

REQUEST FOR PROPOSAL (RFP)

RFP #DS-08

Education Data Portal: Content Management and System Services Solution



NEW YORK STATE EDUCATION DEPARTMENT

Table of Contents

- 1 Description of EDP Program and Services to be Performed 8
 - 1.1 Overview of the Education Data Portal (EDP) Program 8
 - 1.1.1 Program Summary 8
 - 1.1.2 Summary of RFPs and Implementation Approach..... 8
 - 1.1.3 Content Management and System Services Procurement Objectives 11
 - 1.1.4 Data Dashboards Procurement Objectives..... 13
 - 1.1.5 Shared Learning Collaborative and Shared Learning Infrastructure 14
 - 1.2 Required Solution and Services 17
 - 1.2.1 Overview..... 17
 - 1.2.2 Portal Solution Summary 18
 - 1.2.3 Content Management and Collaboration Solution Summary (EngageNY.org) 19
 - 1.2.4 Overarching Project Services 20
 - 1.2.5 High Level Timeline 20
 - 1.2.6 Envisioned Solutions Architecture 21
 - 1.3 Proposed Education Data Portal Management Structure..... 25
 - 1.3.1 Definition of Project Roles 27
 - 1.3.2 Work Streams 28
 - 1.3.3 Contractor Roles and Responsibilities..... 29
 - 1.3.4 Project Monitoring and Quality Assurance..... 31
 - 1.4 Required Implementation and Support Services 31
 - 1.4.1 Project Initiation, Planning, and Management 31
 - 1.4.2 Project Management and Work Stream Support 34
 - 1.4.3 Detailed Requirements Definition 34
 - 1.4.4 Design Specification 35
 - 1.4.5 System Construction 35
 - 1.4.6 Integration and Testing..... 36
 - 1.4.7 Content Integration Services 38
 - 1.4.8 Usage and Usability Analysis 40
 - 1.4.9 Documentation 41
 - 1.4.10 Application Warranty Services..... 42
 - 1.4.11 Application Maintenance, Technical Support and Help Desk Services .. 42

1.4.12	Training	43
1.4.13	Hosting	46
1.4.14	Data Dashboard Selection and License Management Services.....	47
1.4.15	Learning Registry	49
1.4.16	Additional Services.....	51
2	Proposal Format, Contents and Submission	52
2.1	Documents to be submitted with this proposal.....	52
2.2	Minimum Qualifications	52
2.3	Project Submission:	53
2.3.1	Cover Letter.....	53
2.3.2	Technical Proposal	54
2.3.3	Cost Proposal	57
2.3.4	Payment Schedule	58
2.3.5	M/WBE Documents	58
2.3.6	Submission of Documents.....	58
3	Evaluation Criteria and Method of Award	60
3.1	Criteria for Evaluating Bids.....	60
3.2	Method of Award.....	61
3.3	NYSED's Reservation of Rights.....	61
3.4	Post Selection Procedures.....	62
3.5	Debriefing Procedures	62
3.6	Contract Award Protest Procedures.....	62
4	Administrative Specifications	64
4.1	Subcontracting Limit.....	64
4.2	Contract Period	64
4.3	Electronic Processing of Payments.....	64
4.4	Minority and Women-Owned Business Enterprise (M/WBE) Compliance Requirements	65
4.5	M/WBE and Equal Employment Opportunities Requirements.....	67
4.6	Vendor Responsibility	70
4.7	Procurement Lobbying Law.....	71
4.8	Consultant Disclosure Legislation	71
4.9	Public Officer's Law Section 73.....	72
4.10	Draft Contract.....	73
4.11	Appendix A - Standard Clauses For NYS Contracts	76

4.12	Appendix A-1.....	80
4.13	Appendix Q - Amendments and Additions to Appendix A-1 for this Contract and Additional Contractual Provisions	83
4.13.1	Contractor Staff	83
4.13.2	Deliverable Acceptance.....	87
4.13.3	Task Orders.....	89
4.13.4	Manner of Payment/Retainage.....	89
4.13.5	Warranties.....	90
4.13.6	Indemnification Relating to Third-Party Rights	94
4.13.7	Limitation of Liability	95
4.13.8	Force Majeure	95
4.13.9	Conflict Resolution	96
4.13.10	Remedies for Breach.....	96
4.13.11	Suspension of Work	97
4.13.12	Mitigation of Costs.....	97
4.13.13	Termination Closeout Plan	97
4.13.14	General Provision as to Remedies	97
4.13.15	Public Announcements.....	98
4.13.16	Conflict of Interest	98
4.13.17	Required Consents.....	99
4.13.18	Confidentiality.....	99
4.13.19	Insurance	101
4.13.20	Mergers, Acquisitions or Divestitures	103
4.13.21	Material Change in Contractor Status	103
4.13.22	Open Source and Third Party Software Disclaimer	104
4.13.23	Ownership of Data and Records	104
4.13.24	Title and Legal Interest in Agreement Deliverables	104
4.13.25	Software Use.....	105
4.13.26	Source Code Delivery	107
4.13.27	Product Version.....	107
4.13.28	No Hardstop/Passive License Monitoring.....	107
4.13.29	Use by Other Agencies and the Federal Government.....	108
4.13.30	Additional Services Requested.....	108
4.13.31	Freedom to Undertake	108
4.13.32	Reports and Findings	109

4.13.33	Records Access	109
4.13.34	Work Paper Retention and Availability	109
4.13.35	Waiver, Modification, Execution, or Severability.....	110
4.13.36	Freedom of Information Law	110
4.13.37	Piggybacking.....	111
4.13.38	Performance Monitoring	111
4.13.39	Notices	111
4.13.40	Reservations	111
4.13.41	Proposal Ownership.....	111
4.14	Appendix A-2.....	112
5	Submission Documents	113
5.1	Response Sheet for Bids	113
5.2	Non-Collusive Bidding Certifications	115
5.3	MacBride Certification	118
5.4	Certification – Omnibus Procurement Act of 1992	119
5.5	Required Assurances.....	120
5.6	Offerer Disclosure of Prior Non-Responsibility Determinations.....	122
5.7	Minimum Qualifications Certification	124
5.8	Subcontracting Form.....	125
5.9	M/WBE Documents.....	127
5.10	Letter of Intent.....	133
6	Attachments.....	134
6.1	Shared Learning Infrastructure Documentation.....	134
6.2	Detailed Requirements.....	135
6.3	Hosting Services	135
6.4	Maintenance and Support Services	135
6.5	Company Experience and References.....	135
6.6	Staffing Plan and Resumes.....	136
6.7	Counts of Student Enrollment, Classroom Teachers and Other Educators	136
6.8	Statement of Work	136
6.9	Cost Proposal Worksheet	136
7	Glossary	137

Education Data Portal: Content Management and System Services

The New York State Education Department (NYSED) Office of Information Reporting Services is seeking proposals for Education Data Portal: Content Management and System Services.

Subcontracting (exclusive of sub-contracted hosting services) will be limited to sixty percent (60%) of the annual contract budget. Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel. Bidders are required to comply with NYSED's Minority and Women-Owned Business Enterprises (M/WBE) participation goals for this RFP. Please see the section on NYSED's Minority/Women-Owned Business Enterprise (M/WBE) Compliance Requirements.

NYSED is issuing concurrently a separate RFP, for Education Data Portal: Data Dashboard Solutions. The same vendor cannot be a prime contractor on both contracts, although a vendor can be a prime contractor on one and a subcontractor on the other, or a subcontractor on both. All roles depicted with an asterisk in the "Proposed EDP Management Structure" diagram in Section 1.3 must be provided by the prime contractor on the Content Management and System Services contract.

NYSED will make one (1) award pursuant to this RFP. The contract resulting from this RFP will be for a three-year term with two optional one-year extensions.

Service Area: Office of Information Reporting Services.

Mandatory Requirements: See Section 2.2 of the RFP.

MANDATORY BIDDERS' CONFERENCE

A mandatory bidders' conference will be held on May 11, 2012 at the New York State Education Department, Room 5 A/B, 89 Washington Avenue, Albany, NY 12234 from 9:30 am to 12:30 pm ET. All interested bidders must attend this conference to be eligible to submit a bid. All bids received from entities that were not in attendance at this conference will be treated as nonresponsive and disqualified from the review process.

Components contained in RFP Proposal #DS-08 are as follows:

- Description Of Services To Be Performed
- Proposal Format, Content, and Submission
- Evaluation Criteria and Method of Award
- Administrative Specifications
- Submission Documents
- Attachments

Questions regarding the request must be submitted by E-mail to edpContentManagement@mail.nysed.gov no later than the close of business May 18, 2012. Questions regarding this request should be identified as Program, Fiscal or

M/WBE. A Questions and Answers Summary will be posted to <http://usny.nysed.gov/rttt/rfp/ds-08/> no later than May 25, 2012

Program Matters

Kathleen Moorhead
edpContentManagement@mail.nysed.gov

Fiscal Matters

Lynn Caruso
edpContentManagement@mail.nysed.gov

M/WBE Matters

Joan Ramsey
edpContentManagement@mail.nysed.gov

Schedule of Key Events:

Event	Timeline
RFP Release Date	April 20, 2012
Letter of Intent	May 4, 2012
Mandatory Bidder’s Conference (in Albany)	May 11, 2012 @ 9:30 AM ET
SLC Bidder’s Conference (via web conference)	May 16, 2012 @ 12.30 PM ET
Question Submittal Deadline (Questions may contain exceptions to the Terms and Conditions)	May 18, 2012 @ 5:00 PM ET
Question Response Release	May 25, 2012
Proposals Due	June 19, 2012 @ 3:00 PM ET
Proposal Evaluation Begins	June 20, 2012
Technical Presentations	July 9, 10 and 11, 2012
Recommendation & Designation	July 20, 2012
Contract Finalization	July 23 – August 23, 2012
Contract Execution	September 1, 2012
Work Begins	October 15, 2012

Letter of Intent

All interested bidders should submit a Letter of Intent (see Section 5.10). The Letter of Intent should be submitted electronically to edpContentManagement@mail.nysed.gov and submitted by May 4, 2012.

The following documents must be submitted in separately sealed envelopes, as detailed in the Section 2 - Proposal Format, Contents and Submission, and be received at NYSED no later than June 19, 2012 **by 3:00 PM:**

- **Technical Proposal labeled** “Technical Proposal - RFP #DS-08 Do Not Open”
- **Cost Proposal labeled** “Cost Proposal - RFP #DS-08 Do Not Open” (See Attachment 6.9)

- **M/WBE Documents labeled “M/WBE Documents - RFP #DS-08 Do Not Open”**

Note: A copy of the technical, cost, and M/WBE proposals must also be submitted in Microsoft Word/Excel on CD-ROM. Please include it in a separate envelope labeled **“CD-ROM – RFP#DS-08 Do Not Open”**.

All proposals should be delivered via a method that requires a signature from NYSED upon receipt. The mailing address for all the above documentation is:

NYS Education Department
Bureau of Fiscal Management
Attn: Lynn Caruso, RFP#DS-08
Contract Administration Unit
89 Washington Avenue, Room 505W EB
Albany, NY 12234

(Facsimile copies of the proposals are NOT acceptable.)

1 DESCRIPTION OF EDP PROGRAM AND SERVICES TO BE PERFORMED

1.1 Overview of the Education Data Portal (EDP) Program

1.1.1 Program Summary

The New York State Education Department (NYSED) is seeking to procure products and services to develop, test, deploy, and support an Education Data Portal (EDP).

The goals of the EDP program are to:

- Make student data available to New York’s educators, students, and students’ families to support instruction and student learning.
- Make curriculum and instructional resources available to New York’s educators and families to support instructional improvement and professional development.
- Create sustainable and open technology that promotes innovation, flexibility, and choice and enables local education agencies (LEAs)¹, schools, and regional organizations to develop or procure additional applications or new functionality more rapidly and at reduced cost.
- Leverage emerging technology interoperability standards for education applications to remove barriers to innovation and scaling of successful tools for personalizing learning.

NYSED is seeking to support at least three primary use cases through the EDP procurements:

- Educators use data (including locally-defined data loaded to a shared Statewide data store) to help identify student educational needs, and have integrated access to aligned State-provided and user-generated curriculum and instructional resources. Access between Data Dashboards and curriculum and instructional resources should be provided within the EDP single sign-on environment by means of intuitive navigation, access to integrated search functions, and, desired but not required, embedded recommendation engines.
- Parents (or guardians) view their child’s data and have a common framework within which to structure communications with educators.
- Students enrolled in grade six and above access data elements available to educators and parents as part of their preparations for college and career readiness.

1.1.2 Summary of RFPs and Implementation Approach

NYSED will leverage existing and planned assets, in addition to new contracts awarded via two RFPs, to acquire the technology, products, and services required to successfully deploy and support the EDP. The two EDP procurements are:

¹ For purposes of this RFP, and as defined in the Glossary (see section 7), a local education agency or LEA shall include a school district, charter school or BOCES.

- **EDP Content Management and System Services RFP:** The EDP Content Management and System Services RFP (this RFP) includes all of the services needed to develop, test, deploy, and support the EDP that are **not** included in the Data Dashboard Solutions RFP. The EDP Content Management and System Services RFP includes development of Content Management and Collaboration tools, an integrated portal solution, as well as overarching EDP project management, integration, support, help desk, and other professional services.
- **EDP Data Dashboard Solutions RFP:** (see RFP #DS-07 EDP Data Dashboard Solutions) The EDP Data Dashboard Solutions procurement is a request for third-party hosted software applications for presenting educators, students, and families with timely and relevant data that support instruction and student learning, within the EDP single sign-on environment. It is NYSED's intent to award contracts to as many as three (3) Data Dashboard solutions vendors and to enable Local Education Agencies (LEAs) or schools to select their preferred local solution from among the awarded contracts.
- **The same vendor cannot be a prime contractor on both contracts, although a vendor can be a prime contractor on one and a subcontractor on the other, or a subcontractor on both. All roles depicted with an asterisk in the "Proposed EDP Management Structure" diagram in Section 1.3 must be provided by the prime contractor on the Content Management and System Services contract.**

Key existing or planned assets that will be leveraged for the EDP include:

- **Shared Learning Collaborative (SLC):** (<http://slcedu.org/>) NYSED believes that the EDP goals can be best met by collaborating with multiple states to ensure interoperability, reusability, and security of some of the core technology components required. New York, along with Colorado, Delaware, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, and North Carolina, are Phase I and II states participating in the SLC, which is a not-for-profit corporation organized to develop and implement technology services that will be available to all states and districts, such as the Shared Learning Infrastructure (SLI). The SLI is a shared data store and set of web services that will support the implementation of the Common Core State Standards and help states and districts provide teachers with the instructional data and tools they need to make personalized learning the norm in every classroom. NYSED will leverage the data store and web and identity management services of the SLI in implementation of the EDP. It is expected that all data to be displayed by the Data Dashboards will be sourced through the SLI using its standard interfaces and services. It is expected that the Content, Collaboration, and Portal functionality provided by the Content Management and System Services vendor will leverage available SLI web services, including the identity management services.
- **New York State's Student Information Repository System (SIRS):** (<http://www.p12.nysed.gov/irs/sirs/>) NYSED operates a robust Statewide data

collection and repository system that ingests data from schools Statewide via Regional Information Centers (RICs) and large school districts. The SIRS team is currently undertaking improvements to collect additional domains of data, including course- and section-level enrollment and teacher-student linkage data, and to increase capacity for daily refreshes. Attendance data will be added during the 2012-13 school year; suspensions and other behavioral incidents will be added during the 2013-14 school year. Baseline data will be supplied daily to the SLI from SIRS and may be supplemented with additional data loaded to the SLI directly from RICs or LEAs.

- **NYSED's Federated Identity Management System:** NYSED is piloting a federated approach for identity management and authentication of educators and administrators Statewide. NYSED anticipates piloting the approach with parents/ guardians and students by the 2012-13 school year. EDP applications will access NYSED's identity management and authentication systems through interface with SLI, including SLI roles (see Attachment 6.1 for SLI identity management information).
- **EngageNY.org:** (www.EngageNY.org) NYSED currently operates a public website through which it provides State-sourced curricular, video, and other content. Beginning in the spring through the fall 2012, EngageNY.org will be re-built with Drupal and enhanced for the publication of New York's Common Core curriculum modules (see RFP at <http://usny.nysed.gov/rttt/rfp/sa-03/home.html>) and videos of effective teaching practices (see RFP at <http://usny.nysed.gov/rttt/rfp/qt-15/home.html>) during the 2012-13 school year. During the implementation of the EDP, it is expected that the existing EngageNY.org site will be maintained and all existing functionality will be migrated into the EDP Content and Collaboration tools (these tasks will be accomplished through the EDP Content Management and System Services contract).

By leveraging Statewide identity and access management and the SLI, NYSED's EDP will:

- Standardize data integration, authorization, and access protocols so that authorized vendor partners can build tool options for LEAs and schools to use as part of their daily practice;
- Support LEAs by procuring an initial set of data tools through the Data Dashboard Solutions RFP;
- Ensure the security and privacy of student and other educational data;
- Enable the display of State and local instructional data.

EDP users, who are organized into schools, districts, and other groupings/communities of users, will be provided with a role-specific landing page following login to the system. Through single sign-on functionality, users will have access within the system to authorized applications selected or procured by their school, LEA, Regional entity, or NYSED. A shared header/footer and modular approach deployed from within the portal environment will allow newly authorized applications to appear as they become available.

All applications deployed within EDP will consume and display a common header that includes application and other navigational controls, as well as an integrated search box. EDP aims to provide users with intuitive click-through navigation across EDP applications and access to related resources via integrated search results. The goal is to enable straightforward navigation between the locally selected Data Dashboard tool, future tools, and aligned curriculum and instructional resources. During a single login session, educators will be able to identify student needs based on their Data Dashboards and find relevant Common Core-aligned curriculum and instructional resources through integrated search, intuitive navigation pathways, and (desired but not required) recommendation engines.

1.1.3 Content Management and System Services Procurement Objectives

Content and Collaboration Functionality: EDP will provide access to NYSED-sourced curricular and instructional content through a to-be-enhanced version of its EngageNY.org website. As additional curricular and assessment content are acquired and published, NYSED expects to integrate EngageNY.org with the federated identity management system currently under pilot. User login and appropriate permissions will be required to access some content and collaboration spaces or to upload user-generated content. EDP users will be able to create and curate their own content; upload and share resources, and have discussions with colleagues in their school, district, or user-defined groups; find new content aligned to their profile (grades, subjects, interests); and be notified automatically of updates to the system. Schools, districts, and clusters of schools and districts, such as networks within the New York City Department of Education (NYCDOE), and network teams throughout New York State (see <http://usny.nysed.gov/rtt/ntinstitute/home.html>), as well as Boards of Cooperative Educational Services (BOCES) (see www.boces.org) and RICs (see <http://www.boces.org/wps/portal/BOCESofNYS/About/WhatIsARIC>), will be able to manage their own libraries of instructional resources.

Machine Readable Metadata: EDP content will be tagged using the Learning Resource Metadata Initiative (LRMI), www.lrmi.net, mark-up protocol, and Common Core State Standards (CCSS) will be referenced using the Common Core Taxonomy provided by the National Governor's Association (NGA) and the Council of Chief State School Officers (CCSSO), available in spring/summer 2012 at www.corestandards.org. EDP will provide enhanced search and other functionality by sending, receiving, and leveraging content metadata (including tags and ratings) to and from the Learning Registry (www.learningregistry.org). See Attachment 6.1 and the "SLC Pilot Phase Project Documents" link at <http://slcedu.org/technology/technical-specifications> for a summary of the LRMI and Learning Registry initiatives.

Portal and Search: EDP will provide a portal architecture compatible with the SLI portal specifications, ideally leveraging the SLC portal code. See Attachment 6.1 and the "SLC Pilot Phase Project Documents" link at <http://slcedu.org/technology/technical-specifications> for a summary of the SLC portal and integration approaches. The portal architecture will include a shared header for consumption by all EDP applications, including the Data Dashboard solutions. The shared header and portal will include dynamic or configurable navigation to enable users to navigate between the

applications selected for use by the user's organization. Integrated search functionality will be accessible from the header and may be embedded throughout EDP applications.

Overarching EDP Project Services: As described in the "Minimum Time On-Site" table in Section 1.3.3, the vendor selected through the EDP Content Management and System Services RFP process will locate its project team staff at NYSED's Albany offices to coordinate the overarching project services and work streams that span across multiple procurements, solutions, and NYSED teams. Preliminarily, these work streams have been identified as:

- **Data Flow:** SIRS to SLI to EDP applications, LEA/RIC to SLI to EDP applications
- **Help Desk / Technical Support** for all EDP functionality
- **Identity Management and Access Control Integration** across all EDP components
- **Implementation, Configuration, and Testing** of all EDP components
- **Training and Documentation:** Integrated training and documentation for all EDP functionality
- **Selection and License Management Processes** for Data Dashboard solutions
- **Content Integration**

The Overarching Project Services for the above preliminary work streams will include:

- Project Management, coordination, issue tracking, escalation and resolution across the above-identified work streams including defining and tracking all deliverables and dependencies across the EDP, regardless of procurement or source;
- Development of a license management process and supporting survey or selection tool that enables LEA, network, or school selection of the local Data Dashboard solution and provides extracts of the selection data for SLI access control, NYSED contract management, and Data Dashboard vendor invoicing to NYSED predicated on LEA selection tallies;
- Migration of the current and planned EngageNY.org website functionality and content onto the EDP Content Management and Collaboration system;
- Ongoing hosting, maintenance, and operation of the existing EngageNY.org website beginning with the start date of the contract;
- Usability analysis of the existing EngageNY.org website during requirements review; ongoing usability and usage analysis following build for possible time and materials-based feature enhancements;
- Loading of all State-provided curriculum/instructional content in the Content Management (including EngageNY.org) and Collaboration software modules;
- Importing of selected communities and content from NYCDOE's Achievement Reporting and Innovation System (ARIS) Connect system;
- Leveraging the SLC Learning Registry node and publishing specified events to the Learning Registry;
- Deploying enhanced Search functionality that leverages available indexes from the Learning Registry or SLC;
- Quality Assurance and Systems Testing of all required EDP functionality, including applications within the scope of the EDP Content Management and System Services procurement (Portal, Content Management, and Collaboration

applications), and applications outside the scope of that procurement (e.g., vendor Data Dashboard solutions);

- Assistance with User Acceptance Test case development, test scripts, and process management of all required EDP functionality;
- Deployment of training materials, documentation, and turn-key training sessions (to RICs, BOCES, Networks, Big 5) covering all applications within the scope of the EDP Program (including Data Dashboards). Sessions will be facilitated workshops focused on embedding tool use to support existing SEA and LEA initiatives;
- Set up and testing of help desks, with integrated support/ticket tracking processes across Tier 1 to 3 for all applications within the scope of the EDP program;
- The deployment of tools and processes to log, track, and report on escalated issues across all vendors, NYSED, Regional Information Centers, and LEAs during development, test, and operation.

1.1.4 Data Dashboards Procurement Objectives

DISCLAIMER: The information in this section is provided as context for the benefit of those responding to the Content Management and System Services RFP (i.e. this RFP). The information in this section will be superseded by the contents of the Data Dashboard Solutions RFP #DS-07 and may not be relied upon in any way by potential respondents to that RFP.

NYSED is committed to increasing LEA options and choice by contracting with up to three vendors to provide integrated educator/parent/student Data Dashboard solutions that display student biographical, enrollment, achievement, and other relevant data in attractive and compelling ways. The solutions must ensure that personally identifiable student data are displayed only to users with the appropriate access permissions, as determined by SLI roles in federation with NYSED identity and access management systems.

Educator Data Views and Early Warning Indicators: EDP data displays will include district, school, grade, and classroom level aggregate and drill-through views for all educators supporting New York's K-12 LEA-enrolled students (see Attachment 6.7 for educator and enrollment counts), including student demographic, enrollment, attendance, assessment, early warning indicators, and other data as described in the Requirements Table (Attachment 6.2). Detailed Student Profile views will also be available for each student, individually. All data displayed in these views will be sourced via the SLI.

Parent and Guardian Data Views: EDP will display student profile data to parents and guardians of all New York's K-12 enrolled students (See Attachment 6.7 for enrollment counts). This view will support multiple language translations or translation guides and provide embedded contextual help and end-user documentation to explain data elements and displays to families. See the Requirements Table (Attachment 6.2) for detailed requirements. All data displayed in these views will be sourced via the SLI.

Student Data Views and Higher Education Record Exchange: EDP will provide access to student profile data for those students in grades six through twelve (see Attachment 6.7 for enrollment counts) and will enable the authorized student or parent/guardian to transmit a copy of their profile data to New York’s public higher education institutions. See the Requirements Table (Attachment 6.2) for detailed requirements. All data displayed in these views will be sourced via the SLI.

Learning Progression and Mastery: Although not required, Data Dashboard vendors are strongly encouraged to design and offer Learning Maps, or intuitive representations of progress through the Common Core State Standards, for individual students or groups of students. The SLC has committed to provide open Learning Map technology and a reference implementation that may be leveraged for this purpose.

Recommendation Engines and/or Suggested Links: Data Dashboard vendors are encouraged to design and offer recommendation engines or other mechanisms for suggesting links to useful resources while users are viewing data. Recommended content should prioritize aligned EDP resources. Access to the EDP’s Learning Registry feed will be provided.

1.1.5 Shared Learning Collaborative and Shared Learning Infrastructure

NYSED intends to leverage the work of the SLC as a core component of its procurement, development, and implementation strategy. The SLC is investing in a technology infrastructure and set of services called the Shared Learning Infrastructure (SLI), through which states and school districts can more easily provide educational information to application developers in a secure manner. The SLI enables states and school districts to make a one-time reusable investment, rather than individual redundant investments with multiple application vendors. Additional information about the SLI technology can be found at the SLC website at <http://slcedu.org/technology/technical-specifications>.

In addition, the SLC plans to leverage new options for accessing instructional resources that can be made available when curriculum content are marked up with Common Core-aligned meta-data through common protocols such as the Learning Resource Metadata Initiative (LRMI), www.lrmi.net, and such meta-data are published, received, and indexed through the Learning Registry (www.learningregistry.org) for enhanced search and recommendation engine purposes.

These SLC services, coupled with a set of New York-specific Data Dashboards and a New York-specific content management and collaboration solution, provide the context for NYSED’s comprehensive approach to the EDP. The illustration in Section 1.2.3 - Envisioned Solutions Architecture, provides an overview of the intended outlook for NYSED and the integrations with the SLC/SLI².

