necessary attach separate documents and/or explanations.

### **D. Bid Delivery**

Bidders assume all risks for timely and properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to SUNY prior to the date of the bid opening. Late bids will be rejected.

1. Bid envelopes and packages should be clearly marked as **"BID ENCLOSED"**.
2. Exterior envelope should state the RFP number.

3. Revenue proposals (**Attachment 2: Revenue Bid**) must be placed in a separate sealed envelope, clearly marked “**Revenue Proposal**”. References to the revenue proposal anywhere else in the bid proposal will result in bidder disqualification.
4. Failure to complete all information on the bid envelope and/or packages may necessitate the premature opening of the bid and compromise confidentiality.
5. Bidders’ delivery of bid must allow extra time to comply with parking and security procedures that may be in effect at the delivery site.
6. Bids must be received in the Procurement Office at Purchase College by the due date and time indicated on the Summary Information Page. Bidders mailing their bids must allow sufficient time to ensure receipt of their Bids by the time specified. Late bids will be rejected. **Electronically transmitted and/or emailed Bids will not be accepted.**
7. The submission of a bid constitutes a binding offer to perform said services. Such binding offer shall be firm and not revocable for a period of 120 days after the deadline for RFP submission and will continue thereafter until bidder notifies the College otherwise, in writing. Such deadline may be further extended by mutual agreement of both parties.

**Bids must be submitted to:**

**Elizabeth Pleva**  
**Associate Director of Contract and Procurement Services**  
**Purchase College**  
**735 Anderson Hill Road**  
**Purchase, NY 10577**

**E. The College reserves the Right to:**

1. Reject any and all bids received in response to this RFP.
2. Award no License.
3. To terminate any resulting License for: (1) unavailability of funds; (2) cause; (3) in the event it is found that the certifications filed by the Licensee in accordance with State Finance Law §§139-j and 139-k are found to be intentionally false or intentionally incomplete; and if applicable, the Department of Taxation and Finance Licensee Certification Form ST-220CA was false or incomplete. Upon such finding, SUNY may exercise its termination right by providing written notification to the Licensee in accordance with the written notification terms of the License.
4. Request 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.
5. Request additional references and to contact any or all references.
6. Waive requirements or amend this RFP upon notification to all Bidders.
7. Eliminate mandatory requirements if unmet by all Bidders.
8. Adjust or correct cost or cost figures with the concurrence of the Bidder if mathematical or typographical errors exist.
9. Negotiate with Bidders responding to this RFP within the requirements necessary to serve the best interests of the College.

10. Begin License negotiations with another Bidder in order to serve the best interests of the College, should the College be unsuccessful in negotiating a License with the awardee within an acceptable time frame.
11. Reject any or all portions of any offer, to negotiate terms and conditions consistent with the solicitation, and to make an award for any or all remaining portions.
12. Request clarifications from Bidders for purposes of assuring a full understanding of responsiveness, and further to permit revisions from all Bidders determined to be susceptible to being selected for License award, prior to award.
13. Waive minor irregularities.

## **PART 6: GENERAL TERMS AND CONDITIONS**

### **1. 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 SUNY's needs.

### **2. Notification of Errors, Inquiries and Interpretation**

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 RFP. 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.

### **3. No Claims or Rights**

By submitting a Bid, 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.

### **4. Conflict of Interest**

Bidder may be requested to provide evidence that the award of a License 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. Acceptance of RFP Content**

The terms and conditions included in this RFP as well as the applicable portions of Bidder's Bid shall become contractual obligations if a License is awarded, except for non-material changes negotiated by the parties to the language contained in Exhibit B. **BIDDER'S FAILURE TO ACCEPT THIS SHALL RESULT IN REJECTION OF BIDDER'S BID.**



## **6. Services Outside Scope of the License Awarded**

SUNY shall not be responsible for any services provided by the successful Bidder that are outside the scope of the License awarded. SUNY shall not be responsible for any costs for any work performed that has not been properly authorized in writing by SUNY.

## **7. Confidentiality/Freedom of Information Law**

All Bids submitted for SUNY's consideration will become the property of SUNY. The resulting license 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 Bid 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 Bid a separate letter addressed to: Keisha Martin, FOIL Officer, Office of the President, Student Services Building, Purchase College, 735 Anderson Hill road, Purchase, NY 10577 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 Bid 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 Bid be kept confidential is not advisable, because a Bid cannot reasonably consist exclusively of proprietary information.

## **8. Diversity Contracting Requirements**

### **A. Diversity Practices**

SUNY seeks to engage Licensees that have a demonstrated history of hiring, training, developing, promoting and retaining minority group members and women. Under NYS Executive Law Article 15-A, 5 NYCRR Part 141.1(o) diversity practices are the efforts of Licensees 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 Licensees on Licenses with private entities and governmental units other than the State of New York. SUNY will assess the diversity practices of prospective bidders to encourage Licensees to engage in meaningful, capacity-building collaborations with MWBEs through evaluation of the Diversity Practices Questionnaire in Attachment 5. All prospective bidders are required to complete the attached 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. By responding to the RFP and completing this questionnaire, each prospective bidder acknowledges that:

(i) The Bidder has an equal employment opportunity policy statement (which shall be submitted to SUNY with each Bidder's Bid using the Form identified in subsection (iv) below).

a. Pursuant to Article 15 of the NY 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, 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 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. It 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.

b. The Bidder will state in all solicitations or advertisements for employees that, in the performance of this License, all qualified applicants will be afforded equal employment opportunities without discrimination 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.

