REQUEST FOR PROPOSAL

RFP # PROC2026-01

Digital Marketing Services

January 28, 2026

Deadline for Submissions: February 27, 2026 @ 3:00 PM EST

Designated Contact:
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Section 1: Summary Information Form

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

RFP #: **PROC2026-01**	**RFP Title:** **Digital Marketing Services**	**RFP Release Date:** **01/28/2026**
Electronic copies of this RFP are available at: https://www.nyscr.ny.gov/		

Key Events	
Requested Submission of Questions and Requests for Clarification	02/23/2026 @ 4:00 PM EST
Response to questions/requests for clarification issued	02/25/2026 @ 4:00 PM EST
Pre-Bid Conference (if applicable)	N/A
Pre-Bid Site Visit (if applicable)	N/A
Notice of Intent to Bid Due (if applicable)	N/A
Proposal Due Date and Time ***(Any proposal received after the deadline will not be considered)***	**02/27/2026 @ 3:00 PM**
Presentation/Demonstration (Via Video)	End of March 2026 (Tentative)
Anticipated Notification of Award	End April 2026 (Tentative)
Anticipated Contract Start Date	July 1, 2026
SUNY reserves the right, in its sole discretion, to modify the above schedule. *Bidders will be notified via the NYS Contract Reporter of any changes in a timely manner.*	

Contact Information		
Primary Contact: **Gretchen Fronczak** Director of Procurement & University Services	280 Central Avenue Fredonia, NY 14063	Phone: Phone: 716-673-3257 Email: uniserv@fredonia.edu

Restricted Period

In accordance with the requirements of New York State Finance Law Sections 139j and 139k ("Lobbying Law"), the restricted period for this procurement is now in effect. Therefore, all communications regarding this procurement must be handled through the State University of New York's designated contacts only.

Bidder Information		
Legal Business Name of Company Bidding:		Bidder's Federal Tax Identification Number:
D/B/A – Doing Business As (if applicable):		NYS Vendor ID Number:
Street Address:	City/State:	Zip Code:

If applicable, place an "x" in the appropriate box: *(check all that apply)*

☐ Small Business (if checked, provide # of employees___) ☐ Disabled Veteran Owned Business

☐ Minority Owned Business (NYS Certified) ☐ Women Owned Business (NYS Certified)

If you are not bidding, place an "x" in the box and return this page only.

☐ We are unable to bid at this time because:

Bidders Signature:	Title:
Printed Name:	Date:

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

Section 2: Overview

This Request for Proposal (RFP) is issued by the State University of New York at Fredonia (herein after referred to as “SUNY Fredonia”) to solicit proposals for **services to provide digital advertising strategy, creative development, and media placement.**

The results of this RFP will be used to award a 1-year contract, with the option to renew for 2 additional 1-year terms, to the Bidder determined to be most qualified.

Section 3: Background

Section 3.1: University Background

SUNY Fredonia is a four-year, public, comprehensive, and residential university located in western New York, approximately 50 miles south of Buffalo and 45 miles northeast of Erie, Pennsylvania. The University enrolls more than 3,200 students and offers over 65 degree programs within the School of Liberal Arts and Sciences, the School of Business, the College of Music Theatre, and Dance, and the College of Education, Health Sciences and Human Services. Founded in 1826, SUNY Fredonia is recognized for its strong academic programs, welcoming campus environment, and commitment to student engagement and success.

As one of 13 comprehensive universities in the State University of New York (SUNY) system, Fredonia combines the resources of the largest public university system in the nation with the personal attention and community spirit of a smaller institution. SUNY Fredonia’s brand essence—'We lead students to embrace their passions, plans and paths, wherever they go'—drives its mission to foster student success, affordability, and access through small classes, experiential learning, and a vibrant campus community.

SUNY Fredonia seeks to advance its strategic plan, 'True Blue Transformation,' by strengthening institutional reputation, brand awareness, and enrollment through integrated digital marketing efforts that reflect the University’s brand promise: Empower Your Passion.

Section 3.2: Project Description

The purpose of this RFP is to engage a qualified, full-service digital marketing partner to develop and execute data-driven, brand-aligned campaigns that elevate awareness, engagement, and enrollment conversion across key audiences. The selected vendor will collaborate with SUNY Fredonia’s Marketing and Communications team to deliver strategic, creative, and measurable results.

SUNY Fredonia anticipates allocating up to $250,000 per year for digital advertising, media placement, creative development, and related services under this agreement. Actual annual expenditures may vary depending on University needs, performance outcomes, and available funding.

Monthly invoices must include both administrative fees and media costs, with copies of all media platform invoices (i.e. Google, Meta, TikTok, etc.) attached. No markup on media buys is permitted.

Section 4: Bidder Qualifications

Section 4.1: Minimum Bidder Qualifications

A contract will be awarded only to a responsible, responsive and qualified Bidder, in a financial position to do the work specified.

A. Proposals will be accepted only from Bidders meeting the following minimum qualifications:
   1. The Bidder must be a digital marketing services firm with a minimum of four (4) years of experience across major digital ad platforms (Google, Facebook/Instagram, YouTube, TikTok, Snapchat).
   2. The Bidder must have at least three (3) years of experience working with higher education clients.
   3. The Bidder must affirm the ability to establish lines of credit with Facebook and Google for media purchases.
   4. The Bidder must demonstrate proficiency using Google Analytics — preferably GA4 — to measure conversions and optimize performance, including support for CRM integrations, such as Slate.
   5. The Bidder must have the ability to conduct secure file transfers and ensure data-privacy compliance.
   6. The Bidder must demonstrate experience conducting keyword research and developing paid search strategy.
   7. The Bidder must affirm that they have not exceeded client campaign budgets in previous engagements.
   8. The Bidder must provide a real-time reporting dashboard with campaign performance metrics.
   9. The Bidder must complete and submit Attachment 2: Bidder Qualifications Submission Form and accompanying narrative.
   10. The Bidder must be able to begin work immediately upon contract execution.
   11. The Bidder must provide visual examples of creatives produced for other clients, including multiple ad sizes and links to video ads when available.
   12. Because SUNY Fredonia operates with a small internal marketing team, the selected vendor must be fully capable of producing all creative assets for digital campaigns — including concepting, copywriting, design, and video editing. At the same time, SUNY Fredonia may choose to provide raw assets (such as photography or raw video). The vendor must demonstrate flexibility to produce all creative materials independently, collaborate using University-provided assets, or support hybrid workflows as needed.

B. Provide three (3) relevant references in support of the required experience. The references should be from public universities from which the vendor has successfully worked with for a minimum of four (4) years. The referenced should demonstrate the Bidder's ability with projects similar in scope, size and nature of this RFP.

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

C. Identify and explain any cancelled or failed implementations of the Bidder's proposed solution resulting in contract termination in the last five (5) years or that are pending litigation.

In response to this section, complete and submit the **Attachment 2: Bidder Qualifications Submission Form.**

Section 4.2: Preferred Bidder Qualifications / Experience

A. Technical Evaluation

- **Proposal Overview** - The proposal overview will condense and highlight the contents of the proposal to provide the technical review committee with a broad understanding of the entire proposal. Additionally, it will address the offeror's experience with providing Digital Marketing services for institutions of higher education.
- **Understanding of the Project –** The Bidder must state their understanding of the needs of SUNY Fredonia, the capabilities of their firm regarding the project, and why they believe they are best qualified to meet the needs of the project and the University.
- **Proposal Detail** - The Bidder must address each of the following by number:

1. **Experience and Staffing:**
   a) Describe the firm's experience conducting strategic digital advertising campaigns for clients within the higher education field.
   b) Provide a description attesting to the whether the firm specializes in higher education Digital Marketing Services, or has a specialty within the firm for such services.
   c) Offerors should show their agency's creative abilities to create and develop compelling written and visual advertising. To accomplish this, provide three examples of successful advertisements the agency has created and placed with metrics to show success. For example, one (1) Facebook advertisement, one (1) Google search advertisement, and one (1) Instagram advertisement.
   d) State the name and address of the firm, whether the firm is private or not-for-profit.
   e) Include any prior experience at comprehensive universities along with any experience and understanding of the State University of New York and the environment for higher education within the State of New York.
   f) Submit the Offeror's Data Security Policy.
   g) Describe how the Offeror will staff this contract and identify specific individuals who will be assigned to this particular project. The expertise of the principal to be assigned to this account will be a major consideration in selection of the Successful Offeror. Also identify any other staff who will support the project including experience in higher education advertising, including each individual's:
      - Background
      - Educational level and credentials
      - Experience in higher education advertising. Response to this requirement can include resumes of the individuals assigned to the project along with supporting documentation and additional information as needed.
      - A statement of the number of concurrent projects the staff will be engaged with during the term of SUNY's contract.

h) Proposal must include details of a contingency plan to replace principals in the event of an emergency.

2. **Strategy:**
   a) Provide a draft digital advertising plan outlining the firm's recommendation for the University based on the firm's understanding of the current needs of the University for the first year.
   b) Describe how the agency will provide campaign performance data, such as a real-time dashboard or monthly reports.

3. **Creative Capabilities:**
   a) Vendors must include visual examples of creative work produced for other higher education or relevant clients.
   These examples should include multiple ad sizes (e.g., 300x250, 728x90, 1080x1080) and, when available, links to live or archived video ads.
   Mock-ups using SUNY Fredonia content are not required and should not be submitted.

Section 5: Scope of Services

Section 5.1: Mandatory Services

A. **Strategy and Campaign Development**

1. Collaborate with SUNY Fredonia to develop an integrated, omnichannel strategy and media plan for awareness, engagement, and lead-generation campaigns across emerging platforms, including (but not limited to) Google Ads, Meta, TikTok, YouTube, and programmatic display.
2. Demonstrate proficiency in leveraging first-party data and CRM integrations (i.e. Slate, Constant Contact) for audience segmentation, remarketing, and lookalike modeling.
3. Recommend new and emerging technologies—including AI-assisted optimization tools—to enhance campaign efficiency, targeting, and creative performance.
4. Ensure all creative concepts, messaging, and deliverables adhere to SUNY Fredonia's official Brand Guidelines, maintaining consistency in tone, color, typography, photography, and all current accessibility standards (WCAG AA).
5. Produce ad copy and creative assets for multiple formats (static, video, animation, and vertical short-form) with quarterly creative refreshes and ongoing consultation with the university's marketing team.