As indicated below, the EDP will access the following SLC services (see Attachment 6.1 and the “SLC Pilot Phase Project Documents” link at

² If, for any reason, the SLC fails to implement the SLI, it will be NYSED’s responsibility to provide an equivalent infrastructure with which vendors will be expected to integrate.

<http://slcedu.org/technology/technical-specifications> for a summary of the SLC infrastructure technical and integration specifications). The SLC will provide a bidders conference and bidder support to vendors who plan to respond to NYSED's two EDP RFPs):

(1) Data ingestion and validation

Data will be sent to the SLI by NYSED, Regional Information Centers, or directly by LEAs. Data Dashboard vendors must support data integration through web service and batch uploads from the SLI data store. Data in the SLI can be considered valid for reporting purposes.

(2) Core, custom, and other data stores

The SLI will contain data in core and custom data stores. The core data store is modeled on the Common Education Data Standards (CEDs, <http://nces.ed.gov/programs/ceds/>), as instantiated by the Ed-Fi data standard (<http://www.ed-fi.org/>).

Vendors providing EDP Data Dashboard services will pull all student biographical, enrollment (including district, school, class, and assigned teachers and principals), program, and achievement data (e.g., State summative assessments, or local interim/benchmark assessments) from the SLI data store. (See Attachment 6.1 and the "SLC Background – EdFi Data Specifications" link at <http://slcedu.org/technology/technical-specifications> for additional information on the data contained in the SLI.).

Classroom assessment data for use in Learning Maps will be pulled from the SLI, with a Learning Map data store providing the Common-Core student progression "nodes" on the map and the relationship between the nodes for use in learning map representations.

Curriculum and instructional content resources, as well as educator collaboration data, will be stored in a dedicated data store as part of the Content Management and System Services Solution RFP. Content meta-data will be published in a Learning Registry data store (see <http://www.learningregistry.org>).

(3) Secure Web services and APIs

Data transferred to and from the SLI and authorized applications, or to and from the Learning Map data store and authorized applications, will use the SLI API and web services.

The SLC API specifications are in vendor comment phase during the first quarter of 2012. Final API specifications are targeted to be posted on the SLC website (see <http://www.slcedu.org>) on April 30, 2012. The associated sandbox environment and software development kit (SDK) will be available in June 2012.

(4) User authentication and authorization

State-wide identity and access management data will be sourced to the SLI directly and through federation with NYSED. Authorized applications will rely

upon the SLI for user authentication and authorization information (See Attachment 6.1).

(5) License/Application Management

The Content Management and System Services vendor will deploy an external survey tool to allow authorized representatives in LEAs (or schools in NYC) to select Data Dashboard applications from the list of Data Dashboard contract vendors. Once LEAs (or schools in NYC) have made their selections, the Content Management and System Services vendor, with approval from NYSED, will feed this information to the SLI for application authorization purposes (see Attachment 6.1 for identity management specifications) and to NYSED for vendor invoicing.

(6) Portal code

The SLI will publish initial portal code that provides navigational access to multiple authorized applications for authenticated users, and a shared header/footer to be consumed by all authorized applications.

Data Dashboard vendor products are expected to consume the shared header/footer through one of three ways (see Attachment 6.1):

- (1) as “full-window applications” for applications created specifically for the SLI that can access the SLI portal header/footer HTML;
- (2) applications that comply with Web Services for Remote Portlets (WSRP) standard 1.0 or 2.0 can be embedded as a portlet on a page that includes the header and footer; or
- (3) applications that do not implement the WSRP standards can be embedded on a page with the header/footer as an iframe.

Note: Applications in iframes do not reliably support the browser’s back, forward, and page refresh buttons. NYSED does not recommend using iframes for complex web applications that require page-to-page navigation. Some iframe functionality may be restricted due to security rules.

Applications developed as part of the Content Management and System Services Solution RFP will be expected to run within a portal session but will implement a native header/footer that replicates the portal header/footer.

(7) Customizable reporting dashboards

The SLI will support an initial list of deployed apps, including a customizable reporting dashboard for educators that may be leveraged by vendors responding to the Data Dashboard Solutions RFP. This open license educator dashboard will be available in Alpha release in June 2012 and Version 1 release in December 2012.

(8) Learning maps

Vendors responding to the Data Dashboard Solutions RFP are encouraged to provide, as part of their dashboard product, access to Learning Maps, or a graphical representation of student progression along learning objectives aligned

to the Common Core State Standards. To support this work, the SLC, or its partners, will provide, beginning in May 2012, access to a Learning Map authoring tools and exemplary visualizations that can be custom developed by the responding vendor, and a standard taxonomy of the Common Core endorsed by the National Governor's Association (NGA) and the Council of Chief State School Officers (CCSSO) (see www.corestandards.org, beginning in spring/summer 2012).

(9) Learning Resource Meta-data Initiative (LRMI) and Common Core Taxonomy

LRMI is a protocol for marking up educational content with relevant meta-data, including the Common Core taxonomy. Draft LRMI specifications, and a timeline for full deployment, can be found at www.lrmi.net. The NGA/CCSSO authoritative Common Core taxonomy can be found at www.corestandards.org, beginning in spring/summer 2012. All content deployed within the EDP will conform to these standards.

(10) Learning Registry and Enhanced Search

Learning Registry (www.learningregistry.org) is a network and protocol for sharing meta-data. The SLC will build a Learning Registry instance and an index accessible to search engines. EDP will leverage the SLC Learning Registry instance, publish a meta-data feed, and deploy enhanced Search functionality that accesses the SLC index.

It is within this context that bids are requested for this procurement. Support for development work will include SLC published standards (see Attachment 6.1), a development sandbox, a software development kit, and other SLC vendor support for those responding to this RFP.

Since at least eight other states (Colorado, Delaware, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, and North Carolina) will be participating in the SLC, vendors may wish to explore alignment between the work being requested in this procurement and the needs of customers in those other states.

1.2 Required Solution and Services

1.2.1 Overview

In this procurement, the State is seeking to procure portal, content management, and collaboration components for integration into the Education Data Portal Solution. Additionally, the State is seeking overarching project services for the Education Data Portal program. Detailed requirements for the portal, content management and collaboration components are supplied in Appendix 6.2.

The content, collaboration, and portal components shall leverage an open source system approach to portal, content management, and collaboration to minimize total cost of ownership and benefit from new features and security upgrades. Any customization of open source functionality should occur through custom modules or other segregated code, rather than customize core code. Successful proposals for these components must include requirements validation, detailed design, user

experience reviews, system build and integration, systems testing, usability testing, and user acceptance testing.

Core management system services (including project monitoring, quality assurance and acceptance testing) will include embedding vendor staff at NYSED and providing end-user and technical documentation, training materials, an integrated EDP Help Desk service, and an integrated training/professional development services support team.

NYSED is seeking proposals for the core functionality and services included in this RFP. However, responders may choose to include value-added features with their response, **without incremental costs**, which may increase the responders' evaluation scores.

1.2.2 Portal Solution Summary

The vendor shall develop, configure, and operate on behalf of the Department a non-proprietary, open source portal solution consistent with the Shared Learning Collaborative portal solution approach. To the extent practicable and cost-effective, the solution should leverage the portal code and services offered by the Shared Learning Collaborative (SLC).

- In order to leverage SLC assets and services and maintain compatibility (see Attachment 6.1 for the SLC portal integration strategy), the solution shall be a Java-based open source web application framework (such as the SLC-selected LifeRay).
- The solution shall enable single sign on and navigation among all components of the Education Data Portal, including the Data Dashboard components.
- The portal shall maintain session information across EDP components and shall perform all other technical functions necessary to meet the EDP functional requirements and ensure an integrated user experience across EDP and SLI components.
- The portal shall be capable of displaying dynamic top-level navigation (e.g., a shared header/footer) to the user for switching between EDP components and other authorized SLI applications.
- The header shall contain a dynamic list of authorized applications and shall be an extension of or, if necessary, customization of the SLC shared header. The header shall consume the list of authorized applications using the same code or API calls utilized by the SLC portal reference implementation. Backward compatibility with updates to the SLC shared header is highly desirable.
- The portal shall be integrated with NYSED and SLI identity management and access control solutions
- The portal shall contain, in addition to the common navigational header/footer, an integrated and customizable search function.
- All EDP applications must display the shared header/footer
- NYSED expects that Drupal-based content and collaboration components shall replicate the header/footer within Drupal; while Data Dashboard components shall display the portal-provided version of the header.

- The portal shall, to the extent possible, enable log-in for all educators, students, and families using solely a username/email and password (e.g., users should not have to select an organization, domain, server, geography, etc.)

1.2.3 Content Management and Collaboration Solution Summary (EngageNY.org)

The vendor shall provide and operate an open, non-proprietary, Drupal-based Content Management and Collaboration solution suitable for the K-12 education community in New York State. NYS expects to maintain the EngageNY.org or similar branding for the content and collaboration components of the EDP. The State plans to complete its own update of the current EngageNY.org website by Fall of 2012 (“EngageNY v1.5”). This version (v1.5) of the site will be based on the latest version of Drupal and will constitute a baseline of user functionality that shall be included in the EDP Content Management solution. Attachment 6.2 includes the EngageNY v1.5 requirements for informational purposes.

The initial version of the Content Management and Collaboration solution developed and deployed by the winning vendor shall be referred to in this document as “EngageNY v2.0.” The vendor shall take over development and management of the EngageNY product after the v1.5 release, and will assume ongoing hosting, maintenance, and operation of the EngageNY.org website through the end of the contract. EngageNY v2.0 shall include all content and functionality contained in EngageNY v1.5, as well as the additional requirements contained in Attachment 6.2. Other features of this solution include:

- The vendor shall conduct usability analyses of the EngageNY v1.5 site during the requirements review and provide recommendations prior to the finalization of EngageNY v2.0 requirements.
- The State is procuring curriculum, video, and other resources for inclusion in EngageNY.org. See <http://usny.nysed.gov/rttt/rfp/sa-03/home.html> and <http://usny.nysed.gov/rttt/rfp/gt-15/home.html> for a description of those curriculum module and video resources, respectively. This will include approximately 22,000 curriculum module documents for English language arts (ELA), 22,000 curriculum module documents for math, 500 externally-hosted videos, 100 assessment documents in ELA, 100 assessment documents in math, 100 evaluation documents for teachers, and 100 evaluation documents for principals.
- EngageNY v2.0 is an integrated part of the EDP solution and will house New York’s authoritative content repository in addition to content contributed within EDP’s user group/communities, or hosted elsewhere on the internet (e.g., through the display of video embed code from externally-hosted video sites).
- The vendor shall export/convert/import approximately 100,000 instructional resources (primarily documents and links) and associated meta-data from NYCDOE’s ARIS Connect system (built in Drupal 5.9), while preserving the permissions from approximately 2,000 institutional (school/district) private communities, 2,000 institutional (school/district) public communities, 5,000 user-generated private communities, and 1,500 user-generated public communities.
- Without leaving the EDP system, educators will be able to identify student needs based on their Data Dashboards, search for and find relevant Common Core-

aligned resources through integrated search, user rating systems, and intuitive navigation pathways.

- EngageNY v2.0 will display the EDP shared navigational elements by replicating the portal shared header and footer within the content management component.
- Users will be able to create, tag, and curate their own content; upload and share resources and have discussions with colleagues in their school, district, or user-defined public and private groups/communities; find new content aligned to their profile (grades, subjects, interests); and be notified automatically of updates to the system.
- The system shall support tagging to the Common Core State Standards using the method of referencing standards agreed upon by the National Governor's Association and the CCSSO, or an equivalent method identified by NYSED.
- The system shall have the capability to publish to the Learning Registry all content loaded to the EDP, and to subscribe to or import trusted content discoverable via the Learning Registry.
- Groups or communities that are not open to all EDP users (i.e., "private" groups or communities) will have security in place that is sufficient to protect confidential information.
- Schools, districts and networks/BOCES/RICs (regional clusters of schools or districts) will be able to manage their own libraries of instructional resources.
- NYSED will own all data and content contained within the system unless the content has been expressly licensed otherwise.

Proposals may also include open-source, open-license Third-Party Tools or other enhancements that add value to or distinguish a proposed solution. Any or all components may be included as a subcontracted service, but the primary proposers will be responsible for the performance of the entire integrated system, including subcontracted services. The pricing for all services must be provided in aggregate on a fixed-price deliverable basis, with the exception of the EDP / EngageNY 2.0 post-release future enhancements that will be approved by NYSED on an hourly rate / time and materials basis.

1.2.4 Overarching Project Services

As outlined in Section 1.4, the vendor shall be required to provide project management, work stream leadership, technical support, and other services to support the overall program and project management for the EDP project. Much of this support shall be in the form of a project team that is co-located with the NYSED team in Albany. A high level outline of the project organization is provided in Section 1.3 of this document, and more detail about the services required are provide in Section 1.4.

1.2.5 High Level Timeline

Event	Timeline
EDP Procurements	April 2012 – October 2012
Content Management System Build	October 2012 – April 2013
Dashboard Product Integration and Testing	October 2012 – April 2013

Year 1 Data Dashboard Product Selection	April 2013 – September 2013
Year 1 Launch (Year 2 of Contract)	October 2013
Year 1 Data Dashboard Evaluations	October 2013 – March 2014
Year 2 Data Dashboard Product Selection	April 2014 – September 2014
Year 2 Launch (Year 3 of Contract)	October 2014

1.2.6 Envisioned Solutions Architecture

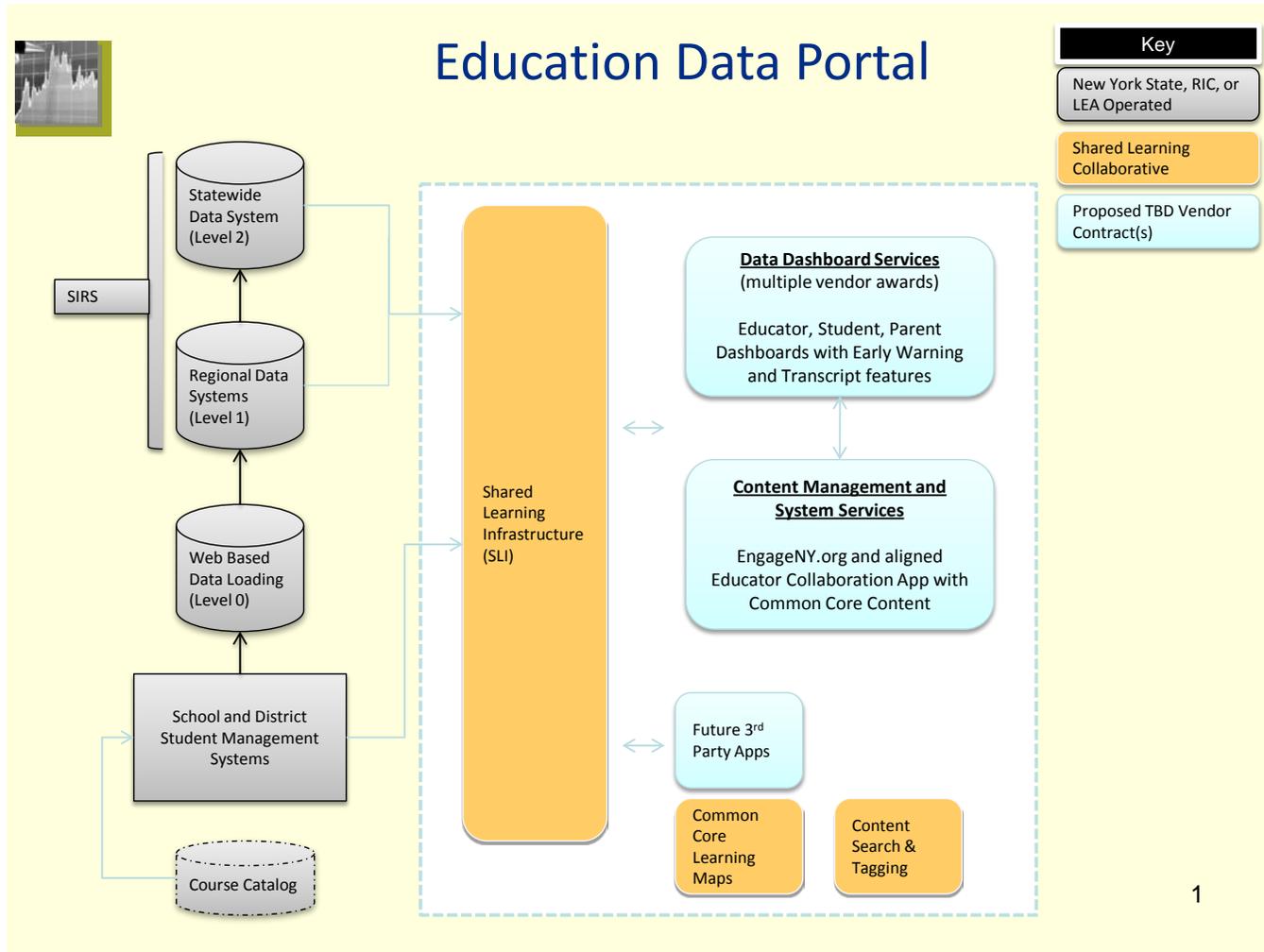
NYSED envisions the EDP to be a core tool for all LEAs and schools, providing support for many types of views and content/instructional resources to allow effective data-driven decision-making for students, teacher and parents.

To support this vision, the solution architecture must have the following characteristics:

- Accessibility of data and content anywhere and anytime by students, parents, teachers, and other educators at home, school, and via mobile devices.
- Scalability to accommodate NYSED students (grades 6 and above), parents (of all students, regardless of grade), and teachers/principals/other educators (of all P/K-12 students, regardless of grade) as described by the estimated enrollment model included in Attachment 6.7.
- Extensibility of functionality in the system environment.
- Extensibility of the technology architecture to support integration with the SLI.
- Interoperability with SLI to support access management, access control, and data exchange.
- Adhere to New York State Cyber Security Policy P03-002 (see <http://www.dhSES.ny.gov/ocs/resources/documents/Cyber-Security-Policy-P03-002-V3.4.pdf>).
- System usability, including, but not limited to, adherence to the New York State Information Technology Policy P08-005, Accessibility of Web-Based Information and Applications (see <http://www.cio.ny.gov/policy/NYS-P08-005.pdf>).

The vendor's proposal shall address the key areas described in this envisioned solution architecture and the included functional requirements (see Attachment 6.2 Detailed Requirements). The following diagram provides a graphical view of the envisioned solution architecture for EDP.

Figure 1. Solution Architecture



Content Management and System Services vendors must have a highly scalable and extensible architecture that will grow, if necessary, to meet the needs of New York's students, parents, and educators.

Additionally, all solutions must support:

- *Application clustering/acceleration*—offers a framework to cluster application components for both failover and load balancing setup that helps to scale based on need, as well as increase uptime of services.
- *Caching*—offers a framework to cluster application components to share runtime data, as well as data caching mechanism for increased performance. Sharing runtime data like HTTP session data assists clustered components to take over from the point of crash seamlessly, without impacting the user experience.
- *Event logging*—offers a centralized logging framework, assists developers, quality assurance, support teams, and operations teams to troubleshoot issues, as well as track flow of data within a business transaction, and ability to track/audit user operations done via the exposed user interfaces.
- *Security/SSO*—offers a secure (SSL) mechanism to let customers access the services via various interface options.
- *Role based access control (RBAC)*—offers a flexible RBAC framework, supports views for educators, parents, students, and roll up data for administrators. The system must restrict, in a timely manner, access based on changes in association with a student.
- *Notification engine*—offers a flexible event publish/subscribe with the ability for users to define various channels of notification.
- Interacts with a rich API layer (see the SLI API documents in Attachment 6.1) for service creation, orchestration, access, and management. Some of the services are exposed as Web services for external application integration.
- All procured technologies should be integrated with the SLI/NYSED identity management solution, including directory and federated SAML identity information.

1.2.6.1 Role-Based Access Control (RBAC)

The SLI identity management system will consider four primary dimensions in assigning roles with the permissions to be consumed by EDP applications:

- 1) Roles (e.g., system administrator, content administrator, local administrator, group/community moderator, teacher, other educator, principal, other administrator, parent/guardian, student, public);
- 2) Permissions based on “group/organization” location (e.g., classroom; school; district; cluster of schools/districts, including RIC, BOCES, network; other group/community);
- 3) Data permissions (e.g., aggregate data only, student-level data);
- 4) Permissions based on relationships between among, course/section, and educators assigned to the organization (e.g., a Network Administrator with

student-level data permissions will be able to view student level data for any students enrolled into a network school).

For example, a teacher may have student-level data permissions for his or her assigned classroom, but aggregate-only data permissions for his or her assigned school and district.

Similarly, a principal may have student-level data permissions for his or her assigned school, but aggregate-only data permissions for his or her assigned district.

A regional network leader, such as an employee of NYCDOE, or a BOCES or a RIC (“other administrator” role), may have aggregate-only data permissions for the schools or districts in his or her network, but may have student-level permissions for a particular school or class in which he or she is facilitating intensive support in data driven decision-making.

1.2.6.2 Single Sign-On

Vendor solutions must support single sign-on (SSO) to access the SLI Authentication system and address internal API authentication. The system is expected to interface with SLI identity access management systems. The specification and details to integrate with the system are provided in Attachment 6.1.

1.2.6.3 Data Integration

Data Dashboard vendors must support data integration through Web service and batch uploads from the SLI data store. If Data Dashboard data elements are SLI-compatible but not populated in the SLI (e.g., not loaded to the SLI by NYSED or LEAs), vendors may build data input or import mechanisms, at no cost to NYSED, that load the data directly from LEAs and schools to the SLI; the data are then consumed via the SLI in the Dashboard solution. Data Dashboard solution vendors may source data for proposed Data Dashboard services directly from LEAs and schools, at no cost to NYSED, only if they have exhausted, as certified in writing by NYSED, every other reasonable attempt to do so through the SLI. Any use of the custom data features of the SLI must be accompanied by an open specification of the data elements.

The SLI will provide the capabilities for NYSED and its LEAs to define access to different applications based on role and agreed upon rights. Data Dashboard vendors will need to integrate with the SLI to gather the necessary data associated with a user and consume and update this information on a frequent and regular basis.

The Data Dashboard tools are intended to primarily serve as presenters of data. If the applications foster the collection of additional data from users for value-add purposes, and/or if these data are authoritative (i.e., there is no other source system for this information), the Data Dashboard vendor will be required to write these data back for storage in the SLI’s core or custom entities, unless otherwise agree to in writing by NYSED. Data that would require write back include, but are not limited to, Early Warning indicator flags, Common Core-aligned assessment data not sourced by NYSED, and grade book data. Data not written back to the SLI, as agreed to in writing by NYSED, will need to be made available for export in an interoperable format.

See Attachment 6.1—for detailed data integration specifications.

1.2.6.4 Data Dashboard Solution Selection Process

NYSED will allow LEAs and, in the case of New York City, schools, to select, prior to Year 2 and again prior to Year 3 of the contract, the Data Dashboard solution which best suits their needs. The Content Management and System Services vendor will manage and support the process of collecting information regarding which Data Dashboard solution LEAs are registered to use and enabling the necessary access controls via technology provided by the SLI. In order to assist LEAs (or schools in New York City) with the Data Dashboard selection process, Data Dashboard solution vendors are expected to have a demonstration version of their systems ready for end users by spring/summer 2013. It is acceptable for Data Dashboard solution demonstration versions to be instances of vendor products, sourced with anonymous data from the SLI sandbox development environment. At the time of demonstration, Data Dashboard solution vendors are expected to have ready sufficient end user documentation and other marketing materials that have already been reviewed and approved by NYSED.

Prior to Year 2 and again prior to Year 3 of the contract, the demonstration process will involve a mandatory Statewide webinar and at least twelve subsequent regional live demonstration events to be held in various locations throughout the state (e.g., Western New York Regional Information Center (RIC), Monroe / EduTech RIC, Central New York RIC, Mohawk RIC, Greater Southern Tier / South Central RIC, Franklin-Essex-Hamilton BOCES, Northeastern RIC, Mid-Hudson RIC, Lower Hudson RIC, New York City, Nassau RIC, Suffolk RIC). All vendors are required to participate in these webinar and regional demonstration events.

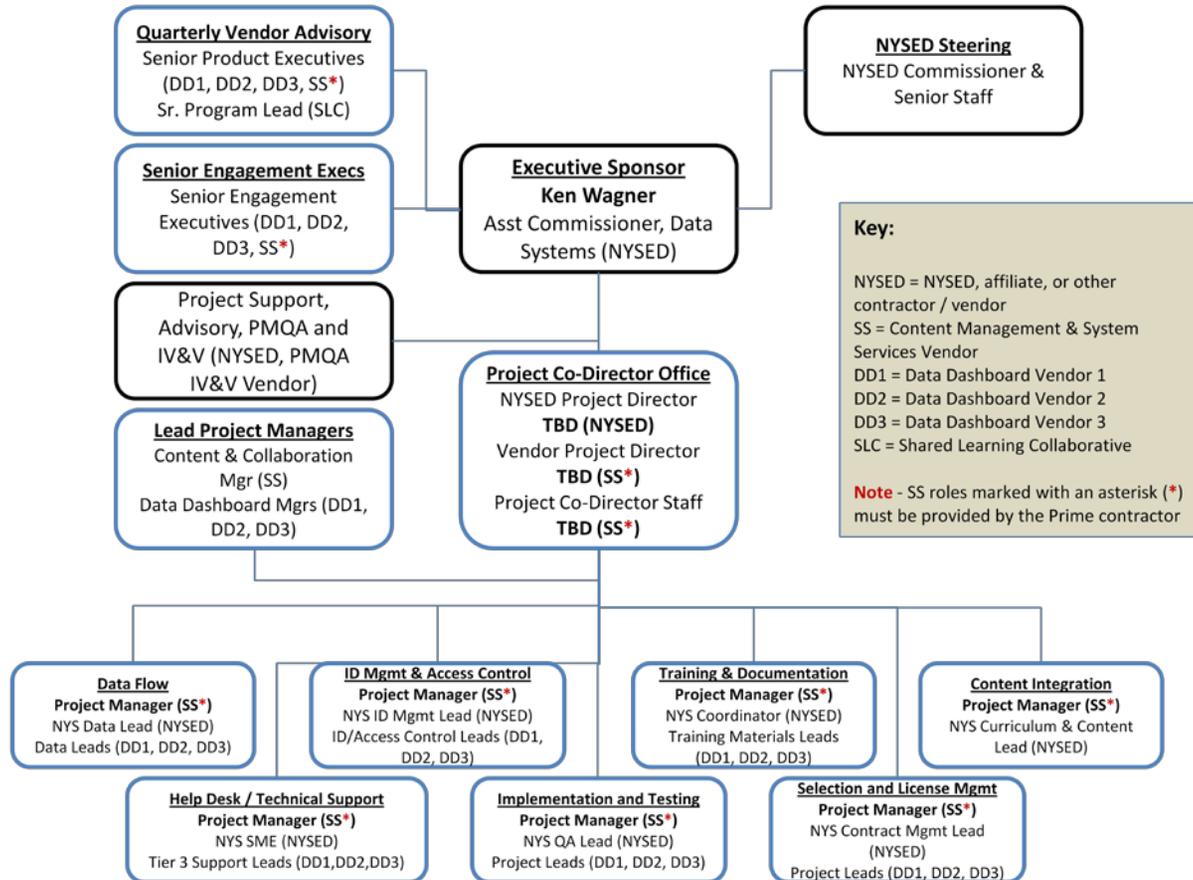
Additional marketing outreach by Data Dashboard vendors will be permitted during a defined period to be specified by NYSED. Data Dashboard solution vendors must provide school, district, and network personnel with the one-click electronic means to opt-out of all future outreach.