(ii) Diversity, Equity and Inclusion: 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 or 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:

- a. information about the diversity of your Firm's staff; and
- b. the Firm's success rate in placing diverse candidates.

#### **B. Minority and Women-owned Business Enterprises (MWBE)**

Pursuant to New York State Executive Law Article 15-A, SUNY recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises and the employment of minority group members and women in the performance of SUNY Licenses.

For purposes of this solicitation, SUNY hereby establishes an overall goal of 0% for MWBE participation, 0 % for Minority-Owned Business Enterprises ("MBE") participation and 0% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). For additional information please refer to the MWBE requirements outlined in MWBE Prospective Bidder's Notice (Form 7557-121).

For guidance on how SUNY will determine a Licensee's good faith efforts to utilize certified MWBEs, refer to 5 NYCRR §142.8.

Please note the response forms identified in Form 7557-121 (SUNY MWBE Forms 7557-104, 7557-107 & 7557-108) must be submitted with all Bids. Forms are available in SUNY Procurement Policies and Procedures Document 7557 online at: [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=61](http://www.suny.edu/sunypp/documents.cfm?doc_id=61).

Bidders must submit an MWBE Utilization Plan on Form 7557-107 with their Bid. Upon License award and prior to License execution, the winning Licensee will enter its Statewide Utilization Management Plan (SUMP) and upload its Good Faith Effort documentation electronically on to the New York State Contract System by logging in at <https://ny.newnycontracts.com>. Should the Bidders experience technical difficulties, or require assistance in accordance with the Americans with Disabilities Act (ADA), Title II (42 USCA §§ 12311-12134 when accessing the system to submit the SUMP, contact Technical Support at <https://ny.newnycontracts.com/FrontEnd/ContactForm.asp?TN=ny&XID=2388>.

Any modifications or changes to the Statewide Utilization Management Plan after the License execution and during the term of the License must be reported on a revised SUMP and submitted to SUNY. SUNY will review the submitted SUMP and advise the Bidder of SUNY acceptance or issue a notice of deficiency within 30 days of receipt.

If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to SUNY F. Edward Herran, Interim Director of Procurement and Accounts Payable, Purchase College, 735 Anderson Hill Road, Purchase, NY 10577, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by SUNY to be inadequate, SUNY shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form 7557-114. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Bid.

SUNY may disqualify a Bidder as being non-responsive under the following circumstances:

- a. If a Bidder fails to submit a MWBE Utilization Plan;
- b. b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c. c) If a Bidder fails to submit a request for waiver; or
- d. d) If SUNY determines that the Bidder has failed to document good faith efforts.

Licensees shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the License. Requests for a partial or total waiver of established goal requirements made subsequent to License Award may be made at any time during the term of the License to SUNY, but must be made no later than prior to the submission of a request for final payment on the License.

Licensees are required to report their M/WBE Licensee Compliance & Payments at New York State Contract System ("NYSCS") by logging in at <https://ny.newnycontracts.com/> and respond to the monthly Compliance Audit Reminder. Licensees that are required to report, should do so monthly, upon receipt of the NYSCS Audit Reminder over the term of the License, documenting the progress made toward achievement of the MWBE goals of the License. To become familiar with the NYSCS as a Licensee, you may access the training classes without logging in by clicking here: <https://ny.newnycontracts.com/?IN=ny>.

### **C. Equal Employment Opportunity Requirements**

By submission of a Bid in response to this solicitation, the Bidder/Licensee agrees with all of the terms and conditions of SUNY Exhibit A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Licensee is required to ensure that it and any Sub Licensees awarded a sub License 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 Licensee, 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 License; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (Form 7557-108) identifying the anticipated work force to be utilized on the License and if awarded a License, will, upon request, submit to SUNY , a workforce utilization report identifying the workforce actually utilized on the License if known. Forms are available in SUNY Procurement Policies and Procedures Document 7557 online at: [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=611](http://www.suny.edu/sunypp/documents.cfm?doc_id=611).

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 License, leading to the withholding of funds, suspension or termination of the License or such other actions or enforcement proceedings as allowed by the License.

#### **D. Executive Order 162 (EO 162)**

Governor Cuomo’s Executive Order 162 requires state Licensees to disclose data on the gender, race, ethnicity, job title, and salary of employees performing work on state Licenses issued on or after June 1, 2017.

Bidder agrees to submit Workforce Utilization Report (Form 7557-110) and to require the same information to be submitted by any of their Sub Licensees on the state License, 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>.

#### **E. 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, pregnancy or pregnancy-related conditions, sexual orientation, gender identity or expression, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

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 License award, successful bidder 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 License award process. All bidders must sign and submit the certification attached to this RFP as Attachment 8.

#### **F. 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 Licenses and to assist in achieving the Act's statewide goal for participation on state Licenses by SDVOBs. The awarded License shall provide that any licensee 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](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 0% for SDVOB participation.

#### **9. Encouraging Use of New York State Businesses in Contract Performance**

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/Proposers/Licensees for this License for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the License. Such partnering may be as Sub Licensees, suppliers, protégés or other supporting roles.

#### **10. Office of Federal Contract Compliance Programs**

**This Licensee and Sub Licensee shall abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 41 CFR §§ 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 Licensees and Sub Licensees to employ and advance in employment qualified protected veterans and individuals with disabilities.**

## **11. State Finance Law § 139-l Certification**

Pursuant to N.Y. State Finance Law § 139-l, 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-l, 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.

