

NOTE: THIS IS NOT A PURCHASE ORDER

INVITATION FOR BIDS (“IFB”) (sealed solicitation)
 (“College”) of **THE CITY UNIVERSITY OF NEW YORK**

for the purchase of _____

Part 1. Key IFB Dates and Terms. The City University of New York (“CUNY”), on behalf of the College, is hereby requesting sealed bid submissions in response to this IFB. Parts 1, 2, and 3 of this IFB contain certain information relating to important deadlines, dates and requirements of this IFB. However, this information is not comprehensive and must be read in conjunction with the rest of this IFB, which bidders should review in full.

<p>Bid Submission Deadline: Date: _____ Time: _____</p> <p>Questions Deadline: Date: _____ Time: _____</p>	<p>Bid Submission Location: Address: _____ _____ _____</p> <p>Room Number: _____</p>
<p>Pre-Bid Conference: <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>If YES: Date: _____ Time: _____ Location: _____ _____ _____</p> <p>Attendance Mandatory: <input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>Supplier Diversity Goals: <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES COMPLETE BELOW</p> <p>_____% Minority and Women-Owned Business Enterprise Participation _____% Minority-Owned Business Enterprise Participation _____% Women-Owned Business Enterprise Participation _____% Service-Disabled Veteran-Owned Business Enterprise Participation</p>
<p>Bid Opening and Public Reading of Bid Prices: Date: _____ Time: _____</p> <p>Location: <input type="checkbox"/> same as the Bid Submission Location, or <input type="checkbox"/> the following address: _____ _____</p>	<p>College-Designated Contact: Name: _____ Title: _____ Phone: _____ Fax: _____ Email: _____</p>

Part 2. IFB Content. This Invitation for Bid consists of this IFB form, including, without limitation, Parts 1 through 5 and the following Attachments:

- (a) Attachment A – IFB Instructions and IFB Terms and Conditions (3 pages) pages 5-7;
- (b) Attachment B – Purchase Order Terms and Conditions (4 pages) pages 8-11;
- (c) Attachment C – Appendix A, Standard Clauses for New York State Contracts (5 pages) pages 12-16;
- (d) Attachment D – Supplier Diversity Provisions (7 pages) pages 17-23;
- (e) Attachment E – Supplier Diversity (MWBE/SDVOB) – Utilization Plan (1 page) page 25;
- (f) Attachment F – COVID-19 Rider
- (g) Attachment G – Contract Award Protest Procedures
- (h) Attachment H – Specifications (____page(s)); and
- (i) Attachment I – Bid Price Breakdown Pages (____page(s)).

Part 3. How to Respond to this IFB. You may submit a response to this IFB (a “Bid Submission”) by:

- (a) completing and signing the Bid Submission Certification and Signature Page appearing below as Part 4, including:
 - i. entering your aggregate Bid Price in figures and in words;
 - ii. if permitted, indicating whether you are proposing substitute goods by initialing the space provided; and
 - iii. entering all required information in Part 4 and executing the signature block provided;
- (b) completing and signing the State Finance Law §139-j and §139-k form appearing in Part 5; and
- (c) completing the Bid Price Breakdown Pages in Attachment G (and copying your aggregate Bid Price into Part 4);
- (d) submitting hard copies of the following in a sealed envelope to the Bid Submission Location by the Bid Submission Deadline: (i) the first four pages of this IFB (Parts 1 through 5) completed and signed, (ii) Attachment G completed and signed where indicated (you are not required to submit Attachments A through F of this IFB with your Bid Submission, but you should keep copies for your records since the Attachments will be a part of any Contract awarded pursuant to this IFB), and (iii) any other documents required by the Specifications. The outside of the sealed envelope must include the name and address of the Bidder, the IFB number from the header of this IFB, and the words “BID SUBMISSION ENCLOSED.”

Part 5. State Finance Law §139-j and §139-k Form

(Part 5, page 1 of 2)

**Disclosure of Prior Non-Responsibility Determinations
and
Certification of Compliance with State Finance Law §139-j and §139-k**

Name of Vendor: _____

Address of Vendor: _____

EIN of Vendor: _____

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 you answered "No" to question #1, then please proceed to and answer question #5.

2. If you answered "Yes" to question #1, then please answer the following: Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (please circle):
No Yes

3. If you answered "Yes" to question #1, then please answer the following: 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 questions #1, #2, or #3, then 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):

[State Finance Law §139-j and §139-k form continued on next page]

Part 5. State Finance Law §139-j and §139-k Form (page 2 of 2)

**Disclosure of Prior Non-Responsibility Determinations
and Certification of Compliance with State Finance Law §139-j and §139-k**

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

No Yes

If you answered "Yes" to question #5, then please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding (add additional pages as necessary): _____

Vendor acknowledges and agrees that the City University of New York ("CUNY") reserves the right to terminate the Contract in the event it is found that the certification filed by the Vendor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, CUNY may exercise its termination right by providing written notification to the Vendor in accordance with the written notification requirements of the Contract.

CERTIFICATION: Vendor certifies that all information provided to CUNY with respect to State Finance Law §139-k is complete, true and accurate.

AFFIRMATION: On behalf of the entity named below, I hereby affirm that I understand and agree to comply with the procedures of CUNY relative to permissible Contacts as required by State Finance Law §§139-j and 139-k, particularly §139-j (3) and §139-j (6) (b).

Vendor: _____
(print or type corporation, partnership, or individual name)

By: _____
(signature of authorized representative)

Name: _____
(print or type name of authorized representative)

Title: _____
(print or type title of authorized representative)

Date: _____

Attachment A**IFB Instructions and IFB Terms and Conditions**

All Bidders and all Bid Submissions must comply with the instructions and terms and conditions contained in this Attachment. Defined terms may be used before being defined.

IFB Instructions

1. Do not contact anyone at the College or CUNY except the College-Designated Contact about this IFB or the proposed purchase. Any contact with any CUNY or College employee except the College-Designated Contact may invalidate or prejudice your Bid Submission and/or your ability to participate in City and State solicitations in the future. If you decide to not submit a Bid Price in response to this IFB, please check the appropriate box on page 2 of this IFB and return this IFB to the Bid Submission Location.
2. Questions pertaining to this IFB must be made in writing and sent to the College-Designated Contact before the Questions Deadline, time being of the essence, by (i) mail to the Bid Submission Location, (ii) facsimile to the College-Designated Contact's fax number, or (iii) email to the College-Designated Contact's email address. Include the IFB # in the subject line of such mail, facsimile, or email. Response to questions received by the Questions Deadline, and any interpretation, clarification, or correction, as well as any other additions or amendments relating to the IFB, will be issued in writing by CUNY as an addendum to the IFB ("Addendum") and will be sent to all who received the IFB from the College. Such Addendum shall become a part of the IFB, and bidder shall be required to sign the Addendum and submit it as part of its Bid Submission.
3. If Part 1 (Key IFB Dates and Terms) above indicates that attendance at the Pre-Bid Conference is mandatory and you do not attend the meeting, CUNY may reject your Bid Submission as non-responsive.
4. Bidders must use this IFB to submit a Bid Submission: print out a hard copy to submit if you received this IFB by email; type or use ink, and do not use pencil. In all instances original ("wet") signatures on the Bid Submission (and all accompanying documents) are required. Bidders must follow the instructions in Part 3 (How to Respond to This IFB) above.
5. Hard copies of sealed Bid Submissions are due to the Bid Submission Location by the Bid Submission Deadline, time being of the essence. Bid Submissions sent by fax or email are invalid and will be rejected.
6. Late Bid Submissions will be rejected and returned to Bidder. Delivery by the Bid Submission Deadline to the Bid Submission Location, including the correct room, is the sole responsibility of Bidder.
7. Bidders may not attempt or propose to modify or supplement the terms and conditions of this IFB. ANY PROPOSED MODIFICATIONS OR SUPPLEMENTS TO THIS IFB (OTHER THAN TO PROVIDE PRICING, SIGNATURES OR OTHER INFORMATION REQUIRED BY THIS IFB) ARE NOT PERMITTED, ARE EXPRESSLY REJECTED, AND MAY RENDER A BID SUBMISSION NON-RESPONSIVE.
8. At the Bid Opening and Public Reading of Bid Prices Bid Submissions will be opened and Bid Prices offered by Bidders will be read publicly at the Bid Submission Location.
9. Unless otherwise specified in the IFB, Bid Price shall be a net price that includes all charges for the goods and/or services, including without limitation, transportation and inside delivery charges, F.O.B. Destination, and unloading and assembly. If the IFB requires that Bidders itemize shipping costs and a Bidder fails to so itemize, then such Bidder's shipping costs shall be deemed to be included in that Bidder's Bid Price. Sales to CUNY are not subject to sales and use tax. Do not include any tax in your Bid Price.
10. Bidder is presumed to have full knowledge of all conditions affecting performance that should have been discovered by a reasonably prudent vendor.
11. Where a manufacturer's name or catalog number is mentioned in the Specifications, it is intended to establish a standard of quality or performance, and Bidders may offer proposed substitutes. Bidders shall submit with their Bid Submissions sufficient information for CUNY to evaluate any substitutes offered, including, without limitation, brochures or cut sheets. CUNY reserves the right to request samples, additional information, or demonstration of performance after the Bid Submission Deadline. CUNY reserves the right to reject Bid Submissions with proposed substitutes that it deems "not equal" to the items specified, and such determination by CUNY shall be final. If Bidder fails to have an authorized representative sign his/her initials where required in the Bid Submission Certification and Signature Page indicating that it is providing prices for substitute item(s), then Bidder shall be obligated to furnish the items specified in the IFB for the Bid Price. If Bidder wishes to submit a Bid Price for the specified items and also for substitute items, then Bidder may do so by photocopying or reprinting the IFB form and submitting two (2) separate Bid Submissions.
12. CUNY 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 at <http://www.osc.state.ny.us/vendrep/index.htm> or go to the VendRep System online at <https://onlineservices.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 itsservice@osc.ny.gov. Vendors opting to complete the process with paper can obtain the appropriate questionnaire from the VendRep website: www.osc.state.ny.us/vendrep or may contact CUNY or the Office of the State Comptroller's Help Desk. CUNY reserves the right to require a hard copy of vendor responsibility forms from Bidders for solicitations valued in excess of \$100,000.

13. Unless otherwise specified in the Specifications, Bidder shall meet and comply with the following requirements; failure to do so is grounds for rejection of your Bid Submission and/or grounds for a determination of non-responsiveness.

- (a) Bidder shall have been in the relevant industry (as determined by CUNY) for a minimum of one (1) year as of the Bid Submission Deadline.
- (b) Bidder shall have satisfactorily completed within the two (2) years preceding the Bid Submission Deadline at least three (3) contracts of similar size, scope, complexity, and nature of the goods and/or services hereunder ("Similar Contracts").

14. A Bidder may withdraw its Bid Submission at any time before the Bid Submission Deadline; each Bid Submission is binding and firm for a period of ninety (90) days following the Bid Submission Deadline, and a Bidder may withdraw its Bid Submission only after the expiration of such ninety (90) days. A request to withdraw a Bid Submission shall be made in writing and delivered to the Bid Submission Location. Upon discovery of a unilateral error or mistake, a bidder may withdraw its Bid Submission only upon a showing of all five of the following:

- (a) the mistake is known or made known to CUNY;
 - i. prior to award of the Contract; or
 - ii. within three (3) business days after the Bid Submission Deadline, whichever period is shorter;
- (b) the Bid Price was based on an error of such magnitude that enforcement would be unconscionable;
- (c) the Bid Price was submitted in good faith, and the Bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error;
- (d) the error in the Bid Price is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods, or services made directly in the compilation of the Bid Price, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the Bid Price; and
- (e) it is possible to place CUNY in status quo ante (the state it was before).

IFB Terms and Conditions

15. The College or department named in this IFB is a constituent unit of CUNY. This IFB is subject to New York State Education Law §6218, State Finance Law Article 11, State Finance Law §§139-j and 139-k, Public Officers Law Article 6, other applicable law, and CUNY policies.

16. CUNY will review the Bid Submissions and award the Contract for the goods and/or services described herein to the Bidder who is both responsive and responsible (as these two terms are defined by New York State law) and offers the lowest Bid Price, unless the IFB specifies otherwise. A Bid Submission must meet all the requirements of this IFB to be deemed responsive.

17. By submission of a Bid Submission, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint Bid Submission each party thereto certifies as to its own

organization, under penalty of perjury, that to the best of his knowledge and belief:

- (a) The prices in this Bid Submission 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;
- (b) Unless otherwise required by law, the prices which have been quoted in this Bid Submission 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
- (c) 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 Submission for the purpose of restricting competition.