During Years 1, 2, and 3 of the contract, it is not permissible for vendors to offer LEAs or schools any financial incentives that could be perceived as intended to encourage a LEA (or school in New York city) to select a vendor Data Dashboard solution.

1.3 Proposed Education Data Portal Management Structure

The diagram below of the proposed project management structure indicates how the Content Management and System Services vendor staff will interface with the overall structure:

Proposed EDP Management Structure



1.3.1 Definition of Project Roles

Role	Definition
<i>NYSED Steering Committee</i>	Comprised of the NYSED Commissioner and Senior Staff.
<i>Executive Sponsor</i>	Ken Wagner, Assistant Commissioner, Data Systems
<i>Quarterly Vendor Advisory</i>	Comprised of Senior Product Executives for DD1, DD2, DD3, and SS* and Sr. Program Lead for the SLC (single point of contact for the EDP project)
<i>Senior Engagement Executives</i>	Senior Engagement Executives for DD1, DD2, DD3, and SS*
<i>Project Support and Advisory</i>	Comprised on NYSED Senior Manager, Functional Leads, and Subject Matter Experts
<i>PMQA and IV&V</i>	See 1.3.4 below
<i>Project Co-Director Office</i>	The project will be co-led by a NYSED Project Director and a Project Director from the winner of the Content Management and System Services RFP*. This duo will leverage shared resources (i.e. Co-Director Staff such as: Project Scheduler, Risk Manager, Budget Manager, Business Analysts, etc.)
<i>Lead Project Managers</i>	The Content and Collaboration solution will be managed (end-to-end) by a Lead Project Manager from the SS vendor*. Similarly, each of the Data Dashboard Solution vendors will provide a Lead Project Manager.
<i>Project Managers (Data Flow, ID Management, Implementation and Testing, Selection and License Management, Training and Documentation, Content Integration, Help Desk and Technical Support) (SS)</i>	Each of the seven work streams will be led by a Project Manager from the winner of the Content Management and System Services RFP*.

Note – Content Management and System Services (SS) roles marked with an asterisk (*) must be provided by the Prime contractor.

1.3.2 Work Streams

As indicated above the project will be managed through a number of “work streams” across each phase of the project. Each work stream is aligned with one or more of the Implementation and Support Services detailed in Section 1.4 of the RFP.

<u>Work Stream</u>	<u>Description</u>	<u>NYSED Management Team</u>	<u>Content Management and System Services Vendor Management Team</u>	<u>Data Dashboard Vendor(s) Team(s)</u>	<u>Alignment to Implementation and Support Services (Section 1.4)</u>
Data Flow	Manage the flow of data from SEAs and LEAs to the SLI and then to the respective vendor applications	Provide SEA data feed to SLI; Oversight of vendor access to SLI data.	Manage overall work stream; Integration of Portal and Content system to SLI	Consume data from SLI for Data Dashboard products; optionally, but at no cost to NYSED, facilitate LEA loading or entry of additional data sets to SLI.	1.4.3, 1.4.4, 1.4.5, 1.4.6
Help Desk and Technical Support	Provision of help desk and technical support	Oversight & Requirements Ownership	Manage overall work stream; Develop Help Desk strategy & protocols across EDP Provide Tier 1 and 2 support for all EDP applications: Provide Tier 1, 2, and 3 support for Content Management solution	Provide Tier 3 support for Data Dashboard solutions; Provide training materials for Tier 1 & 2 support	1.4.10, 1.4.11
Identity Management and Access Control Integration	Ensure compliance with NYSED's/SLI's Identity Management process, protocol and security measures, including single sign-on across all EDP components	Provide Federated Identity Management Plan and Infrastructure (leveraging SLI); Oversight	Manage overall work stream for all EDP; Integrate Content Management, collaboration, and Portal solutions with NYSED/SLI solution	Integrate Data Dashboard solution with NYSED/SLI solution	1.4.3, 1.4.4, 1.4.5, 1.4.6
Implementation, Configuration, and Testing	Specification, Configuration, Customization, and Testing, including UAT and ongoing usability analyses.	Oversight and Requirements Management; UAT	Manage overall work stream, including ensuring deliverable sign-off; systems testing; unit testing of content management,	Testing of Data Dashboard solution	1.4.3, 1.4.4, 1.4.5, 1.4.6, 1.4.8, 1.4.13, 1.4.15

			collaboration, and portal solutions		
Training and Documentation	Develop training materials, end user, and technical documentation. Provide facilitated sessions for training and integration into existing change efforts and SEA, Network, and LEA level	Requirements; Coordination with Statewide efforts; Oversight	Manage overall work stream for EDP; Provide training and “train-the-trainer” sessions focused on embedding tool use to support existing SEA and LEA initiatives; Provide end-user and technical documentation for Content Management, Collaboration, and Portal solution	Provide “train-the-trainer” training to Content Management and System Services vendor; Provide end-user documentation for Data Dashboard solution	1.4.9, 1.4.12
Selection/Licensing	Deliver vendor demonstrations (“road show”) and marketing; Facilitate LEA selection; Manage licenses and ensure proper invoicing	Requirements; Contract Management; Oversight	Manage work stream for all EDP; Provide LEA/school product selection tool; Provide product selections to SLI for access control and Contract Management	Deliver vendor demos of Data Dashboard solution(s); Integrate with licensing system	1.4.14
Content Integration	Convert all existing EngageNY content to EDP Content Management solution. Tag, Load, and Curate additional scheduled content to EDP	Requirements; Contract Management; Oversight	Ensure that all content contained in EngageNY v1.5 displays correctly within EngageNY v2.0; Import selected content and data from the NYCDOE ARIS Connect system; Tag, load, and curate additional NYSED content during the contract term.	None	1.4.7, 1.4.15

1.3.3 Contractor Roles and Responsibilities

The selected Content Management and System Services vendor (“vendor”) will be responsible for supporting all activities associated with design, validation and implementation of the solution, and will also be responsible for maintenance and support and warranties for the installed system through the term of the agreement.

The Content Management and System Services vendor will be responsible for managing the entire EDP project across work streams and communicating work stream status - i.e. progress towards milestones/deliverables, detailed inventory of issues and risks, and key decision points - to the Project Co-Director Office. If a Data Dashboard Solutions vendor fails meet its responsibilities, the Content Management and System Services vendor will document and communicate this issue to the Project Co-Director Office.

The Content Management and System Services vendor is required to provide a full-time EDP Project Director for the overarching EDP project services. The ideal EDP Project Director candidate will have extensive experience managing the delivery of large-scale complex projects in the government sector and significant K-12 expertise. The EDP project director will collaborate daily with the NYSED project director and other NYSED staff to ensure successful delivery and operation of the EDP through the project structures outlined in this RFP. The vendor is required to provide all appropriate staffing to achieve the project services work identified in the RFP as organized per the work streams. This includes, but is not limited to, business analysis and technical support for the Project Co-Director Office (e.g., Vendor and NYSED Project Directors); work stream leadership, project management, issue tracking (escalation and resolution), business analysis, technical, functional, and subject matter expertise and support for each work stream and the overarching project services.

During the Year 1 Implementation of the project - including Project Initiation and Planning, Requirements Analysis, Design, Development, Integration and Testing, and Implementation (60 days post-launch) - the State anticipates a need for a significant on-site presence by selected vendor staff. The minimum requirements for staff time on site are represented in the following table:

MINIMUM Time On Site								
Year 1 (Implementation)							Year 2	Year 3
	Project Initiation and Planning	Requirements Analysis	Design	Development	Integration and Testing	Implementation	Operations and Maintenance	Operations and Maintenance
Key Staff & Staff Assigned to Co-Directors' Office	80% on site	80% on site	80% on site	40% on site	80% on site	80% on site	One Day per month	One Day per month
Work Stream Leads	80% on site	60% on site	60% on site	40% on site	80% on site	80% on site	One Day per month	One Day per month

In addition during Year 1 (Implementation), system developers / programmers shall conduct two-hour weekly system development code reviews with NYSED staff and its designees via web-based interactive technology. This review will be held in person and on-site once per month.

NYSED staff or its designees will have full system access, including access to all programming code, documentation, and all system environments, in order to carry out, without impeding or impairing required vendor activities, its own system review.

While onsite, it is expected that vendor staff be located at the New York State Education Department, 89 Washington Avenue, Albany NY 12234.

The vendor is required to designate a Senior Engagement Executive to serve as the vendor's executive sponsor and senior escalation point internally. This should be a senior executive with P&L responsibility for the project to whom the Project Director will report. Furthermore, if any of the project leaders are provided by a subcontractor then a Senior Executive with P&L responsibility must be identified from that subcontractor and that executive must be available to the Department and the primary vendor as an escalation point.

1.3.4 Project Monitoring and Quality Assurance

The State, at its sole discretion, may contract separately with professional services organization(s) to provide Project Monitoring and Quality Assurance (PMQA) Services and/or Independent Validation and Verification (IV&V) services for the initiative. The PMQA and/or IV&V contractor will be responsible for identifying issues, assisting NYSED in its coordination of its EDP vendor contracts, identifying risks and bringing them to the attention of the governance bodies, and management of inter-agency coordination. The selected Content Management and System Services vendor is expected to fully cooperate with the PMQA and/or IV&V contractor, including providing full system access for monitoring purposes.

1.4 Required Implementation and Support Services

This section describes the implementation and service support activities that will be performed by the vendor once under contract.

The vendor is mandated to perform product implementation and support services as described in the subsections below.

1.4.1 Project Initiation, Planning, and Management

The following activities should be run in parallel with each other and with the initial phases of the product solution deliverables for this RFP and the Data Dashboard RFP. Draft initiation phase (see Table 1 below in this Section) deliverables shall be created and reviewed with NYSED-identified project stakeholders, allowing for sufficient time for each deliverable to be informed by the other initiation activities prior to finalization.

1. Solution Architecture Review: The Vendor shall provide project leadership and relevant technical, functional, user experience, and business analysis resources to work directly with the NYS project team to conduct a brief review of the whole EDP Solution approach. The deliverable shall be an “EDP Technical Architecture Summary” document (approx. 20-50 pages), intended for publication on a NYSED website, that identifies the components that are part of the EDP solution, summarizes the functionality of each component, identifies the interfaces, transports, and interrelationships of each component, and describes the environment in which each component is or will be run. Examples of components include: NYSED, LEA, or Regional Identity Management and Directory components; Shared Learning Infrastructure; other Shared Learning Collaborative provided components (Learning Maps, etc.); Data and Dashboard Solution components; Portal; Content Management; Collaboration; Search; Content Repositories (e.g., learning objects, hosted video, etc.); SEA, LEA, and Regional data sources; Extract Transform Load (ETL)s; Learning Registry node; License Management Components etc.

2. Work Stream Analysis and Status: The Vendor shall provide project leadership and relevant technical, functional, user experience, business analysis, and project planning resources to conduct a review of the status of preexisting project work (where NYSED has already commenced work; e.g., EngageNY v1.5) and planned work in all areas relevant to a timely and successful EDP deployment. The deliverable shall be an updated “EDP Project Status” to be presented to senior management of NYSED along with a revised work breakdown structure. The reviews shall be organized by the work streams proposed in this RFP. A non-exhaustive list of considerations for work already in process includes:
 - a. Data Flow: review of data mapping work to-date; review of current Level 2 plans for data sourcing to SLI; review of planned upgrade to Level 2 data ingestion capacity (nightly refresh capacity); review of data sourcing proposals and requirements of awarded Data Dashboard vendors; review of data required by other EDP components; review of current capabilities of RICs and by extension their supported districts and additional local data domains desired (e.g., formative or benchmark assessment);
 - b. Identity Management and Access Control: review identity management, NYSED directory, and access control work to date and current implementation status; review planned upgrades to NYSED capacity; review SLI capabilities, requirements, and APIs; review proposed EDP log in and SSO experience for technical, functional, security, and user experience issues; review and validate approach of awarded Data Dashboard vendors for technical and security issues; review federation approach for RICs opting in or providing identity and access control services;
 - c. Content Integration: review existing EngageNY v1.5 content; review schedules, specifications, and tagging/curation process for additional content acquisition (curriculum modules, video resources, etc); review import requirements for NYC ARIS Connect content, review planned SLC

- content tagging and indexing deliverables; review Learning Registry specifications and metadata standards
- d. Implementation, Configuration, and Testing: review progress to-date on EngageNY implementation and conduct focus group and other usability analyses, SLI implementation, and implementation of components from other work streams in progress; evaluate testing plans developed (if any); review proposed work under Data Dashboard vendor awards.
 - e. Training and Documentation; Help Desk and Technical Support; and Selection/Licensing: NYSED does not expect to make significant progress on these work streams prior to vendor start date. Work should commence with requirements validation and refinement coupled with a review of proposed work under Data Dashboard vendor awards.
3. Risk Analysis and Project Recommendations: During all phases of work, the Vendor shall maintain a log of open issues submitted by project stakeholders as well as an inventory of project risks identified during the activities above. The deliverable shall be a “Project Risks and Recommendations” document that describes functional, technical, work planning, and organizational capacity risks as well as open questions and other risks to the successful launch and operation of EDP. The deliverable shall include a set of draft recommendations for discussion with NYSED and presentation to senior management. This document should be prepared prior to finalization of the architecture summary document to allow for adopted recommendations to be included in the final version of the architecture summary.

ID	Requirement	Deliverable
1.	<p>The Vendor shall refine its proposed project plans as needed consistent with agreements made during contract negotiation. The plan should address:</p> <ul style="list-style-type: none"> • Work Breakdown Structure (WBS) • Project Schedule • Quality Management • Risk Management • Change Management • Acceptance Management • Issue Management and Escalation • Communication • Implementation/Transition (including migration plans) • Training 	Project Plan
2.	The Vendor shall amend as needed its proposed staffing plan (Attachment 6.6) that identifies individual resources assigned to each of the project activities.	Staffing Plan
3.	The Vendor shall conduct a brief review of the whole EDP Solution approach and present the results in an EDP Technical Architecture Summary” document.	EDP Technical Architecture Summary

ID	Requirement	Deliverable
4.	The Vendor shall conduct a review of the status of preexisting project work (i.e., where NYSED has already commenced work) and planned work in all areas relevant to a timely and successful EDP deployment	EDP Project Status
5.	The Vendor shall develop a Project Risks and Recommendations report.	Project Risks and Recommendations

Table 1, Project Initiation and Planning Phase Requirements

1.4.2 Project Management and Work Stream Support

Using a structured project management methodology the vendor shall provide overarching management of the entire EDP project including work planning, issue tracking, escalation, and status monitoring processes. The vendor will staff the Project Co-Director's office (housed within NYSED) with full time project management, business analysis, and technical support resources who can coordinate daily with work stream leads to 1) control, track, and update a detailed and integrated project plan; 2) control, track, and update detailed and integrated Issues and Risks Registries; 3) control, track, and update a detailed and integrated project staffing, budget and overall vendor management plan; 4) analyze escalated issues; 5) leverage outputs from work stream leads and analysts to develop and manage documents for weekly status reports, monthly management presentations, issue resolution meetings, and key presentations.

ID	Requirement	Deliverable
6.	The Vendor shall provide overarching management of the entire EDP project including work planning,	Weekly Status Reports & Monthly Management Presentations

Table 2, Project Management and Work Stream Support Requirements

1.4.3 Detailed Requirements Definition

NYSED has developed initial functional and technical requirements for the functional components (see Attachment 6.2). The vendor will validate these and update the requirements as needed. This involves activities associated with pre-build EngageNY usability analyses, as well as the definition and assessment of user requirements that are used to determine detailed specifications for application design, configuration, and development.

ID	Requirement	Deliverable
7.	The Vendor shall update the detailed requirements.	Updated Detailed Requirements

Table 3, Detailed Requirements Definition Requirements

1.4.4 Design Specification

Design specification services produce design specifications, for the functional components delivered under this RFP that meet NYSED and SLI technical architectural standards. The process of design specification must include wireframe or mockups for review and approval by the Department. The vendor is required to supply user experience design expertise during this phase to ensure an optimal user experience.

ID	Requirement	Deliverable
8.	The Vendor shall translate the detailed requirements into a design specification, including technical architecture specification, user Interface (e.g., “wire frames”) and functional specifications, and data interface specifications.	Design Specification

Table 4, Design Specification Requirements

1.4.5 System Construction

System Construction services are the activities associated with the programming, development, scripting, configuring, or customizing of Product components delivered under this RFP.

ID	Requirement	Deliverable
9.	The Vendor shall deliver a validated system in the Pre-Production environment. This shall include: <ul style="list-style-type: none"> • ingestion of NYSED/LEA data from the Content Management and Collaboration-specific data store • interface with the SLI API • portal interface with other authorized applications, include Data Dashboards • Integration to the SLI and NYSED Identity Management System (including State and NYC federation), RBAC System, and application licensing system 	Validated Pre-Production System
10.	The vendor shall develop, configure, and operate on behalf of the Department a non-proprietary, open source portal solution consistent with the Shared Learning Collaborative portal solution approach and the requirements in Attachment 6.2. To the extent practicable and cost-effective, the solution should leverage the portal code and services offered by the Shared Learning Collaborative (SLC).	Portal Design
11.	The Vendor shall use a version control tool that can be leveraged by a continuous build system to do automated deployment to various environments. The source control repository should have several branches - one for each environment (development / stage / production) – to be monitored by the continuous build system. When commits/merges happen on those branches the continuous	Version Control

ID	Requirement	Deliverable
	build system should perform an automated build to that environment.	

Table 5, System Construction Requirements

1.4.6 Integration and Testing

The vendor will provide and implement a methodology for the integration and user acceptance testing (UAT) of the overall EDP solution including components procured through the Data Dashboard RFPs, portal interfaces to the SLI and Data Dashboard applications, and others as required. The QA/UAT environment should be representative of the vertical architecture of the production environment.

The vendor will provide and implement a methodology for component testing of the components to be built and delivered under this RFP. Integration and testing services should be provided for each module that is developed for the Content and Collaboration functionality. The vendor will not be responsible for component testing of Data Dashboard components.

Component testing is designed to validate that the component functions as designed and must ensure that all detailed requirements and specifications have been met. Integration testing should be designed to ensure that all components, data feeds, identity management solutions, etc., work together properly and, as a whole, meet the business and functional requirements of the EDP.

For the Portal solution and the Content and Collaboration site, an automated build process should be configured for 'A-B Lane Testing'. Once the system database has been copied to a new location, new code should be configured to use the 'B - Lane' of the database. Updates should be applied; features should be enabled, then the entire Portal solution and Content and Collaboration site should be unit tested through automated processes. Assuming that the build and tests are successful, an automated process should then switch the configuration to use the B-Lane as the live site, and throw out /archive the A- Lane.

EDP component integration testing must include the development of automated system test scripts to validate that:

- user roles are performing properly
- authentication performs properly
- portal integration with Data Dashboard performs properly
- portal integration with Content Management and Collaboration modules performs properly
- system navigation performs properly
- Dashboard demos and selection perform properly
- system Views perform properly
- Data Dashboard solutions end-user documentation and screens are translated properly or translation guides are provided
- search performs properly

Integration and testing methodology must include the process, services, and environments to:

- design, manage, and present component test cases and scripts for review and approval.
- leverage deliverables from Data Dashboard components, design, manage, and present integration test cases, scripts, and tools for review and approval.
- for component and integration testing, execute the scripts, track defects, and present results of testing to NYSED for review prior to requesting sign-off on any production deliverables
- methodology for and implementation of re-testing (or regression testing) prior to releasing packages of enhancements and fixes
- provide some capacity for ad-hoc retesting to accommodate significant updates to components on independent timelines. Examples could include SLI, SIRS, or identity management upgrades.
- For UAT, schedule and facilitate NYSED-selected users to complete UAT, track results, and present to NYSED for review prior to requesting authorization for production releases.

ID	Requirement	Deliverable
12.	The Vendor shall document test plans defining: <ul style="list-style-type: none"> • the overall strategy for validating the functionality of the system • the approach to ensure test coverage of each requirement • the individual test cases that will be performed to execute the testing strategy • the environments in which the tests will be conducted 	Test Plans
13.	The test plans shall include: <ul style="list-style-type: none"> • testing objectives • scope of testing (both what is in and what is out of scope) • responsibilities (who will be performing the test) • testing approach • testing sequence • defect reporting and criteria 	Test Plans
14.	The test case descriptions shall be traced to requirements and include: <ul style="list-style-type: none"> • test data needed to execute the tests • preconditions required prior to the start of test • criteria for suspending and resuming testing • expected test results 	Test Case Descriptions
15.	The Vendor shall design and create User Acceptance Test (UAT) scripts for NYSED approval or modification. Upon NYSED request, additional specific UAT scripts will be created.	User Acceptance Test Scripts

ID	Requirement	Deliverable
16.	The Vendor will subcontract with an industry-recognized security firm (agreeable to NYSED) for a security audit of the code base consistent with the requirements of the New York State Office of Cyber Security applicable to State agency information technology projects, with any material findings and recommendations corrected at no additional cost. The Vendor's security measures are subject to review and approval by NYSED, both through an informal audit of policies and procedures and/or through inspection of security methods used within the researchers' infrastructure, storage, and other physical security.	Code Base Audit

Table 6, Integration and Testing Requirements

1.4.7 Content Integration Services

The vendor will provide tools and resources to tag with meta-data, load, and curate important content resources currently being acquired, owned, licensed, or used by the state.

The State is procuring curriculum, video, and other resources for inclusion in EngageNY.org. See <http://usny.nysed.gov/rttt/rfp/sa-03/home.html> and <http://usny.nysed.gov/rttt/rfp/gt-15/home.html> for a description of those curriculum module and video resources, respectively. This will include approximately 22,000 curriculum module documents for English language arts (ELA), 22,000 curriculum module documents for math, 500 externally-hosted videos, 100 assessment documents in ELA, 100 assessment documents in math, 100 evaluation documents for teachers, and 100 evaluation documents for principals.

The vendor shall export/convert/import approximately 100,000 instructional resources (primarily documents and links) and associated meta-data from NYCDOE's ARIS Connect system (built in Drupal 5.9), while preserving the permissions from approximately 2,000 institutional (school/district) private communities, 2,000 institutional (school/district) public communities, 5,000 user-generated private communities, and 1,500 user-generated public communities.

ID	Requirement	Deliverable
----	-------------	-------------

ID	Requirement	Deliverable
17.	<p>The Vendor shall identify the formatting and metadata requirements for the content described above based on the final design and metadata tagging specifications of the relevant EDP components. The vendor will then complete a gap analysis to determine:</p> <ul style="list-style-type: none"> • Content that needs retagging or additional tagging • Content that has metadata that can be automatically converted by an algorithm and / or “cross walk” • Content that requires reformatting, splitting, or indexing. (For example a curriculum module is composed of many individual objects and may need to be organized and indexed properly to meet the user experience design requirements of the content management system.) 	Content Gap Analysis
18.	<p>The vendor shall integrate content (e.g., from the Curriculum Module and Video Resource RFPs and assessment resources described above, as available) for EngageNY.org 1.5</p> <ul style="list-style-type: none"> • The vendor shall execute the tagging, conversion, reformatting, splitting, indexing or other content integration work as identified in the above analysis and load that content into the EDP. Prior to commencing the execution, the vendor shall provide NYSED with a detailed work plan including: • Review and sign-off processes including NYSED approvals • A description of the approach for each set of content and specifications for any automated processing, tagging, or conversion of content • Resumes for content experts required, subject to NYSED approval • A quality assurance and testing methodology and approach, to be executed by the vendor prior to sign-off on the final production deliverables 	EngageNY. Org v1.5 Content Integration

ID	Requirement	Deliverable
19.	<p>The vendor shall integrate content (e.g., from the Curriculum Module and Video Resources RFPs described above, as well as the NYCDOE ARIS Connect content described above) for EngageNY.org 2.0</p> <ul style="list-style-type: none"> • The vendor shall execute the tagging, conversion, reformatting, splitting, indexing or other content integration work as identified in the above analysis and load that content into the EDP. Prior to commencing the execution, the vendor shall provide NYSED with a detailed work plan including: • Review and sign-off processes including NYSED approvals • A description of the approach for each set of content and specifications for any automated processing, tagging, or conversion of content • Resumes for content experts required, subject to NYSED approval • A quality assurance and testing methodology and approach, to be executed by the vendor prior to sign-off on the final production deliverables 	EngageNY. Org v2.0 Content Integration

Table 7, Content Integration Services Requirements

1.4.8 Usage and Usability Analysis

The vendor shall develop and implement a methodology for capturing, analyzing and reporting usage data that meet the requirements in Attachment 6.2. The vendor shall also propose additional usage tracking and data capture methodologies that are considered best practices for enabling future usability, data mining (e.g., for development of recommendation algorithms, etc.), and product development efforts.

In addition to design reviews by a user experience design expert, the Vendor shall conduct a usability analysis of all components of the EDP prior to and following the release. The analysis should include at least 10 end-users who must represent all relevant roles, and measure the 'ease-of-use' for an end-user and accessibility requirements. The Vendor will define the type of usability test(s) to be deployed, which will be subject to NYSED approval. The Vendor shall share the results of the usability analysis and an implementation plan to incorporate the identified findings into any components provided under this RFP. If the Vendor identifies a finding as not worthy of implementation, it must be accompanied by a justification. The vendor shall execute the implementation plan once it is accepted by NYSED. All "non-worthy" items will be reviewed and signed-off by NYSED as part of the acceptance of the implementation plan.