The required certification is annexed as Attachment 7. Please complete it. 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.

## **12. 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, sub s and suppliers on its procurement Licenses. Information on the availability of New York State Sub Licensees and suppliers and a directory of minority and women-owned business enterprises is available from:

NYS Empire State Development      Website: <https://esd.ny.gov/doing-business-ny/small-business-hub>  
Division for Small Business  
625 Broadway, Albany, NY 12207  
Phone: 1-800-782-8369  
Email: [nylovessmbiz@esd.ny.gov](mailto:nylovessmbiz@esd.ny.gov)

## **13. Determination of Vendor Responsibility**

New York State procurement law requires that state agencies award Licenses only to responsible licensees. Additionally, the New York State Comptroller must be satisfied that a proposed licensee is responsible before approving a License 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 doing so, bidders 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](http://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](mailto: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](http://www.osc.state.ny.us/vendrep) or may contact SUNY System Administration for a copy of the paper form.

In addition:

- a. *General Responsibility.* The Contractor shall at all times during the contract awarded 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 contract awarded, 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 Licensee must comply with the terms of the suspension order. Contract activity 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 contract awarded.
- 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 contract awarded 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.

#### **14. Requirements of New York State's Recycling Program**

In accordance with the provisions of Section 165(3) of the State Finance Law and Executive Order No. 142, SUNY is required to purchase recycled products, if available, made with recycled content in accordance with rules and regulations established by the State Department of Environmental Conservation in development of that agency's Recycling Emblems Program. If the cost of a recycled product does not exceed by 10% the cost of a product made without recycled content (or by 15% if over 50% of the recycled materials are generated from the New York State waste stream), the recycled product must be purchased.

## **15. Compliance with New York State Tax Law**

The Tax Law was amended to require certain persons seeking to enter into contracts with state agencies to certify that they, their affiliates, their Sub Licensees and the affiliates of their Sub Licensees have a valid certificate of authority to collect New York state and local sales and compensating use taxes. Bidders must submit a completed, signed and notarized ST-220-CA form with their bid.

A fillable pdf is located at: [https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

## **16. State Consultant Services Reporting**

State Finance Law Section 163(4)(g) imposes certain reporting requirements on entities doing business with New York State. In furtherance of these reporting requirements, Contractor agrees to complete and submit an initial planned employment data report and an annual employment report. These forms, AC 3271-S New York State Consultant Service Contractor's Planned Employment and AC 3271-S New York Consultant Services Contractor's Annual Employment Report may be downloaded from: <https://www.osc.state.ny.us/agencies/forms/>

## **17. Exhibits**

The following documents will be incorporated into, and made part of, the License awarded:

- 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 License Agreement
- d. Exhibit B – SUNY General Terms and Conditions (with non-material changes, if any, negotiated between the parties).
- e. Exhibit C - this RFP
- f. Exhibit D, the Successful Bidder's Bid.

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.

## **18. Insurance**

The Successful Bidder (Licensee) 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 License Number. Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Certificates shall be mailed to: F. Edward Herran, Interim Director of Procurement and Accounts Payable, Purchase College, 735 Anderson Hill Road, Purchase, NY 10577

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 [License Administrator name and address].

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 License, 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 License, evidence of renewal or replacement of policies of insurance 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 License.

a. A Commercial Property insurance policy in the amount of TWO MILLION (\$2,000,000) covering the PAC café and the PAC and shall name the State University of New York as additional insured, which shall be maintained for a period of three (3) years after completion of this License. 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 the License is completed if coverage is cancelled or not renewed.

b. 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.

c. Commercial general liability insurance for claims that may arise out of ongoing and completed operations under the License. Such policy shall have liability limit of at least ONE MILLION (\$1,000,000) each occurrence, and at least TWO MILLION (\$2,000,000) general aggregate. In the event the Licensee holds a "claims made" policy as distinguished from an "occurrence" policy, the Licensee shall ensure that it obtains "tail" coverage to continue and extend coverage complying with this Agreement after the end of the "claims made" policy for no less than three (3) years. 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.

d. Business Automobile Liability insurance covering liability arising out of the use of any motor vehicle in connection with the work, including owned, leased, hired and non-owned vehicles bearing, or under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least ONE MILLION (\$1,000,000) per claim and TWO MILLION (\$2,000,000) in aggregate and shall name the State University of New York as additional insured. The limits may be provided through a combination of umbrella/excess liability policies.

e. Liquor Liability insurance covering liability arising out of the sales of alcoholic beverages of at least ONE MILLION (\$1,000,000) per occurrence and TWO MILLION (\$2,000,000,000) in aggregate and shall name the State University of New York as additional insured.

## **19. Procurement Lobbying Act – State Finance Law §§ 139-j and 139-k**

Prior to approval of the License 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 License. These restrictions apply to each License 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 License by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of License to a vendor involved in a knowing and willful Contact.

SUNY has developed guidelines regarding Contacts and procedures for the reporting and investigation of Contacts. SUNY’s procurement record must demonstrate compliance with these requirements. SUNY will make a record of all Contacts, and such records of Contact will become part of the procurement record for this RFP. 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 License 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/sunypp/documents.cfm?doc\\_id=430](http://www.suny.edu/sunypp/documents.cfm?doc_id=430)

Each Bidder shall submit with its Bid a written affirmation of its understanding of SUNY’s procurement lobbying procedures and agreement to comply with such procedures. The requisite form is provided at Attachment 3.