18. All terms and conditions of the IFB are deemed part of any Bid Submission. Your Bid Submission is a binding offer under law to provide the supplies, commodities, materials, equipment, and/or other goods and/or services described in the Specifications (collectively, the "Work") for the Bid Price and unit prices and pursuant to all terms and conditions described in or incorporated into this IFB, including, without limitation, the terms and conditions of CUNY's standard purchase order (the "Purchase Order") and Appendix A-Standard Clauses for New York State Contracts ("Appendix A"), that are included in this IFB as Attachments B and C, respectively.

19. The issuance of a Purchase Order to the selected Bidder (if any, "Selected Bidder") shall constitute acceptance of the Selected Bidder's offer to provide the Work pursuant to its Bid Submission, and a contract shall be deemed to have been executed and created between CUNY and the Selected Bidder. The Purchase Order and the Selected Bidder's Bid Submission (including, without limitation, the terms of this IFB), shall constitute the contract ("Contract") between CUNY and the Selected Bidder for the provision of the Work. A notice of award or similar communication from CUNY (other than the issuance of a Purchase Order for the Work) shall not be deemed to create a binding Contract. If the Contract must be registered or otherwise filed with or approved by with the Comptroller of the State or of the City for any reason whatsoever (including, without limitation, the release of public funds to pay for the Work), then such registration shall be an additional condition precedent to the formation of a binding Contract. Bidder signifies its acceptance of and agreement to be bound by the terms of this IFB and the Contract, if any, by delivery of a Bid Submission, delivery of any of the Work, and/or by the acceptance of payment. Unless specified otherwise, the Contract shall be a requirements contract, and the Selected Bidder shall provide the Work described herein, or any portion thereof required by CUNY, at the Unit Price on an "as needed" basis. All Unit Prices contained in the Selected Bidder's Bid Submission shall remain firm for the term of the Contract. CUNY and any of its constituent units may order goods and/or services and may issue multiple Purchase Orders against the Selected Bidder's Bid Submission; each such Purchase Order shall be effective and binding on the Selected Bidder and shall constitute part of the Contract. The amount of the Work described in

the Specifications is an estimate; CUNY does not guarantee any minimum or maximum amount of goods and/or services to be delivered. CUNY will not be liable for any costs incurred by any party in connection with the preparation of a Bid Submission or by virtue of the amount of Work actually provided under any Contract.

20. Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing. CUNY shall notify bidders in writing by mail or email regarding unsuccessful Bid Submissions. Bidders must make a written request to the College-Designated Contract for a debriefing within fifteen (15) calendar days of notice of an unsuccessful Bid Submission. If requested, CUNY shall schedule a mutually convenient time and method for a debriefing.

21. CUNY reserves the right to reject a Bid Submission if such Bid Submission: (a) is in pencil, is illegible, or is unclear in substance; (b) does not include any required information or documents or supporting information; (c) misstates or conceals any material fact; (d) does not comply with the law or any IFB requirements; (e) contains unbalanced prices; and/or (f) is conditional in any way.

22. Notwithstanding anything else in this IFB, CUNY reserves the right to (a) cancel this IFB in whole or in part for any reason or no reason; (b) reject all Bid Submissions; (c) reject Bid Submissions in whole or in part; (d) make single or multiple awards of the Contract to one or more Bidders if indicated in the IFB; (e) make single or multiple awards for all or a portion of the Work by item, class of items, or any combination of items in its best interest if indicated in the IFB; (f) seek clarifications, request Bid Submission revisions, and/or request any information deemed necessary for proper evaluation of Bid Submissions from any or all Bidders deemed to be eligible for Contract award; (g) waive IFB technicalities and/or Bid Submission irregularities and/or omissions; (h) change the deadlines in this IFB; (i) require the Selected Bidder to execute a separate agreement in form and substance acceptable to CUNY for the Work on substantially the same terms as set forth herein for the Contract; (j) amend the terms of this IFB; (k) in the event of tied low bids from responsive and responsible Bidders, make an award to one or more Bidders in CUNY's sole and absolute discretion; and/or (l) correct arithmetic errors in Bid Submissions and deem the corrected amount the Bid Price. Failure by Bidder to timely provide requested information or documentation may result in rejection of a Bid Submission.

23. Within five (5) business days of CUNY's request, Bidder shall:

- (a) demonstrate financial viability by providing documents such as financial statements, balance sheets and income and expenditure statements for the prior two (2) years (and CUNY reserves the right to require certified financial statements);
- (b) submit copies of any licenses, permits and certifications identified in the Specifications as required to perform the Work (each a "Required License"); submit evidence in form acceptable to CUNY of relevant industry experience;
- (c) submit, in form acceptable to CUNY, for at least three (3) Similar Contracts: (i) the name and a brief description of each client; (ii) a brief description of the goods and/or services provided; (iii) the term of each Similar Contract; and (iv) the name of a contact for each Similar Contract, his/her role with respect to the Similar Contract and current title, address, and phone number; and
- (d) complete, sign, and submit any forms or other information as may be required by CUNY, including the following:

- i. NYS Vendor or NYC Vendor and Principal Questionnaires;
- ii. NYS Executive Law Article 15-A disclosures or documentation;
- iii. Contractor Certification, Tax Law §5-a, Form ST-220CA and ST-220TD;
- iv. Planned Employment Forms for Consultants; and/or
- v. evidence satisfactory to CUNY that Bidder maintains worker's compensation and disability insurance coverage required by the New York State Workers' Compensation Law.

Failure to timely provide any of the above requested information or documentation may result (in CUNY's sole and absolute discretion) in rejection of a Bid Submission.

24. Pursuant to State Finance Law Sections 139-j and 139-k, this IFB includes and imposes certain restrictions on communications between CUNY, including its constituent Colleges, and a potential vendor during the procurement process. A vendor is restricted from making contacts from the earliest notice of intent to solicit bids through final award and approval of a contract by CUNY and, if applicable, the Office of the State Comptroller ("restricted period") to other than the College's designated staff unless it is a contact that is included among certain statutory exceptions set forth in New York State Finance Law §139-j(3)(a). The College's designated staff is identified in Part 1 (Key IFB Dates and Terms) of this IFB as the "College-Designated Contact". CUNY (and College) employees also are required to obtain certain information when contacted during the restricted period and to make a determination of the responsibility of the vendor pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award, and in the event of two findings within a four-year period, the vendor is debarred from obtaining any governmental procurement contracts. Further information about these requirements can be found in the guidelines issued by the Advisory Council on Procurement Lobbying, which can be found on the Office of General Services website at: <https://www.ogs.ny.gov/acpl>

25. Any contract to be awarded pursuant to this Invitation for Bid shall be administered in compliance with the requirements of New York Education Law Section 6218 and New York State Finance Law Articles 9 and 11, and the New York State Lobbying Law, as set forth in the New York State Finance Law Sections 139-j and 139-k.

25. By submission of this Bid Submission, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the Labor Law.

Bid Submissions that do not contain the above certification will not be considered for award; provided however, that if the Bidder cannot make the certification, the Bidder may provide a signed statement with their Bid Submission detailing the reasons why the certification cannot be made. CUNY reserves the right to reject any Bid Submission notwithstanding the foregoing signed statement.

Attachment B**Purchase Order Terms and Conditions**

A. Background. The college or department named in this purchase order ("College") is a constituent unit of The City University of New York ("CUNY"). The vendor or supplier named on page 1 of this purchase order shall hereafter be referred to as "Contractor". This Purchase Order is subject to the New York Education Law Section 6218 and State Finance Law Articles 9 and 11. The agreement that is being established by this Purchase Order is comprised of and governed by the following (collectively, "Contract"): (a) these Purchase Order Terms and Conditions, (b) New York State Appendix A, Standard Clauses for all New York State Contracts, as it may be amended, modified, or supplemented from time to time ("Appendix A"), which is incorporated herein (a current copy of which is available upon request if not attached), (c) the specifications set forth on the first page of or attached to this Purchase Order ("Specifications"), (d) any related invitation for bid or other solicitation document issued by CUNY (if any, "IFB"), and (e) any related bid submission, proposal, quote or the like from Contractor (if any, "Bid Submission"). The term "State" in Appendix A includes the State of New York and CUNY, which is a "contracting agency" and "State agency" for purposes of Appendix A. Defined terms may be used herein before being defined.

B. Questions: 1. The Work shall at all times be subject to the review, direction and control of the College Business Manager, or such other person as may be designated by CUNY in writing from time to time ("Business Manager"). All questions concerning performance of the Work shall be decided by the Business Manager. 2. CUNY, acting through the Business Manager, shall act reasonably in exercising this authority under Contract, except to the extent CUNY may act in its sole and absolute discretion or in accordance with such other standard, as specified herein.

C. Work: 1. The term "Work" shall be deemed to include all supplies, commodities, materials, equipment, and/or other goods ("Goods") and/or services ("Services") listed in Specifications, as applicable. 2. Contractor agrees to deliver Work to CUNY for the applicable Unit Price, and on the terms and conditions of Contract. In performing Work, Contractor shall follow generally accepted standards of the relevant industry or trade ("Standards"). 3. All Work shall be performed and delivered on the schedule set forth in the Contract, time being of the essence, and to the satisfaction of CUNY.

D. Price, Requirements, Payment: 1. Unless otherwise specified, each Unit Price shall be a net price that includes all charges for the goods and/or services, including without limitation, transportation and inside delivery charges, F.O.B. Destination, and unloading and assembly. In the event of a discrepancy between the Unit Price and the Extension Price, the Unit Price shall govern. 2. Unless otherwise specified, this is a requirements contract, and CUNY shall have the right to purchase its full requirements at the Unit Price, and CUNY may

issue additional purchase orders to Contractor to purchase its requirements for Work. Upon issuance, each additional purchase order shall be effective and binding on Contractor and constitute part of Contract. CUNY does not guarantee any minimum or maximum amount of Work to be delivered.

3. Contractor shall submit properly documented invoices for Work to CUNY at College's Accounts Payable Department only following Acceptance of such Work and at time intervals and in form and substance acceptable to CUNY. CUNY reserves the right to request additional information at any time, and Contractor shall provide such information promptly. Following CUNY's receipt of such invoices, the CUNY (or the State of New York ("State") or the City of New York ("City"), as applicable) shall pay Contractor in accordance with the Unit Price set forth in Contract and in accordance with ordinary CUNY (or State or City) procedures and practices.

4. Contractor agrees to accept payments under Contract by electronic funds transfer, and Contractor shall provide all information and documentation requested by CUNY to effectuate such transfers. 5. Should Contractor be liable for any payments to CUNY or the State hereunder, interest, late payment charges, and collection fee charges will be determined and assessed pursuant to New York State Finance Law §18.

E. Delivery: 1. Unless otherwise specified, Contractor shall perform and/or deliver Work to College between 9:00 a.m. and 4:00 p.m., Monday to Friday (non-College holidays), or at such other times as College may approve in writing. CUNY reserves the right to reject delivery at any other time. 2. CUNY reserves the right to keep all containers as property of CUNY, require the Contractor to remove any containers at no cost to CUNY, and/or return containers and charge the cost of such return to Contractor. 3. Deliveries shall be made on demand by CUNY, unless otherwise specified. 4. Contractor shall deliver any Goods and/or perform any Services within any timeframes in Specifications or as otherwise required by CUNY. 5. All deliveries shall be deemed to be freight on board (F.O.B.) destination.

F. Subcontracting: 1. Subcontracting is not permitted except as provided in Specifications. 2. Where subcontracting is permitted, Contractor shall obtain CUNY's prior written approval for (a) the portion of Work to be subcontracted and (b) the particular subcontractor(s). 3. Any contract(s) between Contractor and permitted subcontractor(s) (if any) shall incorporate by reference all Contract requirements relating to Contractor, and Contractor shall ensure that any subcontractor(s) comply with such requirements. 4. Nothing herein shall be deemed to waive any rights of CUNY against Contractor.

G. Guarantees, Title: 1. Notwithstanding any Acceptance by CUNY, Contractor guarantees Work against any defects of workmanship, construction and materials and shall promptly repair or replace any defect without cost to CUNY within one (1) year from date of Acceptance. 2. All manufacturer's warranties shall flow directly to CUNY. Notwithstanding the previous two sentences, if the manufacturer's guarantee for any Goods or any component thereof exceeds one (1) year, the longer

guarantee period shall apply to such Goods. 3. In the event of any direct conflict between any guarantees contained in Specifications and this paragraph, the guarantees in Specifications shall control to the extent of such conflict.

4. Contractor shall convey full ownership of and clear title to Goods, free of all claims, encumbrances, liens, and other security interests. If any encumbrance, lien, or other security interest is filed against any Goods on account of any action or inaction of Contractor, Contractor shall discharge such encumbrance, lien, or other security interest within 10 days. CUNY reserves the right to retain monies under Contract sufficient to satisfy any such lien. Contractor shall provide properly executed, acknowledged and delivered bills of sale or other title instruments as may be required by CUNY.