ID	Requirement	Deliverable
----	-------------	-------------

ID	Requirement	Deliverable
20.	The Vendor shall develop a testing plan.	Usability Testing Plan
21.	The Vendor shall develop and deploy usability tests, including accessibility requirements.	Usability Tests
22.	The Vendor shall make available all usage tracking information as specified in Attachment 6.2.	Usage Tracking Data
23.	The Vendor shall conduct user groups and individual interviews.	User Groups/ Interviews
24.	The Vendor shall conduct an analysis of the usability test results and provide an implementation plan for incorporating the results into the system.	Usability Test Results
25.	The Vendor shall develop recommendations and an implementation plan.	Recommendations and Implementation Plan
26.	The Vendor shall conduct an on-site briefing with client and product teams.	Briefing with Client and Product Teams

Table 8, Usage and Usability Analysis Requirements

1.4.9 Documentation

Documentation services are the activities associated with developing, revising, maintaining, reproducing, and distributing information in hard copy and electronic form. Documentation related to the Content Management and System Services includes:

ID	Requirement	Deliverable
27.	The Vendor shall develop end-user system documentation using a NYSED-owned wiki tool. End-user roles will include educators, parents, and students.	End-user System Documentation
28.	The Vendor shall develop technical system documentation, to provide sufficient clarity and detail to provide a reasonably knowledgeable person with the necessary skill sets with sufficient information to operate, maintain, and develop the system, using a NYSED-owned wiki tool. Technical documentation will include sufficient detailed information for Data Dashboard and other third-party vendors to integrate their products into the Content Management and System Services Portal.	Technical System Documentation
29.	The Vendor shall develop system services documentation, using a NYSED-owned wiki tool, to provide sufficient clarity and detail to provide a reasonably knowledgeable person with the necessary skill sets with sufficient information to operate, maintain, and develop the system services and work streams, including Data Flow, Identity Managements and Access Control, Training and Documentation, Content Integration, Help Desk / Support, Implementation and Testing, Selection and License Management.	System Services Documentation

ID	Requirement	Deliverable
30.	The Vendor shall deliver updates to the end-user, technical system, and system services documentation described above for the test release, the full production release and any subsequent releases offered by the Vendor.	Documentation Updates

Table 9, Documentation Requirements

1.4.10 Application Warranty Services

The Vendor shall provide staff support on-site, as needed for 60 days following full system acceptance. Vendor will repair code developed by Vendor during the warranty period (see 4.13.5, part H below), at no charge to NYSED, provided that:

- o the problem results in a Severity 1, 2, or 3 Level problem (see Attachment 6.4 Maintenance and Support Services); and
- o the root cause analysis indicates the problem was introduced solely by code or configuration created by Vendor.

ID	Requirement	Deliverable
31.	The Vendor shall provide staff support on-site for 60 days.	On-site Support
32.	The Vendor shall comply with the terms described in Attachment 6.4 Maintenance and Support Services.	Warrantied Maintenance and Support Services

Table 10, Application Warranty Requirements

1.4.11 Application Maintenance, Technical Support and Help Desk Services

Application Maintenance

Application maintenance services are the activities associated with repairing defects and developing minor functional enhancements for the production application programs and system modules that are put into production. Application maintenance services are defined in Attachment 6.4 Maintenance and Support Services.

Technical Support and Help Desk Services

The Content Management and System Services vendor shall provide overall EDP help desk and technical support, including developing a help desk strategy and protocols across the entire EDP (all products and services for all vendors included in Data Dashboard Services contracts and all products and services included in the Content Management and System Services contract), subject to approval of NYSED, and managing the overall help desk work stream across the entire EDP.

The Content Management and System Services vendor shall provide Tier 1, 2 and 3 support for the products indicated in this contract and Tier 1 and 2 support

for Data Dashboard contract products (for all Data Dashboard solutions). Data Dashboard vendors are responsible for providing the necessary training and materials for the Content Management and System Services vendor to perform this responsibility.

Although the Data Dashboard vendors are responsible for providing Tier 3 support for their associated products and services, the Content Management and System Services vendor is responsible for integrating and coordinating this Tier 3 support within the overall help desk and technical support service structure.

ID	Requirement	Deliverable
33.	<p>The Vendor shall provide technical support and help desk services in compliance with the terms described in Attachment 6.4 Maintenance and Support Services. Specifically the vendor shall:</p> <ul style="list-style-type: none"> • The vendor shall operate Tier 1 and Tier 2 support for all EDP components (including Data Dashboards) for all system users and administrators • The vendor shall provide all tiers of support for the components designed and developed under this RFP. This will include sufficient technical support to assist NYSED's three Data Dashboard solutions vendor to integrate, within the timelines outlined in that RFP, their products into the Content Management and System Services Portal. 	Application Maintenance, Technical Support and Help Desk Services
34.	The vendor shall produce Technical Support and Help Desk Use Cases and Scripts for the products defined in this RFP (i.e. Content and Collaboration and Portal Solutions) use by Help Desk staff.	Technical Support and Help Desk Cases and Scripts
35.	The vendor shall provide Professional Development for Technical Support and Help Desk staff for the products defined in this RFP (i.e. Content and Collaboration and Portal Solutions).	Professional Development for Technical Support and Help Desk Staff

Table 11, Application Maintenance, Technical Support, and Help Desk Requirements

1.4.12 Training

The Vendor shall provide training services as described below.

ID	Requirement	Deliverable
----	-------------	-------------

ID	Requirement	Deliverable
36.	<p>The Vendor shall organize, develop and lead planning sessions with NYSED and the Data Dashboard Services vendors to plan for the development of (a) end-user documentation, (b) help desk materials and strategy, and (c) training/professional development materials and strategy. Sessions will be held as follows:</p> <ul style="list-style-type: none"> • Initial session – to be held in Albany, duration up to five (5) days • Follow-on sessions – three additional one (1) day sessions in Albany, approximately every six months through end of Year 2 (12 days total) • NYSED will provide meeting space 	Planning Sessions
37.	<p>The Vendor shall receive product training from the Data Dashboard vendors for (a) Data Dashboard functionality, (b) end-user documentation, and (c) help desk materials and strategy and training/professional develop materials and strategy (the Data Dashboard vendors will provide electronic copies of all materials to the Content Management and System Services vendor):</p> <ul style="list-style-type: none"> • Initial session – to be held in Albany, duration up to five (5) days • Follow-on sessions – to be held in Albany – one additional one (1) day sessions approximately every six months through end of Year 2 (4 days total) • Training sessions will accommodate up to 30 people per session • NYSED will provide training facilities (room, PCs, Internet connectivity, projector, etc.) 	Receive Product Training
38.	<p>The Vendor shall produce and deliver a high-quality video/webinar for distribution through EngageNY.org. The deliverables will include:</p> <ul style="list-style-type: none"> • High quality 3-camera video shoot including interviews of educators and administrators by NYSED interviewer, resulting in approximately 15 minutes of finished and edited footage • Three versions of the video/webinar that are edited to include screenshots or interviews specific to each different data dashboard tool 	Produce videos and webinars

ID	Requirement	Deliverable
39.	<p>The Vendor shall develop and provide training and “train-the-trainer” sessions (including print and electronic copies of training materials for all training attendees) focused on embedding EDP tool use to support existing SEA and LEA initiatives for the following stakeholder groups: Network Teams / Network Teams equivalents (see http://engageny.org/network-teamsntes), teacher centers (see http://www.p12.nysed.gov/ciai/teachercenters/home.html), leadership/principal academies, Big 5 large city school districts (Buffalo, NYC, Rochester, Syracuse, Yonkers), BOCES (see www.boces.org) and RICs (http://www.boces.org/wps/portal/BOCESofNYS/About/WhatsARIC):</p> <ul style="list-style-type: none"> • Initial session – full day, to be held in Albany, for an estimated 550 participants • Follow-on sessions – to be held in 12 regions of the State (*see below) - eight additional one (1) day sessions approximately quarterly through end of Year 3 (96 days total) • Training sessions will accommodate up to 60 people per session. • NYSED will provide training facilities (room, PCs, Internet connectivity, projector, etc.) 	Professional Development
40.	<p>The Vendor shall organize, develop and lead knowledge-transfer and operations training sessions for NYSED-designees for all technical and system services components of the Content Management and System Services contract,</p> <ul style="list-style-type: none"> • Trainings to be held in Albany for up to 10 days • Training sessions will accommodate up to 25 people per session • NYSED will provide training facilities (room, PCs, Internet Connectivity, projector, etc.) 	Knowledge-transfer Training for NYSED Designees
41.	The Vendor shall develop and deploy on a NYSED-owned wiki tool an end-user training manual for all components of the EDP.	End-user Training Manual
42.	The Vendor shall develop and deploy on a NYSED-owned wiki tool technical system training manual for all components of the EDP.	System Training Manual
43.	The Vendor shall develop and deploy on a NYSED-owned wiki tool system services training manual for all Services contained in the Content Management and System Services contract	System Services Manual

Table 12, Training Requirements

* The 12 regions include: Western New York Regional Information Center (RIC), Monroe / EduTech RIC, Central New York RIC, Mohawk RIC, Greater Southern Tier / South Central RIC, Franklin-Essex-Hamilton BOCES, Northeastern RIC, Mid-Hudson RIC, Lower Hudson RIC, New York City, Nassau RIC, Suffolk RIC

1.4.13 Hosting

The vendor shall provide hosting services to maintain and operate the Portal solution, Content Management and Collaboration solution, Data Dashboard Selection Tool and Learning Registry. NYSED expects to maintain the EngageNY.org or similar branding for the content and collaboration components of the EDP.

The vendor shall take over the hosting, maintenance and operation of the EngageNY product after the v1.5 release (anticipated by November 1, 2012), and will assume ongoing hosting, maintenance, and operation of the EngageNY.org website through the end of the contract. The expanded version of the Content Management and Collaboration solution developed and deployed by the winning vendor in accordance with the requirements of this RFP is referred to in this document as "EngageNY v2.0". EngageNY v2.0 shall include all content and functionality contained in EngageNY v1.5, as well as the additional requirements contained in Attachment 6.2.

NYSED is seeking a hosted solution that complies with the requirements defined in Attachment 6.3 Hosting Services and Attachment 6.2. A shared, multi-tenant hosting solution is permissible. Such solutions will be expected to comply with the Federal Risk and Authorization Management Program (FedRAMP) requirements as developed by the Federal Cloud Computing Initiative (FCCI) at the US General Services Administration (GSA) (<http://www.gsa.gov/portal/category/102371>). FedRAMP security controls and enhancements have been selected from the NIST SP 800-53 Revision 3 catalog of controls. FedRAMP, which is expected to be fully operational by Year 1 launch in September 2013, requires that cloud computing services and systems offered by Cloud Service Providers (CSP) meet specified security requirements. CSPs will be required to use qualified, accredited Third Party Assessment Organizations to perform independent assessments on their service and systems. Data shall be hosted within the continental United States (government-only shared hosting is preferable). The vendor may propose to provide hosting services itself, or may propose the use of a subcontractor. Subcontracted hosting services do not count toward the subcontracting limit of sixty percent (60%) of the contract budget.

ID	Requirement	Deliverable
44.	Beginning November 1, 2012, the Vendor shall provide hosting, operation, and maintenance services for Engage NY v1.5 that comply with the terms described in Attachment 6.3 Hosting Services and Attachment 6.2.	Hosting Services for EngageNY v1,5
45.	The Vendor shall provide hosting services for the EDP components identified in this RFP as the responsibility of the winning vendor, that comply with the terms described in Attachment 6.3 Hosting Services and Attachment 6.2.	Hosting Services for EDP (including EngageNY v2.0)

ID	Requirement	Deliverable
46.	The Vendor shall provide a site and system security plan.	Site and System Security Plan
47.	The Vendor shall provide a backup and disaster recovery plan.	Backup and Disaster Recovery Plan

Table 13, Hosting Requirements

1.4.14 Data Dashboard Selection and License Management Services

The vendor shall design and, once the design is approved by NYSED, implement business processes that enable the demonstration and selection of Data Dashboard solutions. No school may simultaneously be using more than one Data Dashboard solution funded by NYSED. Typically, selection will be done by LEAs except in New York City where it will be by network or school. The vendor-designed process will maintain an accurate, auditable record of all transactions related to selection.

ID	Requirement	Deliverable
48.	The vendor shall develop a work plan for the development of the Data Dashboard Selection tool and accompanying license management processes.	Work Plan
49.	The vendor shall conduct a process to establish business rules for the treatment of organizations to ensure that no organizations are double-counted in selection. (For example, if a network of 16 schools selects Data Dashboard A and a single school within the network subsequently selects Data Dashboard B, then a business rule requiring either a rejection of B's selection or a presumption that 15 schools selected A and 1 school selected B must be applied.) In no case may a school or any organization hold two approved Data Dashboard selections simultaneously. The vendor shall assume that selections may ultimately be made at the school level, and should design accordingly (i.e., there may be occasional cases where an odd school in the LEA will use a different selection than the rest of the LEA).	Business Rules for Selection Process
50.	The vendor shall design a Data Dashboard Selection Tool (accessible to LEAs via a web-based electronic form or survey) for capturing LEA, network, or school selections from designated organization leaders that implements the business rules identified in the previous task.	Design Specification for Data Dashboard Selection Tool
51.	The vendor shall develop a test plan to define the process for testing the Data Dashboard Selection Tool.	Test Plan for Data Dashboard Selection Tool
52.	The vendor shall develop test cases and UAT scripts for testing the Data Dashboard Selection Tool.	Test Cases and UAT scripts for Data Dashboard Selection Tool
53.	The vendor shall implement, maintain and host, on	Data Dashboard

ID	Requirement	Deliverable
	<p>NYSED’s behalf, a Data Dashboard Selection Tool (“the tool”) that includes transaction records representing any initiation or change in status of a selection. Each record will contain at a minimum the organization, the date, the requested Data Dashboard selection (e.g., A, B, or C), the new status, and the name of the person accountable for the change in status (e.g., the requester for an initial request, the approver for an approval, etc., and any additional notes or fields required).The and accompanying reports will be implemented in a common, widely used web-based tool that is acceptable to NYSED. A process must be implemented for archival backups (including data snapshots) that can be physically or electronically secured (e.g., by digital signature) by NYSED for use in auditing and disaster recovery. The selection database shall accept an annual file from NYSED with official enrollment counts by organization and school.</p> <p>Approval processes and workflows that result in changes of selection can be largely manual provided there is a process for maintaining permanent records acceptable to NYSED for each batch of approvals and rejections.</p> <p>The vendor shall design and produce an on-demand report that can produce current selection statuses or selection statuses for any “as of” date.</p> <p>The vendor shall design and produce an on-demand report that, for any date range, calculates a record for each school detailing the number of days it selected each available license and the % of the total date range that represents. The report should have the capability to group schools by LEA or other organizational units. The vendor shall also design and produce an on-demand report that, for any date range, can calculate the product of the % of the period that each school was using each vendor’s product multiplied by the official enrollment of that school. The report will then subtotal by vendor to produce total numbers of student usage for each vendor for the requested date range.</p>	Selection Tool and Reports
54.	The vendor shall operate a process by which a NYSED designee periodically reviews Data Dashboard selections and accepts or rejects them. The vendor shall ensure that the reviewer of selections is aware of any prior accepted selections for a given organization. Prior selections should be terminated if a new selection is accepted for the same organization.	Selection Review Process
55.	The vendor shall prepare series of field communications, to be approved and sent by NYSED designees. The communications will set timelines, expectations, and processes for accessing or attending demos, and making a selection of Data Dashboard tool.	Field Communications

ID	Requirement	Deliverable
56.	The vendor shall prepare follow-up communications to be sent by NYSED designees to non-responsive organizations	Follow-up Communication
57.	<p>The vendor shall transmit the current selections periodically to the respective Data Dashboard vendors and to the SLI in order to support license management and access control functions.</p> <ul style="list-style-type: none"> • The vendor shall prepare and transmit to the Data Dashboard vendors the exports in a common file format and layout approved by NYSED. • The vendor shall prepare and transmit the selection data into the SLI via batch files or web APIs as required by the SLI to perform access control. 	Submittal to DD Vendors and SLI

Table 14, Data Dashboard Selection and License Management Requirements

1.4.15 Learning Registry

NYSED intends to establish a presence within the Learning Registry Public Network (LRPN) (see <http://www.learningregistry.org>) for the purpose of sharing information about learning resources, including information about alignment of learning resources to content standards (alignment data). NYSED intends to exchange alignment data with other states and organizations through the LRPN. NYSED also intends to share other descriptive information about learning resources (metadata) and anonymous and aggregate data about the usage of learning resources (social metadata/paradata).

Additionally, the NYSED intends to make alignment data, metadata and paradata available to districts, schools and teachers for the purpose of discovery of appropriate learning resources and to gather from these entities information about learning resource usage, including social data (likes, ratings, comments).

To enable this discovery and feedback, NYSED intends to expose the NYSED's presence on the LRPN (or "node") to districts, schools and teachers through the Education Data Portal and through normal tools and processes (e.g., search tools) that they may otherwise use for finding and using learning resources.

NYSED intends to:

1. leverage SLC provided components, content and metadata standards (e.g., LRMI), and SLC-specified extensions and vocabulary. See "Learning Standard Alignment in the SLC Technology: A Whitepaper" dated March 29, 2012, in Attachment 6.1.
2. leverage the SLC-provided Node that is connected to the Learning Registry Public Network (LRPN) or a NYSED-provided node (to be developed outside the scope of this contract) if the SLC node does not meet NYSED's requirement;

3. integrate the Node into the Education Data Portal infrastructure for the purpose of data exchange between the node and other components of the EDP;
4. prepare and publish the EDP's standards alignment, usage, ratings, and other meta-data to the Node and to develop an automated process for periodic updating; and
5. define interfaces and feeds for additional NYSED or other state and local agency components to publish and subscribe to data

In order to accomplish this, the vendor shall provide the necessary services and staff to (1) integrate EDP content and search with the SLC-provided or NYSED-provided LRPN; (2) prepare and publish alignment and other data into the Node for distribution across the LRPN and (3) extract, from LRPN, relevant alignment and other data for use in the Education Data Portal. Specific services required are listed in the table below.

ID	Requirement	Deliverable
58.	Develop an approach to establishing and operating NYSED's Learning Registry presence. For example, the proposed approach may be to leverage a single SLC node instance connected to the Learning Registry Public Network, multiple node instances, or both public and private (test/sandbox) node instances.	Conceptual Design
59.	<p>Refine requirements for publishing the LRPN including what objects, metadata, paradata and events will be shared via Learning Registry. Metadata, such as how learning resources align to content standards, shall be expressed in a NYSED-approved standard format such as LRMI or Learning Registry formats. Content standards alignment data shall be expressed in a NYSED-approved machine-accessible format. Other data, such as how a learning resource is used, shall be expressed in a NYSED-approved standard format such as LRMI or Learning Registry formats. NYSED intends to adopt formats and standards that ensure compatibility with other SLC states and SLC provided components.</p> <p>Refine requirements for subscribing to and importing, indexing, and utilizing metadata published to the LRPN by other states or entities. This will include:</p> <ul style="list-style-type: none"> • A method for EDP Content Managers and System Administrators to indicate sources of content objects and metadata that are trusted by NYSED (e.g., other states, agencies, or organizations) • Functionality that ensure that the metadata is appropriately integrated into the EDP Content Management System. For example: • trusted metadata about EDP content objects are displayed on resource pages • trusted objects from other systems return in searches when appropriate 	Detailed Functional and Technical Requirements

	<ul style="list-style-type: none"> trusted objects from other systems can be imported or displayed as EDP-native objects when approved by NYSED Any import service should account for the identities of submitting organizations to the Learning Registry, such that NYSED can specify a white list and/or a black list of identities to accept or reject during imports. Imported data should retain the identity of the submitting organizations within the EDP system. <p>A method for LEAs or other organizations to subscribe to or use EDP content objects and publish back information about learning resource usage, including social data (likes, ratings, comments)</p>	
60.	The vendor shall develop a test plan, test cases and test scripts for the Learning Registry.	Test Plan, Test Cases and Test Scripts
61.	The vendor shall implement the test plan in order to produce a tested pre-production system.	Pre-Production Learning Registry
62.	The vendor shall implement and deploy the Learning Registry production system.	Production Learning Registry

Table 15, Learning Registry Requirements

1.4.16 Additional Services

If the need for unanticipated work beyond what is described within this RFP arises, a deliverable-based budget will be negotiated for the work based upon an agreed upon number of hours multiplied by the appropriate hourly rates provided in the vendor’s cost proposal.

Proposers are to submit fully loaded hourly rates that include all labor, overhead and fee costs including but not limited to printing, secretarial, program entry, computer charges, postage, travel, meals and lodging. These hourly rates will be evaluated during the cost evaluation phase.

NYSED is making an assumption about the total dollar value of this unanticipated work. The same assumed amount will be applied to each proposer’s cost proposal.

ID	Requirement	Deliverable
63.	The vendor shall provide additional services in accordance with the task order process defined in Section 4.13.3.	Additional Services

Table 16, Additional Services Requirements

2 PROPOSAL FORMAT, CONTENTS AND SUBMISSION

2.1 Documents to be submitted with this proposal

This section details the submission document or documents that are expected to be transmitted by the respondent to the New York State Education Department in response to this RFP. The submission will become the basis on which NYSED will judge the respondent's ability to perform the required services as laid out in the RFP. This will be followed by various terms and conditions that reflect the specific needs of this project.

2.2 Minimum Qualifications

The eligible bidder must agree to the minimum qualifications found below and must submit the Minimum Qualifications Certification Form located in Section 5.7, signed by an authorized person.

Inability to meet the minimum qualifications set forth in this RFP will result in the rejection of a proposal as non-responsive.

The bidder must meet **all six** of the qualifications described below. The technical proposal must contain information to support the claimed qualifications, as noted in the Minimum Qualifications Certification Form. You may count the same projects in multiple Minimum Qualification statements if the project meets the criteria.

Minimum Qualification 1

The primary bidder must have been responsible for overall project management of three separate software implementation projects in K-12 school districts or state education agencies of a software product used by educators, students or parents within the last three years.

Minimum Qualification 2

The primary bidder must have experience implementing, within the last three years, a complex solution for a large corporate or government client that: a) involved identity management and access control integration, b) multiple vendors, and c) a scope of services in excess of \$10 million.

Minimum Qualification 3

The primary bidder or its subcontracting team must have completed at least three implementations of content management or collaboration application(s) within the last three years, at least one of which is Drupal based (version 6.0 or higher) and has at least 7,000 registered users. The bidder should submit resumes of its development team, which will be evaluated and considered during the proposal evaluation. Preference will be awarded to development teams who have a record of active participation in the Drupal community (e.g., have contributed Drupal patches, modules, issue queues, documentation, automated tests, or installation profiles).

Minimum Qualification 4

The primary bidder or its subcontracting team must have completed at least one product implementation of a java based portal or web application framework within the last three years

Minimum Qualification 5

The primary bidder or its subcontracting team must have experience providing, within the last three years, Software as a Service (SaaS), or hosted applications operated by the vendor, serving at least 10,000 users a year.

Minimum Qualification 6

The primary bidder or its subcontracting team must have experience providing, within the last three years, a help desk operated by the bidder supporting a product or service with at least 10,000 end users.

2.3 Project Submission:

The proposal submitted in response to this RFP must include the following documents:

2.3.1 Cover Letter

The bidder must submit a signed Cover Letter on official business letterhead. The Cover Letter must include the following:

- The signature of an official authorized to bind the bidder to all provisions of the RFP.
- A statement that, if awarded the contract, the bidder will comply with all the requirements set forth in the RFP.
- A statement that the offered named Key Staff will be provided once NYSED issues a notice to proceed. NYSED does not allow unapproved substitutes for Key Staff.
- Identification of any draft contract exceptions taken by the bidder. Note that NYSED will only consider exceptions to the State's draft contract if doing such is in the State's best interest. Any draft contract exceptions taken by a bidder should fully describe how they are in the best interest of the State for NYSED's consideration. NYSED expressly reserves the right to reject or accept any such exceptions in whole or in part at NYSED's sole discretion. NYSED will not entertain exceptions brought to its attention after the proposal due date or during contract negotiations. The bidder's proposal and/or proposal price must not be contingent upon these requested exceptions, and must remain firm, even if all such exceptions are rejected by NYSED in their totality.
- Any claims of confidential and proprietary information should also be identified and addressed in this cover letter. NYSED may protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law ("FOIL"), Article 6 of the Public Officers Law. If a

bidder believes information included in its proposal is confidential and proprietary, the bidder should identify those page(s) of its proposal which contain such information as “confidential and proprietary”. Labeling all pages as “confidential” or “proprietary” is unacceptable and may not serve to preserve the claim of confidentiality. All bidders shall explain the material and substantive reason(s) why this information should be considered exempt from public disclosure under FOIL. NYSED reserves the right to only consider those FOIL exemption requests that meet the requirements of FOIL. The State will only consider those items confidential and proprietary which it agrees are confidential and proprietary based on the proof provided by the bidder and responses to the State’s questions regarding any such claims.

- The following information regarding the consultant’s official representative for its proposal:
 - Name of bidder’s official representative
 - Title
 - Name of company
 - Address
 - Telephone number
 - FAX number
 - E-mail address
- The legal names of all Subcontractors involved in the consultant’s response.

2.3.2 Technical Proposal

The original plus eight (8) paper copies and an electronic copy (in MS Office format) on CD of the completed Technical Proposal must be mailed in a separate envelope labeled **RFP #DS-08 Technical Proposal - Do Not Open** and must include the following:

- Proposed Solution Description as outlined below
- All Forms and Assurances located in Section 5 - Submission Documents, including original signatures where necessary:
 - 5.1 Response Sheet for Bids
 - 5.2 Non-Collusive Bidding Certifications
 - 5.3 MacBride Certification
 - 5.4 Certification – Omnibus Procurement Act of 1992
 - 5.5 Required Assurances (not referenced anywhere)
 - 5.6 Offerer Disclosure of Prior Non-Responsibility Determinations
 - 5.7 Minimum Qualifications Certification Form
 - Completed Attachment 6.2 - Detailed Requirements
 - Completed Attachment 6.5 - Company Experience and References
 - Completed Attachment 6.6 - Staffing Plan and Résumés
 - Completed Attachment 6.8 - Statement of Work Template

Format for Proposed Solution Description

Table of Contents

The Table of Contents should identify each major section of the bidder's proposal, along with its initial-page number. Any offered attachments or addendums shall be cited here.

Executive Summary

Provide a brief and concise description of the proposed approach and work effort.