## **20. Restrictions on the Activities of Current and Former State Officers and Employees**

All Bidders 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.

Bidders and their employees are cautioned that the hiring of former state employees may violate the Ethics Law. The governing provisions are set forth 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 website of the New York State Joint Commission on Public Ethics at: [http://www.jcope.ny.gov/about/laws\\_regulations.html](http://www.jcope.ny.gov/about/laws_regulations.html). Failure to comply with these provisions may result in non-award of an agreement.

**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: Bid Submission Checklist

√	<b>Description</b>
<input type="checkbox"/>	RFP (page 1) Summary Information Form
<input type="checkbox"/>	Notary Acknowledgement Form
<input type="checkbox"/>	Attachment 1: Bid Submission Checklist
<input type="checkbox"/>	Attachment 2: Revenue Bid
<input type="checkbox"/>	Attachment 3: Bidder Qualifications Submission Form
<input type="checkbox"/>	Narrative addressing ability and experience
<input type="checkbox"/>	Attachment 4: Procurement Lobbying Act Certification
<input type="checkbox"/>	Attachment 5: Non-Collusive Bidding Certification
<input type="checkbox"/>	Attachment 7: NY State Finance Law § 139-1 Certification
<input type="checkbox"/>	Attachment 8: NYS Human Rights Law Executive Order 177 Certification
<input type="checkbox"/>	<p>Vendor Responsibility: File either the required Vendor Responsibility Questionnaire online via the New York State VendRep System or complete and submit a paper questionnaire.</p> <p><b>Select one:</b></p> <p><input type="checkbox"/> completed online questionnaire</p> <p><input type="checkbox"/> paper copy of questionnaire included in Bid.</p>
<input type="checkbox"/>	ST-220-CA Form
<input type="checkbox"/>	MWBE Form 7557-104:                      Equal Opportunity Policy Statement
<input type="checkbox"/>	MWBE Form 7557-108:                      EEO Staffing Plan

**Attachment 2: Revenue Bid**

Annual Licensing Fee to be paid to the College.

\_\_\_\_\_ (in numbers) \_\_\_\_\_ (in words)

**License is expected to begin on September 1, 2019.**

Employer's Federal Tax Identification Number: \_\_\_\_\_

Bidder's Name: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

County: \_\_\_\_\_

Bidder's Signature: \_\_\_\_\_

Printed or Typed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_ PHONE NO: ( ) \_\_\_\_\_ FAX NO: ( ) \_\_\_\_\_

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 this RFP terms and conditions, Exhibit A (State University of New York Standard Contract Clauses), Exhibit A-1 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: <https://ogs.ny.gov/acpl/>

### Attachment 3: Bidder Reference Submission Form

**Bidder References:**

References					
	Company Name:	Address:	Contact Name, email address, Phone #	Length of time as your customer	Estimated Total Annual Sales
1.					
2.					
3					
License Terminations					
Company Name:	Address:	Contact Name, email address, Phone #	Date of License Termination	Reason for License Termination	

## 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 License. These restrictions apply to each License 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 License by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of License 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 License. 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 License 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 License 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 License 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 License.

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 Therefore;**

[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 Licensee	
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:

**Attachment 6: NY State Finance Law 139-1 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 7: NY 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\_\_\_\_

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, whether a Contractor, licensor, licensee, lessor, lessee or any other party):

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

2. **PROHIBITION AGAINST ASSIGNMENT**

Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

3. **COMPTROLLER'S APPROVAL.** (a) In

accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph (3)(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding upon the State University until it has been approved by the Comptroller and filed in the Comptroller's 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 because of race, creed, color, sex, (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation

6. **WAGE AND HOURS PROVISIONS.** If this is a

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

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 on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief 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 or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State, 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 SUNY and its representatives and entities 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.

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State University of New York is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the State University of New York 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.

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

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

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

(2) 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

(3) 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.

(b) Contractor will include the provisions of "1", "2" and "3", 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 section. 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 certification, 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 Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have 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(5) of the 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  
30 South Pearl St., 7th Floor  
Albany, NY 12245  
Tel: 518-292-5100  
Fax: 518-292-5884  
email: opa@esd.ny.gov

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017

email: [mwb certification@esd.ny.gov](mailto:mwb certification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to 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 Search 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 SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY 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) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply

with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4-g) of the State Finance Law, 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 agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

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

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

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

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

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

28. 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.

29. (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.

**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 three million five hundred thousand dollars (\$3,500,000), 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 three million five hundred thousand dollars (\$3,500,000.00), 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 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. Quarterly MWBE Contractor Compliance Report.**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 7557-114) to the University by the 5<sup>th</sup> 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.

#### **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 zero percent (  0  %) for Certified Minority-Owned Business Enterprises and zero percent (  0  %) 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.

# State University of New York

## Exhibit B, General Contract Terms & Conditions

The following will be incorporated into all contracts, whether resulting from competitive solicitations or other means:

1. **Binding Effect:** The Agreement shall be binding upon its execution by both parties and, if required, by New York State law, upon the written approvals of the Attorney General and the Office of the State Comptroller. In the event that this Agreement is subject to the approval of the New York State Office of Attorney General and New York Office of State Comptroller, it shall not be valid and enforceable until such approval is given.
  