B. **Campaign Management**

1. Vendors with demonstrated experience integrating Slate CRM data and tracking full-funnel student journeys—from initial ad click to application, acceptance, and deposit—will be viewed favorably. While not required, Slate proficiency is considered a significant advantage.
2. Provide continuous optimization and data-driven management of all digital campaigns, including media buying, bid strategy, ad placement, and creative testing.
3. Maintain strict adherence to monthly and annual budget limits, ensuring transparent tracking and no hidden fees.
4. Comply with FERPA, GDPR/CCPA, and SUNY data privacy standards; maintain all campaign

data as the property of SUNY Fredonia.

5. Employ brand safety and ad fraud prevention measures (e.g., IAS, DoubleVerify) to protect SUNY Fredonia's reputation across all platforms.
6. Provide full implementation of conversion tracking, UTM tagging, and Google Analytics 4 integrations linked to Slate CRM.

C. **Reporting and Analysis**

1. Provide SUNY Fredonia with access to a real-time performance dashboard (Google Data Studio, Looker Studio, or equivalent) tracking impressions, reach, CTR, CPC, conversions, and cost-per-lead.
2. Deliver monthly performance summaries by the 5th of each month, including analysis, insights, and optimization recommendations.
3. Conduct quarterly strategy review meetings to assess campaign effectiveness and alignment with KPIs such as brand awareness lift, inquiry generation, and application conversions.
4. Maintain all campaign data and performance reports for a minimum of 24 months and provide full data exports upon request.

D. **Creative Deliverables**

1. Produce creative assets that align with SUNY Fredonia's visual and verbal brand standards, including required accessibility features (captioning, alt-text, contrast compliance).
2. Deliver complete sets of ad variations for all active platforms (minimum four ad sizes per campaign).
3. Refresh campaign creative at least once per quarter and collaborate with university staff on ongoing updates or seasonal rotations.
4. Ensure messaging reflects the university's brand personality—brave, open, creative, energetic, supportive, and nimble—and reinforces the brand essence "Empower Your Passions." It should also reinforce our current theme "Small Classes, Vibrant Campus, Big Outcomes."

E. **Contract Term and Pricing**

The contract shall have a term of one (1) year with the with the option to renew for 2 additional 1-year terms. This is a fixed-price contract; no price escalation will be permitted. Pricing must remain firm for the duration of each term. SUNY Fredonia retains full ownership of all data, ad accounts, and creative assets developed under this contract.

SUNY Fredonia reserves the right to spend up to $250,000 annually under this contract for digital marketing services. Funding levels are contingent upon University priorities, performance, and available resources. This RFP does not guarantee any minimum spend.

Section 6: Cost Proposal

Complete the attachment titled <u>Cost Proposal Worksheet Form</u>.

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

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

- **Items:** Price shall be in accordance with the items listed or on the Cost Proposal Submission Form, if provided. No other charges, other than those listed in the items or on the Financial Proposal Submission Form shall be allowable under the agreement.
- **Preparation Costs:** Bidder is responsible for all costs, direct or indirect, that it incurs related to the preparation and submission of a proposal in response to this event.
- **Tax Exempt:** SUNY is exempt from sales tax. All prices should be quoted without the sales tax.

Section 6.1: Travel Costs

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

Section 7: Key Events

Section 7.1: Bidder Questions

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

Section 7.2: Pre-Bid Conference

There will be no pre-bid conference for this solicitation.

Section 7.3: Pre-Bid Site Visit

There will be no pre-bid site visit for this solicitation.

Section 7.4: Bid Opening

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

Section 8: Method of Award

Section 8.1: Evaluation Process

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

1. **Administrative Review**

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

2. **Minimum Bidder Qualifications Review**

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

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

3. **Technical Evaluation**

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

4. **Cost Evaluation**

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

   The Cost Proposal must indicate the cost of the Administrative fee as a percentage of the anticipated annual media buy, as provided in Cost Proposal Worksheet attachment. The Administrative fee should be all-inclusive, including the day-to-day management of all digital campaigns and their ad operations. This includes bid adjustments, change out ad copy and creative, account management, ad-serving and verification, managing compliance with targeting tactics, travel, out- of-pocket expenses.

   The Cost Proposal Worksheet attached to this RFP must be completed by the Offeror in accordance with the instructions provided on the Worksheet.

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

Cost Proposals must be submitted in a separate, sealed envelope and clearly labeled "Cost Proposal". Under no circumstances shall costs be included or mentioned in the technical proposal. Failure to adhere to this requirement may result in disqualification.

Point calculation: (Low Proposal / Proposal Being Evaluated) x 30 = Score

5. **Presentation or Interview**
Bidders that are susceptible to award following the summation of the technical and cost will be invited to make a presentation/demonstration to discuss their proposal. SUNY will notify the Offerors and schedule the time, location, and format. The format of the presentation will be by video. The presentation shall in no way change their original proposals. The presentation will be evaluated and scored by a presentation review evaluation committee. All costs associated with the Bidder's attendance will be borne by the Offeror.

6. **Finalist Review**
In accordance with Section 163 (9) f of the NYS Finance Law, prior to making a contract award each contracting agency shall make a determination of responsibility of the proposed Contractor as discussed in Section 10.1: Vendor Responsibility. SUNY will conduct a review of vendor responsibility for the Bidder earning the highest final composite score, and any proposed subcontractors. SUNY will consider any information that raises issues concerning the vendor's responsibility, with consideration given to its relevance to the scope of work. The review will include factors such as financial and organizational capacity, legal authority, integrity and previous contract performance.

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

CRITERIA	REFERENCE SECTION	%VALUE
Technical Proposal		
Technical Experience & Staffing		15%
Strategy		30%
Creative Capability		20%
Presentation		15%
Cost Proposal		20%
	TOTAL	**100%**

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

Section 8.2: SUNY Reserved Rights

SUNY reserves the right to:

1. Reject any and all proposals received in response to this RFP, make a contract award in whole or in part.
2. Make no contract award.
3. Reject any or all portions of any proposal, to negotiate terms and conditions consistent with this RFP and to make an award for any or all remaining portions.
4. Withdraw the RFP at any time, at SUNY's sole discretion.
5. Disqualify any Bidder whose conduct or proposal fails to conform to the requirements of the RFP.
6. Use proposal information obtained through site visits, management interviews and the state's investigation of a Bidder's qualifications, experience ability or financial standing, and any material or information submitted by the Bidder in response to SUNY's request for clarifying information, in the course of evaluation and/or selection under the RFP.
7. Prior to the bid opening, amend the RFP specifications to correct errors of oversights, or to supply additional information, as it becomes available.
8. Request certified and non-certified audited financial statements for the past three (3) completed fiscal years and/or other appropriate supplementation including, but not limited to, interim financial statements and credit reports.
9. Request references and contact any or all references and perform other related due diligence.
10. Adjust or correct cost or cost figures with the concurrence of the Bidder if mathematical or typographical errors exist.
11. Waive requirements or amend this RFP upon notification to all Bidders. Mandatory requirements may be eliminated if unmet by all Bidders.
12. Negotiate with Bidders responding to this RFP within the requirements necessary to serve the best interests of SUNY.
13. Begin contract negotiations with another Bidder in order to serve the best interests of SUNY should contract negotiations with the Successful Bidder be unsuccessful within a time frame acceptable to SUNY.
14. Require clarifications from Bidders for purposes of assuring a full understanding of responsiveness, and permit revisions from all Bidders determined to be susceptible to contract award prior to award.

Section 9: Proposal Submission Requirements

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

Section 9.1: Proposal Format

1. Prepare a clearly readable proposal that includes all required information.
2. Bidders must submit all information requested by SUNY in written form. Proposals must be complete, accurate, and in the form requested.
3. Indicate any deviations from the technical specifications and if necessary, attach separate documents and/or explanation.
4. Proposal Packages:
    a. Proposals should be submitted in sealed packages clearly labeled on the exterior addressed to the SUNY Primary contact, with the RFP number and title. Proposals not labeled as instructed risk being opened prior to the bid opening date, which may result in the proposal being rejected. All proposals and accompanying documentation shall become the property of SUNY and shall not be returned.
    b. Cost proposals should be submitted in separate sealed envelopes. No mention of cost should appear in the technical proposal. Failure to adhere to this requirement may result in disqualification.
5. No telephone, facsimile, emailed or otherwise electronically submitted proposals will be accepted unless explicitly allowed in the RFP.
6. The proposal must be fully and properly executed by an authorized person. By signing, you certify (i) your express authority to sign on behalf of yourself, your company, or other entity; (ii) your full knowledge and acceptance of contents of this RFP, Exhibit A (State University of New York Standard Contract Clauses), Exhibit A-1 (State University of New York Affirmative Action Clauses), State Finance Law §139-j and §139-k (Procurement Lobbying Certification); and (iii) that all information provided is complete, true and accurate. By signing you further affirm that you understand and agree to comply with the procedures on permissible contacts relating to this procurement as required by State Finance Law §139-j (3) and §139-j (6) (b). These procedures may be accessed at Procurement Lobbying: http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html.
7. **Submit three (3) hard copies of your proposal, and (1) flash drive**. Proposals must be by the due date and time and to the primary contact provided on the Summary Information Form. Bidders mailing their proposals must allow sufficient time to ensure receipt by the due date and time. Bidders are cautioned that even when using a trackable mailing/courier/messenger service, proposals must be received by the due date and time. While proposals may be signed for by personnel at SUNY prior to the due date and time, this does not guarantee that the identified office will receive the proposal by the due date and time.
8. Late Proposals For purposes of Bid openings, a Bid must be received at the contact's address as set forth in the Summary Information Form on or before the proposal due date as set forth in the Summary Information Form. A Late Bid is one that is not received at the location, date and time specified in this RFP. Any Bid received at the specified location after the time specified in this RFP will be considered a Late Bid. A Late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of this RFP are received, or; (ii) in the case of a multiple award, an insufficient number of timely bids were received to satisfy the multiple award; (iii) and acceptance of the Late Bid is in the best interest of SUNY. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of SUNY shall not excuse Late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse Late Bid submissions.