H. Protection of Site; Cooperation: 1. If the Contractor is performing Work at a CUNY location, Contractor shall provide adequate safeguards at any Work site and leave such Work site in broom clean condition daily. 2. All employees or agents of Contractor performing Work at a CUNY location shall wear identification acceptable to CUNY. 3. Contractor shall, upon written request from CUNY, remove from such performance any employee or agent found unacceptable to CUNY. 4. Contractor shall comply, and shall cause its employees, agents, staff, principals and the like to comply, with all CUNY and College rules, regulations, and requirements in effect during the term of Contract. 5. Contractor shall coordinate the Work with any other CUNY contractor performing other services at the Work site.

I. Acceptance: 1. Unless specifically stated in Specifications, all Goods shall consist of new merchandise, and shall be delivered to College inside, F.O.B. Destination, unloaded and assembled. 2. Nothing in Contract shall be deemed to represent or warrant that Specifications are comprehensive as to every item or aspect of Work needed to be done to make Work complete, turnkey, fully functional, and guaranteed.

3. Work shall not be deemed accepted by CUNY until CUNY has inspected it and so certified in writing ("Accept", "Accepted" or "Acceptance"). 4. Any payment or partial payment made before Acceptance, or an acknowledgment by CUNY personnel of the delivery or receipt of Goods (as in a signed bill of lading) shall not constitute Acceptance. Contractor bears the risk of loss of all Goods until Acceptance by CUNY; if Acceptance is revoked, Contractor bears the risk of loss thereafter. Acceptance shall not be deemed a waiver by CUNY of any of its rights or remedies under law or Contract.

J. Rejection: 1. CUNY reserves the right to reject Work not conforming to Specifications or Standards or both. 2. CUNY shall specify defects in writing and offer Contractor a reasonable period in which to cure such defects, such period to be determined in CUNY's sole and absolute discretion, and Contractor shall cure such defects to the satisfaction of CUNY within such period. 3. CUNY reserves the right to Accept partially conforming Work, in its sole and absolute discretion. Such Acceptance shall be subject to a reduction in price equal to the difference between the applicable Unit Price and the reasonable value of such Work as determined by CUNY in CUNY's sole and absolute discretion. 4. Contractor shall promptly remove rejected

Work at its own expense. Rejected Work left longer than thirty (30) days will be deemed abandoned and CUNY shall have the right to dispose of it as its own property. 5. CUNY reserves the right to charge Contractor for the cost of returning or disposing rejected Work, and Contractor shall promptly pay all such costs upon receipt of invoice therefor. 6. Nothing in this paragraph shall limit any other right or remedy of CUNY with respect to improper performance of Contract.

K. Termination for Cause or Convenience; Suspension: 1. If Contractor breaches any term or condition of Contract or if any certification made hereunder is false ("Default"), and Contractor fails to cure such Default following notice from CUNY, CUNY may terminate Contract for cause in accordance with this paragraph. Such notice shall identify the Default and give Contractor a reasonable period in which to cure, such period to be determined by CUNY, in CUNY's sole and absolute discretion. Failure to cure within such period shall be deemed reasonable cause for termination of Contract, and, thereafter, CUNY may terminate Contract upon notice to Contractor.

2. CUNY may immediately terminate Contract for cause at any time upon notice (without an opportunity to cure) to Contractor if: (a) Contractor does not provide or misstates, conceals, or fails to disclose, any material information in Contract, or in any written statement or materials or oral examination or hearing in connection with Contract; (b) Contractor fails to advise CUNY of any change to any facts or information provided by Contractor to CUNY in connection with any IFB or Contract within five (5) days of obtaining knowledge of such change; (c) CUNY determines in accordance with Law or CUNY policies that Contractor is not responsible (as defined by Law); or (d) CUNY finds that the certification filed by Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. 3. CUNY reserves the right to exercise all legal and contractual remedies whether or not Contract is terminated for cause or convenience. 4. Upon any termination for cause or rejection of any Work, CUNY reserves the right to procure replacement Work and charge Contractor the difference between the applicable Unit Prices and the cost of such replacement Work, and Contractor shall promptly pay such amounts following receipt of invoice therefor.

5. Termination for cause may be deemed proof of non-responsibility under Law. 6. Notwithstanding the foregoing, CUNY may terminate Contract at any time for its convenience, without cause, upon five (5) days' written notice to Contractor, and CUNY shall pay Contractor the Unit Price (prorated, as applicable) for any Work delivered up to the date of termination and Accepted by CUNY. 7. CUNY shall have the right, for any reason, to delay, postpone or suspend the Work, or any portion thereof, up to ninety (90) days, upon notice to Contractor (a "Work Suspension"). Any Work Suspension shall not give rise to any cause of action for damages against CUNY, but the Contractor's term of performance for the Work shall be extended for the period of the Work Suspension. In the event of a Work Suspension, the Contractor shall resume the Work as directed by CUNY.

L. Indemnification: 1. Contractor shall indemnify and hold CUNY (including, without limitation, the College and all other

constituent units), the Dormitory Authority of the State of New York ("DASNY"), The City University Construction Fund ("CUCF"), the City and the State, and the trustees, officers, employees and agents of each of them (collectively, the "Indemnified Parties"), harmless from all suits, claims, demands, fines, actions, and costs of any kind including attorneys' fees and other defense costs, arising out of or related to Contractor's operations (regardless of whether or not Contractor itself has been negligent) including, without limitation, (a) Contractor's performance of its obligations under Contract, (b) Contractor's failure to comply with Law or any of the requirements of Contract, (c) any damage to property and injuries to persons, including death, arising out of or related to Contractor's operations, and (d) Contractor's infringement of any third party intellectual property rights. 2. In any circumstances contemplated above in which Contractor would be required to indemnify and hold any Indemnified Party harmless, Contractor shall also, upon the request of CUNY, defend the Indemnified Parties with counsel acceptable to CUNY. CUNY shall have final decision-making authority over any settlement during the course of such defense. 3. Insofar as the facts or Law relating to any of the foregoing would preclude the Indemnified Parties from being completely indemnified by Contractor, the Indemnified Parties shall be partially indemnified by Contractor to the fullest extent permitted by Law.

M. Insurance: 1. Contractor shall provide CUNY with certificates of all required insurance before beginning Work, and upon CUNY's request, copies of policies and all endorsements. 2. All vehicles to be used for Work shall be insured in an amount not less than one million dollars (\$1,000,000) per occurrence. 3. Contractor shall procure and maintain Workers' Compensation, Employers' Liability, and Disability Benefits insurance as required by New York law. 4. Contractor shall procure and maintain Commercial General Liability ("CGL") insurance issued in Contractor's name by a licensed carrier authorized to do business in New York, in an amount not less than one million dollars (\$1,000,000) per occurrence. In the event such CGL insurance contains an aggregate limit, the aggregate shall apply on a per-project basis applicable to the Contract and such per-project aggregate shall be no less than two million dollars (\$2,000,000). Such CGL insurance shall protect each additional insured, Contractor and its subcontractors from claims for property damage and/or bodily injury, including death that may arise from operations under the Contract. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office Form CG 001. Such insurance shall name CUNY, City, State, DASNY, CUCF, and such additional persons or entities required by CUNY from time to time, as additional insureds on a primary and non-contributory basis. If Specifications contain alternate insurance requirements, the more favorable to CUNY shall control.

N. Modification: 1. Contract may not be amended or modified, and none of its provisions may be waived, except by a written instrument signed by CUNY. 2. CUNY shall not be liable for

any additional Work or changes to Work without such instrument.

O. Liquidated Damages: Without limiting any other right CUNY may have in law or in equity, CUNY reserves the right to assess Contractor liquidated damages in the amount contained in the Specifications for Contractor's failure to complete timely performance, and Contractor shall pay such amounts as billed.

P. Applicable Laws and Licenses: Throughout the Contract term Contractor shall comply with all laws, codes, ordinances, rules, regulations, orders, intergovernmental directives and agreements, requirements of federal, state, and local governments, courts, governmental authorities, legislative bodies, boards, agencies, commissions, and the like (collectively, "Law"). If there is a conflict between or among any Laws and specific requirements of Contract, then Contractor shall comply with the most stringent Law or requirement in each instance. By noting any specific Law with particularity in Contract or in any other prior or future communication, Contractor is not relieved of any obligation to comply with all Laws, and the CUNY does not waive any rights it may have with respect to such compliance. Contractor shall procure and maintain at its own cost any permits, licenses or certificates required for performance of Contract.

Q. Lien Waivers; Release: Contractor shall from time to time, following any request by CUNY, promptly execute and deliver, and cause any subcontractors and suppliers to execute and deliver, written releases and waivers of the right to file mechanic's liens, in form and substance acceptable to CUNY. Receipt of such releases and waivers shall be a condition to any subsequent payment due under Contract. Without limiting the foregoing, Contractor agrees that, upon acceptance by Contractor of the final payment to be paid pursuant to Contract, it shall be deemed to have fully released the Indemnified Parties from any and all claims, demands and causes of action whatsoever that the Contractor has or may have against any or all of the Indemnified Parties in connection with Contract. Upon CUNY's request, Contractor shall execute and deliver to CUNY a comparable written release in form and substance acceptable to CUNY.

R. Survival: All of Contractor's obligations in Contract related to insurance, indemnification, liens, releases, and guaranties and warranties shall survive Acceptance and/or the expiration or earlier termination of Contract.

S. Strict Performance; No Waiver: Failure of CUNY to insist upon strict performance of any of the terms and conditions of Contract, or failure or delay to exercise any rights or remedies or to promptly notify Contractor of a Default, or the Acceptance of or payment for any Work, shall not release Contractor from any of the obligations under Contract or diminish the right of CUNY to insist upon strict performance of Contract or to exercise any of its rights and remedies.

T. Miscellaneous: 1. CUNY shall have all of its statutory, common law and equitable rights of set-off. 2. CUNY shall have no liability under Contract beyond funds appropriated and available therefor. 3. No action shall lie or be maintained against CUNY upon any claim arising out of Contract unless commenced within six (6) months of (i) the termination or

expiration of Contract, or (ii) the date such action accrues, whichever is earlier. Such action shall be heard only in State or Federal courts located in New York City. 4. Contract is subject to audit by CUNY's auditors and by the Comptroller(s) of City and/or State of New York. 5. Contractor is an independent contractor and neither it nor its employees shall be deemed agents or employees of CUNY for any purpose. 6. Captions used herein are for reference only and shall not be construed to limit provisions herein; words importing the singular number shall mean and include the plural number and vice versa.

7. Unless otherwise specified herein, Contract is the sole and entire agreement between CUNY and Contractor for Work. No other terms or conditions shall be binding upon CUNY unless duly accepted by it in writing. 8. Contractor and its employees may have access to or learn of information and records that are not rightfully in the public domain in the course of providing Work, and Contractor agrees that it and its employees will treat such information and records confidentially and not divulge them to third parties. 9. All notices under Contract shall be in writing and sent by first class or express mail to the parties at their respective addresses on the first page of this Purchase Order, or to such other address as may be provided by each party to the other from time to time by written notice.

10. Contractor and each of its employees will diligently provide any and all assistance that CUNY may require if any claim is made or any action brought relating to Contract, whether or not Contractor is a party. Contractor agrees that it and each of its employees will cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City governmental agency or authority. 11. If any clause, provision or section of Contract be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions of Contract.

12. Contractor signifies its acceptance of the provisions of Contract by delivery of a Bid Submission, delivery of goods and/or services, and/or by acceptance of payment. 13. In cases of conflict between any Contract documents, then the order of precedence is: NYS Appendix A; Specifications; these Purchase Order Terms and Conditions; the IFB; and Bid Submission. In any case, Contractor is obligated to provide the most expensive option, and the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; and the more expensive item will take precedence over the less expensive item. 14. This Contract supersedes any and all Contractor documents and/or previous agreements concerning the Work, unless otherwise agreed to in writing by CUNY.

16. The parties intend that every provision of Law required to be inserted in Contract shall be and is inserted herein, and if through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then Contract shall forthwith upon the application of either party be amended to comply strictly with Law and without prejudice to the rights of either party.