2. **Commodity Contract Sales Reports:** Upon written request by SUNY, the Licensee 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 NYS Consulting Services Reporting Requirements:** State Finance Law sections 8 and 163 requires that licensees annually report certain employment information to the contracting agency, the Department of Civil Service (DCS) and Office of the State Comptroller (SUNY). State licensees 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 licensee 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 licensee. State Finance Law Section 163(4)(g) imposes certain reporting requirements on licensees doing business with New York State. In furtherance of these reporting requirements, if applicable Licensee agrees to complete and submit an initial planned employment data report and an annual employment report, which are attached as Consulting Reporting Forms A and B, respectively.
  
4. **Compliance with SUNY Policies:** At all times when on SUNY premises, all Licensee and Sub Licensee 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 Licensee;
  - b. The prohibition against smoking within the buildings or on the grounds owned or leased by SUNY; and

- c. The parking regulations. Parking violations are subject to the fines and are the sole responsibility of the Licensee. All vehicles must be registered with SUNY.
  - d. The Licensee must communicate these policies to its employees, Sub Licensees, and any other individuals assigned to enter upon SUNY grounds and premises in connection with the services to be performed in connection with the contract awarded; and
5. **Contract Amendments:** The Contract may be amended at any time 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 Attorney General (“AG”) and the State Comptroller (“OSC”).

**6. Licensee’s Representations and Warranties**

- a. The Licensee shall provide all of the Services described in the Contract. The Licensee warrants that the Services it provides under this Contract will conform substantially to the specifications set out in the Contract and that all work will be performed in a professional and workmanlike manner, in accordance with 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. Licensee shall re-perform, at its own expense, any work not in compliance with this warranty brought to its attention within 90 days of the initial performance/re-performance of such work.

- b. The Licensee represents that it is fully capable and willing to provide the Services required by the Contract; that it has full right and authority to enter into the Contract; that no 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 required for or in connection with the execution and delivery of the Contract by the Licensee 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 Contract. The Licensee warrants and represents that all electronic and information technology (“EIT”), including but 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, and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data will be accessible in accordance with Section 504 and 508 of the Rehabilitation Act of 1973, as amended, and the American with Disabilities Act of 1990, as amended.

## **7. Data Management and Security**

### **a. Data Privacy**

- (i) Licensee will use any information it creates, receives, maintains or transmits on behalf of SUNY (“SUNY Data”) only for the purpose of fulfilling its duties under this Contract and will not share such data with or disclose it to any third party without the prior written consent of the SUNY, except as required by the Contract or as otherwise required by law.
- (ii) SUNY Data will not be stored outside the United States without prior written consent from SUNY.
- (iii) Licensee will provide access to SUNY Data only to its employees and Sub Licensees who need to access the data to fulfill its obligations under the Contract.
- (iv) Licensee will ensure that employees who perform work under the Contract have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of the Contract.
- (v) FERPA: If Licensee will have access to the SUNY’s Education Records as defined under the Family Educational Rights and Privacy Act (FERPA), Licensee acknowledges that for the purposes of the Contract it will be designated as a “school official” with “legitimate educational interests” in the SUNY Education records, as those terms have been defined under FERPA and its implementing regulations, and the Licensee agrees to abide by the limitations and requirements imposed on school officials. Licensee will use

the Education Records only for the purpose of fulfilling its duties under the Contract for SUNY's and its end users' benefit, and will not share such data with or disclose it to any third party except as provided for in the Contract, required by law, or authorized in writing by SUNY.

- (vi) European Union ("EU") General Data Protection Regulation ("GDPR"). The Licensee, as well as any Sub Licensees the licensee employs to process data on behalf of SUNY, shall comply with the European Union General Data Protection Regulation ("GDPR") (EU 2016/679).
- (vii) If Licensee will receive, maintain, process or otherwise will have access to confidential information on employees of the State University of New York. Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314), and to the extent the Licensee is a covered entity or applicable service provider under these regulations with respect to student or customer data, the Licensee will implement and maintain a written Information Security Program ("Program") in order to protect such confidential customer information. Customer information is defined as "any record containing nonpublic personal information as defined in 16 CFR §313(n)" (the FTC's Privacy Rule) "about a customer of a financial institution, whether in paper, electronic, or other form" (16 CFR §314.2). Examples of nonpublic personal customer information include, but are not limited to, name, address, phone number, social security number, bank and credit card account numbers and student identification numbers.

b. Data Security

- (i) Licensee agrees at all times to maintain network security which at a minimum, includes: network firewall provisioning, intrusion detection, and regular (three or more annually) third party vulnerability assessments, and provide a copy of the annual Attestation of Compliance (AOC) document, if requested. Further, Licensee agrees to maintain network security that conforms to generally recognized "Industry Standards" and best practices that Licensee applies to its own network. 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>. Licensee will maintain a data security plan ("Data Security Plan"), which will comply with Payment Card Industry Data Security Standards ("PCI DSS") requirements (as discussed in more detail below) 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. Licensee will review, at least annually, its Data Security Plan and update and revise it as needed. A copy of Licensees' Data Security Plan will be



made available to SUNY upon request.