Determinations relative to bid timeliness shall be at the sole discretion of the SUNY Chancellor or her designee.

9. All prices and conditions must be included in the original proposal. Prices and conditions not included in the original proposal will be rejected.
10. The submission of a proposal constitutes a non-revocable, binding offer to perform and provide said services. Such binding offer shall be firm and not revocable for a period of one-hundred eighty (180) days from the proposal due date. After one-hundred eighty (180) days, the proposal may remain in effect, subject to withdrawal communicated in writing signed by the Bidder. If this RFP is for the sale of goods pursuant to §2-205 of New York State Uniform Commercial Code, the proposal shall be firm, binding and not revocable for a period of ninety (90) days from proposal due date.
11. Bidder is responsible for all costs that it incurs, direct or indirect, related to the preparation and submission of a proposal in response to this RFP.
12. Each copy of the proposal must be accompanied by the documents listed in **Attachment 1: Bid Submission Checklist.**
13. **Proposal Submission Address:**
    RFP # PROC2026-01 – Digital Marketing Services
    SUNY Fredonia
    University Services
    403 Maytum Hall
    280 Central Avenue
    Fredonia, NY 14063

Section 10: Other Proposal Requirements

Section 10.1: Determination of Vendor Responsibility

New York State procurement law requires that state agencies award contracts only to responsible Bidders. Additionally, the New York State Comptroller must be satisfied that a proposed Contractor is responsible before approving a contract award under Section 112 of the State Finance Law. Section 163 of the New York State Finance Law ("SFL") requires that contracts for services and commodities be awarded on the basis of lowest price or best value "to a responsive and responsible Bidder." Section 163 (9)(f) of the SFL requires that prior to making a contract award, each contracting agency shall make a determination of responsibility of the proposed Contractor. In accordance with these procurement laws, SUNY will conduct an affirmative review of vendor responsibility for all organizations or firms with which it conducts business.

In response to this section, Bidders and all proposed subcontractors who may receive more than $100,000 over the life of the contract are required to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire.

To enroll in and use the VendRep System, see the VendRep System Instructions on the Office of State Comptroller (OSC) website, available at: www.osc.state.ny.us/vendrep or go directly to the VendRep System online at https://portal.osc.state.ny.us. For VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Bidders opting to file a paper questionnaire may obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact SUNY System Administration for a copy of the paper form.

Section 10.2: Procurement Lobbying Act – State Finance Law §§ 139-j and 139-k

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

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

In response to this section, complete and submit **NYS Finance Law §§139-j & 139-k Forms B & C.**

Section 10.3: Non-Collusive Bidding Certification

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

Section 10.4: Executive Order 162 (EO 162)

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

Section 10.5: Executive Order 177 (EO 177)

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

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

Section 10.6: New York State Finance Law § 139-l Certification

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

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: https://www.ny.gov/combating-sexual-harassment-workplace/employers.

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

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, SUNY may reject the bid or decide that there are sufficient reasons to accept the bid without such certification.
In response to this section, complete and submit **State Finance Law 139-L Certification.**

Section 10.7: New York State Finance Law § 139-M Certification

Pursuant to N.Y. State Finance Law § 139-m, every bid made on or after November 05, 2025 to the State or any public department or agency thereof (including SUNY), where competitive bidding is required by statute, rule, or regulation, shall contain a certification, subscribed and affirmed under penalty of perjury, that the Bidder has and has implemented a written policy addressing gender-based violence and the workplace and has provided such policy to all of its employees, directors, and board members. The policy must, at a minimum, meet the requirements referenced in Executive Law § 575(11).

Under State Finance Law §139-m(3), a bid shall not be considered for award if it does not comply with §139-m(1). However, if a bidder cannot make the certification, the bidder may submit, with its bid, a signed statement detailing the reasons it cannot certify. SUNY will review any such statement and retains discretion to reject the bid. Bids that include neither the certification nor a timely signed explanatory statement will not be considered.

A corporate Bidder's bid containing the § 139-m certification is deemed authorized by the Bidder's board of directors, and such authorization includes the signing and submission of the bid and inclusion of the certification as the act and deed of the Bidder.

OPDV has issued a Model Gender-Based Violence and the Workplace Policy explaining minimum content and distribution expectations for bidders (including distribution to employees, directors, and board members upon hire and annually). While § 139-m does not itself impose training on private bidders, OPDV guidance and Executive Law § 575(11) set out the baseline policy elements agencies should expect.

In response to this Section, complete and submit the **State Finance Law 139-M Certification** with your bid/proposal.

Section 10.8: Diversity Requirements

Section 10.8.1: Equal Employment Opportunity Requirements

a. Pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Bidder will not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin, military status, sexual orientation, gender identity or expression, age, disability, predisposing genetic characteristics, domestic violence victim status, familial status or marital status. The Bidder shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. The Bidder will state in all solicitations or advertisements for employees that, in the performance of this Contract, all qualified applicants will be afforded equal employment opportunities without discrimination.

b. The Bidder will undertake, or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, if awarded a Contract pursuant to this solicitation, will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force during its legal engagement with SUNY.

c. By submission of a bid or proposal in response to this solicitation, the Bidder agrees with all of the terms and conditions of SUNY Exhibit A including Clause 12 - Equal Employment Opportunities for Minorities and Women and acknowledges that, if the Bidder is awarded a Contract, The Contractor is required to ensure that it and any subcontractors awarded a subcontract over $25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

Section 10.8.2: Service-Disabled Veteran-Owned Businesses (SDVOB)

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

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

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

Section 10.8.3: Minority and Women-Owned Business Enterprises (MWBE)

Pursuant to New York State Executive Law Article 15-A, SUNY recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises and the employment of minority group members and women in the performance of SUNY contracts. For purposes of this solicitation, SUNY hereby establishes an overall goal of **30% for MWBE participation, 15.9%for Minority-Owned Business Enterprises ("MBE") participation and 14.1%for Women-Owned Business Enterprises ("WBE") participation** (based on the current availability of qualified MBEs and WBEs).
For additional information please refer to the MWBE requirements outlined in MWBE Prospective Bidder's Notice (Form 7557-121). For guidance on how SUNY will determine a Contractor's good faith efforts to utilize certified MWBEs, refer to 5 NYCRR §142.8.

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

Bidders must submit an MWBE Utilization Plan (MWBE Form 7557-107) with their bid or proposal. Upon contract award and prior to contract execution the selected awardee will enter its Statewide Utilization Management Plan (SUMP) and document its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence through the New York State Contract System, which can be viewed at: http://ny.newnycontracts.com, provided however, that the selected awardee may arrange to provide such evidence via a non-electronic method by contacting the SUNY Office of Diversity, Equity, and Inclusion.

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

If a notice of deficiency is issued, Awardee agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to SUNY [address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by SUNY to be inadequate, SUNY shall notify the Awardee and direct the Awardee to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form 7557-114. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
SUNY may disqualify a Bidder as being non-responsive under the following circumstances:

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

Section 10.8.4: Assessment of Diversity Practices

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

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

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

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

Section 10.9: Subcontracting

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

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

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

Section 10.10: General Insurance Requirements

During the term of the awarded contract, the Successful Bidder (Contractor) must obtain and maintain insurance coverage at its own expense as provided in this paragraph, and shall deliver Certificates of Insurance in a form satisfactory to SUNY before commencing any work under this contract. Certificates shall reference the Contract Number. Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Certificates shall be mailed to: SUNY Fredonia, Office of University Services, 280 Central Avenue, Fredonia, NY 14063.

The policies of insurance set forth below shall be written by companies authorized by the New York Department of Financial Services to issue insurance in the state of New York ("admitted" carriers) with an A.M. Best company rating of "A-" or better. Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to Gretchen Fronczak, Director of Procurement & University Services @ SUNY Fredonia, Office of University Services, 280 Central Avenue, Fredonia, NY 14063.

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

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

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

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

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

Section 10.11: Automobile Insurance Requirements

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

Section 10.12: Compliance with NYS Consulting Services Reporting Requirements

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

Section 11: General Contract Terms & Conditions

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

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

State University of New York
Notary Acknowledgement

(ACKNOWLEDGEMENT BY INDIVIDUAL)

STATE OF NEW YORK)
COUNTY OF) ss.:

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

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

____
Notary Public

(ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION)

STATE OF NEW YORK)
COUNTY OF) ss.:

On this ____ day of ______________, 20___, before me personally came ________________________________ ________________________, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of ______________________________ and that he/she executed the foregoing instrument in the firm name of ____________________________ and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of _____________________________ for the uses and purposes mentioned therein.

____
Notary Public

(ACKNOWLEDGEMENT BY CORPORATION)

STATE OF NEW YORK)
COUNTY OF) ss.:

On this ____ day of ______________, 20___, before me personally came _____________________ _________________, to me known, who being duly sworn, did depose and say that he/she resides in _____________________________; that he/she is the ____________________________ (title) of _________________________________(firm), the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

____
Notary Public

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

STATE UNIVERSITY OF NEW YORK

CONTRACT NUMBER [INSERT]

[VENDOR NAME]

THIS AGREEMENT (the "Agreement") is made by and between The **STATE UNIVERSITY OF NEW YORK**, an educational corporation organized and existing under the laws of the State of New York, with its principal place of business located at H. Carl McCall SUNY Building, 353 Broadway, Albany, New York 12246 ("SUNY"), acting through its State University of New York at Fredonia campus ("SUNY Fredonia"), located at 280 Central Avenue, Fredonia, NY 14063, and **[VENDOR LEGAL NAME]**, [doing business as [VENDOR FULL DBA NAME, if any, otherwise delete], a [corporation] organized under the laws of [New York] and having its principal place of business located at [VENDOR ADDRESS and ZIP CODE] (hereinafter, ("VENDOR Short Form" or ("Contractor"). SUNY and Contractor may be referred to individually as a "Party" and collectively as the "Parties."