U. New York State Provisions: 1. If Contractor is called before a grand jury, head of a State department or other State agency, a temporary State commission or the Organized Crime Task Force in the State Department of Law and refuses to sign a

waiver of immunity from prosecution or to answer any relevant questions concerning Contract, Contractor may be barred from State contracts for five (5) years and Contractor's current contracts with State may be cancelled. 2. By accepting the Purchase Order, Contractor hereby certifies: (a) that Contractor has the power and authority to carry out the transaction involved herein; (b) Contractor is the only one interested in the transaction, and that no person, firm or corporation other than herein above-named has any interest in this Contract or in the transaction involved herein; (b) that no councilman, legislator or other officer or employee whose salary is payable in whole or in part, directly or indirectly, by City or State treasury any direct or indirect interest, financial or otherwise, in IFB, Bid Submission, or this Purchase Order or in the supplies, materials, equipment, work or labor to which it relates or in any of the profits thereof; and (c) that Contractor is not in arrears to CUNY, City or State upon any debt, contract or taxes and has not been declared in default as surety or otherwise, upon any obligation to any of them within the past three (3) years.

V. Vendor Responsibility: 1. Contractor shall at all times during the Contract term remain responsible. Contractor agrees, if requested by the Chancellor of CUNY or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. 2. The Chancellor of CUNY or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Chancellor of CUNY or his or her designee issues a written notice authorizing a resumption of performance under the Contract. 3. Upon written notice to Contractor, and a reasonable opportunity to be heard with appropriate CUNY officials or staff, the Contract may be terminated by the Chancellor of CUNY or his or her designee at Contractor's expense where the Contractor is determined by the Chancellor of CUNY or his or her designee to be non-responsible. In such event, the Chancellor of CUNY or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

W. No Promotion. Contractor shall not, without the prior written consent of CUNY in each instance: (a) use in advertising, publicity, or otherwise the name of CUNY or any other trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by CUNY; or (b) represent directly or indirectly, that any product or any service provided by Contractor has been approved or endorsed by CUNY.

Attachment C**Appendix A, Standard Clauses for New York State 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 \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a).

However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State

Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

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

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

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

contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and (c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in

accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

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

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

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research,

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

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://www.ogs.ny.gov/system/files/documents/2019/09/IranDivestmentActListofEntities.pdf>. Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced

certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

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

Attachment D
Supplier Diversity Provisions

Contractor Requirements and Procedures for Participation by New York State-certified Minority, Women, and Service-Disabled Veteran-Owned Businesses and Equal Employment Opportunities for Minority Group Members and Women

This Attachment describes certain requirements and procedures applicable to the (1) Request for Quotes (“RFQ”), Invitation for Bids (“IFB”), or Request for Proposals (“RFP”) of which this Attachment is a part, (the “Solicitation”) and to all Respondents and (2) any contract or purchase order resulting from this Solicitation (the “Contract”) and to any contractor selected as a result of this Solicitation (the “Contractor”). The term “Respondent” as used herein shall mean any person or entity responding to the Solicitation, including, without limitation, Bidders responding to an IFB, Proposers responding to a RFP, or Respondents providing Quotes pursuant to an RFQ. Failure by any Respondent to timely provide any of the documents, plans, and the like contemplated in this Attachment that are required to be delivered to CUNY prior to Contract award shall be grounds for CUNY to reject such Respondents’ Quote, Bid Submission, or Proposal as non-responsive. In addition, failure by any Contractor to comply with the any of the following requirements may, in the sole and absolute discretion of CUNY unless otherwise noted, result in a finding of non-responsibility and/or a breach of the Contract, leading to the withholding of funds, assessment of liquidated damages, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract, law or equity. Capitalized terms used but not defined in this Attachment shall have the meaning set forth in the Solicitation of which this Attachment is a part. The term “College-Designated Contact” as used in this Attachment shall mean the CUNY employee identified in the Solicitation for correspondence relating to the procurement of goods and/or services hereunder, including, without limitation, a “College-Designated Contact” identified in an IFB, a “Designated Contact” identified in an RFP, an “RFQ Administrator” identified in an RFQ, or the like. All forms required by the Attachment may be obtained from the College-Designated Contact or from www.cuny.edu/vendorforms, if not attached hereto.

1. Solicitation Provisions. The following provisions apply to the Solicitation and to any Contract awarded under the Solicitation. All Respondents responding to this Solicitation are subject to the following provisions.

A. New York State Law

Pursuant to New York State Executive Law Article 15-A, Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations, and CUNY policy, CUNY is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women- owned Business Enterprises and the employment of minority group members and women in the performance of CUNY contracts.

Pursuant to New York State Executive Law Article 17-B, Parts 252 of Title 9 of the New York Codes, Rules and Regulations, and CUNY policy, CUNY is required to promote meaningful participation in public procurement by New York State certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Respondents are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

B. Business Participation Opportunities for MWBEs and SDVOBs

CUNY may have established (1) an overall participation goal for New York State-certified minority- and women-owned business enterprises (“MWBE”), and (2) specific participation goals for New York State-certified minority-owned business enterprises (“MBE”) and New York State-certified women-owned business enterprises (“WBE”), for the Contract (based on the current availability of qualified MBEs and WBEs) (collectively, “MWBE Goals”) and/or (3) an overall SDVOB participation goal for the Contract, based on the current availability of qualified SDVOBs (“SDVOB Goal”). The term “Supplier Diversity Goals” used herein shall mean any MWBE Goals, SDVOB Goals, or both, established by CUNY for the Contract. Any such Supplier Diversity Goals will be set forth in the Solicitation. If no Supplier Diversity Goals appear in the Solicitation, or if the Solicitation indicates that there are no Supplier Diversity Goals, then CUNY will be deemed to have set no Supplier Diversity Goals for the Solicitation and the Contract, and no Supplier Diversity Goals will apply.

As discussed further below, if Supplier Diversity Goals have been set for this Solicitation, the Contractor must document its good faith efforts to provide meaningful participation by MWBEs and/or SDVOBs as subcontractors or suppliers in the performance of the Contract. To that end, by submitting a response to this Solicitation, Bidder agrees that CUNY may withhold payment pursuant to any Contract awarded as result of this Solicitation pending receipt of the required MWBE or SDVOB documentation.

For the purposes of providing meaningful participation by MWBEs and SDVOBs, the Respondents and Contractor should reference the directory of New York State Certified MWBEs found at: <https://ny.newnycontracts.com> and the list of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans/>. For

guidance on how CUNY will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8 in relation to MWBEs and 9 NYCRR §252.2(n) in relation to SDVOBs.

Bidder understands that only sums paid to MWBEs and SDVOBs for the performance of a commercially useful function, as that term is defined in 5 NYCRR §140.1 in relation to MWBEs and 9 NYCRR §252.1(f) in relation to SDVOBs, may be applied towards the achievement of the corresponding MWBE Goal and SDVOB Goal. For Contracts that are determined to be construction contracts by CUNY, acting in its sole and absolute discretion ("Construction Contracts"), the portion of a Construction Contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the Construction Contract. The portion of a Construction Contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE. For all Contracts that are not Construction Contracts, the portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR §142.13 the Bidder acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and CUNY may withhold payment as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE Goals; and all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB Goals set forth in the Contract, shall be found to have breached the Contract and Contractor shall pay damages as set forth therein.

By submitting a response to this Solicitation, the Respondent agrees to demonstrate and document its good faith efforts to achieve the Supplier Diversity Goals by submitting evidence thereof to CUNY, including, without limitation, all forms, documents, data, information, and the like contemplated in this Attachment. The Respondent, and any selected Contractor, shall submit all forms, documents and correspondence required to be submitted under this Attachment to the College-Designated Contact, in the form and manner required by CUNY, and to any other individual and address otherwise designated in writing by CUNY for such purposes from time to time. Notwithstanding anything to the contrary herein, if and to the extent required by CUNY from time to time, the Respondent and any selected

Contractor shall submit all MWBE-related forms, documents, data, information, and the like contemplated in this Attachment electronically, including, without limitation, to the New York State Contract System (which can be viewed at <https://ny.newnycontract.com>). Contractor shall make any such electronic submissions in the manner and format required by CUNY from time to time, and such electronic submissions shall be in addition to the original copies to be submitted to CUNY using the forms contemplated in this Attachment.

Additionally, if Supplier Diversity Goals have been set for this Solicitation, the Respondent agrees to submit the following documents and information as evidence of compliance with the foregoing:

- i. For RFQs and IFBs: The Respondent is required to submit a Supplier Diversity (MWBE/SDVOB) Utilization Plan ("Utilization Plan") using the form attached hereto within ten business days (or such shorter period as may be required by CUNY) after receiving notice from CUNY that the Respondent to an RFQ has been selected for Contract award or that the Bidder to an IFB is the apparent low bidder, as the case may be.
- ii. For RFPs: A Proposer is required to submit a Utilization Plan using the form attached hereto with its Proposal.
- iii. The Utilization Plan shall list the MWBEs and/or SDVOBs that the Respondent intends to use to perform the Contract, a description of the work that the Respondent intends the MWBE and/or SDVOB to perform to meet the Supplier Diversity Goals on the Contract, the estimated dollar amounts to be paid to a MWBE and/or SDVOB, or, if not known, an estimate of the percentage of Contract work the MWBE and/or SDVOB will perform.
- iv. CUNY will review the submitted Utilization Plan and advise the Respondent of CUNY acceptance or issue a notice of deficiency within 30 days of receipt.
- v. If a notice of deficiency is issued, the Respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the College-designated Contact a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by CUNY to be inadequate, CUNY shall notify the Respondent and direct the Respondent to submit, within five (5) business days, a request for a partial or total waiver of the Supplier Diversity Goals using the Supplier Diversity (MWBE/SDVOB) – Request for Waiver Form ("Request for Waiver").

Failure to file the waiver form in a timely manner may be grounds for disqualification of the Respondent's Bid Submission, Proposal, or Quote, as the case may be.

vi. In addition to and without limiting any rights CUNY may have, if the Supplier Diversity Goals have been set for the Solicitation, then CUNY may disqualify a Respondent as being non-responsive under the following circumstances:

- a. If a Respondent fails to submit a Utilization Plan;
- b. If a Respondent fails to submit a written remedy to a notice of deficiency;
- c. If a Respondent fails to submit a Request For Waiver; or
- d. If CUNY determines that the Respondent has failed to document good faith efforts.

By signing the Utilization Plan, the Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future Bid Submissions, Proposals, or Quotes, and/or withholding of payments.

As discussed further below, the Contractor will be required to attempt to utilize, in good faith, any MBE, WBE, or SDVOB identified within its Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to CUNY, but must be made no later than prior to the submission of a request for final payment on the Contract.

If awarded a Contract, the Contractor certifies that it will follow the submitted Utilization Plan for the performance of MWBEs and/or SDVOBs on the Contract pursuant to the prescribed Supplier Diversity Goals. Contractor further agrees that a failure to use MWBEs and/or SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, CUNY shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

If Supplier Diversity Goals have been set for the Solicitation, the Contractor will be required to submit a Supplier Diversity (MWBE/SDVOB) – Quarterly Contractor Compliance & Payment Report or on a form required by CUNY, along with supporting documentation, no later than the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the Supplier Diversity Goals of the Contract.

C. Equal Employment Opportunity Requirements

By submission of a Bid Submission, Proposal, or Quote in response to this Solicitation, the Respondent agrees with all of the terms and conditions of Appendix A, Standard Clauses for

New York State Contracts, including without limitation Clause 12 - Equal Employment Opportunities for Minorities and Women. The Respondent shall submit to CUNY a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement in form and substance acceptable to CUNY and within 10 days of CUNY's request, as more fully described below.

The Contractor is required to ensure that it and any subcontractors awarded a subcontract 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, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

If awarded a Contract, the Contractor shall submit a Workforce Utilization Report and shall require each of its subcontractors to submit Workforce Utilization Reports, in such form, manner, and frequency as may be required by CUNY during the term of the Contract.

Pursuant to Executive Order#162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow

the requirements of the Human Rights Law with regard to nondiscrimination on the basis of prior criminal conviction and prior arrest.

2. Contract Provisions. The following provisions apply to any Contract awarded pursuant to this Solicitation that is described in paragraph A(i) below, and to any respective Contractor.

A. General Provisions

- i. Contractor and CUNY hereby agree that the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of New York Codes, Rules and Regulations (as amended or supplemented from time to time, the “MWBE Regulations”) and New York State Executive Law Article 17-B and Parts 252 of Title 9 of New York Codes, Rules and Regulations (as amended or supplemented from time to time, the “SDVOB Regulations”) shall apply to the Contract and are incorporated herein by reference if this is a contract (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- ii. The contractor to the subject contract (“Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to CUNY, to fully comply and cooperate with CUNY in the implementation of New York State Executive Law Article 15-A and Article 17-B, and the MWBE Regulations and SDVOB Regulations. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority, women, service-disabled veteran-owned businesses. The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 in relation to MWBEs and 9 NYCRR §252.2(n) in relation to SDVOBs shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state and local laws.
- iii. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, damages (including, without limitation, liquidated damages contained in this Attachment) or enforcement proceedings as allowed by the Contract, law, or equity.
- iv. Contractor shall submit all forms, documents, data, information, and the like required under this Attachment to the College-Designated Contact, and to any other individual and address otherwise designated in writing by CUNY for such purposes from time to time. Notwithstanding anything to the contrary herein, if and to the extent required by CUNY from time to time, Contractor shall submit all forms, documents, data, information, and the like contemplated in this Attachment electronically.