- (ii) Licensee 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 Licensee’s Information Security Incident Response Policy will be made available to SUNY upon request. In the event a breach is suspected, Licensee 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 timeframe 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.

c. New York Information Breach and Notification Requirements

Licensee hereby acknowledges and agrees to use commercially reasonable efforts to maintain the security of private information (as defined in the New York State Information Security Breach and Notification Act, as amended “ISBNA”(General Business Law § 889-aa; State Technology Law § 208) that it creates, receives, maintains or transmits on behalf of SUNY and to prevent unauthorized use and/or disclosure of that private information; and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic private information that it creates, receives, maintains or transmits on behalf of SUNY (“SUNY Data”). Licensee hereby acknowledges and agrees to fully disclose to SUNY pursuant to the ISBNA, and any other applicable law any breach of the security of a system where Licensee 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. Licensee shall be liable for the costs associated with such breach if caused by Licensee’ negligent or willful acts or omissions, or the negligent or willful acts or omissions of Licensee’s agents, officers, employees or Sub Licensees. In the event of a Security Incident involving SUNY Data pursuant to the ISBNA, SUNY has an obligation to notify every individual whose private information has been or may have been compromised. In such an instance, the Licensee agrees that SUNY will determine the manner in which such notification will be provided to the individuals involved pursuant to the ISBNA and agrees to indemnify SUNY against any cost of providing any such legally required notice. Upon termination or expiration of the Contract, the Licensee will follow SUNY’s instructions relating to

any SUNY Data remaining in Licensee's possession. Upon authorization from SUNY, the Licensee will use data and document disposal practices that are reasonable and appropriate to prevent unauthorized access to or use of SUNY Data and will render the information so that it cannot be read or reconstructed.

d. Disaster Recovery

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

e. Data Portability

Licensee agrees to do whatever is reasonable and necessary to facilitate the orderly and professional transfer of the Services and SUNY Data upon the expiration or termination of the Contract to SUNY or a SUNY Institution, or do whatever subsequent vendor SUNY may select to provide similar services on SUNY's behalf.

f. Electronic Information Technology

SUNY is committed to providing an accessible, usable and integrated experience for 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. EIT includes, but is not limited to, telecommunication 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. SUNY expects that all such products, if supplied under the awarded contract, will be accessible as defined under Sections 504 and 508 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended.

8. **Diesel Emissions Reduction Act of 2006 (the "Act"):** If Licensee operates any diesel powered heavy duty vehicle(s) on behalf of SUNY pursuant to the Contract, Licensee 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 Licensee's responsibility. If applicable, annually, but no later than March 1st, Licensee shall complete and submit directly to SUNY, via electronic mail, the "Regulated Entity and Licensee Vehicle Inventory Form" and "Regulated Entity and Licensees 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 Licensee 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 Payment Authorization:** The Licensee shall provide complete and accurate billing invoices to SUNY in order to receive payment for its services. Billing invoices submitted to the SUNY must contain all information and supporting documentation required by SUNY and OSC. Payment for invoices submitted by the Licensee 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. The Licensee shall comply with the OSC procedures to authorize payments. Authorization forms are available at the OSC website at [www.osc.state.ny.us/epay](http://www.osc.state.ny.us/epay), by email at [ePayments@osc.state.ny.us](mailto:ePayments@osc.state.ny.us). The Licensee acknowledges that it will not receive payment on any invoices submitted under this contract 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.
- 11. FOIL:** Licensee 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 Licensee's proprietary information that satisfies the

requirements of §87(2)(d) of the Public Officers Law shall be excepted from disclosure thereunder.

- 12. Governing Laws:** The laws of New York State will govern this solicitation (if any) and resulting contract without regard for New York State's choice of law statute. The parties agree to bring any action to construe, interpret or enforce this Agreement in a court of competent jurisdiction in New York State. The Licensee agrees to submit itself to such court's jurisdiction.
- 13. Independent Licensee:** Licensee and its agents or employees or any entity or person acting on behalf of Licensee engaged in the performance of work shall at all times be deemed to be performing as an independent licensee. Licensee hereby covenants and agrees to act in accordance with that status. Licensee and its agents or employees or any entity or person acting on behalf of Licensee 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. Liability and Indemnification:** Neither Licensee, SUNY, nor the State of New York shall be deemed in default of this Contract, 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. 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 Contract 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 Licensee which have been approved by SUNY.

- a. Licensee shall be fully liable for any act or omission of Licensee and its Staff 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 Licensee 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 Licensee 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 Licensee:
  - i. Prompt written notice of any action, claim, suit, proceeding, or threat of such action for which Licensee is liable relating to this Contract;
  - ii. The opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at the Licensee's sole expense; and
  - iii. Reasonable assistance in the defense of any such action, claim, suit, or proceeding at the expense of the Licensee.

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 Contract where liability is not otherwise set forth in this Contract as being without limitation, and regardless of the basis on which the claim is made, the Licensee shall be liable for any act or omission of Licensee and its Staff, in an amount not to exceed, in aggregate, the greater of the dollar amount of this Contract, or two times the charges paid to the Licensee. The Licensee shall not be responsible for loss of records or data unless the Licensee 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 Licensee, or by others.
- d. SUNY may, in addition to other legal remedies available to it, retain from amounts otherwise due Licensee such monies as may be necessary to satisfy any claim for damages SUNY may have against the Licensee.