W I T N E S S E T H:

WHEREAS, SUNY Fredonia requires digital advertising strategy, creative development, and media placement as more fully described in this Agreement;

WHEREAS, the Contractor is qualified and able to perform the services required by SUNY Fredonia; and

WHEREAS, the Contractor was selected through a competitive procurement process and has submitted a proposal describing the proposed services;

WHEREAS, the Parties desire to enter into an agreement defining the terms and conditions pursuant to which the Contractor will provide such services to SUNY Fredonia; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein made, the Parties agree as follows:

1. **Services**

Contractor will provide the services ("Services") described in:
(a) SUNY Fredonia Request for Proposals ("RFP") No. PROC2026-01, titled Digital Marketing Services, and dated January 9, 2026, including SUNY's written specifications for the Services, attached hereto as Exhibit F and incorporated herein by reference; and

(b) Contractor's written response to the RFP titled _________________ and dated ________ (the "Proposal") attached hereto as Exhibit G and incorporated herein by reference.

2. **Entirety, Order of Precedence and Compliance**

(a) This Agreement, together with the documents incorporated by reference and attached hereto (collectively, the "Exhibits"), constitute the entire agreement of the Parties, and supersedes all prior communications between the Parties, whether written or oral, with respect to the subject matter hereof. The Exhibits are incorporated into and made part of this Agreement and are as follows, in order of precedence:

a. Exhibit A, State University of New York Standard Contract Clauses
b. Exhibit A-1, State University of New York Affirmative Action Clauses (for contracts valued at greater than $25,000)
c. Exhibit B, State University of New York General Contract Terms & Conditions
d. The Agreement
e. Exhibit C, SUNY Institutions and Other Authorized Users - Exhibit Intentionally Omitted
f. Exhibit D, Product Accessibility Roadmap - Exhibit Intentionally Omitted
g. Exhibit E, Service Level Agreement - Exhibit Intentionally Omitted
h. Exhibit F, SUNY's Solicitation (e.g., RFP, IFB, RFQ) or SUNY Services Specifications, as applicable
i. Exhibit G, Contractor's Proposal, written cost proposal, Rate Schedule, or Statement of Work, as applicable
j. Exhibit H, SUNY Institution Sample Order Form - Exhibit Intentionally Omitted
k. Exhibit I. Consultant Services Reports, Form A and Form B

(b) Notwithstanding any other provision of this Agreement, the Parties shall remain responsible for compliance with all applicable federal, state, and local laws, rules, and regulations, as well as the policies of the State University of New York Board of Trustees, each as may be amended from time to time.

(c) The Parties acknowledge that this Agreement is at all times subject to such laws, rules, regulations, and policies. In the event any provision of this Agreement is determined, in the reasonable judgment of either Party, to conflict with any such authority in a manner that would render performance unlawful or noncompliant, the affected provision shall be deemed suspended. The Parties shall, in good faith, seek to modify the Agreement to preserve its intent and enforceability to the maximum extent permitted by law. If the Parties are unable to agree on such an amendment within a reasonable period of time, either Party may terminate the Agreement upon thirty (30) days' written notice.

3. **<u>Effective Date, Term and Termination</u>**
The Term shall begin on the date of final execution and, if required, approval by the NYS Attorney General ("OAG" and NY Office of the State Comptroller ("OSC") and continue for **<u>one (1) year</u>** unless earlier terminated as provided herein.

This Agreement may be extended upon the mutual written consent of the Parties, and with the approval of OSC, if applicable, for up to **two (2) additional year(s).** The Agreement may be terminated in accordance with the provisions set forth herein including, without limitation, Exhibit B - State University of New York General Contract Terms and Conditions, which is annexed hereto and incorporated herein by reference.

4. **<u>Pricing and Rates</u>**
The pricing applicable to this Agreement is set forth in **Exhibit G**. The total compensation to be paid under this Agreement shall not exceed **[INSERT NTE VALUE IN WORDS] ($IN NUMERALS**) over the Term of the Agreement. The Contractor shall not charge rates or amounts exceeding those set forth in Exhibit G.

Exhibit G shall consist of the Contractor's cost proposal submitted in response to SUNY's solicitation, which can be found at **[INSERT ATTACHMENT NUMBER AND TITLE]** *(e.g., Attachment 5: Cost Proposal Submission Form).*

If this Agreement constitutes a "Personal Services Contract," as defined by Executive Order No. 10 (issued by Governor Cuomo on March 2, 2011, and continued in effect by Governor Hochul)—meaning that a majority of the contract costs are attributable to compensation of the Contractor's personnel—the rates set forth in Exhibit G shall comply with Section 6 of that Executive Order. The Contractor shall be responsible for determining whether the Agreement qualifies as a Personal Services Contract under Executive Order No. 10 and, if so, for ensuring that the rates and documentation required under Section 6 are provided and retained in accordance with applicable guidance.

All payment and invoicing shall be made in accordance with applicable New York State law and the terms of this Agreement.

5. **<u>Modification of Services</u>**
SUNY may, at any time during the Term, alter, reduce, or terminate any or all Services by providing at least thirty (30) days' written notice to Contractor. Such changes will not entitle Contractor to claim for lost profits or other damages. SUNY will pay for Services properly performed through the effective date of the change, subject to receipt and approval of acceptable invoices.

If the change reduces the scope of Services, SUNY will deduct a proportionate amount from the total contract price.

If the change expands or materially alters the Services or deliverables, the Parties must:

- Mutually agree to the changes in writing;
- Prepare a change order or amendment to the Statement of Work; and
- Obtain approval from the New York State OAG and the OSC, if required.

For the avoidance of doubt, no increase in fees or material change in deliverables is valid unless agreed to in writing and approved by OAG and OSC, if applicable.

6. **<u>Executive Order No. 177</u>**
In accordance with Executive Order No. 177, Contractor hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin,

sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

7. **Executive Order 162**
Executive Order 162 requires state contractors to disclose data on the gender, race, ethnicity, job title, and salary of employees performing work on state contracts issued on or after June 1, 2017. Contractor agrees to submit Workforce Utilization Report (Form 7557-110) and to require the same information to be submitted by any of its subcontractors on this state contract, in such format as shall be required by SUNY on a quarterly basis during the term of this Agreement.

8. **Executive Order No. 16**
In accordance with Executive Order No. 16, Contractor hereby certifies that it does not conduct any commercial activity in Russia in the form of contracting, sales, purchasing, investment or any business partnership and does not transact business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia.

9. **New York State Finance Law § 139-m Certification**
Pursuant to N.Y. State Finance Law § 139-m, every bid made on or after November 05, 2025 to the State or any public department or agency thereof (including SUNY), where competitive bidding is required by statute, rule, or regulation, shall contain a certification, subscribed and affirmed under penalty of perjury, that the Bidder has and has implemented a written policy addressing gender-based violence and the workplace and has provided such policy to all of its employees, directors, and board members. The policy must, at a minimum, meet the requirements referenced in Executive Law § 575(11).

10. **State Consultant Services Reporting**
For contracts that meet the definition of "consulting services" under State Finance Law §§ 8 and 163, the Contractor must submit annual employment reports to SUNY, the NYS Department of Civil Service (DCS), and OSC. These reports must include, by employment category:

- The number of persons providing services under the contract;
- The number of hours worked; and
- The amount paid by the State for those services

This requirement applies to both the Contractor's employees and any individuals working under subcontracts.

If this Agreement is a consulting services contract, the Contractor agrees to complete and submit:

- **Form A (Planned Employment Data)** — submitted at the time of contract execution.
- **Form B (Annual Employment Report)** — submitted by **May 15** of each year during the term of the Agreement.

Copies of both forms must be submitted to SUNY, DCS, and OSC.

Further instructions and blank copies of Forms A and B are annexed as **Exhibit I** and incorporated into this Agreement by reference.

11. **Governing Law**
This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict-of-law principles. All claims arising out of or relating to this Agreement—whether in contract, tort, or otherwise—shall be governed by New York law. Jurisdiction shall lie exclusively in a court of competent jurisdiction located in Chautauqua County, New York, or elsewhere within the State of New York as permitted by law.

12. **Binding Effect**
This Agreement is binding upon execution by both Parties, but if approval by OAG and OSC is required, it shall not be valid or enforceable until such approvals are obtained.

13. **Notice**
Any notice to Parties hereunder must be in writing, signed by the Party giving it and shall be served either personally, by certified mail, return receipt requested, or by nationally recognized overnight courier service, with delivery receipt, addressed as follows:

TO SUNY FREDONIA
Gretchen Fronczak, Director of Procurement & University Services
280 Central Avenue
403 Maytum Hall
Fredonia, NY 14063

TO CONTRACTOR:
Insert Contractor Notice Information

Each Party may update its notice address by giving written notice to the other Party in accordance with this Section. A notice is effective only upon receipt at the designated address. For the avoidance of doubt, notices sent by email do not satisfy the requirements of this Section and will not be deemed effective unless expressly agreed to in writing by both Parties.

14. Construction
The Parties hereto acknowledge and agree that: (i) each Party has had the opportunity to review and negotiate the terms of this Agreement; (ii) no rule of construction shall apply that disfavors the drafting Party; and, (iii) this Agreement shall be interpreted fairly and in accordance with its terms, without regard to authorship or drafting responsibility.

15. No Third-Party Beneficiaries
This Agreement is intended solely for the benefit of the Parties. No third party shall have any rights under this Agreement or be entitled to enforce any of its terms.