Contractor shall make any such electronic submissions in the manner and format required by CUNY from time to time, and such electronic submissions shall be in addition to the original copies to be submitted to CUNY using the forms contemplated in this Attachment.

B. Contract Goals

- i. CUNY may have established (1) an overall participation goal for New York State-certified minority- and women-owned business enterprises (“MWBE”), and (2) specific participation goals for New York State-certified minority-owned business enterprises (“MBE”) and New York State-certified women-owned business enterprises (“WBE”), for the Contract (based on the current availability of qualified MBEs and WBEs) (“MWBE Goals”) and/or (3) an overall SDVOB participation goal (“SDVOB Goal”) for the Contract. Any such MWBE Goals and SDVOB Goals (collectively, “Supplier Diversity Goals”) will be set forth in the Solicitation. If no Supplier Diversity Goals appear in the Solicitation, or if the Solicitation indicates that there are no Supplier Diversity Goals, then CUNY will be deemed to have set no Supplier Diversity Goals for the Solicitation and the Contract, and no Supplier Diversity Goals will apply.

For purposes of providing meaningful participation by MWBEs on the Contract and achieving any MWBE Goals, the Contractor should reference the directory of MWBEs found at the following internet address: <https://ny.newnyccontracts.com>. Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

For purposes of providing meaningful participation by SDVOBs on the Contract and achieving any SDVOB Goals, the Contractor should reference the list of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans> regarding compliance with SDVOB Goals and should be directed to the College- Designated Contact. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service- Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- ii. Pursuant to 5 NYCRR §142.8 and 9 NYCRR §252.2(n), the Contractor must document “good faith efforts” to provide meaningful participation by MWBEs (where MWBE Goals have been established for the Contract) and SDVOBs (where an SDVOB Goal has been established for the

Contract) as subcontractors or suppliers in the performance of the Contract. In accordance with 5 NYCRR §142.13 and 9 NYCRR §252.2(s), the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with any Supplier Diversity Goal set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the CUNY for liquidated or other appropriate damages, as set forth herein or otherwise available under law, equity or contract. Contractor's documentation of such "good faith efforts" shall include, but not be necessarily limited to:

- a. Evidence of outreach to MWBEs and SDVOBs;
 - b. Any responses by MWBEs and SDVOBs to the Contractor's outreach;
 - c. Explanation of the specific reasons why any MWBE or SDVOB that responded to Respondents or Contractors' solicitation for MWBE or SDVOB subcontractors or suppliers was not selected.
 - d. Copies of advertisements for participation by MWBEs and SDVOBs in appropriate general circulation, trade, and minority or women-oriented and veteran-business publications;
 - e. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by CUNY with MWBEs and SDVOBs; and,
 - f. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE and SDVOB participation.
 - g. Other information CUNY deems relevant to any waiver request submitted by the Contractor.
- iii. The Contractor understands that (1) only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140 may be applied towards the achievement of the MWBE Goal and (2) only sums paid to SDVOBs for the performance of a commercially useful function, as that term is defined in 9 NYCRR § 252.1(f), may be applied towards the achievement of the applicable SDVOB Goal. For Contracts that are determined to be construction contracts by CUNY, acting in its sole and absolute discretion ("Construction Contracts"), the portion of a Construction Contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the Construction Contract. The portion of a Construction Contract with an MWBE serving as a broker that shall be

deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE. For all Contracts that are not Construction Contracts, the portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

- C. Equal Employment Opportunity ("EEO")
- i. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
 - ii. In performing the Contract, the Contractor shall:
 - a. Ensure that each contractor and any subcontractor performing Work under the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - b. The Contractor shall submit or have submitted to CUNY a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement in form and substance acceptable to CUNY ("EEO Policy Statement") within ten days of CUNY's request, and CUNY shall have the right to make the submission of an EEO Policy Statement a condition of Contract award.
 - c. If the Contractor or any of its subcontractors does not have an existing EEO Policy Statement, CUNY may require the Contractor or subcontractor to adopt a model EEO Policy Statement provided by CUNY.
 - d. The Contractor's EEO Policy Statement shall include the following language:
 - (1) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its

conscientious and active efforts to employ and utilize minority group members and women in its work force.

(2) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.

(3) 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.

(4) The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection (iv) and Paragraph "E" of this Section 3 which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

iii. Staffing Plan

As required by CUNY, Contractor shall submit or have submitted an Equal Employment Opportunity Staffing Plan, using a form required by CUNY, to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories (a "Staffing Plan"). Contractors shall have completed and submitted the Staffing Plan within ten days of CUNY's request.

iv. Workforce Utilization Report ("Workforce Report")

a. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit Workforce Utilization Reports, in such form, manner, and frequency as may be required by CUNY during the term of the Contract.

b. Separate forms shall be completed by the Contractor and any subcontractors.

c. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.

v. The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

The following provisions contained in Sections D through F apply to Contracts for which any Supplier Diversity Goals have been set.

D. Supplier Diversity (MWBE/SDVOB) Utilization Plan

i. The Contractor represents and warrants that Contractor has submitted to CUNY an Supplier Diversity (MWBE/SDVOB) Utilization Plan ("Utilization Plan"), or shall submit a Utilization Plan at such time as may be required by CUNY, in the form and manner required by CUNY.

ii. The Contractor agrees to adhere to such Utilization Plan in the performance of the Contract.

iii. The Contractor further agrees that failure to submit and/or adhere to such Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, CUNY shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

iv. The Contractor acknowledges and agrees that firms that do not perform commercially useful functions (as defined in 5 NYCRR Part 140.1 and 9 NYCRR § 252.1(f)) may not be counted towards utilization of MWBEs or SDVOBs in the Utilization Plan. Contractor further acknowledges and agrees that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bid submissions, proposals, and/or withholding of payments.

E. Waivers

- i. Any request by the Contractor for a partial or total waiver of the Supplier Diversity Goals must be submitted in the form and manner required by CUNY (a "Request for Waiver").
- ii. Prior to submission of a request for a partial or total waiver, Contractor may speak to the College-Designated Contact at CUNY for guidance.
- iii. In accordance with 5 NYCRR § 142.7 and 9 NYCRR §252.2(m), if Contractor, after making good faith efforts, is unable to achieve the Supplier Diversity Goals, the Contractor may submit a Request for Waiver. Such Request for Waiver must be supported by evidence of the Contractor's good faith efforts to achieve maximum feasible participation towards the Supplier Diversity Goals. If the Request for Waiver is complete, and the Contractor has provided to CUNY's satisfaction such additional documentation that may be required by CUNY, CUNY shall evaluate the Request for Waiver and issue a written notice of approval or denial within twenty (20) business days of receipt.
- iv. Contractor shall attempt to utilize, in good faith, the MWBEs and SDVOBs identified within its Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established Supplier Diversity Goals made subsequent to Contract award may be made at any time during the term of the Contract to CUNY, but must be made no later than prior to the submission of a request for final payment on the Contract.
- v. If CUNY, upon review of the Utilization Plan and updated Supplier Diversity (MWBE/SDVOB) – Quarterly Contract or Compliance & Payment Report described in Section 6 below, or any other relevant information, determines that the Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, CUNY may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Goals.

F. Supplier Diversity (MWBE/SDVOB) Quarterly Contractor Compliance & Payment Report

In accordance with 5 NYCRR § 142.11 and 9 NYCRR §252.2(q), Contractor is required to report MWBE and/or SDVOB participation during the term of the Contract for

the preceding three month's activity, documenting progress made towards achieving the Contract Supplier Diversity Goal. This information must be submitted using the Supplier Diversity (MWBE/SDVOB) - Quarterly Contractor Compliance & Payment Report form provided by CUNY from time to time, or otherwise in the form and manner required by CUNY, and must be completed by the Contractor and submitted to CUNY along with supporting documentation, by the 10th day following each end of quarter over the term of the Contract.

G. Breach of Contract and Damages

- i. Where CUNY determines that the Contractor is not in compliance with the requirements of this Attachment and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE Goals, Contractor shall be obligated to pay to CUNY liquidated damages.
- ii. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE Goals; and
 - b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- iii. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by CUNY, the Contractor shall pay such liquidated damages to CUNY within sixty (60) days after they are assessed by the CUNY. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant 5 NYCRR §142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein. Such damages shall be calculated based on the actual cost incurred by CUNY related to the CUNY's expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing SDVOB programmatic goals.



Attachment E

SUPPLIER DIVERSITY (MWBE/SDVOB) - UTILIZATION PLAN

INSTRUCTIONS: This form must be submitted with any bid, proposal, proposed/negotiated contract or as otherwise required by CUNY, but prior to contract award. The Supplier Diversity – MWBE/SDVOB Utilization Plan must contain a detailed description of the services and/or supplies to be provided by each NYS-certified Minority and Women-owned Business Enterprise (MWBE) and/or Service-Disabled Veteran-Owned Business (SDVOB) as subcontractors and/or suppliers under the proposed agreement. Attach additional sheets if necessary.

Bidder/Proposer's Name:

Address:

City, State, Zip Code:

Telephone No.:

Region/Location of Work:

Federal Identification No.:

Solicitation No.:

MWBE Goals: MWBE % or (MBE % WBE %)

SDVOB Goal: %

Total Dollar Value of Contract: \$

NYS-certified MWBE & SDVOB Subcontractors/Suppliers Contact Information	NYS Certification (Check One)	Subcontract Information			
		Description of Work / Supplies Provided	Contract Value	Start Date	Completion Date
Company Name: FEIN: Address: Contact Name: Phone #: E-Mail Address:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$		
Company Name: FEIN: Address: Contact Name: Phone #: E-Mail Address:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$		
Company Name: FEIN: Address: Contact Name: Phone #: E-Mail Address:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$		

Note: If unable to fully meet the MWBE and/or SDVOB participation goals set forth in the solicitation, the bidder/proposer must submit a Request for Waiver form for a partial waiver, in addition to the Utilization Plan.

Select One: New Utilization Plan or Modification to Existing/Approved Utilization Plan

Prepared By (Signature): _____

Date:

Name and Title of Preparer (Print or Type):

Email Address:

SUBMISSION OF THIS FORM CONSTITUTES THE BIDDER/PROPOSER'S ACKNOWLEDGEMENT AND CONTRACT TO COMPLY WITH THE MWBE AND SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLE 15-A AND ARTICLE 17-B, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NON-RESPONSIVENESS, NONCOMPLIANCE AND POSSIBLE TERMINATION OF THE CONTRACT.

CUNY – PURCHASING OFFICE

CONTRACT AWARD DATE:

ESTIMATED DATE OF COMPLETION:

DESCRIPTION OF PROJECT:

CUNY – SUPPLIER DIVERSITY

REVIEWED BY:

DATE:

MWBE PARTICIPATION:

SDVOB PARTICIPATION:

UTILIZATION PLAN APPROVED: YES NO Date: _____

NOTICE OF DEFICIENCY ISSUED: YES NO Date: _____

NOTICE OF ACCEPTANCE ISSUED: YES NO Date: _____

Attachment F
COVID-19 RIDER

A. By responding to this solicitation and submitting a Bid Submission, Bidders are agreeing to the additional provisions in this COVID-19 Rider to IFB ("Rider"), which are applicable when and if the College issues a Purchase Order or Contract pursuant to the IFB. The vendor or supplier named on page 1 of any Purchase Order or Contract issued by the College pursuant to the IFB shall hereafter be referred to as "Contractor." Without limiting the generality of the terms and conditions set forth in IFB, the Purchase Order or the Contract, Contractor covenants, represents, warrants and agrees, at Contractor's sole cost and expense, to comply, and to cause its employees, agents, staff, principals, subcontractors, suppliers and the like to comply, with both guidance (to the extent reasonably possible) and requirements issued by the federal, state and local governments and all agencies and instrumentalities thereof, relating to the novel coronavirus COVID-19 or other pandemic, and health-related requirements, as the same may change from time to time, applicable to Contractor and its operations at the Work site, the building, and the College campus, as applicable, including, without limitation, with all permits and health care requirements and recommendations of the New York City Department of Health and New York State Department of Health (collectively, as they apply at the relevant time and to the area or operations in question, "Guidance and Rules"), including, without limitation, those related to COVID-19. Contractor agrees to ensure social distancing, temperature checks, and to supply appropriate personal protective equipment, including but not limited to masks, cleaning supplies and disinfectants, and hand sanitizer. Contractor shall cooperate with College so that College is able to effectively comply with all Guidance and Rules applicable to the Work site, the building and the College campus, as applicable. Upon receipt of notice by email to the email address provided by Contractor in the Purchase Order or Contract ("Contractor's Email Address"), Contractor shall, and shall cause all of Contractor's employees, agents, staff, principals, subcontractors, suppliers and the like to comply with College's and University's rules and procedures (which may be provided and updated from time to time as requirements change) in connection with any Guidance and Rules.