System Requirements and Technical Approach

System Requirements

Using the Requirements table provided as Attachment 6.2, Detailed Requirements, and using the following indicators, the bidder should provide its indication as to whether its proposed solution meets NYSED's requirements.

Scale for bidder ability to meet requirements:

M - Meets requirement

NS - Not supported

The bidder must respond to every requirement in Attachment 6.2, including references to pages in the Technical Proposal where that requirement is discussed. Failure to provide the page number where the requirement is addressed in the proposal may result in a lower score if evaluation is impeded by such failure. **Failure to be able to meet each and every *mandatory* requirement in Attachment 6.2 will lead to rejection of the proposal on non-responsive grounds (i.e. Not supported is not an acceptable response to a mandatory requirement).**

Technical Approach

The bidder shall describe its approach for performing the work and accomplishing the scope and objectives as identified in the RFP. Specifically, the response shall include the approach for performing the work required for each of the following tasks (as outlined in RFP Section 1.4 Required Implementation and Support Services):

- 1.4.1 Project Initiation, Planning, and Management
- 1.4.2 Project Management and Work Stream Support
- 1.4.3 Detailed Requirements Definition
- 1.4.4 Design Specification
- 1.4.5 System Construction
- 1.4.6 Integration and Testing
- 1.4.7 Content Integration Services
- 1.4.8 Usage and Usability Analysis
- 1.4.9 Documentation
- 1.4.10 Application Warranty Services
- 1.4.11 Application Maintenance, Technical Support, and Help Desk Services
- 1.4.12 Training
- 1.4.13 Hosting

1.4.14 Data Dashboard Selection and License Management Services 1.4.15
Learning Registry
1.4.16 Additional Services

The response shall also include a technical solution description relating the architecture of the solution proposed and the approach to achieving it. The description shall include the following:

- System architecture (including system hardware, system software, supporting tools, and network diagrams)
- Information architecture (conceptual data model)
- Security architecture (description of how security controls are positioned to maintain the system's confidentiality, integrity, and availability)
- User interface (including screen-shots or mock-ups)
- Approach to deploying Drupal features and modules to achieve the required functionality
- Narrative description of the proposed process to get from current to final state
- Proposed approach for testing and promoting the system
- Performance optimization capabilities supported by the system, such as content caching at schools where Bandwidth access may be limited

Additionally the response shall include a description of the approach to achieving the following:

- Approach to portal design
- Portal integration with Data Dashboard, Content and Collaboration system, and other authorized applications
- Header/Footer integration with Data Dashboard, Content and Collaboration system, and other authorized applications
- Search
 - Integrating search functionality into the common header
 - Returning search results across multiple applications for a coherent user experience
 - Using the Learning Registry to enhance search results
 - Providing sort and filter functionality on search results

Experience and References

The qualifications and prior experience of the bidder are of great importance to NYSED. Direct, prior experience in the provision of content management solutions and system services is highly desirable. The experience must be relevant and must be for services comparable, in scale and scope, to NYSED's operation. The References must reflect each of the categories of minimum qualification claimed by the bidder.

The bidder is expected to provide reachable references to verify all offered experience. NYSED reserves the right to request information from any source so named, and further reserves the right to contact additional references (including appropriate references not specifically named by bidders) to completely verify all offered experience, as well as to

request additional references. Failure to provide reachable and responsive references will lead to the downgrading of a bidder's experience score.

The bidder shall provide a minimum of three references for the prime contractor and at least one reference for each proposed sub-contractor. If a sub-contractor's qualifications are being used to satisfy a minimum qualification in Section 2.2 of this RFP, however, three references must be provided for that sub-contractor, relevant to that minimum qualification.

Bidders must complete Attachment 6.5 Company Experience and References as part of their response.

Project Schedule

The bidder shall provide a detailed proposed project schedule based on the timeline contained in Attachment 6.8 – Statement of Work.

Staffing Plan

The bidder shall provide a staffing plan by completing Attachment 6.6 Staffing Plan and Résumés.

The bidder should describe how staffing will be provided to meet the project, business and technical obligations over the entire lifecycle of this engagement. The discussion should address how the bidder intends to allocate Key Project Staff and other staff by phase and task, as well as the level of effort associated with such key personnel. The staffing plan should also address any assumptions that the bidder has made about the expected level of effort of NYSED staff on the project.

2.3.3 Cost Proposal

A three-year contract and up to two annual renewals will be awarded. Costs and rates will be fixed for Years 1 to 3. Year 4 continuing costs and rates will be based on the year-over-year increase or decrease in CPI for All Urban Consumers, US City Average from month prior to the Year 1 start date of the contract to the month prior to the start date of the Year 4 annual renewal. Year 5 continuing costs and rates will be based on the year-over-year increase or decrease in CPI for All Urban Consumers, US City Average from the month prior to the Year 4 start date of the contract to the month prior to the start date of the Year 5 annual renewal.

All instructions for submitting cost proposals are contained within Attachment 6.9 – Cost Proposal Worksheet, provided in MS Excel format.

The completed Cost Proposal must be mailed in a separate envelope labeled **RFP #DS-08 Cost Proposal - Do Not Open**, and must include the following:

- Completed electronic version (on CD in MS Excel format) of Attachment 6.9 Cost Proposal Worksheet
- Instruction tab from Attachment 6.9 Cost Proposal Worksheet (original plus two paper copies) **Signature Required**
- Subcontracting Form (see Section 5.8)
- M/WBE Subcontracting/Supplier Form (see Section 5.9)

Costs must be submitted using whole dollar numbers.

2.3.4 Payment Schedule

Vendors shall submit through Attachment 6.9 – Cost Proposal Worksheet a proposed estimated proportionate split of the total fixed price across the major project milestones. This proposal will serve as a basis for determining a payment schedule at contract finalization. All deliverable invoicing will be consistent with the Deliverable Acceptance policy found in Section 4.13.2.

2.3.5 M/WBE Documents

The original plus two (2) copies of the completed M/WBE Documents must be mailed in a separate envelope labeled **RFP #DS-08 M/WBE Documents - Do Not Open**. Each set must include the following:

- M/WBE Cover Letter
- **M/WBE 100** Utilization Plan
- **M/WBE 102** Notice of Intent to Participate
- **EEO 100** Staffing Plan

Signature Required

2.3.6 Submission of Documents

The submission must include paper documents plus one electronic version (Microsoft Office format saved on a CD) of the technical, cost, and M/WBE proposals. Please place the CD-ROM in a separate envelope.

Mailed or hand delivered to:

**NYS Education Department
Bureau of Fiscal Management
Contract Administration Unit
Attn: Lynn Caruso, RFP #DS-08
89 Washington Avenue, Room 505W EB
Albany, NY 12234**

The complete proposal must be received by June 19, 2012 **by 3:00 PM** at NYSED in Albany, New York. All proposals should be delivered via a method that requires a signature from NYSED upon receipt. **Faxed or emailed submissions are unacceptable and will be rejected.**

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

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

Bidders should specify all details and dates required to evaluate the technical proposal and should limit aspects of the project plan which are to be determined only after the

award of a contract. No optional deliverables to be provided only at an additional cost should be included and will not be considered in the evaluation of the technical proposal. Contractual terms, conditions, and assumptions are inappropriate for inclusion in the proposal.

Any proprietary material considered confidential by the bidder must be specifically so identified, and the basis for such confidentiality must be specifically set forth in the proposal.

3 EVALUATION CRITERIA AND METHOD OF AWARD

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

3.1 Criteria for Evaluating Bids

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

A proposal will first be reviewed by NYSED staff to ensure that the proposal is complete, and that all of the mandatory requirements have been addressed.

An evaluation committee will complete a review of the Technical Proposals for all complete proposals submitted. The committee will review each Technical Proposal to determine compliance with the requirements described in the RFP. The committee retains the right to determine whether any deviation from the requirements of this RFP is substantial in nature and may reject, in whole or in part, any and all proposals, waive minor irregularities, and conduct discussions with all responsible bidders.

Proposals receiving at least 75 percent (75%) of the points available for the Technical Proposal (a total of 45 out of 60 points) will move on to the next step of the process, the scoring of the cost proposal. Proposals with a score of less than 45 points in the Technical Proposal section will be eliminated from further consideration.

As part of the technical evaluation, the top bidders who have a mathematical chance of being selected (a Best Value determination, based on combined technical and cost scores) will be expected to provide a technical presentation of their proposal to NYSED. The key staff members identified in the proposal must attend. Prior to the technical presentations, NYSED will provide each bidder with a Technical Presentation Package, including an agenda, instructions, and possible clarification questions. Bidders shall not change their proposal during the technical presentation but responses to requested clarifications are permitted. The presentation will be evaluated and scored by the evaluation committee and will account for 10 points of the technical score.

Technical presentations will be held at the Department's main office located in Albany, New York.

Technical Criteria	70 Points
Technical Proposal	60 Points
Demonstration/Presentation	10 Points
Financial Criteria	30 Points

The **financial portion** of the proposal represents 30 points of the overall score and will be awarded pursuant to a formula. This calculation will be computed by the Contract Administration Unit upon completion of the technical scoring by the evaluation committee.

The submitted cost information will be awarded points, pursuant to a formula which awards the highest score of 30 points to the proposal that reflects the lowest overall cost. The remaining proposals will be awarded points based on a calculation that computes the relative difference of each proposal against the lowest cost submitted. The resulting percentage is then applied to the maximum point value of 30 points.

NYSED reserves the right to request best and final offers. In the event NYSED exercises this right, vendors who meet the minimum qualifications and whose technical evaluation score exceeds the minimum will be asked to provide a best and final offer. The Contract Administration Unit will recalculate the financial score.

3.2 Method of Award

The aggregate score of all the criteria listed will be calculated for each proposal received. The contract issued pursuant to this proposal will be awarded to the proposal whose aggregate technical and cost score is the highest among all the proposals rated. In the case of a tie score, the bidder among the tied group with the lowest cost will be ranked higher.

3.3 NYSED's Reservation of Rights

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

3.4 Post Selection Procedures

The relevant contents of this RFP, the successful proposal and its required attachments, any subsequent correspondence during the proposal evaluation period, and such other stipulations as agreed upon, may be made a part of the final contract prepared by NYSED. Successful bidders may be subject to audit and should ensure that adequate controls are in place to document the allowable activities and expenditure of State funds.

3.5 Debriefing Procedures

All unsuccessful bidders may request a debriefing within five (5) business days of receiving a notice of non-award from NYSED. Bidders may request a debriefing letter on the selection process regarding this RFP by submitting a written request to the Fiscal Contact person at:

NYS Education Department
Contract Administration Unit
89 Washington Avenue
Room 505W EB
Albany, NY 12234

The Fiscal Contact person will make arrangements with program staff to provide a written summary of the proposal's strengths and weaknesses, as well as recommendations for improvement. Within ten (10) business days of receipt of the request, the program staff will issue a written debriefing letter to the bidder.

3.6 Contract Award Protest Procedures

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

1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by NYSED.
2. The protest must be filed within ten (10) business days of receipt of a debriefing letter, or ten (10) business days of receipt of the notice of non-award, whichever is later. The protest letter must be filed with:

NYS Education Department
Contract Administration Unit
89 Washington Avenue
Room 505W EB
Albany, NY 12234

3. The NYSED Contract Administration Unit (CAU) will convene a review team that will include at least one staff member from each of NYSED's Office of Counsel, CAU, and the Program Office. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within seven (7) business days of receipt of the protest. The

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

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

4 ADMINISTRATIVE SPECIFICATIONS

4.1 Subcontracting Limit

Subcontracting (exclusive of subcontracted hosting services) will be limited to sixty percent (**60%**) of the annual contract budget. Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel.

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

4.2 Contract Period

NYSED will award one (1) contract pursuant to this RFP. The contract resulting from this RFP will be for an initial term of three years, with the option for renewal for two additional years.

At the end of any contract term otherwise provided for herein, if a replacement contract has not yet been approved in accordance with State law, any contract awarded hereunder may be extended unilaterally by the State, upon notice to the contractor, at the same terms and conditions, including all contract pricing, for a period of one month. Additionally, this extension may be for a period of up to three months with the concurrence of the contractor. However, any extension will terminate immediately upon approval of the replacement contract, except where a period for transition of contractors has been previously provided for.

4.3 Electronic Processing of Payments

In accordance with a directive dated January 22, 2010, by the Director of State Operations - Office of Taxpayer Accountability, all State agency contracts, grants, and purchase orders executed after February 28, 2010, shall contain a provision requiring that contractors and grantees accept electronic payments. Additional information and authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm.

Payee Information Form/NYSED Substitute W-9 Form

General Instructions: The Payee Information Form is a packet consisting of the Payee Information Form itself and an accompanying form known as the NYSED Substitute W-9 Form. The NYSED Substitute W-9 form may or may not be needed from your agency. Please follow the instructions for each as outlined below.

The Payee Information Form is used to establish the identity of applicant organizations and enables them to receive funds from the NYSED. An online version is available at <http://www.oms.nysed.gov/cafe/forms/PIform.pdf>.

4.4 Minority and Women-Owned Business Enterprise (M/WBE) Compliance Requirements

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) PARTICIPATION GOALS

Article 15-A identifies the State's procurement goals for Minority Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) participation as 12% and 8%, respectively, of the total contract budget or as specifically outlined in the RFP. NYSED's intent is to comply with Article 15-A and all bidders must demonstrate a good faith effort to comply with these goals. Minority and Women-Owned Business Enterprise (M/WBE) participation includes any and all services, materials or supplies purchased from New York State certified minority and women owned firms. Utilization of certified Minority and Women-Owned firms will be applied toward the goals. Bidders can achieve compliance with NYSED's Minority and Women-Owned Business Enterprise goals as described below.

ACHIEVE FULL COMPLIANCE WITH DESIGNATED GOALS (preferred)

Bidders should submit subcontracting forms that meet or exceed NYSED's participation goals for this procurement. Bidders must complete and submit M/WBE 100: Utilization Plan, M/WBE 102: Notice of Intent to Participate and EEO 100: Staffing Plan. Instructions and copies of these forms are located in the Submission Documents. All firms utilized must be certified with the NYS Division of Minority and Women Business Development before beginning any work on this contract. For additional information and a listing of currently certified M/WBEs, see <http://www.esd.ny.gov/MWBE/directorySearch.html>.

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

DOCUMENTATION OF GOOD FAITH EFFORTS

Bidders must undertake a good faith effort to solicit NYS Certified M/WBE firms as subcontractors and/or suppliers in fulfillment of this procurement. Means of solicitation may include but are not limited to: advertisements in minority centered publications; solicitation of

vendors found in the NYS Directory of Certified Minority and Women-Owned Business Enterprises (<http://www.esd.ny.gov/MWBE/directorySearch.html>); and the solicitation of minority and women-oriented trade and labor organizations. Bidders will be required to certify and attest to their good faith efforts by completing NYSED's Certification of Good Faith Efforts (Forms M/WBE 105 and M/WBE 105A). See the M/WBE Submission Documents for detailed examples of and required forms to document good faith efforts.

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

In the event Bidders cannot comply with NYSED's designated participation goals, said bidders must document their "good faith efforts" to comply and submit one of the following requests.

REQUEST A PARTIAL WAIVER OF DESIGNATED GOALS

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

REQUEST A COMPLETE WAIVER OF DESIGNATED GOALS

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

All payments to Minority and Women-Owned Business Enterprise subcontractor(s) must be reported to NYSED M/WBE Program Unit using M/WBE 103 Quarterly M/WBE Compliance Report. This report

must be submitted on a quarterly basis and can be found at www.oms.nysed.gov/fiscal/MWBE/forms.html .

4.5 M/WBE and Equal Employment Opportunities Requirements

M/WBE AND EQUAL EMPLOYMENT OPPORTUNITIES REQUIREMENTS CONTRACTOR REQUIREMENT AND OBLIGATION UNDER NEW YORK STATE EXECUTIVE LAW, ARTICLE 15-A (PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS)

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

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

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

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

- 1) All state contracts and all documents soliciting bids or proposals for state contracts contain or make reference to the following provisions:
 - a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

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

- b) The contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligation herein.
 - c) The contractor shall state in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status.
- 2) The contractor will include the provisions of subdivision one of this section in every subcontract as defined under §310.14, except as provided under §312.6 of the Article, in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the State contract.
 - 3) Contractors or subcontractors shall comply with the requirements of any federal law concerning equal employment opportunity, which effectuates the purpose of this section.
 - 4) Contractors and subcontractors shall undertake programs of affirmative action and equal employment opportunity as required by this section³. In accordance with the provision of the Article, the bidder will submit, with their proposal, Staffing Plan (EEO 100).
 - 5) Certified businesses (as defined under Article 15-A, §310.1 means a business verified as a minority or women-owned business enterprise pursuant to §314 of the Article) shall be given the opportunity for meaningful participation in the performance of this contract, to actively and affirmatively promote and assist their participation in the performance of this contract, so as to facilitate the award of a fair share of this contract to such businesses⁴.
 - 6) Contractor shall make a good faith effort to solicit active participation by enterprises identified in the Empire State Development ("ESD") directory of

³Notice – Contractors are provided with notice herein, NYSED may require a contractor to submit proof of an equal opportunity program after the proposal opening and prior to the award of any contract. In accordance with regulations set forth under Article 15-A §312.5, contractors and/or subcontractors will be required to submit compliance reports relating to the contractor's and/or subcontractor's program in effect as of the date the contract is executed.

⁴Should the contractor identify a firm that is not currently certified as an M/WBE, it should request that the firm submit a certification application to the NYSED M/WBE Program Unit by the deadline for submission of proposals for eligibility determination. NYSED will work with ESD to expedite the application, however, it is the responsibility of the contractor to ensure that a sufficient number of certified M/WBE firms have been identified in response to this procurement, in order to facilitate full M/WBE participation.

certified businesses, which can be viewed at: <http://www.nylovesmwbe.ny.gov>. The contractor must document its good faith efforts as set forth in 5 NYCRR 142.8. This document, Contractors Good Faith Efforts, can be found in the M/WBE Submission Documents.

- 7) Contractor shall agree, as a condition of entering into said contract, to be bound by the provisions of Article 15-A, §316.
- 8) Contractor shall include the provisions set forth in paragraphs (6) and (7) above, in every subcontract in a manner that the provisions will be binding upon each subcontractor as to work in connection with this contract.
- 9) Contractor shall comply with the requirements of any federal law concerning opportunities for M/WBEs which effectuates the purpose of this section.
- 10) Contractor shall submit M/WBE Utilization Plan⁵ (M/WBE 100) as part of their proposal in response to NYSED procurement.
- 11) The percentage goals established for this RFP are based on the overall availability of M/WBEs certified in the particular areas of expertise identified under this RFP. These goals should not be construed as rigid and inflexible quotas which must be met, but as targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority and Women-Owned Business Program work.
- 12) Contractor shall ensure that enterprises have been identified (M/WBE 102) within the Utilization Plan, and the contractor shall attempt, in good faith, to utilize such enterprise(s) at least to the extent indicated in the plan, as to what measures and procedures contractor intends to take to comply with the provisions of the Article.
- 13) Contractor shall upon written notification from NYSED M/WBE Program Unit as to any deficiencies and required remedies thereof, the contractor, within the period of time specified, will submit compliance reports documenting remedial actions taken and other information relating to the operation and implementation of the Utilization Plan.
- 14) Where it appears that a contractor cannot, after a good faith effort, comply with the M/WBE participation requirements, contractor may file a written application with NYSED M/WBE Program Unit requesting a partial or total waiver (M/WBE 101) of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements, together with an explanation of the efforts undertaken by the contractor to obtain the required M/WBE participation.

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

⁵A Utilization Plan, as defined under Article 15-A, shall mean a plan prepared by a contractor and submitted in connection with a proposed state contract. In developing the Utilization Plan bidders should consider the goals and established time frames needed to achieve results which could reasonably be expected by putting forth every good faith effort to achieve the overall prescribed M/WBE participation percentage (%) goals as set forth under the procurement.

- 1) Whether the contractor has advertised, in general circulation media, trade association publications, and minority-focused and women-focused media and, in such event;
 - a) Whether or not the certified M/WBEs which have been solicited by the contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and
 - b) Whether certified businesses solicited by the contractor responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the contracting agency's deadline for submission of proposals.
- 2) Whether there has been written notification to appropriate certified M/WBEs that appear in the Empire State Development website, found at: <http://www.nylovesmwbbe.ny.gov>.

All required Affirmative Action, EEO, and M/WBE forms to be submitted along with bids and/or proposals for NYSED procurements are attached hereto. These forms are to be submitted without change to goals specified in the RFP. All M/WBE firms are required to be certified by Empire State Development (ESD), or must be in the process of obtaining certification from ESD.

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

4.6 Vendor Responsibility

State law requires that the award of state contracts be made to responsible vendors. Before an award is made to a not-for-profit entity, a for-profit entity, a private college or university or a public entity not exempted by the Office of the State Comptroller, NYSED must make an affirmative responsibility determination. The factors to be considered include: legal authority to do business in New York State; integrity; capacity- both organizational and financial; and previous performance. Before an award of \$100,000 or greater can be made to a covered entity, the entity will be required to complete and submit a Vendor Responsibility Questionnaire. School districts, Charter Schools, BOCES, public colleges and universities, public libraries, and the Research Foundation for SUNY and CUNY are some of the exempt entities. For a complete list, see: http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm.

NYSED recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

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

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

Subcontractors:

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

- the subcontractor is known at the time of the contract award; and
- the subcontract will equal or exceed \$100,000 over the life of the contract.

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

4.7 Procurement Lobbying Law

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the New York State Education Department ("NYSED") and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of the solicitation through final award and approval of the Procurement Contract by NYSED and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff, unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified below. NYSED employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection of contract award and, in the event of two findings within a four-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at the following web link:

<http://www.oms.nysed.gov/fiscal/cau/PLL/procurementpolicy.htm>

Designated Contacts for NYSED:

Program Office – **Kathleen Moorhead**

Contract Administration Unit – Lynn Caruso

M/WBE – **Joan Ramsey**

4.8 Consultant Disclosure Legislation

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

the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor.

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

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

Form A: <http://www.osc.state.ny.us/agencies/gbull/g226forma.doc>

Chapter 10 of the Laws of 2006 mandates that State agencies must now require State contractors to **report annually** on the employment information described above, including work performed by subcontractors. The legislation mandates that the annual employment reports are to be submitted by the contractor to the contracting agency, to the OSC, and to the Department of Civil Service. State Consultant Services Contractor's Annual Employment Report (Form B - see link below) is to be used to report the information for all procurement contracts above \$15,000. Please note that, in contrast to the information to be included on Form A, which is a one-time report of planned employment data for the entire term of a consulting contract on a projected basis, **Form B will be submitted each year the contract is in effect and will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31)**.

Form B: <http://www.osc.state.ny.us/agencies/gbull/g226formb.doc>

For more information, please visit the OSC web site for G-Bulletin 226 at: <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>.

4.9 Public Officer's Law Section 73

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

4. (a) No statewide elected official, state officer or employee, member of the legislature, legislative employee or political party chairman or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any state agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a state agency or officer thereof, unless such goods or services are

provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

As provided in Public Officer's Law Section 73(1)(i), the term "state officer or employee" shall mean:

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

Public Officer's Law Section 73 can be found at:

<http://www.nyintegrity.org/law/ethc/POL73.html>.

4.10 Draft Contract

The State of New York Agreement (Section 4.10), Appendix A – Standard Clauses for all NYS Contracts (Section 4.11), Appendix A-1 – NYSED standard changes and additions to the State of New York Agreement (Section 4.12), Appendix Q – Amendments and Additions to Appendix A-1 for this Contract and Additional Contractual Provisions (Sections 4.13.1 to 4.13.41), and Appendix A-2 – American Recovery and Reinvestment Act of 2009, Additional Contract Record Keeping Requirements (Section 4.14) **WILL BE INCLUDED** in the contract that results from this RFP.

Vendors who are unable to complete or abide by these assurances should not respond to this request.

STATE OF NEW YORK AGREEMENT

This AGREEMENT is hereby made by and between the People of the State of New York, acting through John B. King, Jr., Commissioner of Education of the State of New York and Chief Executive Officer of the Board of Regents of the University of the State of New York, party of the first part, hereinafter referred to as the (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

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

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

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

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

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

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

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

II. Payment and Reporting

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

B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.

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

III. Terminations

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

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

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

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

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

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

IV. Indemnification

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

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

V. Property

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

VI. Safeguards for Services and Confidentiality

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

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

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

4.11 Appendix A - Standard Clauses For NYS Contracts

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

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

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

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

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, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the

contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification

number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

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

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

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

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

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

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

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

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

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

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

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

thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar

services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

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

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State. (December 2011)

4.12 Appendix A-1

Payment and Reporting

- A. In the event that Contractor shall receive, from any source whatsoever, sums the payment of which is in consideration for the same costs and services provided to the State, the monetary obligation of the State hereunder shall be reduced by an equivalent amount provided, however, that nothing contained herein shall require such reimbursement where additional similar services are provided and no duplicative payments are received.
- B. Variations in each budget category not exceeding ten percent (10%) of such category, whichever is greater, may be approved by the Commissioner of Education. Any such variations shall be reflected in the final expenditure report and filed in the Office of the State Comptroller.
- C. For each individual for whom costs are claimed under this agreement, the contractor warrants that the individual has been classified as an employee or as an independent contractor in accordance with 2 NYCRR 315 and all applicable laws including, but not limited to, the Internal Revenue Code, the New York Retirement and Social Security Law, the New York Education Law, the New York Labor Law, and the New York Tax Law. Furthermore, the contractor warrants that all project funds allocated to the proposed budget for Employee Benefits, represent costs for employees of the contractor only and that such funds will not be expended on any individual classified as an independent contractor.

Terminations

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

Property

- A. The Contractor shall maintain a complete inventory of all realty, equipment and other non-expendable assets including, but not limited to, books, paintings, artifacts, rare coins, antiques and other collectible items purchased, improved or developed under this agreement. The Contractor shall submit a copy of the inventory in a form identical to or essentially similar to, Exhibit A annexed hereto. The term "non-expendable assets" shall mean for the purposes of this agreement any and all assets which are not consumed during the term of this agreement and which have a cost of One Thousand Dollars (\$1,000) or more.