16. **Counterparts**
This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A signed copy transmitted by PDF or other electronic means shall be deemed valid and binding as if it were an original; however, electronic signatures are not permitted unless expressly authorized in writing by SUNY.

[Remainder of page intentionally left blank – Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereby execute this Agreement by their respective authorized signatories as of the day and year written below.

Contract No. TBD
Dept. ID No. 3320209

Contractor Certification	**Agency Certification**
"In addition to the acceptance of this contract, I certify that all information provided to SUNY is complete, true, and accurate."	"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."
[FULL LEGAL NAME OF VENDOR]	**STATE UNIVERSITY OF NEW YORK AT FREDONIA**
By: ______________________________	By: ______________________________
[Name of Authorized Signatory]	Gretchen Fronczak
[Title of Authorized Signatory]	Director of Procurement & University Services
Dated: ______________________________	Dated: ______________________________

APPROVED AS TO FORM	**APPROVED AND FILED**
ATTORNEY GENERAL	**NY STATE COMPTROLLER**
By: ______________________________	By: ______________________________
Dated: ______________________________	Dated: ______________________________

STATE UNIVERSITY OF NEW YORK
ACKNOWLEDGMENT BY NOTARY PUBLIC

STATE OF }
: **SS.:**
COUNTY OF }

On the ____ day of __________________ in the year 20__ , before me personally appeared: ______________________________________ , known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides at ____ , Town of _________________________________, County of ______________________________ , State of _____________________________ ; and further that:

[Check One]

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

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

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

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

____
Notary Public

EXHIBIT A

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State or State University of New York, whether a Contractor, licensor, licensee, lessor, lessee or any other party; the State University of New York shall hereinafter be referred to as “SUNY”):

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

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

3. **COMPTROLLER'S APPROVAL.** (a) In accordance with Section 112 of the State Finance Law, the State Comptroller’s approval is required for the following contracts: (i) goods, services, construction, and construction-related services for State University hospital or healthcare facilities which exceed $150,000; (ii) purchases utilizing an Office of General Services (OGS) centralized contract which exceed $200,000 (iii) goods, services, construction, and construction-related services not described in (i) or (ii) and which exceed $75,000;

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

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

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

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

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

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

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

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

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

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

12. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**
In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. **RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))

require that they be denied contracts which they would otherwise obtain.
NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. **COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa, § 899-bb, and State Technology Law § 208).

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

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

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

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

27. **IRAN DIVESTMENT ACT**. By entering into this contract, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: https://ogs.ny.gov/iran-divestment-act-2012.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State Contracts;(ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination; (iii) At the request of the University the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

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

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

(i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to SUNY of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

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

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

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

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

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

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

(j) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

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

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

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

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

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

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

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

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

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

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

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

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

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified

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

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

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

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

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

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

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

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

6. MWBE Utilization Plan.

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

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

i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
ii. insert a description of the contract scope of work which the Contractor intends to structure to increase the participation by NYS Certified minority- and women-owned enterprises on the State contract;
iii. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and

(c) Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the SUNY University-wide MWBE Program Office.

(d) The University will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:

i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
ii. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;
iii. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program Office has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and
iv. other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.

(e) The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the University a written remedy in response to the notice of deficiency.

i. If the written remedy that is submitted is not timely or is found to be inadequate, the University-wide MWBE Program Office shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by the University-wide MWBE Program Office.
ii. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(f) The University may disqualify a Contractor as being non-responsive under the following circumstances:

i. If a Contractor fails to submit a MWBE Utilization Plan;
ii. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
iii. If a Contractor fails to submit a request for waiver; or

iv. If the MWBE Program Office determines that the Contractor has failed to document Good Faith Efforts.

(g) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

(h) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, SUNY shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

7. Waivers.
(a) For Waiver Requests Contractor should use (Form 7557-114) – Waiver Request.

(b) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete the University shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(c) If University, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the University may issue a notice of deficiency to the Contractor. The contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

8. MWBE Contractor Compliance Report.
Contractor is required to submit an MWBE Contractor Compliance Report (Form 7557-112) to the University by the 5th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract. Compliance Reports for construction contracts (Form 7557-110) must be submitted on a monthly basis.

9. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.
(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.
(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

(b) **GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.** For all State Contracts in excess of $25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing or all State Contracts in excess of $100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of fifteen point nine percent (15.9%) for Certified Minority-Owned Business Enterprises and forteen point one percent (14.1%) for Certified Women-Owned Business Enterprises.

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

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

11. DAMAGES FOR NON COMPLIANCE.
Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay

liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

Exhibit B General Contract Terms and Conditions

State University of New York
December 10, 2025

The Parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "Agreement") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State or State University of New York, whether a Contractor, licensor, licensee, lessor, lessee or any other party; the State University of New York shall hereinafter be referred to as "SUNY"):

1. **Amendments:** The Agreement may be amended at any time only upon prior mutual written consent of the Parties. Such written amendment will not be effective until signed by both Parties, and if required, approved by the New York State Office of the Attorney General (OAG) and the Office of the State Comptroller (OSC).

2. **Prohibition of Contractor Weblinks and "Click-Wrap"/"Shrink-Wrap" Terms**

   a. Terms and conditions submitted or made unilaterally by the Contractor and accessed through URL hyperlinks, embedded weblinks, or other electronic means (including but not limited to "click-through," "click-wrap" or "shrink-wrap" terms and conditions accompanying software and/or software updates upon delivery; order forms; purchase orders; or other documentation submitted for payment; notwithstanding SUNY's subsequent acceptance of same or that SUNY has processed such information for approval and payment) shall not be binding on SUNY or the State of New York. Terms and conditions must be mutually agreed upon and incorporated and attached as an exhibit to this Agreement (or a written amendment to this Agreement signed by the Parties) to be effective and enforceable. No provisions of pre-printed purchase orders, acknowledgements, or click-through terms may modify this Agreement, and such other or additional terms or conditions are void and of no effect.

b. If Contractor uses third-party software, platforms, or services in connection with the Services it provides pursuant to the Agreement, any terms or conditions (including “click-through,” “click-wrap,” “browse-wrap,” “shrink-wrap,” or similar agreements) that may be presented to or accepted by Contractor in connection with such third-party products will not bind or apply to SUNY, unless and until SUNY reviews and agrees to such terms in a subsequent signed writing. Contractor will not purport to accept any such terms on SUNY’s behalf.

3. **Commodity Contract Sales Reports**: Upon written request by SUNY, the Contractor shall furnish reports of detailed sales transactions including, but not limited to, the following: Campus, Product Number (or SKU), Product Description, Manufacturer, quantity purchased, unit price and total dollar volume of purchases.

4. **Diversity Contracting Requirements**

a. ***Diversity Practices and Equal Employment Opportunity****:* Contractor agrees to submit, upon SUNY’s request, all required forms relating to its diversity practices, including its efforts to include New York State certified Minority and Women-Owned Business Enterprises (MWBEs) in its business practices. Pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin, military status, sexual orientation, age, disability, genetic disposition or carrier status, domestic violence victim status, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force during its legal engagement with SUNY. It shall also follow the requirements of the Human Rights Law with regard to non-discrimination based on prior criminal conviction and prior arrest.

b. ***Service-Disabled Veteran-Owned Businesses (SDVOB)***: Contractor acknowledges SUNY’s commitment to the State’s policy of encouraging the development of SDVOBs. The Service-Disabled Veteran-Owned Business Act (the “Act”) became effective on May 12, 2014, and SUNY has implemented the State's comprehensive plan and operational guidelines to promote SDVOBs and to assist them in obtaining opportunities to participate in the procurement of goods and services by the State. SUNY will employ applicable measures and procedures provided by the Director of the Division of Service-Disabled Veterans' Business Development in the Office of General Services (the "Division"), to ensure that SDVOBs are afforded the opportunity for meaningful participation in the performance of SUNY's contracts and to assist in achieving the Act’s statewide goal for participation on state contracts by SDVOBs. Contractor further acknowledges that in the event it willfully and intentionally fails to comply with the SDVOB participation requirements, it shall be liable to SUNY for damages, calculated based on costs for administration of SUNY’s SDVOB program.

c. ***Encouraging Use of New York State Businesses in Contract Performance*****:** New York State businesses have a substantial presence in SUNY contracts and strongly contribute to the economies of New York and the nation. In recognition of their economic activity and leadership in doing business in New York State, the Contractor is strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of this Agreement. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

5. **Compliance with SUNY Policies:** At all times when rendering Services under the Agreement, or when on SUNY premises, all Contractor and subcontractor personnel shall comply with all applicable SUNY regulations, policies, and procedures including, but not limited to:

a. The requirement to wear an identity tag clearly identifying them as being an employee or agent of the Contractor or subcontractor, as applicable.

b. The prohibition against smoking within the buildings or on the grounds owned or leased by SUNY.

c. The parking regulations. Parking violations are subject to fines and are the sole responsibility of the Contractor. All vehicles must be registered with SUNY.

d. SUNY Information Security Policy 6900 and all Procedures and Policies contained and/or referenced therein. See: https://www.suny.edu/sunypp/documents.cfm?doc_id=848

The Contractor must communicate these policies to its employees, subcontractors (at any level), volunteers, and any other individuals or entities assigned to enter upon SUNY grounds and premises to perform the contract services.

6. Contractor's Representations and Warranties:

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

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

7. Insurance: During the term of this Agreement, Contractor must maintain insurance coverage at its own expense as provided in this Section and shall deliver Certificates of Insurance in a form satisfactory to SUNY before commencing any work under this Agreement. Certificates shall reference the Contract Number of this Agreement. Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Certificates shall be mailed to: SUNY Fredonia, Office of University Services, 280 Central Avenue, Fredonia, NY 14063.

The policies of insurance set forth below shall be written by companies authorized by the New York Department of Financial Services to issue insurance in the state of New York ("admitted carriers") with an A.M. Best company rating of "A-" or better. Unless otherwise agreed in writing, policies shall include an endorsement providing that coverage shall not be cancelled, materially changed, or not renewed without at least thirty (30) days prior written notice to the following address (ten (10) days for non-payment of premium) as required by law to: SUNY Fredonia, Office of University Services, 280 Central Avenue, Fredonia, NY 14063.