- 15. Office of Federal Contract Compliance Programs:** The Licensee and Sub Licensee 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 licensees and Sub Licensees to employ and advance in employment qualified protected veterans and individuals with disabilities.
- 16. OSHA:** If applicable, the Licensee shall provide all necessary safeguards for safety and protection as set forth by the United States Department of Labor, Occupational Safety and Health Administration.
- 17. Piggybacking:** Other New York State organizations may piggyback on the resultant contract with prior written approvals provided by the Licensee, SUNY, and, if applicable, NYS Office of General Services (OGS) and, if applicable, NYS Office of the Attorney General (OAG) and NYS Office of the State Comptroller (OSC).
- 18. Public Announcements:** Public announcements or news releases regarding this Contract must not be made by the Licensee without the prior written approval of SUNY.
- 19. Restrictions on the Activities of Current and Former State Officers and Employees:** All Licensee 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 Licensee 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](http://www.jcope.ny.gov/about/laws_regulations.html). Failure to comply with those provisions may result in termination of the Contract and/or other civil or criminal proceedings as required by law.

- 20. Rights in Deliverables:** The Licensee hereby assigns to SUNY ownership of all materials created by the Licensee 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 Licensee's proprietary tools, methodologies, and any enhancements made to such tools and methodologies, which shall remain the sole property of the Licensee, 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 Licensee retains all rights to its knowledge, experience and know-how (including processes, ideas, concepts and techniques) acquired in the course of performing the Services.
- 21. Sexual Harassment Policy.** If the Licensee is a New York State employer, by signing this Agreement it certifies that it has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees, in accord with the requirements of § 201-g of the New York State Labor Law.
- 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. Sub Licensees, Partners, Joint Venturers and other Third Party Participants ("Sub Licensee").** Prior to commencing services, the Licensee shall submit a statement to SUNY describing the portion of the work and materials which Sub Licensees are to perform and must furnish any other information to document that such Sub Licensees have the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and provisions of the contract. If SUNY finds that the Sub Licensees are qualified, it will so notify the Licensee within ten (10) business days following receipt of Licensee's written statement described above. If SUNY determines that a Sub Licensee is not qualified, it will so notify the Licensee. The Licensee must, within ten (10) business days thereafter, submit a written statement as described above with respect to other

proposed Sub Licensees, unless the Licensee decides to do such work itself and in SUNY's opinion is qualified to do such work.

- a. SUNY's approval of a Sub Licensee shall not relieve the Licensee of any of its responsibilities, duties and liabilities under the contract. The Licensee shall be solely responsible to SUNY for the acts, omissions or defaults of such Sub Licensees and of such Sub Licensees' officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Licensee 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 Sub Licensee or with any person, firm or corporation employed by, contracted with or whose services are utilized by the Licensee.
- b. The Licensee shall be fully responsible for the administration, integration, coordination, direction and supervision of all of its Sub Licensees and of all work. Licensee 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 Licensee with its own employees and the work being performed by its Sub Licensees.
- c. No Sub Licensee shall be permitted to work until it has furnished satisfactory evidence to SUNY of the insurance required by law.
- d. The Licensee shall execute a written agreement with each of its Sub Licensees and shall require all Sub Licensees to execute with their sub-Sub Licensees 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 Sub Licensees. The Licensee shall require all Sub Licensees and sub-Sub Licensees 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 Licensee Responsibility:**

- a. General Responsibility. The Licensee shall at all times during the contract awarded term remain responsible. The Licensee 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 contract awarded, at any time, when he or she discovers information that calls into question the responsibility of the Licensee. In the event of such suspension, the Licensee will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Licensee must comply with the terms of the suspension order. The Contract activity 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 contract awarded.
- c. Termination for Non-Responsibility. Upon written notice to the Licensee and a reasonable opportunity to be heard with appropriate SUNY officials or staff, the contract awarded may be terminated by the SUNY Chancellor or his or her designee at the Licensee's expense, where the Licensee 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 contract awarded to the Successful Bidder may be terminated by SUNY for any of the following reasons:

- a. Convenience of SUNY: The Contract 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 Contract may be terminated in the event of breach of any of its provisions by the Licensee, or if the Licensee's Services are deemed unsatisfactory in SUNY's sole discretion, due to Licensee's fault or negligence, or that of its officers, employees, Sub Licensees, agents, licensees, licensors, or affiliates. In such event, SUNY will send a written cure notice in accordance with the Notice provisions of the contract, and the Licensee shall have 30 days to correct the deficiencies noted. If the deficiencies are not corrected, SUNY may terminate this contract immediately upon written notice.
- c. Deficient Certifications: If the awarded contract 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 Licensee are found to be false or incomplete. If the contract has a value of greater than \$100,000 and Licensee's sales for the immediately preceding four quarters were greater than \$300,000, or if the contract has a value of \$125,000 or greater, the University shall have the right to terminate in the event the Licensee's Department of Taxation and Finance Licensee 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 awarded contract 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 Licensee 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 awarded contract, upon written notice, in the event of any of the following: (i) The Licensee makes an assignment for the benefit of creditors; (ii) a petition in bankruptcy or any insolvency proceeding is filed by or against the Licensee and is not dismissed within 30 days from the date of filing; or (iii) all or substantially all of Licensee's property is levied upon or sold in any judicial proceeding.
- f. Upon expiration or termination of this Agreement, the Licensee shall provide SUNY with all necessary records, electronic and otherwise, in the Licensee's possession relating to the Services provided under this Agreement. At SUNY's request, the Licensee 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 Licensee under this Agreement. The Licensee shall cooperate to the fullest extent with any successor licensee 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 Licensee 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 Licensee 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 Licensee 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.