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

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

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

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

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

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

Safeguards for Services and Confidentiality

- A. Any copyrightable work produced pursuant to this agreement shall be the sole and exclusive property of the author(s) of the work and/or artist. Should the Contractor use the services of consultants or other organizations or individuals who are not regular employees of the Contractor, the Contractor and such organization or individual shall, prior to the performance of any work pursuant to this agreement, enter into a written agreement, duly executed, which shall set forth the services to be provided by such organization or individual and the consideration therefore. Such agreement shall provide that the State shall have the rights outlined in this Agreement with regard to any copyrightable work produced pursuant to said agreement. A copy of such agreement shall be provided to the State.
- B. The New York State Education Department will receive a copy of any such written document owned by the author(s) and/or produced by the artist(s) in both hard copy and electronic form where feasible. The New York State Education Department shall have a non-exclusive, royalty-free right to use any such copyrightable works for non-commercial purposes including but not limited to dissemination of written materials, using excerpts of written materials in other documents issued by the Department, or using copyrightable works or providing the copyrightable works to future contractors for derivative use including creating derivative works for non-commercial purposes of the Department. The data received by the Contractor, authors and/or artist from survey responses, and other input received from interested groups or persons as a result of this contract, shall belong to the Department and the Contractor and the authors/artists shall have a non-exclusive, royalty-free right to use such data or other input for further research or other non-commercial purposes.
- C. All reports of research, studies, publications, workshops, announcements, and other activities funded as a result of this proposal will acknowledge the support provided by the State of New York.
- D. This agreement cannot be modified, amended, or otherwise changed except by a writing signed by all parties to this contract.

- E. No failure to assert any rights or remedies available to the State under this agreement shall be considered a waiver of such right or remedy or any other right or remedy unless such waiver is contained in a writing signed by the party alleged to have waived its right or remedy.
- F. Expenses for travel, lodging, and subsistence shall be reimbursed at the per diem rate in effect at the time for New York State employees.
- G. No fees shall be charged by the Contractor for training provided under this agreement.
- H. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.
- I. This agreement, including all appendices, is, upon signature of the parties and the approval of the Attorney General and the State Comptroller, a legally enforceable contract. Therefore, a signature on behalf of the Contractor will bind the Contractor to all the terms and conditions stated therein.
- J. The parties to this agreement intend the foregoing writing to be the final, complete, and exclusive expression of all the terms of their agreement.

Certifications

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

Notices

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

Miscellaneous

- A. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 889-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.
- B. If required by the Office of State Comptroller ("OSC") Bulletin G-226 and State Finance Law §§ 8 and 163, Contractor agrees to submit an initial planned employment data report on Form A and an annual employment report on Form B. State will furnish Form A and Form B to Contractor if required.

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

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

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

Reports to DCS are to be transmitted as follows:

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

Reports to NYSED are to be transmitted as follows:

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

By fax: (518) 408-1716

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

4.13 Appendix Q - Amendments and Additions to Appendix A-1 for this Contract and Additional Contractual Provisions

4.13.1 Contractor Staff

All employees of the Contractor, or of its subcontractors, who shall perform Services under this resulting contract(s), shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services under the Agreement on behalf of Contractor shall, in performing the Services, comply with all applicable Federal and State laws concerning employment in the United States.

A. Staffing Changes

Key Project Staff

Except as otherwise provided for herein or for cessation of work for Reasons Beyond the Contractor's Control (as defined below), the Contractor agrees that the Key Project Staff (Senior Engagement Executive, Project Director, and

Project Manager[s]) will continue their assignment to completion of said assignment except as provided in this section.

- a. The Contractor's Senior Engagement Executive is an integral part of the Contractor's project team. The Senior Engagement Executive shall be available, at a minimum, two full Business Days per month, on site at least once per month, throughout the term of the resulting Agreement and shall be totally accountable to the State for the successful completion of all aspects of the resulting Agreement. The Senior Engagement Executive's role shall include, but not be limited to, the review and sign off on all Deliverables prior to release of said Deliverables for review and sign off by the State; acceptance testing as described in the RFP, the resulting Agreement, and any acceptance procedures established by the Acceptance Management section of the Project Plan; being present on-site at critical points during project development; and meeting, upon reasonable notice, with the State's Project Manager and other State executives when requested by the State's Project Manager.
- b. The Contractor's Project Director is an integral part of the Contractor's project team. The Project Director will be assigned full time to the project and will be responsible for working directly with the State's Project Director or Manager to oversee the entire EDP program, including day-to-day management of the project's timetable, personnel, and administration. His/Her role shall include, but not be limited to, resource allocation, ensuring Contractor staff performance, ensuring the timely development and acceptance of implementation documents and all other Deliverables, communicating with the Project Team, chairing the status meetings, and meeting with the State's Project Director or Manager on a daily basis. The Contractor's Project Director shall always be able to be contacted through the contract term.
- c. The Contractor's Project Manager(s) will be assigned full time to the project and will be responsible for the day-to-day management of one or more components of the project's timetable, personnel, and administration. His/Her role shall include, but not be limited to, resource allocation, ensuring Contractor staff performance, ensuring the timely development and acceptance of implementation documents and all other Deliverables, communicating with the Project Team, chairing the status meetings, and meeting with the State's Project Director on a daily basis. The Contractor's Project Manager(s) shall always be able to be contacted through Final Acceptance of the System.
- d. The Contractor understands that the State's selection of the Contractor to perform the work under the resulting Agreement will be based, in part, upon the State's confidence in the abilities of the Key Project Staff. Therefore, if the Contractor wishes to remove any of the Key Project Staff from the Project prior to commencement of his or her assignment, or during his or her assignment period, the Contractor shall first, before proceeding with such removal, consult with and seek the advice and opinion of the State Project Director. If, after said consultation, it is mutually agreed that such removal

- shall take place, the Contractor must immediately provide the résumés of three or more potential replacements with similar or better qualifications for the State Project Director's review and approval. If the State Project Director does not approve one of those candidates, the Contractor must immediately provide additional candidates for the State Project Director's review. If the State Project Director still cannot agree to a replacement, it reserves the right to either (a) have Key Project Staff remain on the Project, or (b) terminate the resulting Agreement for cause pursuant to RFP Section 7.3.12 Agreement Termination Provisions. Upon the State Project Director's approval, the replacement will become Key Project Staff and will be subject to the terms and conditions of the resulting Agreement. If the Key Project Staff member's work has already commenced, the Contractor will ensure that there is a smooth transition, including having the Contractor staff who is leaving train the replacement Contractor staff at the State's facilities (see Staff Transition Period, below).
- e. If the State Project Director does not agree to the replacement of Key Project Staff and does not wish to terminate the Agreement, and the Key Project Staff has not ceased work for Reasons Beyond the Contractor's Control, then the Key Project Staff member must remain on the Project and must continue to work with the same degree of professionalism he or she provided prior to the Contractor's request for removal. If the Key Project Staff fails to do so, or if the Contractor removes the Key Project Staff without the State Project Director's consent, the State has the right to terminate the resulting Agreement for cause pursuant to RFP Section 7.3.12 Agreement Termination Provisions.
 - f. If the State Project Director reasonably and in good faith believes that a member of the Contractor's Key Project Staff is not performing adequately and is jeopardizing the timely delivery of deliverables meeting the acceptance criteria, the State Project Director will notify the Contractor and the NYSED Executive Sponsor. The Contractor will have 5 business days to propose a remediation plan to the Department. If the remediation plan is not satisfactory to the NYSED Executive Sponsor, then the Contractor must provide the resumes of three or more potential replacements with similar or better qualifications for the State Project Director's review and approval. If the State Project Director does not approve one of these candidates, the Contractor must immediately provide additional candidates for the State Project Director's review. If the State Project Director still cannot agree to a replacement, it reserves the right to either (a) have Key Project Staff remain on the Project, or (b) terminate the resulting Agreement for cause pursuant to RFP Section 7.3.12 Agreement Termination Provisions. Upon the State Project Director's approval, the replacement will become Key Project Staff and will be subject to the terms and conditions of the resulting Agreement. If the Key Project Staff member's work has already commenced, the Contractor will ensure that there is a smooth transition, including, having the Contractor staff who is leaving train the replacement Contractor staff at the State's facilities (see Staff Transition Period, below).

Other Contractor Staff

The parties hereto understand that staff turnover is detrimental to Project progress, the quality of the Deliverables and Services to be provided hereunder, and the skills transfer process. The State believes, therefore, that it is in its best interest to maintain the continuity of work assignments for all levels of Employees. The State also recognizes that it can be difficult, or in some cases impractical, to maintain said continuity. The Contractor agrees, therefore, to make a good-faith, commercially reasonable effort to minimize turnover of Employees it assigns to the Project. The Contractor further agrees that if the Contractor removes an Employee, who is not Key Project Staff, prior to completion of his or her assignment, the Contractor will so notify the State's Project Manager, in writing, five (5) business days prior to said Employee's leave date. The Contractor will provide a replacement with similar or better qualifications. The Contractor will ensure that there is a smooth transition, including having the Employee who is leaving train the replacement Employee at the State's facilities.

Cessation of Work by Contractor Staff For Reasons Beyond Contractor's Control

- a. Reasons beyond the control of the Contractor shall be defined as: (i) death of the Contractor Staff member; (ii) new disability or illness; (iii) Contractor Staff member resigns his or her position; (iv) termination of this Contract; or (v) any other reason deemed acceptable by the State's Project Director.
- b. In the event that any Contractor Staff member ceases work for the reasons specified in (i) through (v), written notification must be forwarded to the State's Project Director.
- c. The provisions of this section do not preclude any Contractor Staff member from reasonable sick leave or annual leave.
- d. The contractor shall take prompt, commercially reasonable steps to resolve the difficulties caused by the Reasons Beyond Contractor's Control, and will seek to replace a staff member or Key Project Staff member in accordance with the provisions of this section.

Staff Transition Period

In the event the Contractor initiates a staffing change of either a Contractor employee or a subcontractor employee who is identified as Key Project Staff under the Agreement, or who has been on-site 80% or greater for a period of six (6) months or greater, the Contractor will offer State a mutually agreed upon transition period up to two (2) weeks. During the transition period, the departing staff and the new staff will work together to develop a transition plan to transition the responsibilities, at no additional cost to NYSED. The State reserves the right to approve this transition plan, in writing, for Key Project Staff.

B. Work Site and Schedule

The Contractor's team members shall perform their duties primarily on-site in Albany, New York, to the degree indicated in the schedule in Section 1.3.3, unless otherwise agreed to by the State, in writing. Non-full-time Contractor and subcontractor staff are not required to be based in Albany but shall be available to be on-site during their active periods of project engagement, as reasonably requested by the State Project Director. All team members working on-site shall be identified to the State, along with any Contractor-issued equipment intended to be used on-site. Contractor team members working on site shall comply with all building policies, and Contractor team members using NYSED-issued equipment, software, or infrastructure, or Contractor-issued equipment within the NYSED IT environment, or accessing NYSED-owned data, will be responsible for following all IT and acceptable use policies. No reasonable request by the Contractor to permit the use of State equipment off-site shall be refused.

The State and the Contractor will determine equipment/computer needs of the on-site Contractor's Team that the State can provide.

The Contractor shall provide the State with an advance monthly staff schedule no later than five (5) business days before the last day of the preceding month. Unless otherwise agreed to by both parties, the Contractor's Team will work onsite in Albany to the degree indicated in the schedule in Section 1.3.3. On the off-site days, the Contractor shall designate individuals to provide on-site coverage to fill in for the Key Project Staff (Project Manager and lead staff) where appropriate.

Contractor employees and subcontractors assigned to each Deliverable will be required to devote to the State Project the percentage of their working time that is defined in the Master Project Schedule.

The Contractor's assigned staff and any subcontractor's staff, when working on-site, shall be located at offices designated by the State Project Director and shall be provided 24/7 access to such offices to the extent possible.

4.13.2 Deliverable Acceptance

Deliverables must meet all applicable State-approved Acceptance Criteria developed in accordance with State-approved Acceptance Management Plans and Test Plans (as defined in Section 1.4 Required Implementation and Support Services).

For each document-based Deliverable (as defined in Section 1.4 Required Implementation and Support Services) other than status reports, the State shall have an acceptance period beginning on the date written notification of completion was received from the Contractor and as outlined herein. All document-based Deliverables shall require written approval by the State Project Director or his or her written designee that such Deliverables comply with the terms of the Agreement.

The Contractor shall provide document-based Deliverables in the form and format agreed to by the State using deliverable specification sheets approved by the State Project Director. The deliverable specification sheets will include, but not be limited to the following information: Deliverable title, frequency, draft, and final due dates, approval requirements, outline of contents, and delivery of media.

- A. The number of business days for any State initial review of a document-based Deliverable shall be no more than ten (10) business days, unless otherwise mutually agreed to by the State Project Director and the Contractor's Project Manager in the Project Work Plan. The ten (10) day period shall begin upon written transmittal by the Contractor Project Manager to the State Project Manager that the Deliverable is in final form and ready for approval, and shall be counted from and include the first working day following the delivery of the Deliverable to the State. The State shall provide Contractor (i) with approval of the Deliverable or (ii) with a written statement, of the itemized deficiencies preventing approval.
- B. The Contractor shall have ten (10) business days to complete all corrective actions or changes in order for such document-based Deliverable to conform in all material respects with the requirements set forth in the Agreement. The count of such business days shall begin on the first business day following Contractor's receipt of the written statement of required corrective actions or changes.
- C. If the State cannot approve the document-based Deliverable after correction by Contractor, the Contractor's Project Manager and the State Project Director may mutually agree to further steps to correct outstanding material deficiencies. However, in no event shall the total time allocated for review, correction, and re-review of material deficiencies in a Deliverable exceed forty (40) business days, except for good cause in the sole discretion of the State.
- D. The State will have final approval of all document-based Deliverables.

For Deliverables that contain hardware or software programs, the State's Deliverable review process will include acceptance testing as detailed in an approved Acceptance Test Plan. The number of business days for any State initial review/test of a software-based Deliverable shall be set forth in the Acceptance Test Plan, but will be not less than ten (10) business days, unless otherwise mutually agreed to by the State Project Director and the Contractor's Project Manager. The process for software Deliverables will be as follows: User Acceptance testing will take place in a test environment. After approval by the State, the software Deliverable will be migrated to the production environment. The software Deliverable will then be monitored to verify performance in accordance with all requirements and acceptance criteria. The State will provide Deliverable Acceptance upon completion of Production Verification. If any issues are reported by the State during Production Verification, the review period will reset starting on the date the State is notified that the correction has been made

in the production system. The State shall have final approval of all hardware or software-based Deliverables.

4.13.3 Task Orders

Task Orders will be used when work is required by the Contractor that had not been included in the Deliverables or in the contract's Statement of Work. Prior to the parties' entering into a Task Order, a reasonability determination will be performed by the State Project Director or designee. Such reasonability determination shall include the State's review of the Contractor's required number of hours for the task; the titles of staff performing such tasks; and the rates for such tasks consistent with the Contractor's rates submitted in its Cost Proposal. Upon the parties' acceptance, in writing, of the terms of the Task Order, and approval by the State Comptroller if required, the Contractor shall perform such Task Order.

The Task Order will specify:

- The work to be performed
- The acceptance criteria
- The name of the Contractor's staff member(s) who will be assigned to fulfill the Task Order
- The estimated number of hours to be worked by the Contractor's staff
- The total amount to be paid for each Contractor's staff member
- The total amount to be paid for the Services performed

4.13.4 Manner of Payment/Retainage

A. Hourly Rate Escalation

Rates will be fixed for Years 1 to 3 of the contract. Year 4 rates will be based on the year-over-year increase or decrease in CPI for All Urban Consumers, US City Average from month prior to the Year 1 start date of the contract to the month prior to the start date of the Year 4 annual renewal. Year 5 rates will be based on the year-over-year increase or decrease in CPI for All Urban Consumers, US City Average from the month prior to the Year 4 start date of the contract to the month prior to the start date of the Year 5 annual renewal.

B. Payment Schedule

The State anticipates that the Deliverable payment schedule will be consistent with Section 2.3.2 Cost Proposal, but the exact schedule will be established by the State and the successful Bidder.

Maintenance and Support will begin at the end of the System Warranty period, and will be billable annually at the start of each Maintenance and Support contract year.

4.13.5 Warranties

Where Contractor generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to the State.

A. Representations and Warranties

The Contractor warrants that the Services rendered by the Contractor shall be performed in accordance with all the terms and conditions, covenants, statements, and representations contained in the Contract, including all appendices.

B. Deliverables

The Contractor warrants that the Contractor's Deliverables and the System will, in order of precedence, conform in all material respects to: (i) the Detailed Requirements (Attachment 6.2), specifications, and all applicable State-approved Acceptance Criteria developed in accordance with State approved Acceptance Management Plans and Test Plans for such Deliverables in Contractor's most recently approved deliverable specification or task order, and (ii) the applicable requirements for such Deliverables in the Agreement.

The Contractor warrants that: (i) any Deliverable(s) that it creates or provides to the State shall be substantially free from defects, as defined herein, and; (ii) the Services relating to the integration, development, and implementation of the Software by means of the Contractor's configuration, modification, and/or enhancement of such Software shall not introduce defects to, or negatively impact the operations of, any pre-existing or newly- developed software.

The Contractor warrants that it shall be responsible for performance of Contractor's software and any third-party software provided by the Contractor to the State. Software used by the Contractor to develop the product and any third-party software supplied to the State by the Contractor must be currently supported by the manufacturer and free of any known defect.

"Defects" shall mean: (i) a failure of a configuration, modification, and/or customization of the software to operate in accordance with the Acceptance Criteria or RFP functional or technical requirements, or (ii) a failure of the Software to operate in accordance with the Software program documentation.

C. Workmanship Warranty

The Contractor warrants that all services provided by the Contractor and its subcontractors under the Agreement will be performed using a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of the Contract, "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. The Contractor shall meet or exceed the manufacturers' installation standards.

D. Contractor Compliance

The Contractor warrants that it will pay, at its sole expense, all applicable permits, licenses, tariffs, tolls, and fees and to give all notices and comply with all laws, ordinances, rules, and regulations of any governmental entity in conjunction with the performance of obligations under the Agreement. Prior to award, and during the Agreement term and any renewals thereof, the Contractor shall establish, to the satisfaction of the State, that it meets or exceeds all requirements of the Agreement and any applicable laws, including but not limited to permits, insurance coverage, licensing, and proof of coverage for workman's compensation, and shall provide such proof as required by the State. Failure to do so shall constitute grounds for the State to cancel or suspend the Agreement, in whole or in part, or to take any other action deemed necessary by the State.

E. Personnel Eligible for Employment

The Contractor further warrants to the State that Contractor personnel performing services under the Agreement from within the United States are eligible for employment in the United States.

F. Product Performance

Products delivered pursuant to the Agreement shall conform to the specifications and performance standards defined by the RFP and the Product's documentation. The Product's documentation shall fully describe the proper procedure for using the Products.

G. System Support

Commencing from the User Acceptance of the first project phase through Final Acceptance, the Contractor shall warrant the following:

- a. Components or Deliverables specified and furnished by or through the Contractor in the course of providing the services described in the Agreement shall, individually and together, operate in accordance with all Acceptance Criteria for such Deliverables and the System and shall operate substantially uninterrupted and error-free, and be guaranteed against faulty material and workmanship.
- b. Defects in the materials or workmanship of components or Deliverables specified and furnished by or through Contractor shall be promptly repaired or replaced by Contractor at no cost or expense to the State.
- c. Accepted Deliverables and the System, as a whole, shall: (i) continue to meet the functional, performance, and reliability requirements of the State, as set forth in the RFP, the Agreement, and the manufacturers' specifications for the Equipment and Software, as the same may be amended and updated, and (ii) operate, in conformance with the acceptance criteria established for each Deliverable, the System, as a whole, and by the Acceptance Management Plan.

The Contractor shall promptly provide all necessary services and support, at no cost, to the State to ensure all Deliverables and the System operate in accordance with the warranties set forth in a, b, and c above.

Where the Contractor or other third-party manufacturer/developer markets any project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, the Contractor's obligations for System Support described herein. Where such standard commercial warranty covers all or some of the System Support, Contractor shall be responsible for the coordination with other third-party Product manufacturer(s)/developer(s) for warranty repair or replacement of other third-party manufacturer's/developer's Product.

Where the Contractor or other third-party Product manufacturer/developer markets any Project Deliverable with a standard commercial warranty which goes beyond the System Support, the Contractor shall notify the State and pass through the manufacturer's standard commercial warranty to the State, at no additional charge.

H. System Warranty

For the period of this agreement and any extensions thereof (the "Warranty Period"), the Contractor shall warrant the following:

- a. Components or Deliverables specified and furnished by or through the Contractor in the course of providing the services described in the Agreement shall, individually and together, operate in accordance with all Acceptance Criteria for such Deliverables and the System and shall operate, substantially uninterrupted and error-free, and be guaranteed against faulty material and workmanship.
- b. Defects in the materials or workmanship of components or Deliverables specified and furnished by or through Contractor shall be promptly repaired or replaced by Contractor, at no cost or expense to the State.
- c. Accepted Deliverables and the System, as a whole, shall: (i) continue to meet the functional, performance, and reliability requirements of the State, as set forth in the RFP, the Agreement, and the manufacturers' specifications for the Equipment and Software, as the same may be amended and updated, and (ii) operate in conformance with the acceptance criteria established for each Deliverable, the System as a whole, and by the Acceptance Management Plan.

The Contractor shall promptly provide all necessary services and support, at no cost to the State, to ensure all Deliverables and the System operate in accordance with the warranties set forth in a, b, and c above.

Where the Contractor or other third-party manufacturer/developer markets any project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, the Contractor's obligations for System Warranty

described herein. Where such standard commercial warranty covers all or some of the System Warranty, Contractor shall be responsible for the coordination with other third-party Product manufacturer(s)/developer(s) for warranty repair or replacement of other third-party manufacturer's/developer's Product.

Where the Contractor or other third-party Product manufacturer/developer markets any Project Deliverable with a standard commercial warranty which goes beyond the System Support, the Contractor shall notify the State and pass through the manufacturer's standard commercial warranty to the State, at no additional charge.

I. Training and Certification Warranty

The Contractor warrants that all staff assigned to the State's account will be kept current in training and certification. Any fees or charges incurred by the Contractor to obtain and maintain such training and certification shall be the responsibility of the Contractor and may not be billed to the State.

J. Survival of Warranties

All warranties contained in the Agreement shall survive the termination of the Agreement. The Contractor will maintain all original manufacturers' warranties, organized by installation location, and will present the organized warranty package to the State upon completion and/or termination of Agreement.

K. Virus Warranty

The Contractor warrants that services relating to the integration, development, and implementation of the Software by means of the Contractor's configuration, modification, and/or enhancement of such Software shall be performed in a manner so as not to result in introducing a virus or other malware to the software. The Contractor will utilize commercially reasonable virus detection and vulnerability scanning software on its equipment to ensure that any configuration, modification, and/or enhancement it creates and provides to the State shall not contain any virus or vulnerability.

L. Date/Time Warranty

The Contractor warrants that Product(s) furnished pursuant to the resulting Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including but not limited to calculating, comparing, and sequencing) transitions, including leap-year calculations.

M. Breach of Warranty

In the event of any breach of the above warranties, the Contractor shall, as applicable: (i) correct errors and defects that caused the breach of warranty, or (ii) re-perform the deficient services. If the Contractor does not correct the

program errors or re-perform the service in a commercially reasonable time and manner, the State may pursue other remedies as described below.

4.13.6 Indemnification Relating to Third-Party Rights

The Contractor warrants that it owns or holds appropriate license rights in any intellectual property provided to the State/Department, and that any such use of intellectual property in accordance with this contract will not infringe on those rights. The Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorney's fees), claims, judgments, liabilities, and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent and/or any other ownership interest, , or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the Contractor's products, Deliverables, or services furnished or utilized under the Agreement, provided that the State shall give Contractor: (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit;(ii) the opportunity to take over, settle, or defend such action, claim, or suit at Contractor's sole expense; and (iii) reasonable assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State shall require.

If the use of any Contractor product, Deliverable, or part(s) thereof shall be enjoined for any reason, or if the Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion, to take action in the following order of precedence: (i) to procure for the State the right to continue using such product, Deliverable(s) or part(s) thereof, as applicable; (ii) to modify the product or Deliverable(s) so that it becomes non-infringing and is of at least equal quality and performance; (iii) to replace said product or Deliverable or part(s) thereof, as applicable, with a non-infringing product or Deliverable of at least equal quality and performance; or (iv) if none of the foregoing is commercially reasonable, then the State agrees to return the product or Deliverable (or part thereof), and Contractor shall provide monetary compensation to the State for its inability to continue to provide to LEAs for their use the affected product or Deliverable (or part thereof) up to the applicable dollar amount specified in the Limitation of Liability section below.

The Contractor further agrees that, in the event the State is sued by a third party for issues related to the work performed by the Contractor under this Agreement and/or the deliverables, the Contractor will provide such experts and witnesses as may be necessary to defend any allegations regarding such work or deliverables, at Contractor's cost. Defense shall include, but is not limited to, consultation with the State's representatives and attorneys, and appearance at depositions or trials to give testimony.

4.13.7 Limitation of Liability

Except as set forth in the Indemnification paragraphs above, the limit of liability shall be as follows, except as otherwise provided for herein:

- a. The Contractor's liability to the State for any claim, loss, or liability arising out of, or connected with the products or services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation, or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the amount disbursed by the State to the Contractor under the Agreement.
- b. The State may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the State unless Contractor, at the time of the presentation of claim, shall demonstrate to the State's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
- c. Neither the Contractor nor the State shall be liable to each other for any consequential, indirect, or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the State, the Contractor, or by others (exclusive of a party's misappropriation or misuse of confidential information in breach of its confidentiality obligations under the Agreement).

Notwithstanding the foregoing, the Contractor remains liable, without monetary limitation, for direct damages for personal injury, death, or damage to real property or tangible personal property or intellectual property attributable to the negligence or other tort of contractor, its officers, employees, subcontractors, partners, or agents, or due to a breach of the provisions of this Agreement related to confidentiality of data and/or violation of State or federal confidentiality laws.

Notwithstanding any other provision in this contract, the Contractor shall be responsible for any and all notification obligations arising out of a breach of confidentiality by Contractor, its officers, employees, subcontractors, partners or agents, of data provided by the State or an LEA, school or BOCES pursuant to this contract and during the term of this Agreement. The costs of such notification will be borne solely by the Contractor.

4.13.8 Force Majeure

Neither Party will be liable for losses, defaults, or damages under the resulting Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of the resulting Agreement, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, fire, or any other cause beyond the reasonable control of the party that was so delayed or so unable to perform, provided that such party was not negligent and shall have

used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

4.13.9 Conflict Resolution

In connection with the Contractor's performance under the Agreement, the Contractor shall cooperate in a reasonable manner with the State and any other Contractor(s) or consultant(s) retained by the SLC or the State to work on the NYSED Education Data Portal system.