All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to SUNY for any claim arising from the Contractor's work under this Agreement, or as a result of the Contractor's activities. Any other insurance maintained by SUNY shall be excess of and shall not contribute with the Contractor's insurance, regardless of any "other insurance" clause contained in any SUNY policy of insurance. All policies must include a waiver of subrogation in favor of the People of the State of New York, the State University of New York, and other entities authorized to utilize the Agreement, and their officers, agents, and employees, to the extent permitted by law.

At least two weeks prior to the expiration of any policy required under this Agreement, evidence of renewal or replacement of policies of insurance with terms no less favorable to SUNY than the expiring policies shall be delivered to SUNY in the manner required for service of Notice under this Agreement. Contractor shall obtain and maintain in full force and effect, insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

a. **Commercial General Liability Insurance**: Insurance covering the liability of Contractor for bodily injury, property damage, and personal/advertising injury from all work and operation under this Agreement. The limits under such policy shall not be less than the following:

i. Each Occurrence Limit: One Million Dollars ($1,000,000.00)
ii. General Aggregate: Two Million Dollars ($2,000,000.00) in the aggregate

Coverage shall include, without limitation, the following:

i. Premises liability;
ii. Independent contractors;
iii. Blanket contractual liability, including tort liability of another assumed in a contract;
iv. Defense and/or indemnification obligations, including obligations assumed under this Agreement;
v. Cross liability for additional insureds;
vi. Products/completed operations for a term of no less than three (3) years, which commences upon acceptance of the work as required by this Agreement; and
vii. Contractor means and methods, where applicable.

Labor Law Coverage: If the work under the Agreement involves any construction, renovation, maintenance, or repair work performed on SUNY premises, the CGL policy shall not exclude coverage for claims arising under New York Labor Law Sections 200, 240, or 241. Contractor shall provide written confirmation of this upon request.

b. **Comprehensive Business Automobile Liability:** Insurance covering liability arising out of the use of any motor vehicle in connection with the work, including owned, leased, hired and non-owned vehicles bearing, or under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy shall have a minimum combined single limit for Bodily Injury and Property Damage of One Million Dollars ($1,000,000.00) and shall name the People of the State of New York, the State University of New York, and other entities authorized to utilize the Agreement, and their officers, agents, and employees, as additional insureds. The limits may be provided through a combination of umbrella/excess liability policies.

In the event that Contractor does not own or lease any vehicles to fulfill the requirements of this Agreement, Contractor must attest to that fact in writing. If at any time during the Agreement term Contractor acquires or leases any vehicles for use under this Agreement, Contractor shall immediately obtain compliant coverage and provide evidence to SUNY within ten (10) days of binding.

c. **Technology Errors and Omissions Insurance (Required where Contractor is providing technology-related services):** Contractor shall procure and maintain Technology Errors and Omissions insurance with a limit of at least $1,000,000.00 per claim and in the aggregate covering the negligent acts, errors, or omissions of Contractor in the provision of professional services required under this Agreement, for damages arising from computer-related services including, without limitation, the following:

i. Consulting;
ii. Data Processing;
iii. Programming;
iv. System Integration;
v. Hardware or Software Development;
vi. Installation;
vii. Distribution or Maintenance;
viii. Systems Analysis or Design;
ix. Training;
x. Staffing or Other Support Services; and
xi. Manufactured, Distributed, Licensed, Marketed or Sold Cloud Computing Services.

The limits may be provided through a combination of primary and excess/umbrella liability policies. The policy shall include coverage for third party fidelity if the same is not provided as part of the Data Breach and Privacy/Cyber Liability insurance. If the insurance is written on a claims-made basis, Contractor shall purchase, at its sole expense, an Extended Discovery Clause ("tail coverage") providing coverage for up to three (3) years after the work is completed if coverage is cancelled or not renewed.

Alternative to Technology Errors and Omissions Insurance Above (Professional Services)

Professional Liability Policy: Insurance (errors and omissions) in the amount of One Million Dollars ($1,000,000.00), which shall be maintained for a period of three (3) years after expiration or termination of the Agreement. If said policy is issued on a claims-made policy form, the policy shall be purchased with extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

Note: The People of the State of New York, the State University of New York, and other entities authorized to utilize the Agreement, and their officers, agents, and employees, shall not be named as an additional insured under any professional liability policy.

d. **Data Breach and Privacy/Cyber Liability:** Contractor shall maintain Data Breach and Privacy/Cyber Liability insurance throughout the term of the Agreement and for any additional period required under this Section. Coverage must include liability for failure to safeguard confidential, proprietary, or personal information; failure of the security of Contractor's computer systems; and any resulting unauthorized access to SUNY's or other Authorized Users' data. Said insurance shall be maintained with a minimum of Ten Million Dollars ($10,000,000.00) for each occurrence. The limits may be provided through a combination of primary and excess/umbrella liability policies. The insurance shall provide coverage for damages arising from, without limitation, the following:

i. Breach of duty to protect the security and confidentially of nonpublic proprietary corporate information;
ii. Breach of a duty to protect the security and confidentiality of personally identifiable nonpublic information (i.e.: medical, financial or personal in nature in electronic and non-electronic form)
iii. Privacy notification, credit monitoring, and related incident response costs
iv. Regulatory defense and penalties;
v. Website media liability; and,
vi. Cyber theft of property, including but not limited to money and securities.

If the policy is written on a claims-made basis and does not provide the same, it must be endorsed to provide proof that it has an Extended Discovery Clause (also known as "tail coverage") providing coverage for up to three (3) years after the work is completed in the event that the coverage is cancelled or not renewed.

If, in SUNY's reasonable judgment, the Contractor's performance under this Agreement involves the collection, storage, transmission, or processing of a substantial volume of personally identifiable information (PII) or other confidential data on behalf of SUNY or an Authorized User, SUNY may require that the Contractor's cyber liability policy name the State University of New York and/or an Authorized User as a loss payee with respect to any amounts payable for notification, credit monitoring, or other remedial costs incurred by SUNY due to a covered data breach.

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

f. **Owners and Contractors Protective (OCP) Liability**: If the Contractor is performing construction, major renovation, or other high-risk physical work, the Contractor shall provide an Owners and Contractors Protective (OCP) Liability Insurance policy that provides primary coverage with limits of at least $1,000,000 per occurrence and $2,000,000 aggregate (or higher at SUNY's discretion). The policy must name the People of the State of New York, the State University of New York, and other entities authorized to utilize the Agreement, and their officers, agents, and employees, as the insured.

SUNY reserves the right to inspect any coverage and request copies of actual policies. Failure to maintain the required insurance may be deemed a material breach of this Agreement.

8. Data Privacy and Security Requirements:

All information and data of any kind, provided or made available by SUNY, SUNY students, or SUNY End Users to Contractor, for the authorized purposes of this Agreement, regardless of form, format or content, is and at all times shall be exclusively owned by, and under the exclusive control of, SUNY (collectively "SUNY Data"). SUNY Data is further defined in Appendix 1, attached hereto and made a part hereof. When Contractor accesses, creates, receives, processes, maintains or transmits SUNY Data, Contractor expressly represents and warrants that Contractor will comply with the following requirements to safeguard SUNY Data:

a. **Data Privacy; General Requirements**

i. All SUNY Data shall be considered to be confidential and shall be treated as such by Contractor, and its employees, agents, volunteers, consultants, subcontractors and sub-subcontractors of any level (collectively, "Authorized Representatives"). For purposes of this Section, references to Contractor shall be deemed to include Contractor's Authorized Representatives.

ii. Contractor will only use SUNY Data for the purpose of fulfilling Contractor's duties under the Agreement for the benefit of SUNY and will not share such data with, or disclose it to, any third party without the prior written consent of SUNY, except as required by the Agreement or as otherwise required by law. If Contractor is required by law or legal process to disclose any Confidential Information, it shall:

A. Provide SUNY with prompt written notice before making the disclosure, unless prohibited by law; and

B. Cooperate with SUNY's efforts to limit or prevent such disclosure, including seeking protective orders or similar remedies.

iii. All SUNY Data, including but not limited to student data, academic records, personal information, and any data provided to or made available to Contractor, and/or generated through use of the Services (regardless of form, format, or content), shall remain the sole property of SUNY. Contractor shall have no title, ownership rights, or claims to any such SUNY Data.

iv. To the extent any Services include the use of Artificial Intelligence ("AI") systems and technologies:

A. Use of SUNY Data to develop or train AI Systems, or to build upon an AI System model, shall require the prior written consent of SUNY, which consent (if approved) may be subject to any such conditions as SUNY may determine are necessary to: (I) comply with current or future applicable laws, rules, regulations, guidelines, policies, and/or procedures; (II) protect the privacy and security of SUNY Data; and/or (III) manage risk, and promote accountability, safety, and fairness and equity. Execution of this Agreement does not constitute such consent.

B. Use of any AI System in any manner that would authorize (or have the effect of authorizing) automatic decision-making without any human oversight shall be prohibited.

C. Use of any AI System in a manner that would result in (or have the effect of resulting in) any discrimination or bias, as defined under applicable New York State or federal laws, rules, and/or regulations, shall be prohibited.