B. Contractor acknowledges and agrees that the maximum number of persons permitted to enter the Work site, building or College campus, as applicable under the Purchase Order or Contract, may be modified by College or University due to COVID-19 considerations at any time during the contract term. College will provide notice to Contractor's Email Address of any such required modifications.

C. Contractor shall promptly provide notice to College to the email address provided by College in the Purchase Order or Contract ("College's Email Address") upon becoming aware of any individual that accessed the Work site and/or the building and/or College campus and tested positive for COVID-19 or became symptomatic for COVID-19, or was in close proximity to an individual that tested positive for COVID-19 or became symptomatic for COVID-19.

D. Contractor hereby acknowledges and agrees that Contractor's use of the Work site, building and College campus, as applicable, will involve risks and hazards due to the COVID-19 pandemic and that COVID-19 presents unique health risks, especially to those with underlying conditions, and that there may be other risks not known or reasonably foreseeable. Contractor shall advise all individuals using the Work site, building and/or the College campus under the Purchase Order or Contract of the foregoing and shall ensure that such individuals have voluntarily accepted and assumed all of the risks associated with using the Work site, building, and/or the College campus. Contractor agrees to fully indemnify, defend and hold harmless the College, the University, DASNY, CUCF, the State of New York and the City of New York, in

accordance with the indemnification set forth in the IFB for any claims, causes of action, costs, fees, or the like related to COVID-19 by individuals using the Work site, building and/or College campus in connection with the work of the Purchase Order or Contract.

E. Bidder/Contractor acknowledges that due to the effects of COVID-19, the terms and conditions of this IFB and resulting purchase order or contract may be subject to change to adhere to New York State/City regulations, requirements and Guidance and Rules. In addition, Contractor acknowledges that certain requirements and certain processes under the IFB and any resulting Purchase Order or Contract may be modified based upon restrictions resulting from COVID-19 with advance notice to Bidders/Contractor.

F. No claim shall be made by Contractor or its employees, agents, staff, principals, subcontractors, suppliers, and the like, against College or University for any delays to the performance of the Work caused by College or University, including but not limited to, failure to provide access to the Site. As applicable, the inability of the College or University to provide access to the site to Contractor to perform maintenance or other services under any Contract or Purchase Order shall not void any warranties or guarantees available to the College or University under the Contract, Purchase Order, or at law. An extension of time shall be Contractor's only remedy for any delays. As applicable, to the extent the College is not open during the times preventative maintenance is scheduled to be performed, Contractor shall perform all past due maintenance immediately upon regaining access to the facilities.

G. College may terminate the Contract or Purchase Order for its convenience, without cause, for any reason, or for no reason, at any time. The College may cancel portions of the Work as the College deems in its best interests. Such right to terminate shall apply to all or a portion of the Work of the contract or purchase order.

H. Notwithstanding anything to the contrary contained in the Contract or Purchase Order, Contractor's failure to comply with the terms and conditions contained in this Rider shall be a material breach of the Contract or Purchase Order, and College reserves the right to cure such breach at Contractor's cost after providing notice of Contractor's default to Contractor's Email Address; however, given the serious nature of any default under this Rider, College shall not be required to provide Contractor with an opportunity to cure before College undertakes such cure at the cost and expense of Contractor, which cost shall be paid by Contractor promptly upon notification by College of such costs due.

I. Notwithstanding anything to contrary contained in the Contract, Purchase Order or this Rider, in the event of Contractor's breach of the terms of this Rider, College shall have the right to cancel the Contract or Purchase Order upon giving written notice to Contractor's Email Address.

J. The provisions of this Rider shall survive the expiration or earlier termination of the term of the Contract or Purchase Order. In the event of a conflict between or among any laws, regulations, orders, directives, requirements, and the like of federal, state, and local governments, courts, governmental authorities, legislative bodies, Guidance and Rules, and University requirements ("Laws/Requirements"), Contractor shall comply with the most stringent Laws/Requirements in each instance. In the event of a conflict between the terms and conditions of this Rider and the terms and conditions of the Contract or Purchase Order, the terms and conditions of this Rider shall apply.

Attachment G: Contract Award Protest Procedures

Part 1: Intent

1.1. The City University of New York (“CUNY” or “University”) offers any Protesting Party an opportunity to administratively resolve any Contract Award Protests as it relates to procurement actions pursuant to the *Procurement Policy and Procedures of The City University of New York* as adopted by the CUNY Board of Trustees on February 21, 2017 and amended on December 16, 2019. All such matters will be accorded full, impartial and timely consideration.

Part 2: Definitions.

2.1. As used herein, the following terms shall have the respective meanings set forth below:

CUNY or University – The City University of New York, including its Central Office, senior and community colleges, professional and graduate schools. For purposes of this Policy, “CUNY” and “University” also includes the following types of entities and their subsidiaries: college associations, student services corporations, childcare centers, performing arts centers, and art galleries. These Procedures do not apply to college foundations, separately incorporated alumni associations or auxiliary enterprise corporation; however, those entities are strongly encouraged to establish contract award protest procedures of similar scope to provide for open and free competition to the maximum extent practicable and consistent with the NYS Not-for-Profit Corporation Law.

Contract Award – a written determination by the University to an offeror stating that the University has accepted a bid submission, proposal or offer.

Designated Contact – the authorized procurement contact person for the subject procurement or contract during the procurement process, except where otherwise authorized by law or University policy.

Purchasing Director – CUNY College Director of Purchasing (or equivalent title) or designee who is directly responsible for the acquisition of goods and services at their respective CUNY college or school, including CUNY Central Office.

Protest – a written challenge by a Protesting Party to a Contract Award.

Protesting Party – an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

Vice President of Finance and Administration – CUNY College Vice President of Finance and Administration (or equivalent title) or designee, who is to receive, review and determine Contract Award Protests.

Solicitation or Contract Number – a unique identifier assigned by CUNY to each procurement and/or Contract Award.

Part 3: Submission of a Contract Award Protest.

3.1. After attempting to informally resolve any questions, the Protesting Party may submit a Protest to the Vice President of Finance and Administration, in writing, setting forth the basis on which the Protesting Party challenges a Contract Award by CUNY.

3.2. The Protest must include the following:

3.2.1. Name, address, e-mail address, telephone numbers of the Protesting Party or its Designated Agent.

3.2.2. Solicitation and/or Contract Number.

3.2.3. Detailed statement of the legal and factual grounds for the protest, including a description of resulting prejudice to the Protesting Party.

3.2.4. Copies of all relevant documents.

3.2.5. Statement of the relief requested.

3.2.6. Request for a determination by the Vice President of Finance and Administration.

3.2.7. Information establishing that the protest or inquiry was timely filed in accordance with this Contract Award Protest Procedures.

3.3. Contract Award Protests concerning a pending or awarded contract must be filed by the Protesting Party within ten (10) business days of the earliest to occur of the following, as determined by the Vice President of Finance and Administration: (1) after the Protesting Party knows or should have known of the facts which form the basis of the protest; or (2) after the Protesting Party received a debriefing offered by CUNY. An untimely Protest will not be considered and will be returned to the Protesting Party.

3.4. All Protests must be sent by certified mail return receipt requested or a similar tracked mail delivery service to the Vice President of Finance and Administration at the address provided in the solicitation document for the Designated Contact.

3.5. A copy of all correspondence and supporting documentation accompanying a Protest must also be sent by certified mail return receipt requested or a similar tracked mail delivery service to the following two addresses:

3.5.1. University Office of Budget and Finance, Attn: Chief Procurement Officer, 230 West 41st Street – 5th Floor, New York, NY, 10036

3.5.2. University Office of the General Counsel, Attn: General Counsel, 205 East 42nd St – 11th Floor, New York, NY 10017.

3.6. The Purchasing Director may, at his or her discretion, suspend, modify, or cancel the disputed procurement action prior to the review or issuance of a formal dispute decision.

Part 4. CUNY's Review and Response of Contract Award Protest.

4.1. Upon receipt of the Protest, the Vice President of Finance and Administration shall review the documentation submitted by the Protesting Party and any other documents available to CUNY.

4.2 The Vice President of Finance and Administration, may take any action or make any requests he or she deems necessary in order to investigate the Protest in order to obtain all evidence and other pertinent information.

4.3. The Vice President of Finance and Administration, at his or her discretion, may convene an informal conference with the Protesting Party, and/or any other interested party to resolve the Protest by mutual consent.

4.4. The Vice President of Finance and Administration shall issue a written determination within thirty (30) business days after receipt of the Protest, where feasible.

4.4.1. The Vice President of Finance and Administration reserves the right to waive or extend the time requirements for decisions and final determination on appeals herein prescribed when, in its sole judgment, circumstances so warrant.

4.5. A copy of the written determination, stating the reason(s) upon which it is based and informing the Protesting Party of the right to appeal the determination to the College President shall be sent to the Protesting Party or its agent by certified mail.

Part 5. Appeals.

5.1. The written determination rendered by the Vice President of Finance and Administration to resolve the Protest shall be final and conclusive, unless, within ten (10) business days after receipt of the written determination, the Protesting Party appeals the determination to the College President.

5.1.1. The appeal must be in writing and sent by certified mail return receipt requested or a similar tracked mail delivery service to the President at the address provided for in the solicitation document or as stated in the written determination sent by the Vice President of Finance and Administration.

5.1.2. A copy of all correspondence and supporting documentation to an appeal must also be sent by certified mail return receipt requested or a similar tracked mail delivery service to the following two addresses:

5.1.2.1. University Office of Budget and Finance, Attn: Chief Procurement Officer, 230 West 41st Street – 5th Floor, New York, NY 10036.

5.1.2.2. University Office of the General Counsel, Attn: General Counsel, 205 East 42nd St – 11th Floor, New York, NY 10017.

5.1.3. The College President, at his or her discretion, may designate a cabinet level employee of the College, other than the Vice President of Finance and Administration, to review relevant documents and make a final determination.

5.1.4. The College President, at his or her discretion may suspend, modify, or cancel the disputed procurement action prior to issuance of a formal appeal decision.

5.2. The final determination on the appeal shall be issued within thirty (30) business days of receipt of the appeal and shall be sent to the Protesting Party or its agent by certified mail.

5.2.1. The College President may take any action or make any requests he or she deems necessary, including extending the time to issue a decision in order to render a written decision on the appeal to the College President.

5.3. An appeal of the decision made by the Vice President of Finance and Administration shall not include new facts and information unless requested in writing by the College President.

5.4. Unless otherwise provided in Part 6 below, the decision of the College President shall be the University's final and conclusive determination of the Protest.

Part 6. Appeals to the Office of the New York State Comptroller.

6.1. If the Contract Award let by the University is from a New York State operated institution, specifically including the senior colleges, and graduate, honors and professional schools, and the Contract Award is subject to approval of Office of the New York State Comptroller pursuant to State Finance Law section 112 and Education Law section 6218, or is otherwise submitted to the Office of State Comptroller for approval, then the Protesting Party may submit an appeal of the College President's determination to the Office of the New York State Comptroller in accordance with the guidelines on Contract Award Protest Procedure as fully set out at [Part 24 of Title 2 of the New York Codes, Rules and Regulations](#).

Part 7. Legal Appeals.

7.1. Nothing contained in these provisions is intended to limit or impair the rights of any vendor to seek and pursue remedies of law through the judicial process.

Attachment H

Specifications

[Specifications follow this page]

Attachment H - Specifications

Section 1 - Introduction

- 1.1 Contractor shall develop and implement an integrated Digital Marketing Campaign for Queens College (“College”) of The City University of New York (“University”) as set forth in greater detail below (“Goods and Services”).
- 1.2 Contractor shall develop a digital marketing campaign for each of the College’s following programs: summer session, undergraduate studies, undergraduate yield, graduate studies, general diversity branding.
- 1.3 Contractor shall provide qualified student lead-generation as well as generate new applications for admission.
- 1.4 Contractor shall develop and implement the digital marketing campaign for the College as needed.
- 1.5 The College designates Lillian Zepeda ("College Representative") as the liaison between Contractor and the College for purposes of administration of the Contract.