**SAMPLE LICENSE AGREEMENT BETWEEN  
THE STATE UNIVERSITY OF NEW YORK  
AND**

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**CONTRACT NUMBER X\_\_\_\_\_**

This License Agreement is entered into this \_\_ day of \_\_\_\_\_ 2019, by and between STATE UNIVERSITY OF NEW YORK, a corporation organized and existing under the laws of the State of New York, with its principal office located at State University Plaza, Albany, New York 12246, on behalf of State University of New York at Purchase, located at 735 Anderson Hill Road, Purchase, NY 10577 (hereinafter referred to as “SUNY” or “the State”) and \_\_\_\_\_ having its principal office located at \_\_\_\_\_ (hereinafter referred to as “\_\_\_\_\_” or as Licensee). SUNY and Licensee, collectively, may hereinafter be referred to as the “Parties”.

WHEREAS, SUNY requires the operation of a café concession in its Performing Arts Center, and that an annual Licensing fee shall be paid to SUNY for the right to operate said concession, as more fully set forth in the Request for Proposal (RFP) No. SU-121718 awarded on the basis of best value to SUNY, issued on \_\_\_\_\_ and made a part hereof (the "RFP"); and

WHEREAS, SUNY has determined that \_\_\_\_\_ submitted a Bid responsive to the RFP and that \_\_\_\_\_ is a responsible Bidder; and

WHEREAS, \_\_\_\_\_’s Bid proposed he best value to SUNY, compared to all other responsive and responsible Bidders.

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein set forth, the parties hereto agree as follows:

1. **TERM:** The Term of this License Agreement shall be for a period of three years, commencing on \_\_\_\_\_, 2019 through \_\_\_\_\_, 2024 (the “**Term**” or “**Initial Term**”) and may be renewed by mutual written agreement by the Parties for two one-year renewal terms (the “**Renewal Term**”).
2. **LICENSEE’S PERFORMANCE OF SERVICES:** Licensee agrees to perform all services as outlined in the RFP and in the manner stated in the RFP and the bidder’s response.
3. **PAYMENT OF REVENUE:** Licensee agrees to pay to SUNY an annual Licensing fee equal to the amount proposed, as detailed in the Licensee’s Bid. Such payment shall occur on the day after notification of Licensee of the License approval and annually thereafter on

the anniversary of said notification throughout the duration of the contract:

Licensee shall issue a check payable to Purchase College (or other form of remuneration agreed upon by the College and Licensee) a sum equal to the amount in **Attachment 2: Revenue Bid**

**4. PAYMENT AUDITS:**

Licensee shall agree to submit detailed financial statements annually to the contract administrator no later than one month after the end of each calendar year for audit purposes. The financial statements will minimally include all revenues received during the prior year, payments made to the College, payments to MWBEs or any other Sub Licensees, and all other expenditures.

**5. ENTIRE AGREEMENT/ORDER OF PRECEDENCE:** This License Agreement shall be subject to, and hereby incorporates by reference the following Exhibits which are attached hereto and made an integral part hereof and sets forth the entire agreement of the Parties and supersedes all prior Bids, representations, communications, negotiations, and agreements between the Parties, whether oral or written, with respect to its subject matter (collectively, the “**License Agreement**”).

In the event of any inconsistency or conflict between the elements of this License Agreement and its Exhibits, such inconsistency shall be resolved by giving precedence to the document elements in the following order:

- a. Exhibit A to the RFP, State University of New York Standard Contract Clauses
- b. Exhibit A-1 to the RFP, State University of New York Affirmative Action Clauses (for contracts valued at greater than \$25,000)
- c. The License Agreement (this document)
- d. Exhibit B to the RFP – SUNY General Terms and Conditions
- e. Exhibit C - the RFP
- f. Exhibit D, the Successful Bidder’s Bid.

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. NOTICES:** All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and delivered in person or by courier, receipt acknowledge, or mailed by certified mail, return receipt requested, postage prepaid, AND emailed to the addresses set forth below:

Licensee: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SUNY: F. Edward Herran  
Interim Director,  
Procurement and Accounts Payable  
Purchase College  
Email: [edward.herran@purchase.edu](mailto:edward.herran@purchase.edu)

With a copy to (which will not constitute notice):

Elizabeth Pleva  
Associate Director of  
Contract and Procurement Services  
Purchase College  
Email: [elizabeth.pleva@purchase.edu](mailto:elizabeth.pleva@purchase.edu)

**7. APPROVALS/BINDING EFFECT:** This Agreement and any amendments shall be in writing, signed by the parties, and conditioned upon and are subject to the approvals of the New York State Office of the Attorney General and the New York State Office of the State Comptroller.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement the day and year first above written.

**LICENSEE**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**STATE UNIVERSITY OF NEW YORK**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**  
**OFFICE OF THE ATTORNEY GENERAL**

By: \_\_\_\_\_  
For the Attorney General

**APPROVED AND FILED:**  
**OFFICE OF THE STATE  
COMPTROLLER**

By: \_\_\_\_\_  
For the Comptroller

SAMPLE

**ACKNOWLEDGMENT BY NOTARY PUBLIC**

STATE OF \_\_\_\_\_ }  
: SS.:  
COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2019, before me personally appeared: \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_he resides at \_\_\_\_\_, Town of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_; and further that:

**[Check One]**

**If an individual):** \_he executed the foregoing instrument in his/her name and on his/her own behalf.

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

**If an unincorporated association):** \_he is the \_\_\_\_\_ of \_\_\_\_\_, the firm described in said instrument; that, \_he is authorized to execute the foregoing instrument on behalf of the firm for the purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name and on behalf of said firm as the act and deed of said firm.

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

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