D. For purposes of this Agreement, "AI Systems" or an "AI System" shall include but not be limited to any system or technology utilizing machine learning ("ML"), large language modeling ("LLM"), natural language processing and/or computer vision technologies, including but not limited to generative AI, frontier AI, algorithms or other computational models. "AI Systems" or "AI System" shall not include basic calculations, basic automation, or pre-defined conditional If This Then That ("ITTT") response systems.

v. Contractor shall not anonymize, aggregate, or otherwise process student or SUNY Data in a manner that could enable its use for AI training or other unauthorized purposes, even if the SUNY Data is de-identified.

vi. Any use of SUNY Data for marketing or advertising purposes is strictly prohibited.

vii. To the extent any SUNY Data is provided to Contractor in de-identified, anonymized, pseudonymized, or another masked or encrypted form, and except as expressly authorized or required pursuant to this Agreement, Contractor shall be prohibited from re-identifying any SUNY Data (including without limitation personal information protected by the New York State Privacy Protection Law, Article 6-A of the NYS Public Officers Law ("PPPL"), and education records or personally identifiable information ("PII") from education records protected by Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA")), in whole or in part, through any means, including without limitation, any system, algorithm, computational model, AI, ML, LLM, or other software or technology.

viii. Contractor will ensure that Contractor and its Authorized Representatives, and any providers of services or technology solutions utilized by Contractor to fulfill Contractor's duties under this Agreement, shall comply with pertinent provisions, as may from time to time be amended, of this Agreement; applicable federal and New York State laws, rules and/or regulations; and the policies, procedures and other requirements of SUNY and/or the SUNY Board of Trustees, as applicable to the privacy, use and security of SUNY Data.

A. Contractor will provide access to SUNY Data only to its employees and subcontractors who need to access the data to fulfill Contractor's obligations for the benefit of SUNY under the Agreement.

B. Contractor will ensure that its employees and other Authorized Representatives, and any providers of services or technology solutions utilized by Contractor to fulfill Contractor's obligations for the benefit of SUNY under this Agreement, are expressly informed of the limitations on access and use of SUNY Data, and have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this Agreement.

C. Contractor will ensure that its employees and other Authorized Representatives, and any providers of services or technology solutions utilized by Contractor to fulfill Contractor's obligations for the benefit of SUNY under this Agreement, protect all SUNY Data with reasonable data security measures and procedures consistent with this Agreement, which shall include physical and/or technological access controls.

D. Contractor shall execute a written agreement with each of its subcontractors and shall require all subcontractors to execute with their sub-subcontractors (at any level) a written agreement which shall bind each to the terms and provisions of this Agreement, insofar as such terms and provisions are applicable to the work to be performed by such subcontractors or sub-subcontractors (at any level). Contractor shall require all subcontractors and sub-subcontractors (at any level) to promptly file with SUNY upon request a copy of such agreements, from which the price and terms of payment may be deleted.

ix. **Location and Use of Data:** SUNY Data will not be stored, processed, backed up, acted upon, archived or otherwise retained on systems physically located outside the United States without prior written consent from SUNY and execution of this Agreement is not considered prior written consent. For purposes of this Agreement, "stored" includes, but shall not be limited to, any form of housing, retention, or persistent caching of data.

x. **Federal Data Security Program (DSP) (28 C.F.R. Part 202):** To the extent applicable, Contractor shall not engage in any data "transfer" or other "transaction" constituting a "covered data transaction" that allows "access" by a "country of concern" or "covered person" to "bulk U.S. sensitive personal data" or U.S. "government-related data," as defined by the U.S. Department of Justice's Final Rule implementing Executive Order 14117, codified at 28 C.F.R. Part 202, as it may be amended from time to time. In compliance therewith, Contractor shall not transmit to or otherwise store SUNY Data with any prohibited party and must implement and maintain security measures consistent with applicable guidance. For avoidance of doubt: (A) Contractor shall not engage in any "restricted transaction" subject to Subpart D of 28 C.F.R. Part 202 without the prior written consent of SUNY pursuant to a written agreement signed by the Parties; and (B) execution of this Agreement shall not constitute such consent. Contractor must also promptly report suspected or actual violations and agrees that SUNY may audit compliance with these obligations upon reasonable written notice.

xi. **FERPA Compliance:** In addition to any other privacy and/or confidentiality obligations herein, Contractor agrees that any disclosure by SUNY of education records and/or student PII from education records is subject to applicable law including FERPA and any implementing regulations (20 U.S.C. § 1232g; 34 CFR Part 99). With respect to any such disclosure, Contractor agrees to the following: (A) that Contractor's use of education records and/or PII from education records will be limited to those purposes expressly authorized in this Agreement; and (B) that Contractor will abide by the limitations on re-disclosure of education records and/or PII from education records as set forth in FERPA; and (C) that, unless the Parties designate another exception in the Agreement, any disclosure of education records and/or PII from education records is done so pursuant to the "school official" exception to FERPA, Contractor is a "school official" with a "legitimate educational interest" in any education records and/or PII from education records disclosed, and Contractor is under the direct control of SUNY with respect to the use and maintenance of any such education records and/or PII from education records. Education records and/or PII from education records are as defined in FERPA and include any and all records, data, or information related to any student or students of SUNY. This obligation shall survive termination of this Agreement.

xii. **European Union ("EU") General Data Protection Regulation ("GDPR") and Other International Data Privacy and Security Laws and Regulations:** Unless otherwise agreed in writing by both Parties, Contractor, as well as any subcontractors Contractor may engage (at any level) to perform any of Contractor's obligations under the Agreement, shall be solely responsible for compliance with the EU GDPR 2016/679 and the European Artificial Intelligence Act (Regulation (EU) 2024/1689), if applicable, and any other international data privacy and security laws and regulations that may be applicable to the proposed solution, if any (e.g. China Personal Information Protection Law or "PIPL").

xiii. **Gramm-Leach-Bliley Act:** Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314) ("GLBA"), and to the extent Contractor is a financial institution or service provider of SUNY under these regulations with respect to student or customer information, Contractor will comply with the Safeguards Rule including the requirement to implement and maintain a written Information Security Program ("Program") in order to protect such nonpublic customer information (any record containing nonpublic personal information as defined in 16 CFR §313.3(n), whether in paper, electronic, or other form that is handled or maintained by or on behalf of SUNY or SUNY affiliates (16 CFR §314.2)). Examples may include, but are not limited to, name, address, phone number, Social Security Number, bank/credit account information, and student ID numbers.

xiv. **HIPAA:** Contractor will comply with all personal health information protection requirements, if applicable, of the United States Department of Health and Human Services, Standards for Privacy of Individually Identifiable Health Information, promulgated pursuant to the administrative simplification provisions of the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as set forth in 45 C.F.R. Subtitle A, Subchapter 3, Parts 160 and 164 (as now or hereafter amended or superseded), and shall complete the HIPAA Business Associate Agreement if so required.

xv. **NYS Personal Privacy Protection Law:** Contractor will comply with applicable provisions of the New York State Privacy Protection Law (NY Public Officers Law §§91-99) and the University's implementing regulations under 8 NYCRR § 315. See *SUNY Other Requirement 6603 Compliance with Personal Privacy Protection Law*. https://www.suny.edu/sunypp/documents.cfm?doc_id=539.

b. **Mandatory Data Security Requirements**

Contractor agrees at all times to maintain industry standard information and critical infrastructure security features and protocols, which at a minimum, include: network firewall provisioning; intrusion detection; Distributed Denial of Service (DDoS) threats of a minimum of two terabits per second; the use of network monitoring and protection tools monitored 24/7/365 by security analysts; and regular (at least annually) third-party vulnerability assessments, or equivalent, including providing SUNY a copy of the annual Attestation of Compliance (AOC) document, if requested. Further, Contractor agrees to maintain information and critical infrastructure security that conforms to generally recognized "Industry Standards" and best practices that Contractor applies to its own network, infrastructure, applications and data. Generally recognized Industry Standards include but are not limited to the current standards and benchmarks set forth and maintained by the Center for Internet Security (see http://www.cisecurity.org) or Payment Card Industry/ Data Security Standards ("PCI/DSS") (see http://www.pcisecuritystandards.org).

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

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

Contractor must have integrated continuous security testing into its code and build development process, including the following processes: (i) Static Application Security Testing (SAST): Analysis of source code and binaries to identify security vulnerabilities; (ii) Dynamic Application Security Testing (DAST): The execution of simulated attacks on live applications to detect runtime vulnerabilities; and (iii) Software Composition Analysis (SCA): Evaluation of all software components, including external libraries and dependencies, to identify security risks within the codebase.

Contractor agrees to provide evidence of compliance with these requirements before this Agreement becomes effective and at any other time upon reasonable request of SUNY. The following report(s) and/or certification(s) shall be prepared by Contractor and made available to SUNY:

1. A Higher Education Community Vendor Assessment Tool (HECVAT) spreadsheet report completed by Contractor and provided to the SUNY Chief Information Security Officer (CISO).

   And

2. Either:

   a. A completed up-to-date SOC 2 Type 2 report pursuant to Statement on Standards for Attestation Engagements (SSAE) 18, and issued by an independent third-part auditor, that includes the Security, Availability, Confidentiality, and Privacy of all SUNY Data and the technology solution comprising the Services provided by Contractor to SUNY pursuant to this Agreement.

   Or

   b. An up-to-date ISO (the International Organization for Standardization) and IEC (the International Electrotechnical Commission) certification from an accredited body, prepared pursuant to *ISO/IEC 27001:2022 Information security, cybersecurity and privacy protection — Information security management systems — Requirements*, and accompanied by the Statement of Applicability (SoA) showing which controls are in scope, and covering all people, systems, and locations involved in delivering the product and/or services to SUNY.

   And

3. Contractor agrees to address the ability to provide the same levels and types of security through multiple data access methods (e.g., Web, mobile devices, or network).

   And

4. Required Time Periods

   a. Each reporting or certification period shall cover the previous twelve (12) consecutive months.
   b. Report(s) and/or certification(s) shall be provided to SUNY annually and within fifteen (15) days of final issuance by the Contractor (HECVAT), independent third-party auditor (SOC 2) and/or independent third-party accredited body (ISO/IEC certification).
   c. Report(s) and/or certification(s) shall be provided to SUNY no later than fifteen (15) months after the end date of the previous annual report.
   d. For report(s) and/or certification(s) with an end date of greater than ninety (90) days from the date of receipt by SUNY, the Contractor shall provide a bridge letter signed by executive management attesting: (I) that no material changes have occurred which would adversely affect the report and/or certification's conclusions; and (II) that any new high-severity control deficiencies discovered since the report or certification end date are disclosed and accompanied by a remediation plan and/or corrective action plan.