In the event of conflicts between the Contractor and other consultants, contractors, or subcontractors, the Contractor shall submit to the State a timely written explanation of the details of the conflict, including such pertinent facts as may provide the State with a firm basis for understanding the nature of the conflict. The Contractor agrees to act in a good-faith effort to avoid conflicts, and to resolve conflicts with other consultants, contractors or subcontractors that cannot be avoided.

With respect to the conflicts detailed above, if the Contractor is unable to resolve a conflict, the State Project Director (or designee) shall have the right and authority to direct the involved parties on the appropriate course of action to be taken to resolve the conflict.

If the Contractor or a subcontractor is also a Contractor or subcontractor for the Data Dashboard contract, and a conflict arises between the work being performed on one EDP contract vis-à-vis the other EDP contract, the conflict shall immediately be escalated to the State Project Director.

4.13.10 Remedies for Breach

It is understood and agreed that all rights and remedies set forth in this Agreement shall be in addition to all remedies or actions otherwise authorized or permitted by law:

- A. Withhold Payment: In any case where a question of non-performance or deficient performance by the Contractor arises, payment may be withheld, in whole or in part, at the discretion of the Department.
- B. Bankruptcy: In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of the Contract, the State may, at its discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the State the amounts owed by the Contractor arising out of the same transactions.
- C. Reimbursement of Costs Incurred: The State shall have the right to award a new contract to complete the NYSED Education Data Portal system as described by the RFP, and the Contractor shall be responsible for damages and for all additional costs incurred in re-letting the contract.
- D. Deduction/Credit: Sums due as a result of these remedies may be deducted or offset by the State from payments due, or to become due, to the Contractor

on the same or another transaction. If no deduction, or only a partial deduction, is made in such fashion, the Contractor shall pay to the State the amount of such claim or portion of the claim still outstanding, on demand. The State reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

4.13.11 Suspension of Work

The State reserves the right to suspend any or all activities under the Agreement, at any time, in the best interest of the State. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a freeze on State spending, revocation of any grant funding associated with the project, declaration of emergency, or other such circumstances. Upon receipt of such notice, the Contractor shall immediately comply with the suspension order. Activity may resume at such time as the State issues a formal written notice authorizing a resumption of work.

4.13.12 Mitigation of Costs

The Contractor shall not undertake any additional or new contractual obligations on or after the date of a termination notice without the prior written approval of the State. On or after the date of termination notice, and during the termination notice period, if any, the Contractor shall take all commercially reasonable and prudent actions to close out outstanding, existing obligations to the extent possible and as economically as possible for the State.

4.13.13 Termination Closeout Plan

Within thirty (30) calendar days of receipt of a notice of termination as set forth in the Agreement, or at the end of the contract term, the Contractor shall provide for approval by the State a detailed written plan for transition. The closeout plan shall outline, at a minimum, the tasks, milestones, and Deliverables associated with the smooth transition of the Project to a successor Contractor or to identified persons with the State. The closeout plan shall include all other information mutually agreed upon by the Parties to the Agreement. Consideration for the closeout plan shall be considered paid as part of the payments for the Deliverables in the Agreement. No further compensation shall be due for the completion of the closeout plan.

4.13.14 General Provision as to Remedies

The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with, or succeeds the exercise of another. A single or partial exercise of a remedy shall not

preclude a further exercise of the right or remedy or the exercise of another right or remedy. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy or constitute a waiver of, an event otherwise constituting a breach or default under the Agreement.

4.13.15 Public Announcements

Public announcements or news releases regarding the NYSED EDP program may not be released by any Bidder, the Contractor, or their agent without prior review and approval of the NYSED. Such approval shall not be considered until an executed Agreement is in place.

Publicity includes but is not limited to news conferences, news releases, advertising, brochures, reports, discussions, and/or presentations at conferences or meetings.

4.13.16 Conflict of Interest

In providing its services, the Contractor warrants and represents, to the best of its knowledge and belief, that Contractor's other obligations to third parties or to the State will not result in a conflict of interest or in the appearance of a conflict of interest that would render Contractor, its employees, subsidiaries, affiliates, partners, agents, or subcontractors unable to legally provide the Products or Services under the Agreement.

In the event that the Contractor, through reorganization, consolidation, merger, or otherwise, becomes an affiliate, or is expected by Contractor to become an affiliate of the Data Dashboard prime contractor, the quality management provider or any other consultant engaged by the State, the Contractor shall immediately notify the State Project Director. Upon such notification, the State/NYSED reserves the right, after discussions with the Contractor as to appropriate alternative resolutions, to terminate the Agreement.

If the Contractor develops a conflict of interest based upon its other business relationships, which would render the Contractor unable to legally perform the Services, the Department may terminate the Agreement upon written notice. The Contractor shall notify the Department of any such conflict upon becoming aware of such conflict.

The Contractor represents and covenants that it has, and will maintain during the term of the Agreement, quality control systems to prevent such a conflict of interest and that it maintains, and will maintain during the term of the Agreement, adequate safeguards to comply with this requirement.

If NYSED terminates the Agreement as a result of the Contractor establishing a new business relationship with a third party, the Contractor shall compensate the State/NYSED for any and all reasonable, documented, direct costs that the State/NYSED incurs to procure a new Contractor to perform the portion of the Services not yet performed by the Contractor as of the effective date of

termination. Prior to any such termination the NYSED will provide notice to the Contractor.

The Contractor must disclose the name of any officer, director, project staff, or senior executive who is also an employee of New York State. Further, the Contractor must disclose the name of any State employee who directly owns an interest of ten percent (10%) or more in the Contractor's Firm or any of its subsidiaries. No State employee shall receive, directly or indirectly, any compensation from the Contractor or any of its subsidiaries as a result of this contract. The Contractor will take appropriate steps to make a similar determination regarding its sub-contractors.

This shall be an ongoing requirement, and failure to comply will subject the Agreement to cancellation.

4.13.17 Required Consents

Each party is responsible for promptly obtaining and providing all required consents necessary for the Parties to provide the Services described in the Agreement. A Required consent means any consents or approvals required to give the parties, and the Contractor's subcontractors, the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware, and other products the State of New York Users, without infringing the ownership or license rights (including patent and copyright) of the provisions of owners of such products.

4.13.18 Confidentiality

All work will be performed by the Contractor, its subcontractor and their respective officers, agents, and employees under the supervision of the Contractor or the Contractor's employees.

Any information made available to the Contractor, its subcontractor, or their respective officers, agents, and employees, in any format, shall be used only for the purpose of carrying out the provisions of the Agreement. Information contained in such material will be treated as confidential and will not be divulged or made known, in any manner, to any person except as may be necessary in the performance of the Agreement. Disclosure to anyone other than an officer, agent, or employees of the Contractor or its subcontractors is prohibited. The Contractor will be required to sign an Information Protection Agreement, and a Confidentiality and Non-Disclosure Agreement, to be provided subsequent to award.

All information will be accounted for by the Contractor upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

The Contractor agrees that the data processed during the performance of the Agreement will be completely purged from all data storage components of the Contractor's computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage

components is not possible, the Contractor will certify that any data remaining in any storage component will be safeguarded to prevent unauthorized disclosures. The Contractor will provide written notification to the State Project Director when all data have been destroyed.

The Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the State Project Director or his/her designee with a statement containing the date of the destruction, description of material destroyed, and the method used. In the event that it becomes necessary for the Contractor to receive confidential information, which Federal or State statute or regulation prohibits from disclosure, the Contractor hereby agrees to destroy all such confidential information that has been received as part of this Agreement when the purpose that necessitated its receipt by the Contractor has been completed. In addition, Contractor agrees not to retain any confidential information which Federal or State statute or regulation, including but not limited to the federal Family Educational Rights and Privacy Act (FERPA), prohibits from disclosure after termination of the Agreement. Contractor will provide written notification to the State Project Manager when the confidential information has been destroyed. The Contractor will require all project staff who have access to such confidential information to sign a confidentiality agreement that they will use the confidential information solely for purposes of this contract, and will not disclose the information to any third parties, nor to any person within Contractor's firm or sub-contractors unless such person has a legitimate business need to access such information for purposes of this contract.

The Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of the State's confidential information, which Federal or State statute or regulation prohibits from disclosure. At a minimum, the Contractor shall comply with, and shall require and ensure that its subcontractor(s) comply with, the data and information security policies of NYSED; New York State Cyber Security Policy P03-002 (see <http://www.dhSES.ny.gov/ocs/resources/documents/Cyber-Security-Policy-P03-002-V3.4.pdf>); and the federal Family Educational Records and Privacy Act (FERPA). However, if the laws of the state in which the data is housed by Contractor or a subcontractor provide greater protection for confidentiality and security of the data, then the Contractor or subcontractor must comply with the most stringent security and confidentiality laws. Failure to abide by the more stringent laws of the other state, where the data is housed, will be considered a violation of this contract in the same manner as violation of applicable New York or federal law.

The Contractor shall never disclose information which Federal, State statute, or regulation prohibits from disclosure. Other confidential information disclosed under the Agreement will be subject to the Agreement for five years following the initial date of disclosure.

The Contractor agrees that it shall immediately report to the State the discovery of any unauthorized use or unauthorized disclosure of such confidential

information of any New York State agency information directly to that New York State agency. The State may terminate the Agreement for cause if it determines that the Contractor has violated a material term of this section. The terms of this section shall apply equally to the Contractor, its agents, and subcontractors, if any. The Contractor agrees that all subcontractors, if any, and agents shall be made aware of and shall agree to the terms of this section.

The State will have the right to terminate the Agreement for cause if the Contractor fails to provide the safeguards described above.

Notwithstanding the language contained in this section, the Contractor may release any information pursuant to a final order issued from a Court of competent jurisdiction, provided the State has had an opportunity to be heard. The Contractor shall immediately forward to the State Project Director a copy of any such order requiring disclosure of confidential information, and shall advise the court of this provision.

Notwithstanding the foregoing, information which falls into any of the following categories shall not be considered confidential information:

- a. Information that is previously rightfully known to the receiving party without restriction on disclosure;
- b. Information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain;
- c. Information that is independently developed by the Contractor without use of confidential information of the State;
- d. Information unrelated to the scope of this engagement and not required by State or federal law to be kept confidential; and
- e. That the State has approved for disclosure, but solely in accordance with the State's approval or direction.

4.13.19 Insurance

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor must obtain and furnish Certificates of Insurance evidencing compliance with all insurance requirements contained herein. Such Certificates shall be, in form and substance, acceptable to the State.

Acceptance and/or approval of Certificates of Insurance by the State shall not diminish any of Contractor's obligations, responsibilities, or liabilities under the Agreement.

All insurance required by the Agreement shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State; shall be primary and non-contributing (only with respect to liability arising out of the Agreement) to any insurance or self-insurance maintained, and shall be endorsed to provide that reasonable efforts will be used for written notice to be given to the State at least thirty (30) calendar days prior to the cancellation or non-renewal of such policy or policies, which notice, evidenced by return receipt of United States Certified Mail, shall be sent

to the State/Department. The insurance policy(ies) shall name the State of New York, its officers, agents, and employees as additional insureds. The additional insured requirement does not apply to Workers' Compensation or Disability coverage.

The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII," the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the State and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of the Agreement and to remain in full force and effect throughout the term of the Agreement and as further required by the Agreement. The Contractor shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverage during the period of time such coverage is required to be in effect.

Not less than thirty (30) calendar days prior to the expiration date or renewal date, the Contractor shall supply with updated replacement Certificates of Insurance, and amendatory endorsements.

The Contractor, throughout the term of the Agreement, or as otherwise required by the Agreement, shall obtain and maintain, in full force and effect, the following insurance with limits not less than those described below and as required by the terms of the Agreement, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 0001, or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract).

Workers' Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near, or over navigable waters, US Longshore and Harbor Workers' Compensation Act endorsement must be included. Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) require that the State shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the State, the Contractor shall be required to verify for the State, on forms authorized by the New York State Workers' Compensation Board, that they are properly insured or are otherwise in compliance with

the insurance provisions of the WCL (see Appendix J: Compliance with Workers' Compensation Law). Any questions relating to either Workers' Compensation or disability benefits coverage should be directed to the New York State Workers' Compensation Board.

Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired, and non-owned automobiles.

Employee dishonesty coverage on all employees, including contract and temporary, in an amount of \$250,000.

4.13.20 Mergers, Acquisitions or Divestitures

In the event there is a substantial or material change, as defined below, in the ownership or financial viability of the Contractor, its corporate affiliates, subsidiaries or divisions, or subcontractors, the Contractor is required to provide prompt written notice to the State with all details of any such change.

"Substantial" or "material" change in Contractor status shall be defined to include, but not be limited to, a sale, acquisitions, mergers, or takeovers involving the Contractor, its corporate affiliates, subsidiaries or divisions, or partners which result in a change in the controlling ownership or assets of such entity after the submission of the proposal; or entry of an order for relief under Title 11 of the United States Code; the making of a general assignment for the benefit of creditors; the appointment of a general receiver or trustee in the bankruptcy of the Contractor, its corporate affiliates, subsidiaries or division, or partners under any state insolvency or similar law for the purposes of its bankruptcy, reorganization or liquidation; or court ordered liquidation against Contractor, its corporate affiliates, subsidiaries, or divisions or partners.

Upon receipt by the State of such notice, the State shall have thirty (30) business days from the date of notice to review the information. The Contractor may not transfer or assign the Agreement without the consent of the State. In addition to any other remedies available at law or equity, the State shall have the right to terminate this Agreement immediately, in whole or in part, if it finds that such change materially and adversely affects the delivery of services solely determined with reference to the best interests of the State, or if the change in Contractor status causes a conflict of interest or violation of law.

In the event the Contractor is acquired or merged, the Contractor shall continue to be bound by, and shall perform under, all terms and conditions set forth herein.

4.13.21 Material Change in Contractor Status

A. Ownership

The Contractor, or its licensors, retain all ownership and intellectual property rights to the licenses in perpetuity. Any property or material furnished or

provided by the State to the Contractor hereunder, is and will remain the property of the State.

B. Prior Licensed Software

The State's prior licensed software shall not be extinguished or merged by execution of the resulting Agreement or by unilateral acts of the Contractor.

4.13.22 Open Source and Third Party Software Disclaimer

Open source software and Third Party software is developed independently of Contractor and may be governed by a separate license. If such software is governed by a separate license, Contractor shall provide a copy of that license in the applicable Documentation, and the Authorized User's license rights and obligations with respect to that open source software shall be defined by those separate license terms and subject to the conditions, if any, therein. Nothing in the Contract shall restrict, limit, or otherwise affect any rights or obligations the Authorized User may have, or conditions to which the Authorized User may be subject, under such separate open source license terms. The Contractor may not use material pursuant to a Creative Commons License for performance of its responsibilities under this contract without prior approval of the State, and shall ensure that any such material is free from all obligations to third parties, including but not limited to royalties.

4.13.23 Ownership of Data and Records

All data and other records contained in or entered into any Contractor accessible data store by the State or LEA, or supplied to the Contractor by the State or LEA are, and shall remain, the sole property of the State or LEA respectively. The Contractor shall not copy or use such records except to carry out contracted work under the terms herein, and shall not transfer or display such records to any other party not involved in the performance of the resulting Agreement. Contractor will certify in writing that all data and records have been destroyed upon completion of the work hereunder.

4.13.24 Title and Legal Interest in Agreement Deliverables

Unless otherwise specified in the Agreement, all materials developed pursuant to the terms of the Agreement without limitation, including materials developed as a result of Task Orders, contract documentation, software coding or modifications, and all other contract Deliverables of whatever description, custom program code developed or prepared for the State by the Contractor under the Agreement, whether or not the Agreement is completed, is confidential information and the property of the State and all title and interest therein shall vest in the State and shall be deemed to be a "work made for hire" and made in the course of the services rendered hereunder. To the extent that title to any such works may not, by operation of law, vest in the State, or such works may not be considered works made for hire, all rights, title and interest therein are hereby irrevocably

assigned to the State. All such materials shall belong exclusively to the State, with the State having the right to obtain and to hold in its own name copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. The Contractor agrees to give the State, and any person designated by the State, reasonable assistance, at the State's expense, required to perfect the rights defined in this Paragraph.

Notwithstanding the foregoing, the Contractor or third parties shall retain all right, title and interest in any of their respective pre-existing software products. The State acknowledges that the successful Contractor or its licensors shall retain all ownership and intellectual property rights to proprietary code offered to the State under a licensing agreement. Any property or material furnished or provided by the State to the Contractor hereunder is and will remain the property of the State.

Nothing herein shall preclude the State from entering into an agreement with the Contractor to jointly own a specific work developed under the Agreement.

4.13.25 Software Use

The Contractor shall pay all associated license, maintenance, and support fees from the start date of the resulting agreement and continuing through the end of the System Warranty Period. All software licenses will be held by the Contractor for the State during the phased implementation period, with the State as the sub-licensee or grantee of all rights necessary to allow it to conduct its proposed activities during the project. All privileges extended to the licensee shall also be extended to the State, the sub-licensee. Upon completion of the System Warranty Period, all software licenses shall automatically pass to the State. In the event of Termination of the contract, the Contractor shall immediately grant all software licenses to the State, upon the State's request. The Contractor shall ensure that these provisions are included in any software license obtained by Contractor for a third-party for use in this contract.

Where use of software is granted on a licensed basis, the following shall constitute the license grant with respect to use of the licensed software by NYSED:

- A. License Scope – NYSED is to be granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the software within its business enterprise up to the maximum licensed capacity stated in the license agreement. Software may be accessed, used, executed, , displayed or performed for the purposes outlined in the Content Management and System Services Contract. NYSED shall have the right to use and modify or customize the software for the purposes in the Content Management and System Services contract, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in the trademark, trade name, or service mark is granted

hereunder. The software will not be distributed to any third parties, except for use by the federal government as may be required by 34 C.F.R. §80.34.

- B. Right to Purchase Additional Software – NYSED may elect to purchase additional software components/modules, to complement the integration of the existing collection of software components/modules to rapidly changing technology. The characteristics of an increment may vary depending upon the type of information technology being acquired and the nature of the system being developed. The following factors may be considered in choosing an appropriate contracting technique that facilitates the acquisition of subsequent software components:
- Takes advantage of any evolution in technology or needs that occur during implementation;
 - Address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable systems or solutions for attainment of those objectives; and,
 - Reduce risk of potential adverse consequences on the overall project by isolating and avoiding custom-designed components of the System.

The Contractor shall offer to the State the lowest price offered to other customers. This provision of this contract shall survive termination or expiration of the contract.

The information technology acquired through this Contract for each increment should be compatible, integrate seamlessly with the existing software products, comply with commercially acceptable information technology standards when available and appropriate, and shall conform to the State's information technology architecture. The performance requirements of each increment should be consistent with the performance requirements of the overall solution, and should address interface requirements with succeeding increments.

- C. Licensed Documentation – If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense one (1) hard copy and one (1) master electronic copy of the Documentation in CD format; Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product), and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license. Contractor must also provide access to an on-line library to ensure that users have access to the most recent user manuals and other documentation.

- D. Platform Migration – The State may elect to change its technical infrastructure including the hardware, operating system, and database management system, to another platform supported by the Contractor. In such a case, the Contractor will provide the State, at no charge and with no amendment to the terms and conditions set forth herein, with all updates and software replacements necessary to use the licensed software on the new platform.
- E. The State acquires only the right to use the Software and does not acquire any rights of ownership, other than for application programs developed specifically for this Agreement. All rights, title, and interest in the Software shall at all times remain the property of the Contractor. The Contractor represents that (i) it is the owner of the Software developed by the Contractor, with the exception of the application programs developed specifically for the Agreement and that it has the right to modify same and to grant the State a license for its use.
- F. Notwithstanding any other provisions of the Agreement, NYSED will have unlimited access to: (i) all source code which was written specifically for System applications or is reasonably required in order to make modifications to any such applications; and (ii) all application programming interfaces, whether or not developed specifically for purposes related to the Agreement, which are reasonably required in order to modify any application, either written or to be written, and which are related to the System applications.

4.13.26 Source Code Delivery

A. Source Code

The State will receive source code to the EDP project software (Programs) developed by the Contractor under this Contract, and any enhancement or configuration thereto.

4.13.27 Product Version

Products licensed or provided shall be the most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested, in writing, by the State Project Director and Contractor is willing to provide such version.

4.13.28 No Hardstop/Passive License Monitoring

Unless NYSED is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of

copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Contractor agrees that, in the event of a breach or alleged breach of this provision, NYSED shall not have an adequate remedy at law, including monetary damages, and that NSYED shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which NYSED shall be entitled.

4.13.29 Use by Other Agencies and the Federal Government

Any contract entered into pursuant to an award of this RFP shall contain a provision that grants the option to extend the terms and conditions of such contract to any other State agency in New York. The Contractor recognizes that this contract is funded by federal Race to the Top / American Recovery and Reinvestment Act (ARRA) funds, and that the federal government reserves a right to use material or works created pursuant to this contract pursuant to 34 C.F.R. §80.34, to the extent that provision is applicable.

4.13.30 Additional Services Requested

NYSED may, at any time, by written notice, make changes or additions to work or services within the general scope of this contract for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the Agreement, an equitable adjustment shall be made in the cost using the billing rates set forth in the Agreement, and the Contractor shall be notified, in writing, accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 calendar days from the date of receipt by the Contractor of the notification of change; provided however, that NYSED, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with the Agreement as modified. A change to the scope of the Agreement or budget would be subject to the approval of the State Comptroller.

4.13.31 Freedom to Undertake

With respect to any contract or employment as an independent Contractor or employee of New York State, or any New York public corporation as defined in Section 66 of the New York General Construction Law or any agency or department of either, pursuant to the terms of any other present or future agreement, expressed, implied, entered into with such entity, if any, the Contractor by submitting a proposal thereby covenants and represents that there is no conflict as to hours required to be worked or duties required to be

performed pursuant to the terms of this proposal and any aforesaid contract or employment.

4.13.32 Reports and Findings

Any and all reports and findings rendered to NYSED by the Contractor shall be the exclusive property of NYSED and subject to its exclusive use and control. The Contractor herewith waives any and all rights to such reports and findings and the control thereof.

The Contractor shall take all appropriate action to protect the confidentiality of all information supplied to it or developed by it during the course of its performance under the terms of the contract.

4.13.33 Records Access

NYSED staff, others authorized by NYSED such as representatives of the Federal government, or other State agencies authorized by State law, shall have access to and the right to examine the books, documents, work papers, documentation of charges, or other records of the Contractor involved in transactions relating to the contract during the contract period and for a period of six years after final payment for said services by the Department. The Contractor will make all records, including related documents of any and all subcontractors, available to New York State. Such retained records shall not include confidential data or information, as defined in this Contract, unless specifically mandated in writing by NYSED to be retained. Otherwise, such confidential data and information shall be promptly destroyed as provided in this Contract.

As authorized by NYSED, the Contractor shall cooperate with Federal auditors and other independent auditors conducting audits of State and related Federal records and with any subsequent auditors for the examination of documents, systems, and financial statements. Such cooperative work shall be reported to NYSED and identified separately in all billings under the contract.

4.13.34 Work Paper Retention and Availability

The work papers to be prepared by the Contractor during the engagement will be the Contractor's property, although copies thereof and access to them will be made available, upon request, to NYSED, representatives of the Federal government and State agencies when authorized by NYSED, and other State agencies authorized by law, for a period of six (6) years following the date of the final payment under the contract. All such requests, and their disposition, shall be authorized by the Department.

The Contractor selected agrees to make personnel available to explain fully all data, materials, and work papers developed during the engagement for a period of six (6) years following the date of the final payment under the contract.

4.13.35 Waiver, Modification, Execution, or Severability

No waiver or modification of the contract or any covenant, condition, or limitation herein contained shall be valid unless in writing and executed by the parties hereto, and no evidence of any waiver or modification shall be offered or received in evidence in any action between the parties hereto arising out of or affecting the contract, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid, and the parties further agree that the provisions of the paragraph may not be waived except as herein set forth.

The written contract shall contain the sole and entire agreement between the parties and shall supersede any and all other agreements between the parties.

The parties hereto shall execute such other further documents as may be required to effectuate the terms of the contract.

In the event that any provision of the Agreement shall be declared void, voidable, illegal, or invalid for any reason, such provision shall be of no force and effect only to the extent that it is so declared void, voidable, illegal, or invalid. All of the provisions of the Agreement not specifically found to be so deficient shall remain in full force and effect.

4.13.36 Freedom of Information Law

New York State's Freedom of Information Law (FOIL) (Public Officers Law, Article 6, §§84-90), available at: <http://www.dos.state.ny.us/coog/index.html>, promotes the public's right to know the process of governmental decision-making and grants maximum public access to governmental records. The proposal of the successful Bidder and the proposals of unsuccessful Bidders may be subject to disclosure under FOIL.

However, pursuant to Section 87(2)(d) of FOIL, a State agency may deny access to those portions of proposals or portions of a successful Bidder's contract which are "trade secrets" or submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise.

Please note that all information that a Firm may claim as proprietary, copyrighted, or rights-reserved is not necessarily protected from disclosure under FOIL.

As noted in Section 2.3.1 above, if there is information in a Firm's proposal that a Firm claims meets the definition set forth in Section 87(2)(d), the Firm should identify such information and provide an outline of its reasons for seeking exemption from FOIL disclosure.

Failure to identify the information which a Firm believes should be protected by Section 87(2)(d) may result in such information being disclosed if a request is received.

It is a Firm's responsibility to consult an attorney with any questions the Firm may have about New York State's Freedom of Information Law. All work products described herein may also be subject to FOIL disclosure.

The State will not honor any attempt by a Bidder either to designate its entire bid proposal as proprietary or to claim copyright protection for its entire proposal.

The Contractor must provide to the Department all information, records, and other written material it produces, possesses, or relies upon if such material is the object of a legitimate request to the Department pursuant to the Freedom of Information Law.

4.13.37 Piggybacking

This contract may be extended for use in accordance with the State Finance Law Section 163 (10)(e). NYSED reserves the right to convert any provisions that involve LEA procurement into a piggybacked OGS backdrop contract.

4.13.38 Performance Monitoring

The Contractor's performance will be assessed by the State according to the achievement of Contractor's contractual obligations in a timely and professional manner, as set forth herein. NYSED may utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work product.

4.13.39 Notices

All notices, demands, instructions, claims, approvals, and disapprovals are required to be given to either Party at the addresses set forth in the final contract document or to such other address as either Party shall have provided the other.

4.13.40 Reservations

NYSED reserves the right to employ other consultants and contractors in connection with its responsibilities and functions. In that event, Contractor will, as directed by NYSED, cooperate and work in harmony with such consultants and contractors.