Section 2 - Bidder Requirements

- 2.1 Bidder shall meet the following requirements and submit necessary information with its bid submission. Failure to comply with these requirements shall constitute grounds for rejection of bid submission. The College reserves the right to determine that a bidder has substantially met all the bid requirements and/or to ask bidder for additional information.
- 2.2 If a mandatory pre-bid conference and site visit or video conference is scheduled, it is a bidder requirement that bidders attend and sign the attendance sheet. Failure to comply with this requirement shall constitute grounds for rejection of a bid submission.
- 2.3 Bidder shall demonstrate financial viability by providing documents such as financial statements, balance sheets, and income and expenditure statements for the prior one (1) year. If Bidder is a subsidiary of a larger organization, only financial data pertinent to the subsidiary's financial position is required. Bidder shall submit such documents with its bid submission as Schedule 1.
- 2.4 Bidder shall submit a list of all required licenses, permits, and certifications with its bid submission as Schedule 2. Bidder shall submit to College copies of all required licenses and certificates within ten (10) Business Days of notice of award of Contract.
- 2.5 Bidder shall have been in the digital marketing business for a minimum of three (3) years as of the Bid Submission Due Date. Bidder shall submit documents that provide evidence of same with its bid submission as Schedule 3.

- 2.6 Bidder shall have satisfactorily completed within the past two (2) years at least three (3) contracts that are of similar size, scope, complexity, and nature to those required hereunder (“Similar Services”). For each of the three (3) contracts, Bidder shall submit with its bid submission as Schedule 4:
1. the name of the client and a brief description of the client;
 2. a brief description of the contract, including a description of the services provided, samples of relevant work, and the premises involved;
 3. the value of the contract;
 4. the dates during which the contracts were in effect; and
 5. the name of a contact person for each such contract together with his/her role with respect to the contract and his/her current title, address, and telephone number.
- 2.7 Bidder shall provide with its bid submission as Schedule 5 a list of all contracts for which it has supplied Similar Services during the two (2) years immediately prior to the Bid Due Date.
- 2.8 Bidder shall provide with its bid submission as Schedule 6 a list of all contracts in the last five (5) years that Bidder has completed and that were not renewed.
- 2.9 In order to encourage greater participation and reduce the burden for those wishing to tender bid submissions, the following items are not being required as part of your bid submission; however, in order for the solicitation process to progress smoothly, bidders are hereby notified that they may be requested to provide any or all of the following documents before the contract is awarded, and if so requested, are required to provide completed forms and documents within five (5) business days of request:
- 2.10 Bidder shall demonstrate financial viability by providing documents such as financial statements, balance sheets, and income and expenditure statements for the prior one (1) year. If Bidder is a subsidiary of a larger organization, only financial data pertinent to the subsidiary's financial position is required.
- 2.11 Bidder shall provide a list of all contracts for which it has supplied Similar Services during the three years immediately prior to the Bid Due Date.
- 2.12 Bidder shall provide a completed and signed New York State Vendor Questionnaire (or a Certification of No Change)
- 2.13 Bidder shall provide complete, sign, and submit NYS Executive Law Article 15-A Statement (EEO).
- 2.14 Bidder shall complete, sign, and submit to New York State Tax Law § 5-a, Form ST-220-TD - Contractor Certification

- 2.15 Bidder shall complete, sign, and submit Tax Law § 5-a, Form ST-220-CA - Contractor Certification
- 2.16 Bidder shall complete, sign, and submit State Finance Law §§ 139-j and 139-k (Disclosure of Non-Responsibility Determinations and Certification of Compliance)

Section 3 - Terms of Contract and Renewal

- 3.1 The term ("Term") of the Contract shall be for one (1) year and commence upon written notification from College to Contractor.
- 3.2 College shall have the right in its best interest to renew Contract for one (1) additional year period ("Renewal Term").
- 3.3 College shall have the right, in its best interest, to terminate the Contract without cause with written notice at least thirty (30) business days prior to the effective date of such termination. Within five (5) business days of receiving such notice to terminate, Contractor shall acknowledge and sign such termination notice and return same to College.

Section 4 - Contractor Requirements

- 4.1 Contractor shall designate a competent employee to be responsible for the work, to coordinate all of the services to be rendered, and to represent Contractor with authority to act for Contractor ("Contractor's Representative"); Contractor's Representative shall respond to College and act as the liaison between the College and Contractor for purposes of administration of the Contract and shall have full decision-making authority on behalf of Contractor and the authority to obligate Contractor. Contractor's Representative shall be subject to the approval of the College and shall not be changed during the term of the Contract without prior written permission of the College.
- 4.2 Contractor shall identify its Contractor Representative and provide Contractor Representative's name and contact telephone number(s) within three (3) days of notice to proceed. Contractor's Representative shall be available for telephone consultation with College during normal business hours. Contractor shall also provide a telephone number where Contractor's Representative can be reached in the event of an emergency.
- 4.3 Contract Representative shall respond within twenty-four (24) hours upon receipt of telephone call, e-mail, or any other form of communication.
- 4.4 During any absence of Contractor's Representative, Contractor shall designate an alternate Contractor Representative under the same terms and conditions.
- 4.5 Contractor shall ensure that the College shall have access at all times to an individual with full authority to make decisions on behalf of Contractor. Nothing in this section shall be deemed to preclude the College or University from discussing any matters relating to Contract with any other member of Contractor's organization.

- 4.6 Subcontracting any part of the Goods and Services shall be permitted on a limited basis and only if subcontracting is necessary for Contractor to fulfill its obligation in accordance with this contract, and only upon prior written authorization by the College.
- 4.6.1 College reserves the right to approve both the work to be subcontracted and the particular subcontractor.
- 4.6.2 Contractor's agreement with subcontractor(s) shall incorporate this Contract by reference.
- 4.6.3 Bidder shall submit with its bid submission as Schedule 7 a description of any work to be subcontracted, the particular subcontractor, and a list of work completed with subcontractor during the two (2) years immediately prior to the Bid Due Date where the subcontractor supplied Similar Services.
- 4.7 Contractor's use of subcontractors shall not diminish Contractor's obligations to provide the Goods and Services in accordance with the Contract. Contractor shall control and coordinate the Goods and Services of its subcontractors. Contractor shall inform its subcontractors and suppliers of all the terms, conditions, and requirements of the Contract. There shall be no relationship between the University and any of Contractor's subcontractors.
- 4.8 Contractor shall only assign competent personnel who are qualified to complete the Goods and Services. If Contract Representative is notified in writing that, in the reasonable opinion of the College, any worker, employee, or agent of Contractor or its subcontractors is incompetent or otherwise unacceptable, then Contractor shall promptly replace such employee, agent, or subcontractor and shall not assign such person or entity to this Contract again.
- 4.9 Contractor shall maintain all records and reports required by Contract, by Law, by best practices, and by industry standards. Immediately upon request from College, Contractor shall provide access to all such records and reports for College review.
- 4.10 Contractor acknowledges and agrees that no change in or modification to or discharge of this Contract, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by an authorized representative of the party to be charged therewith.
- 4.11 The language of the Contract is directed at Contractor unless specifically stated otherwise. The Contract language and attachments are complementary, and what is called for by one shall be as binding as if called for by all. In the event of conflicting provisions within or among the drawings, manufacturer's instructions, and the specifications, Contractor is obligated to seek clarification from the College; in general, however, Contractor is obligated to the most expensive option, and the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; and the more expensive item will take precedence over the less expensive item.
- 4.12 Contractor shall comply with all laws, regulations, rules, orders, requirements, and the like of federal state, and local governments, courts, governmental authorities, legislative bodies, boards, agencies, commissions, and the like ("Law(s)") with respect to this Contract. If there is a conflict between or among any laws and specific requirements of this contract, then Contractor shall comply with the most

stringent Law in each instance. By noting any specific Laws with particularity in this Contract or in any other prior or future communication, Contractor is not relieved of any obligation to comply with all Laws, and the University does not waive any rights it may have with respect to such compliance.

Section 5 – Scope of Work

5.1 Contractor shall, in consultation with the College’s Communications and Marketing staff, develop and implement a digital enrollment campaign, including but not limited to the development of messaging, copy, artwork, value propositions, landing pages, web-based forms, targeting personas, media plans, remarketing pixels, and weekly status reports with recommended next-steps for each of the following programs:

5.2 Undergraduate recruitment

5.2.1 Timing: From May 1, 2022 through June 30, 2022 with a minimum flight period of fourteen (14) days dedicated to in-market testing of messaging and creative; and a minimum flight period of thirty (30) days dedicated to optimizing messaging and creative.

5.2.2 Estimated Media Spend: \$60,000 for testing and optimizing a minimum of three (3) variants per tactic.

5.2.3 Audience: High school seniors living in New York state and the NJ, PA and CT metropolitan area, and their parents; as well as community college graduating students living in New York City.

5.2.4 Platforms: Facebook, Instagram, Snapchat, Tiktok, YouTube, Display and Google Adwords and Remarketing.

5.3 Undergraduate yield

5.3.1 Timing: From April 1, 2022 through June 1, 2022 with a minimum flight period of fourteen (14) days dedicated to in-market testing of messaging and creative; and a minimum flight period of thirty (30) days dedicated to optimizing messaging and creative.

5.3.2 Estimated Media Spend: \$1,000 for testing and optimizing a minimum of three (3) variants per tactic.

5.3.3 Audience: Custom audience of approximately 5,000 students accepted to the College for the Fall 2022 term.

5.3.4 Platforms: Facebook, Instagram, Snapchat, TikTok, YouTube, Display and Google Adwords and Remarketing.

5.4 General branding:

- 5.4.1 Timing: May 1, 2022, to June 30, 2022 with a minimum period of fourteen (14) days dedicated to in-market testing of messaging and creative; and a minimum period of thirty (30) days dedicated to optimizing messaging and creative.
- 5.4.2 Estimated Media Budget: \$60,000 for testing and optimizing a minimum of three (3) variant of copy and creative per tactic.
- 5.4.3 Audience: All high school and community college students living within 40 miles of the college and their parents; working professionals with interest in programs offered at QC and living within 40 miles of the college; with emphasis on reaching such diverse communities as LGBTQ, persons with disabilities, Black, Latino, Asian and others.
- 5.4.4 Platforms: Facebook, LinkedIn, Twitter, Instagram, YouTube, Snapchat, TikTok, Display and Google Adwords and Remarketing, streaming services and radio.

5.5 Summer Session

- 5.5.1 Timing: From December 2022 through June 30, 2023 with a minimum flight period of fourteen (14) days dedicated to in-market testing; cycles of building awareness, consideration, and decision; lead generation; and retargeting.
 - 5.5.2 Estimated Media Spend: \$100,000 for testing and optimizing a minimum of three variants per tactic.
 - 5.5.3 Audience: Current Queens College graduate and undergraduate students; undergraduate students living in New York City and Long Island and attending college in New York City or within forty (40) miles; parents of Queens College students and undergraduate students living in New York City or Long Island, and attending college in New York City or within forty (40) miles; graduate students attending other CUNY colleges and living within 5 miles of the college or on Long Island.
 - 5.5.4 Platforms: Facebook, Instagram, Snapchat, TikTok, YouTube, Display, and Google Adwords and Remarketing.
- 5.6 Contractor shall track conversions for remarketing through link clicks, forms that are abandoned before submission; as well as through independent visits to the College homepage via pixel.
- 5.7 Contractor shall incorporate into this digital marketing campaign any custom data lists, videos and artwork provided by the College as the College makes them available.
- 5.8 Contractor shall provide placement and management of cross-platform media buys on preexisting College accounts or on accounts authorized by the College.

- 5.9 Contractor shall provide an integrated method for email follow-up with leads, and provide technical support and guidance on email messaging and strategy using existing campaign creative.
- 5.10 Contractor shall provide a dashboard with live campaign activity and will provide a weekly recap, including measurable results, recommendations and next steps, via a weekly phone conference. No later than thirty (30) days after the end of the campaign, Contractor shall provide a comprehensive campaign report including, but not limited to, ad samples and results.
- 5.11 All landing pages developed for the purpose of this campaign shall be hosted on an adequate and secure server provided and managed by the Contractor, and approved by the College.
- 5.12 All content created for the digital enrollment marketing campaign, including copy, artwork, value propositions, landing pages, web-based forms, targeting personas, and media plans, shall be subject to modifications within the reasonable opinion of the College before final approval and acceptance.
- 5.13 Contractor shall provide any web parts, widgets and plug-ins needed to track and measure audience behavior; facilitate the integration of email marketing; and optimize the performance of ads, web-based forms and landing pages.
- 5.14 Contractor shall provide higher education-specific and data driven recommendations as well as periodic market research reports on topics affecting campaigns as needed.
- 5.15 No additional fees, margin or mark-ups on digital media buys on the aforementioned advertising platforms will be accepted by the College. Estimated Media budgets for each program are the maximum allowable spend; however, Contractor is not required to spend the full amounts dependent upon link click and impression goals, and frequency capping.
- 5.16 No additional payment or reimbursements will be issued to Contractor for travel, accommodations, postage, messenger, telephone, photography, videography, or printing.

Section 6 – Statutory Requirements

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

- 6.2 Contractor shall provide Goods and Services in a manner that does not permit the handling of personally identifiable information of the students by any individual or entity other than the Contractor and their officers and employees. For the duration of this Contract, and if the Contractor shall thereafter retain any student information in any format, the Contractor shall ensure that the information and data is secure and access to it is limited to those employees who have legitimate business need to access the information.
- 6.3 Contractor shall attest to the College that its computer systems and other data collection, maintenance, and storage systems are secure and safe.
- 6.4 The University will maintain control of all academic decisions including admissions, program development and decisions on whether, where, when and how to offer programs. The University will retain ultimate control of all decisions regarding marketing strategies.
- 6.5 All materials designed, created and/or produced by Contractor or Contractor's personnel in the course of performance of the Services shall be considered the property of the University. The University shall own all rights thereto, including without limitation all copyrights, trademark, patent and other intellectual property rights of every kind and nature. In particular:
- 6.5.1 all copyrightable works (including, but not limited to, reports, compilations of data, software, audio and visual recordings, pictures, and graphics) created or prepared by Contractor or Contractor's personnel in the course of the performance of the Services ("Copyrightable Works") shall be "works made for hire" (as that term is defined in the copyright laws of the United States) for the University, and all copyright therein is expressly intended to be wholly owned by the University. To the extent that any Copyrightable Works may not, by operation of law, be works made for hire, by entering into the Contract Contractor shall be deemed to have assigned to the University the ownership of copyright in such Copyrightable Works, and the University shall have the right to obtain and hold in its own name copyrights, registrations, and similar protections that may be available in such Copyrightable Works. Contractor shall give the University or its designee all assistance reasonably required to perfect such rights. Contractor represents and warrants that Contractor is and shall be sole author of any and all Copyrightable Works, and they are and shall be original works not subject to any prior agreement, lien, or other rights. Contractor further represents and warrants that the Copyrightable Works do not and shall not contain libelous, plagiarized, injurious, or other unlawful matter, and shall not infringe on copyright or violate any other right of any person or party whatsoever. The Contractor shall not use, transmit, display, publish or otherwise license the Copyrightable Works without the University's prior written consent. The provisions of this paragraph shall survive the expiration or termination of the Contract.
- 6.5.2 any invention or discovery, whether or not patentable, that is conceived or reduced to practice by Contractor and arises out of Contractor's performance of the Services shall be reported to the University with complete information concerning such invention or discovery. The University retains all right, title, and interest to any such invention or discovery and retains the sole right to determine whether a patent application shall be filed. Contractor shall cooperate fully with the University or its designee to enable it to secure the rights retained under this paragraph and shall execute all documents necessary to do so.

6.6 All rights, title and interest in and to any content provided by University including as may be digitized or otherwise reformatted by Contractor as part of the Services, in all media now known or hereafter developed, and any trademarks, trade names, logos, characters and other materials provided by University (“CUNY Materials”) are owned and retained exclusively by CUNY, except that course content available through CUNY Online will be owned as set forth in the University’s Intellectual Property Policy (<http://www.cuny.edu/about/administration/offices/la/IP-Policy.pdf>), which provides that copyrightable course materials and other Scholarly or Pedagogical Works (as defined in the Policy) are owned by the Creator of such materials.

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

6.6.2 Contractor shall not use the name, or any logo, mascot, seal, trademark, trade name or other proprietary mark of CUNY or any College for brand or product endorsement, or in any manner which may imply such endorsement. Any other use is subject to CUNY’s or the applicable College’s prior written approval.

Section 7 - Acceptance

7.1 Upon delivery of any independently identifiable portion of Goods and Services, Contractor shall contact the College and request confirmation of receipt of and satisfaction with such Goods and Services (“Acceptance”). If Contractor is advised that any Goods were not provided or that any Services were unsatisfactory, then Contractor shall provide such Goods and complete or re-perform such Services until College is satisfied.

Section 8 – Quality and Guarantee

8.1 Quality of the digital materials and reporting is of the essence of this Contract. All work shall be subject to the satisfaction of College and the Office of the Comptroller. Nothing in these Bid Documents shall be deemed to prevent College from rejecting digital materials on any other grounds which render such materials unsuitable on the basis of quality. The following list provides examples of inferior quality:

1. typos
2. inactive links
3. excessive loading time on landing pages
4. substitution of copy or creative without prior approval
5. improperly sized images or text
6. insufficient or inadequate performance tracking

- 8.2 College may reject digital materials it deems of inferior quality. In such case, College shall specify the defects in writing and offer Contractor a reasonable opportunity to cure. By offering such opportunity to cure, the University does not waive its right to liquidated damages.
- 8.3 If digital ads or landing pages of inferior quality are published; or if leads, applications or reports are submitted on a schedule other than what has been indicated on this Contract without prior notification by the Contractor to the College, payment due to Contractor will be subject to adjustment at the discretion of College and/or the Office of the Comptroller.

Section 9 – Termination

- 9.1 The University may terminate the Contract for cause at any time if:
- 9.1.1 Contractor does not provide any of the information or documents as required under the terms of this Contract; or
 - 9.1.2 Contractor misstates, conceals, or fails to disclose any material information in this Contract, or in any written statement or oral examination or hearing, in connection with this Contract; or
 - 9.1.3 Contractor fails to advise University within five (5) Business Days if there is any change in the facts or information provided by College after the date College signs this Contract; or
 - 9.1.4 the University determines in accordance with Law(s) or University regulations that Contractor is "not responsible" as defined by New York State laws; or
 - 9.1.5 the University finds that the certification filed by Contractor in accordance with New York State Finance Law §139k was intentionally false or intentionally incomplete.
- 9.2 University shall have the right in its best interest to terminate the Contract without cause at any time upon thirty (30) days' written notice.

Section 10 – Liquidated Damages

- 10.1 College reserves the right to assess Contractor liquidated damages in the amount contained in the Specifications for Contractor's failure to complete timely performance, and Contractor shall pay such amounts as billed.
- 10.2 In the event that Contractor fails to deliver printed and digitized materials in accordance with these Specifications, College reserves the right to assess liquidated damages in the amount of three hundred dollars (\$300) per day from date due until date of acceptance by College.
- 10.3 College's failure to exercise any part of this Section 10 at any time shall not be deemed a waiver of that part or any other.

Section 11 – Payment

- 11.1 Contractor shall submit invoices to College's Accounts Payable Department at a time interval and in a format approved by the College.
- 11.2 Contractor shall provide sufficient and appropriate documentation with invoices. College reserves the right to request additional information at any time.
- 11.3 Contractor shall not submit invoices to College to be paid for any Goods or Services until it has received Acceptance from College.
- 11.4 College will pay Contractor the Contract Price in accordance with amounts and rates set forth in the Bid Breakdown Schedule.
- 11.5 Contractor agrees to accept payments under this Contract from the College by electronic funds transfer. Contractor shall register and complete necessary forms so that it can receive electronic payments from the State and/or the City, as applicable. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by Contractor shall constitute full satisfaction by the College for the amount of the payment under the Contract.

Section 12 - Liabilities

- 12.1 Any claim made by Contractor arising out of any act or omission by any officer, agent, or employee of the University or the College in the execution or performance of this Contract shall be made against the University and not against the officer, agent, or employee.
- 12.2 Contractor shall require each subcontract professional or sub-consultant to agree in its contract not to make any claim against the University, or their respective officers, agents or employees, by reason of such contract, or any acts or omissions of the University, Contractor or their respective officers, agents, or employees.
- 12.3 Nothing in this Contract shall be construed to give any person, including any subcontractors or suppliers, other than the University and Contractor any legal or equitable right, remedy or claim under this Contract; but it shall be held to be for the sole and exclusive benefit of the University and Contractor.

CONTRACT-SPECIFIC INFORMATION FROM CONTRACTOR

Section I - Schedules

Schedule 1

Instruction to Bidder: Insert immediately after this page documents that demonstrate financial viability as required under Attachment F - Specifications, Section 2 - Bidder Requirements, subsection 2.3.

Contract Specific Information from Contractor
Section I - Schedules

Schedule 2

Instruction to Bidder: Insert immediately after this page a list of all licenses, permits, and certifications that are required pursuant to this Contract as required under Attachment F – Specifications, Section 2 – Bidder Requirements, subsection 2.4.

Contract Specific Information from Contractor
Section I - Schedules

Schedule 3

Instruction to Bidder: Insert immediately after this page documents that provide evidence that it, as currently constituted, has been in the business set forth in Attachment F - Specifications, Section 2 - Bidder Requirements, subsection 2.5 for the period set forth therein.

Contract Specific Information from Contractor
Section I - Schedules

Schedule 4

Instruction to Bidder: Insert immediately after this page the required information for a list of all contracts for which it has supplied Similar Services during the two (2) years immediately prior to the Bid Due Date as set forth in Attachment F-Specifications, Section 2 - Bidder Requirements, subsection 2.6.

Contract Specific Information from Contractor
Section I - Schedules

Schedule 5

Instruction to Bidder: Insert immediately after this page the required information for a list of all contracts for which it has supplied Similar Services during the two (2) years immediately prior to the Bid Due Date as set forth in Attachment F-Specifications, Section 2 - Bidder Requirements, subsection 2.7.

Contract Specific Information from Contractor
Section I - Schedules

Schedule 6

Instruction to Bidder: Insert immediately after this page the required information regarding a list of all contracts in the last five (5) years that Bidder has completed and that were not renewed each of the three contracts as set forth in Attachment F-Specifications, Section 2 - Bidder Requirements, subsection 2.8.

Contract Specific Information from Contractor
Section I – Schedules

Schedule 7

Instruction to Bidder: Insert immediately after this page the required information regarding a list of work to be subcontracted, the particular subcontractor, and work completed with subcontractor during the two (2) years immediately prior to the Bid Due Date where the subcontractor supplied Similar Services as set forth in Attachment F-Specifications, Section 4 - Contractor Requirements, subsection 4.6.3.

EXHIBIT A**Estimated Media Budget Breakdown Estimate**

Queens College is estimating to procure the following estimated media spend as per the various platforms listed below for each program. The college has the right to add and remove spending buys within this budget as needed.

Program	Estimated Media Spend	Platforms
1. Undergraduate-yield	\$1000	Facebook, Instagram, Snapchat, Tiktok, YouTube, Display and Google Adwords and Remarketing.
2. Undergraduate-recruitment	\$60,000	Facebook, Instagram, Snapchat, Tiktok, YouTube, Display and Google Adwords and Remarketing.
3. General Branding	\$60,000	Facebook, Instagram, Snapchat, YouTube, Display and Google Adwords and Remarketing.
4. Summer Session	\$100,000	Facebook, Instagram, Snapchat, TikTok, YouTube, Display and Google Adwords and Remarketing.
Estimated Media Spend Total	\$221,000	

Attachment I

Bid Price Breakdown Schedule

Bidders must complete all information in the Bid Price Breakdown Schedule. [*Bid Price Breakdown Schedule follow this page*]

Attachment I

Bid Price Breakdown Schedule

The prices set forth below represent pricing offered by vendor to provide the services specifically named in Attachment F-Specifications. Bidder hereby offers the goods and services specified in Attachment H-Specifications in accordance with the Contract for the Bid Price and Bid Price Breakdown Prices as set forth below.

The Bid Price set forth below represents the price offered by Bidder to provide the College on a lump sum, turnkey basis, all services/labor, materials, and licenses to develop and implement a digital enrollment campaign, including, but not limited to, the development of messaging, copy, artwork, value propositions, landing pages, web-based forms, targeting personas, media plans, remarketing pixels, and weekly status reports with recommended next-steps for each of the programs described and set forth herein and in accordance with the University contract terms and conditions, New York State Appendix A (October 2019), and the University’s Purchase Order terms and conditions, including any and all necessary creative, licenses and/or web services.

A. Services

Item	Price
Provide all services/labor, materials, and licenses to develop and implement a digital enrollment campaign, including, but not limited to, the development of messaging, copy, artwork, value propositions, landing pages, web-based forms, targeting personas, media plans, remarketing pixels, and weekly status reports with recommended next-steps for each of the programs described and set forth herein and in accordance with the University contract terms and conditions, New York State Appendix A (October 2019), and the University’s Purchase Order terms and conditions, including any and all necessary creative, licenses and/or web services.	\$
Services Total	\$

Bid Price \$ _____	**
Bid Price in words: _____ dollars	

****NOTE TO BIDDERS:** Copy the Bid Price amount to Part 4. Bid Submission and Signature Page on page 2 of the Invitation For Bids (“IFB”) Form. Award will be made, if at all, based on this amount.