4.13.41 Proposal Ownership

All proposals and accompanying documentation become the property of the State of New York and will not be returned. The Department reserves the right to use any portions of the Bidder's proposal not specifically noted as proprietary.

4.14 Appendix A-2

American Recovery and Reinvestment Act of 2009 (ARRA)

ADDITIONAL CONTRACT RECORD KEEPING REQUIREMENTS

This contract is funded, in whole or in part, by the American Recovery and Reinvestment Act of 2009 (ARRA). The United States Office of Management and Budget (OMB) has released, "Implementing Guidance for Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009" (M-09-21). This guidance provides detailed information on reporting requirements included in Section 1512 of the Recovery Act.

Recipient vendors receiving ARRA funding will be required to submit quarterly information which will include at a minimum the following information:

- Vendor name and zip code of Vendor headquarters;
- Expenditures (per quarter and cumulative);
- Expenditure description; and
- Estimates on jobs created or retained via the expenditure of these funds by the Vendor.

Additional data may be required from vendors as a result of guidance issued by OMB.

Vendors will be required to submit the ARRA data in a form and format to be determined by the New York State Education Department (NYSED). NYSED anticipates that the reporting information will be provided to Vendors no later than August 30th. There will be no additional compensation for this reporting activity, and it is anticipated that the Quarterly Reporting forms will be required in both paper and electronic formats.

An employee of any non-federal employer receiving ARRA funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to law enforcement and other officials information that the employee reasonably believes is evidence of:

- Gross mismanagement;
- Gross waste of covered funds;
- A danger to public health and safety;
- An abuse of authority; or
- A violation of law.

5 SUBMISSION DOCUMENTS

5.1 Response Sheet for Bids

Response Sheet for Bids

Please complete the bidder section on this sheet even if you choose not to bid. Read the detailed specifications, terms, and conditions, and submit this form along with your completed bid form and supporting materials.

Agency and Bid-Delivery Information

Bids may not be faxed. To ensure the confidentiality of your bid before the bid opening, enclose your bid within an envelope labeled

**Bid Proposal #DS-08
DO NOT OPEN**

Place this sealed envelope within another envelope labeled with the delivery information.

Bidder Information—Please Complete This Section

Please complete the following even if you are choosing not to bid; responses must be legible. By signing, you indicate your express authority to sign on behalf of yourself, or your company or other entity and full knowledge and acceptance of the terms and conditions of the bid. You also affirm that you understand and agree to comply with the procedures of the NYSED relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

<u>Name of Company Bidding</u>	<u>Employer's Federal Tax ID Number</u>		
Address	<i>Street</i>	<i>City</i>	<i>State</i>
<i>Zip Code</i>			

Check one of the following:

I certify that my organization has filed its Vendor Responsibility Questionnaire online via the New York State VendRep System and that the current questionnaire was certified within the past six months.

I am including a completed paper copy of the Vendor Responsibility Questionnaire with the bid proposal.

My entity is exempt based on the OSC listing.

Other, explanation:

I am not submitting a bid. (Please complete and submit this sheet only; in addition, please indicate why you have chosen not to bid.)

<hr/>		
Bidder's Signature	<i>Date</i>	<i>E-mail</i>
	<i>Phone</i>	<i>Fax</i>
Print Name as Signed and Title		

The New York State Education Department reserves the right to request any additional information deemed necessary to properly review bids.

5.2 Non-Collusive Bidding Certifications

In accordance with Section 139-d of the State Finance Law and paragraph 7 of Appendix A (Standard Clauses for NYS Contracts), the bidder hereby affirms, under penalty of perjury:

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 to the best of his knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose 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 FORGOING 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 or partnership.

The person signing on behalf of the bidder further affirms that he/she is authorized and responsible for signing this certificate.

Identifying Data

Name of Potential Contractor _____

Street Address _____

City, State, zip code: _____

Telephone: _____

Name: _____

Title: _____

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: _____

Name

Name

Title

Title

Street Address

City, State, Zip Code

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:

5.3 MacBride Certification

**"NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:
MacBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Chapter 807 of the laws of 1992 the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either:

(Answer Yes or No to one or both of the following, as applicable)

1. Has business operations in Northern Ireland:

_____ Yes _____ No

If yes:

2. Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such principles.

_____ Yes _____ No

Company Name: _____

Printed Name and Title of Authorized Representative:

Signature: _____

Date: _____

Proposal: _____

Commodity: _____

5.4 Certification – Omnibus Procurement Act of 1992

The Omnibus Procurement Act of 1992 requires that by signing this RFP/bid proposal, contractors certify that whenever the total bid amount is greater than \$1 million:

1. The contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the State;
2. The contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
3. The contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor; or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The contractor agrees to document these efforts and to provide said documentation to the State upon request;
4. The contractor acknowledges notice that New York State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

Name: _____

Title: _____

Company Name: _____

Date: _____

5.5 Required Assurances

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them

for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Professional, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs

(a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, and zip code)

Check if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Professional, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications. The applicant will provide immediate written notice to the NYSED Contract Administration Unit if at any time the applicant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE
CONTRACT YEAR	CONTRACT NUMBER

5.6 Offerer Disclosure of Prior Non-Responsibility Determinations

Instructions: The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the State Education Department.

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

Address: _____

Name and Title of Person Submitting this Form: _____

Contract RFP Number: _____

Date: _____

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

No

Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No

Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

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

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

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

By: _____ Date: _____
Signature

Name: _____

Title: _____

5.7 Minimum Qualifications Certification

RFP #DS-08

By signing this form, the undersigned certifies it can provide and/or meet all of the requirements listed below as well as all of the required implementation and support services deliverables outlined in Section 1.4 of the RFP. Please use the line space, where provided, to describe how you are going to provide or meet the specified requirement.

The bidder must meet all six of the qualifications described below. The technical proposal must contain information to support the claimed qualifications, as noted in the Minimum Qualifications Certification Form. You may count the same projects in multiple Minimum Qualification statements if the project meets the criteria. (Please clearly document how this proposal meets each mandatory requirement):

<i>Qualification</i>	<i>As supported in this proposal on page(s)</i>
The primary bidder must have been responsible for overall project management of three separate software implementation projects in K-12 school districts or state education agencies of a software product used by educators, students or parents within the last three years.	
The primary bidder must have experience implementing, within the last three years, a complex solution for a large corporate or government client that: a) involved identity management and access control integration, b) multiple vendors, and c) a scope of services in excess of \$10 million.	
The primary bidder or its subcontracting team must have completed at least three implementations of content management or collaboration application(s) within the last three years, at least one of which is Drupal based (version 6.0 or higher) and has at least 7,000 registered users. The bidder should submit resumes of its development team, which will be evaluated and considered during the proposal evaluation. Preference will be awarded to development teams who have a record of active participation in the Drupal community (e.g., have contributed Drupal patches, modules, issue queues, documentation, automated tests, or installation profiles).	
The primary bidder or its subcontracting team must have completed at least one product implementation of a java based portal or web application framework within the last three years.	
The primary bidder or its subcontracting team must have experience providing, within the last three years, Software as a Service (SaaS), or hosted applications operated by the vendor, serving at least 10,000 users a year.	
The primary bidder or its subcontracting team must have experience providing, within the last three years, a help desk operated by the bidder supporting a product or service with at least 10,000 end users.	

Completed Attachment 6.2 Mandatory Systems Requirements	Yes/No
A completed Attachment 6.2 is included with this bid and indicates that all mandatory systems requirements as indicated in Attachment 6.2 will be met.	

Proposals that do not include the completed and signed Mandatory Requirements Certification will be disqualified and removed from further consideration.

Vendor Signature and Title		Date:	
Printed Name			
Company Name			
Company Address			

5.8 Subcontracting Form

**NYS Education Department
Content Management and System Services RFP #DS-08**

**New York State Education Department
Subcontracting Form
New York State Education Department
(whole dollar figures only)**

Content Management and Systems Services RFP #DS-08

Subcontracting For Implementation Cost

Name of Subcontractor	M/WBE	Work Description & Estimated Hours/Days	Projected Cost

*Indicate with an "X" which subcontractors are M/WBE.

Total Subcontracting Cost	Total Project Budget	Percent of Subcontracting to Total Budget

Subcontracting (5 Years)	Total Year 1	Total Year 2	Total Year 3	Total Year 4	Total Year 5	Grand Total Subcontracting For 5 Years
Percent of Subcontracting to Annual Budget						

Subcontracting (exclusive of subcontracted hosting services) is limited to sixty percent (60%) of the annual contract budget.

New York State Education Department
(whole dollar figures only)

Content Management and Systems Services RFP #DS-08

M/WBE Purchases For Year One

Table 1-- Minority Business Enterprise

Name of Vendor	Type of Services or Supplies	Cost
Total Year 1 MBE Costs		
Total Year 1 Budget		
Total Year 1 MBE Costs divided by Total Year 1 Budget (%)		

Table 2-- Women-Owned Business Enterprise

Name of Vendor	Type of Services or Supplies	Cost
Total Year 1 WBE Costs		
Total Year 1 Budget		
Total Year 1 WBE Costs divided by Total Year 1 Budget (%)		

M/WBE Purchases For Years 1-5

M/WBE Purchases (5 Years)	Year 1	Year 2	Year 3	Year 4	Year 5	Grand Total For 5 Years
% MBE Purchases to Budget						
% WBE Purchases to Budget						

5.9 M/WBE Documents

M/WBE COVER LETTER

RFP #DS-08

Minority & Woman-Owned Business Enterprise Requirements

NAME OF FIRM _____

In accordance with the provisions of Article 15-A of the NYS Executive Law, 5 NYCRR Parts 140-144, Section 163 (6) of the NYS Finance Law and Executive Order #8 and in fulfillment of the New York State Education Department (NYSED) policies governing Equal Employment Opportunity and Minority and Women-Owned Business Enterprise (M/WBE) participation, it is the intention of the New York State Education Department to provide real and substantial opportunities for certified Minority and Women-Owned Business Enterprises on all State contracts. It is with this intention the NYSED has assigned M/WBE participation goals to this contract.

In an effort to promote and assist the participation of certified M/WBEs as subcontractors and suppliers on this project for the provision of services and materials, the bidder is required to comply with NYSED's participation goals. The goals are 12% Minority Business Enterprise (MBE) and 8% Women-Owned Business Enterprise (WBE). NYSED is open to participation levels that achieve the overall goal through a different split between MBE and WBE (e.g. 10% and 10% or 16% and 4%). These participation goals shall be applicable to the contract as a whole and will be monitored by NYSED M/WBE Program Unit for compliance.

Bidders are required to respond to the participation goals by completing and submitting **M/WBE 100**, Utilization Plan, **M/WBE 102**, Notice of Intent to Participate and **EEO 100**, Staffing Plan in this RFP or at www.oms.nysed.gov/fiscal/MWBE/forms.html.

By my signature on this Cover Letter, I certify that I am authorized to bind the Bidder's firm contractually.
Typed or Printed Name of Authorized Representative of the Firm
Typed or Printed Title/Position of Authorized Representative of the Firm
Signature/Date

M/WBE UTILIZATION PLAN

INSTRUCTIONS: All bidders submitting responses to this procurement must complete this M/WBE Utilization Plan and submit it as part of their proposal. The plan must contain detailed description of the services to be provided by each Minority and/or Women-Owned Business Enterprise (M/WBE) identified by the bidder.

Bidder's Name _____

Telephone: _____

Address _____

Federal ID No.: _____

City, State, Zip _____

RFP No.: _____

Certified M/WBE	Classification (check all applicable)	Description of Work (Subcontracts/Supplies/Services)	Annual Dollar Value of Subcontracts/Supplies/Services
NAME ADDRESS CITY, ST, ZIP PHONE/E-MAIL FEDERAL ID No.	NYS ESD Certified MBE _____ WBE _____		\$ _____
NAME ADDRESS CITY, ST, ZIP PHONE/E-MAIL FEDERAL ID No.	NYS ESD Certified MBE _____ WBE _____		\$ _____

PREPARED BY (Signature) _____ DATE _____

SUBMISSION OF THIS FORM CONSTITUTES THE BIDDER'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-1, 5 NYCRR PART 143 AND THE ABOVE REFERENCE SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR PROPOSAL DISQUALIFICATION.

NAME AND TITLE OF PREPARER: _____
 TELEPHONE/E-MAIL _____

DATE _____

M/WBE 100

<i>(print or type)</i>	
REVIEWED BY _____	DATE _____
UTILIZATION PLAN APPROVED YES/NO _____	DATE _____
NOTICE OF DEFICIENCY ISSUED YES/NO _____	DATE _____
NOTICE OF ACCEPTANCE ISSUED YES/NO _____	DATE _____

**M/WBE SUBCONTRACTORS AND SUPPLIERS
NOTICE OF INTENT TO PARTICIPATE**

INSTRUCTIONS: Part A of this form must be completed and signed by the Bidder/Contractor. Parts B & C of this form must be completed by MBE and/or WBE subcontractors/suppliers. The bidder/contractor must submit a separate M/WBE Notice of Intent to Participate form for each MBE or WBE as part of the proposal.

Bidder Name: _____ Federal ID No.: _____

Address: _____ Phone No.: _____

City _____ State _____ Zip Code _____ E-mail: _____

Signature of Authorized Representative of Bidder's Firm _____
Print or Type Name and Title of Authorized Representative of Bidder's Firm

Date: _____

PART B - THE UNDERSIGNED INTENDS TO PROVIDE SERVICES OR SUPPLIES IN CONNECTION WITH THE ABOVE PROCUREMENT:

Name of M/WBE: _____ Federal ID No.: _____

Address: _____ Phone No.: _____

City, State, Zip Code _____ E-mail: _____

BRIEF DESCRIPTION OF SERVICES OR SUPPLIES TO BE PERFORMED BY MBE OR WBE:

DESIGNATION: MBE Subcontractor WBE Subcontractor MBE Supplier WBE Supplier

PART C - CERTIFICATION STATUS (CHECK ONE):

The undersigned is a certified M/WBE by the New York State Division of Minority and Women-Owned Business Development (MWBD).

The undersigned has applied to New York State's Division of Minority and Women-Owned Business Development (MWBD) for M/WBE certification.

THE UNDERSIGNED IS PREPARED TO PROVIDE SERVICES OR SUPPLIES AS DESCRIBED ABOVE AND WILL ENTER INTO A FORMAL AGREEMENT WITH THE BIDDER CONDITIONED UPON THE BIDDER'S EXECUTION OF A CONTRACT WITH THE NEW YORK STATE EDUCATION DEPARTMENT.

The estimated dollar amount of the agreement \$ _____

_____ Date

Signature of Authorized Representative of M/WBE Firm

Printed or Typed Name and Title of Authorized Representative

EQUAL EMPLOYMENT OPPORTUNITY - STAFFING PLAN

Instructions on Page 2

Bidder Name: _____ Telephone: _____
 Address: _____ Federal ID No.: _____
 City, State, ZIP: _____ RFP No: _____

Report includes: _____ Reporting Entity: _____

Work force to be utilized on this contract Contractor
 Contractor/Subcontractor's total work force Subcontractor - Name: _____

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

EEO - Job Categories	Total Work Force	Race/Ethnicity - report employees in only one category																	
		Hispanic or Latino		Not-Hispanic or Latino															
				Male									Female						
		Male	Female	White	African-American or Black	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	Disabled	Veteran	White	African-American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	Disabled	Veteran
Executive/Senior Level Officials and Managers																			
First/Mid-Level Officials and Managers																			
Professionals																			
Technicians																			
Sales Workers																			
Administrative Support Workers																			
Craft Workers																			
Operatives																			
Laborers and Helpers																			
Service Workers																			
TOTAL																			

PREPARED BY
 (Signature): _____

DAT
 E: _____

NAME AND TITLE OF
 PREPARER: _____

TELEPHONE/EMAIL
 : _____

STAFFING PLAN INSTRUCTIONS

General Instructions: All Bidders and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's or subcontractor's total work force, the Bidder shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's or subcontractor's total work force, the Bidder shall complete this form for the contractor's or subcontractor's total work force.

Instructions for Completing:

1. Enter the RFP number that this report applies to, along with the name, address, and federal ID number of the Bidder.
2. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Bidder's total work force.
3. Check off the appropriate box to indicate if the Bidder completing the report is the contractor or subcontractor.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and race/ethnic background and enter under the heading Race/Ethnicity. Contact the Designated Contact(s) for the solicitation if you have any questions.
6. Enter the name, title, phone number and/or email address for the person completing the form. Sign and date the form in designated areas.

RACE/ETHNIC IDENTIFICATION

For purposes of this form NYSED will accept the definitions of race/ethnic designations used by the federal Equal Employment Opportunity Commission (EEOC), as those definitions are described below or amended hereafter. (Be advised these terms may be defined differently for other purposes under NYS statutory, regulatory, or case law). Race/ethnic designations as used by the EEOC do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. The race/ethnic categories for this survey are:

- **Hispanic or Latino** - A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
- **White (Not Hispanic or Latino)** - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- **Black or African American (Not Hispanic or Latino)** - A person having origins in any of the black racial groups of Africa.
- **Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino)** - A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **Asian (Not Hispanic or Latino)** - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- **American Indian or Alaska Native (Not Hispanic or Latino)** - A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.
- **Two or More Races (Not Hispanic or Latino)** - All persons who identify with more than one of the above five races.
- **Disabled** - Any person who has a physical or mental impairment that substantially limits one or more major life activity; has a record of such an impairment; or is regarded as having such an impairment
- **Vietnam Era Veteran** - a veteran who served at any time between and including January 1, 1963 and May 7, 1975.

5 NYCRR 142.8 CONTRACTOR'S GOOD FAITH EFFORTS

(a) The contractor must document its good faith efforts toward meeting certified minority- and women-owned business enterprise utilization plans by providing, at a minimum:

- (1) Copies of its solicitations of certified minority- and women-owned business enterprises and any responses thereto;
- (2) If responses to the contractor's solicitations were received, but a certified minority- or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;
- (3) 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 publication of such advertisements;
- (4) Copies of any solicitations of certified minority- and/or women-owned business enterprises listed in the directory of certified businesses;
- (5) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority- and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
- (6) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority- and women-owned business enterprises.

(b) In addition to the information provided by the contractor in paragraph (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:

- (1) whether the contractor submitted an alternative utilization plan consistent with the subcontract or supplier opportunities in the contract;
- (2) the number of certified minority- and women-owned business enterprises in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
- (3) The actions taken by the contractor to contact and assess the ability of certified minority- and women-owned business enterprises located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
- (4) whether the contractor provided relevant plans, specifications or terms and conditions to certified minority- and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
- (5) the terms and conditions of any subcontract or provision of suppliers offered to certified minority- or women-owned business enterprises and a comparison of such terms and conditions with those offered in the ordinary course of the contractor's business and to other subcontractors or suppliers of the contractor;
- (6) whether the contractor offered to make up any inability to comply with the certified minority- and women-owned business enterprises goals in the subject State contract in other State contracts being performed or awarded to the contractor; and
- (7) any other information that is relevant or appropriate to determining whether the contractor has demonstrated a good faith effort.

5.10 Letter of Intent

**New York State Education Department
Letter of Intent Form
Education Data Portal: Content Management and System Services**

Authorized representatives of our organization have received and read the Request for Proposal and we believe our organization is qualified to bid for the requested services. We understand that receipt of this form electronically to edpContentManagement@mail.nysed.gov by **COB on May 4, 2012** is requested.

Organization Name:

Address/Phone/Email:

Signatory Authority Name/Title (Print or Type):

Signature: _____ **Date:** _____

6 ATTACHMENTS

6.1 Shared Learning Infrastructure Documentation

The following documents are attached and are current as of the time of release of the RFP. For updates to these documents please see the SLC website at www.slcedu.org:

A. Guidance – SLC Project Documents

SLC_Read_Me_Draft_Documentation_Overview.pdf

B. API

Data Store Draft API – RFP Guidance (January 13, 2012)	SLC_Data_Store_Draft_API_RFP_Guidance.pdf
Data Store Draft API Specification (December 20, 2011)	SLC_Data_Store_Draft_API_Spec.pdf
Introductory Data Store API Usage – Whitepaper (December 20, 2011)	SLC_Introductory_API_Usage_Whitepaper.pdf

C. File Format

SLI Data Ingestion Specification (January 30, 2012)	SLI_Data_IngestionSpecification.pdf
SLI Bulk Data Transfer – RFP Guidance (February 1, 2012)	SLI_Bulk_Data_Transfer_RFP_Guidance.pdf

D. Learning Registry

Learning Registry Index Solution – RFP Guidance (January 31, 2012)	SLC_Learning_Registry_Index_Solution_RF P_Guidance.pdf
--	---

E. Learning Resource Metadata Initiative (LRMI)

Learning Resource Metadata Initiative (LRMI) – RFP Guidance (January 13, 2012)	SLC_LRMI_RFP_Guidance.pdf
--	---------------------------

F. Identity Integration

SLI Identity Integration – RFP Guidance (January 27, 2012)	SLIRFP_Identity_Integration_Doc.pdf
Identity Integration Solution Overview (January 20, 2012)	SLC_Identity_Integration_Overview.pdf

G. Integration and Customization

SLI Portal and Dashboard Integration and Customization – RFP Guidance (January 24, 2012)	SLIRFP_Portal_Dashboard_RFP_Guidance_Doc.pdf
Customizing the Portal & Educator Dashboards – Overview (December 16, 2011)	SLC_Customizing_SLI_Portal_and_Dashboards_Overview.pdf

H. Learning Standard Alignment

Learning Standard Alignment in the SLC Technology: A Whitepaper (March 29, 2012)	SLI_Learning_Standards_Alignment_Whitepaper_v1.0.pdf
--	--

6.2 Detailed Requirements

See separate document

6.3 Hosting Services

See separate document

6.4 Maintenance and Support Services

See separate document

6.5 Company Experience and References

See separate document

6.6 Staffing Plan and Resumes

See separate document

6.7 Counts of Student Enrollment, Classroom Teachers and Other Educators

See separate document

6.8 Statement of Work

See separate document

6.9 Cost Proposal Worksheet

See separate document

7 GLOSSARY

Term	Definition
Achievement Reporting and Innovation System or ARIS	The New York City Department of Education's (NYCDOE) Achievement Reporting and Innovation System (ARIS) provides a single place where NYCDOE educators can find important information to use to accelerate student learning (www.arisnyc.org).
Application Programming Interface	A source code-based specification intended to be used as an interface by software components to communicate with each other.
ARIS Connect System	Part of ARIS that: <ul style="list-style-type: none"> ■ Engages in collaborative inquiry with colleagues ■ Finds or creates a community of shared interest ■ Shares a resource with colleagues
Big 5	Refers to the following five New York State school districts: NYC; Buffalo; Rochester; Syracuse; Yonkers.
Boards of Cooperative Educational Services (BOCES)	Organizations established pursuant to Education Law §1950, <u>et seq.</u> , that provide component school districts with shared educational services and programs.
Common Core	The Common Core State Standards provide a consistent, clear understanding of what students are expected to learn, so teachers and parents know what they need to do to help them. More information on Common Core Standards can be found at http://www.corestandards.org/ .
Data Dashboard	An information system user interface that (similar to an automobile's dashboard) is designed to be easy to read.
Ed-Fi Data Standard	Developed for the K-12 sector, Ed-Fi is open, XML-based, and CEDS-aligned to integrate information from a broad range of existing sources so it can be sifted, analyzed and put to use every day. www.ed-fi.org .
Federated Identity	A federated identity is the means of linking a person's electronic identity and attributes, stored across multiple distinct identity management systems.
Hosting/ASP services	An entity that manages and distributes software-based services and solutions to customers across a wide-area network from a central data center)
iFrames	An HTML structure that allows another HTML document to be inserted into an HTML page.
Independent Validation and Verification	Independent procedures that are used together for checking that a product, service, or system meets requirements and specifications and that it fulfills its intended purpose.
Learning Maps	Graphical representations of student progression along the Common Core State Standards.
Learning Registry	A new approach to capturing, sharing, and analyzing learning resource meta-data to broaden the usefulness of digital content to benefit educators and learners. www.learningregistry.org .
Learning Resource Metadata Initiative	Project led by Creative Commons (CC) and the Association of Educational Publishers (AEP) to establish a common vocabulary

	for using meta-data to describe learning resources.
Local Education Agency (LEA)	For purposes of this contract, an LEA shall include a school district, a charter school or a BOCES.
Master Data Management	Comprises a set of processes and tools that consistently defines and manages the master data (i.e. non-transactional data entities) of an organization.
Networks	Groupings of schools in the New York City school district and throughout the State.
Paradata	Dynamic information about digital learning objects that is generated as they are used, reused, adapted, contextualized, favorited, tweeted, retweeted, shared, and all the other social media style ways in which educational users interact with resources. In this context, paradata captures the user activity related to the resource that helps to elucidate its potential educational utility. (http://nsdlnetwork.org/stemexchange/paradata)
Portal	A web portal is a web site that brings together information from diverse sources in a unified way. Usually, each information source get its dedicated area on the page for displaying information (a portlet); often, the user can configure which ones to display.
Portlet	Pluggable user interface software components that are managed and displayed in a web portal.
Recommendation Engines	A subclass of information filtering system that seek to predict the 'rating' or 'preference' that a user would give to an item.
Reference Implementation	A reference implementation (or, less frequently, sample implementation or model implementation) is the standard from which all other implementations, with their attendant customizations, are measured.
Regional Information Centers	Similar to BOCES, RICs are a trusted provider of collaborative services. By regionalizing services, the RICs, in particular, make a wider range of technology skill sets available to school districts.
Role-Based Access Control or RBAC	Is an approach to restricting system access to unauthorized users. RBAC is sometimes referred to as role-based security.
SAML	An XML-based open standard for exchanging authentication and authorization data between security domains, that is, between an identity provider (a producer of assertions) and a service provider (a consumer of assertions).
Shared Learning Collaborative (SLC)	Led by the vision of the Council of Chief State School Officers and nine participating states, and funded by the Bill & Melinda Gates Foundation and Carnegie Corporation of New York, the collaborative aims to create a shared technology infrastructure that works better and costs less per state than what can be accomplished by each state working individually.
Shared Learning Infrastructure (SLI)	As part of the SLC, a shared data store and set of web services that support the implementation of the Common Core State Standards and help states and districts provide teachers with the instructional data and tools they need to make personalized learning the norm in every classroom.
Software Development Kit	A set of software development tools that allows for the creation

	of applications for a certain software package, software framework, hardware platform, computer system, video game console, operating system, or similar platform.
--	--