The HECVAT, and the SOC 2 Type 2 report or ISO/IEC certification, must be completed by the appropriate experts in these areas. Failure to comply with these Mandatory Data Security Requirements (including without limitation, any suspension, withdrawal, or non-renewal of a report or certification and/or failure to implement corrective action plan or agreed-upon remediation plan within the required time frame(s)) shall constitute a breach of the Agreement.

c. **Other Mandatory Information Security and Service Requirements**

i. **Compliance With Breach Notification and Data Security Laws:** The Contractor shall comply with all applicable federal and New York State data protection and breach notification laws, including the New York State Information Security Breach and Notification Act (General Business Law § 899-aa; State Technology Law § 208) ("ISBNA"), the Stop Hacks and Improve Electronic Data Security Act (General Business Law § 899-bb) ("SHIELD Act"), the Family Educational Rights and Privacy Act ("FERPA"), the Gramm-Leach-Bliley Act ("GLBA"), and any other applicable statute, rule, or regulation governing the collection, use, security, or disclosure of personally identifiable information or sensitive data.

The Contractor shall implement and maintain appropriate administrative, physical, and technical safeguards to protect the security, confidentiality, and integrity of any private information (as defined by ISBNA) and other SUNY Data to which it has access in connection with the performance of this Agreement.

In the event that the Contractor becomes aware of or reasonably suspects any actual or suspected unauthorized acquisition, access, use, or disclosure of SUNY Data ("Security Incident"), the Contractor shall:

(1) notify SUNY in writing without unreasonable delay, and in no event later than two (2) business days after discovery of the Security Incident;
(2) take all reasonable measures to investigate, contain, and remediate the Security Incident;
(3) cooperate fully with SUNY, including providing access to relevant records, personnel, and systems as necessary to support SUNY's investigation and response; and
(4) comply with all applicable legal requirements concerning breach notification and mitigation.

SUNY shall have the sole discretion to determine the content, method, and recipients of any required notifications to affected individuals or government agencies. If the Security Incident is caused by the negligent or willful acts or omissions of the Contractor or its officers, employees, agents, consultants, or subcontractors (at any tier), the Contractor shall be responsible for all reasonable costs and expenses incurred by SUNY in connection with the Security Incident, including investigation, remediation, notification, and credit monitoring services, if applicable.

Upon expiration or termination of this Agreement, the Contractor shall, in accordance with instructions provided by SUNY, return or securely destroy all SUNY Data in its possession. If destruction is authorized, the Contractor shall certify in writing that such data has been irretrievably destroyed using industry-standard methods consistent with ISBNA, SHIELD, and any other applicable law to prevent unauthorized access to or use of SUNY Data and will render the private information so that it cannot be read or reconstructed.

ii. **Service Level Requirements:** Contractor will ensure availability of the Services in accordance with the provisions of the Agreement and, if applicable, **Exhibit E: Service Level Agreement**, attached hereto and made a part hereof.

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

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

v. **Data Portability:** Contractor agrees that SUNY owns the SUNY Data generated, received, or maintained in connection with the Agreement. At SUNY's direction, Contractor shall take all steps and actions that are necessary and reasonable to facilitate and complete the orderly, efficient, expedient, and professional transfer of SUNY Data, in whole or in part, to SUNY, a SUNY Institution, or third-party designated by SUNY. Such transfer shall occur during the Term and/or upon expiration or termination of the Agreement and shall be completed in the format and on the media specified by SUNY. All costs related to such transfer services shall be at no additional expense to SUNY.

vi. **Destruction of SUNY Data:**

A. **Timing and Method of Destruction:** Upon the expiration or termination of the Agreement and following completion of the transfer obligations under Section 8(c)(v), Contractor shall, unless otherwise directed in writing by SUNY, complete the destruction of all SUNY Data in its possession or control no later than thirty (30) calendar days after such expiration, termination, or direction. Destruction shall apply to all forms and media of SUNY Data, including written, electronic, or other formats, and shall include physical and electronic copies, partial files, notes, derivative materials, working files, and backups. All destruction shall be performed in accordance with the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitization, Special Publication 800-88 Revision 1 (December 2014), as now or hereafter amended or superseded (NIST SP 800-88). Contractor shall provide SUNY with a signed and dated Certificate of Sanitization in a format substantially similar to Appendix G of NIST SP 800-88 within ten (10) business days following the completion of such destruction.

B. **Retention of Required Records:** Notwithstanding Section 8(c)(vi)(A), Contractor may retain only the minimum amount of administrative Records necessary to demonstrate compliance with the Agreement, and only for the period required under Section 10 of Exhibit A (SUNY Standard Contract Clauses). Contractor shall complete destruction of such Records no later than thirty (30) calendar days after the end of the required retention period. Destruction shall be carried out in accordance with NIST SP 800-88, and Contractor shall provide SUNY with a signed and dated Certificate of Sanitization, in a format substantially similar to Appendix G of NIST SP 800-88, within ten (10) business days following the completion of destruction. Except for the limited retention described in this subsection, Contractor shall not retain any SUNY Data or Records following expiration or termination of the Agreement without prior written authorization from a duly authorized SUNY representative.

C. **Survival:** The obligations set forth in Section 8(c)(v) and Section 8(c)(vi) shall survive the expiration or termination of the Agreement for so long as Contractor retains any SUNY Data or Records in any form or media.

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

10. Dispute Resolution: At SUNY's sole option, the Parties shall attempt in good faith to resolve any dispute arising under this Agreement through informal discussions. If the Parties are unable to resolve the dispute within thirty (30) calendar days of written notice of the dispute, either Party may pursue available legal or equitable remedies.

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

a. SUNY is committed to providing an accessible, usable, and integrated experience for all its students, staff and community. Electronic and information technology ("EIT") consists of information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information that will be deployed in connection with such technology, equipment or systems. Further, EIT includes, but is not limited to, telecommunications products, information kiosks and transaction machines, Internet and Intranet websites, web-delivered content (including without limitation word processing, spreadsheet, presentation files, and PDF files), software, mobile applications, electronic books and electronic book reading systems, search engines and databases, multimedia, classroom technology, and office equipment.

b. Contractor warrants that all EIT and the technology solution comprising the Services shall conform to all current and future applicable state and/or federal accessibility laws, rules, regulations, and/or standards, and/or the policies of the State of New York and/or the SUNY Board of Trustees, including but not limited to the following:

   i. New York State Executive Law § 170-f, requiring that every contractor, subcontractor, vendor, consultant, or other person providing services pursuant to a state contract shall conform any website provided by such contractor, subcontractor, vendor, consultant, or other person in relation to and for the provision of such services to the most current version of the Web Content Accessibility Guidelines ("WCAG") adopted by the World Wide Web Consortium for accessibility, or successor standards (currently WCAG 2.2, released October 05, 2023);

   ii. Title 28, Code of Federal Regulations, Part 35 (28 C.F.R. Part 35), Subpart H Web and Mobile Accessibility, §§ 35.200 – 35.209, Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, as now or hereafter amended, addressing, among other things, web content and mobile app accessibility, and currently referencing best practices of WCAG 2.1 AA (regulations effective June 24, 2024) (regulatory compliance date April 24, 2026);

   iii. Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194 (36 C.F.R. Part 1194), as now or hereafter amended; and

   iv. To the extent applicable, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and its implementing regulations set forth at Title 45, Code of Federal Regulations, Part 84 (45 C.F.R. Part 84), as now or hereafter amended, addressing, among other things, requirements related to providing accessible web content, mobile applications, and kiosks (regulations effective July 8, 2024) (regulatory compliance date May 11, 2026).

c. Contractor shall provide evidence of compliance with the accessibility requirements set forth above before this Agreement becomes effective, and at any other time during the Term of such Agreement upon reasonable request of SUNY, in accordance with the following:

   i. **Contractor Accessibility Conformance Report (ACR):** Contractor shall provide SUNY an Accessibility Conformance Report completed utilizing the Voluntary Product Accessibility Template (VPAT), 2.5 WCAG (Web Content Accessibility Guidelines), VPAT 2.5 508, as revised or updated (in a Microsoft Word file in an accessible format), found at Information Technology Industry Council website, or equivalent.

      A. The ACR must correspond to the current version of the EIT and the technology solution comprising the Services.

      B. If the ACR detailed above was not completed by an independent third party, a comprehensive accessibility evaluation from an objective, independent, third party verifying the claims made on the product ACR (VPAT 2.5, as revised or updated), or equivalent, is required. Contractor may use a third-party accessibility evaluation service of their choice. SUNY reserves the right to determine that such third-party accessibility evaluation services is equivalent or better.

ii. **Product Accessibility Roadmap:** SUNY developed Product Accessibility Roadmap template as a means for Contractors to document any accessibility gaps associated with their products (including, without limitation, all Section 504, Section 508 and WCAG standards identified in the VPAT as "does not support" and "partially supports") and to indicate their plans for addressing these gaps (including, without limitation, identifying any accessible solutions to the identified barriers). Contractor must complete and submit the Product Accessibility Roadmap template as Exhibit D if any accessibility gaps are identified in the ACR as described above.

d. In the event EIT and/or the technology solution comprising the Services provided pursuant to this Agreement do not fully conform to the standards set forth above at any time during the Term of this Agreement, Contractor shall promptly advise SUNY in writing of the non-conformance and provide detailed information regarding the plans to achieve conformance, including but not limited to an intended timeline for remediation. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services as specified in this Agreement.

Contractor's Designated Accessibility Contact: John McCune, Director of Academic Technologies and Innovation; Email: TJohn.Mccune@fredonia.edu; **Phone:** (716) 673-3115

e. **Contractor Continuing Accessibility Commitment**

i. SUNY recognizes that producing accessible technology products may require SUNY to provide reasonable accommodations to users during time periods where the Contractor is addressing identified issues. In an effort to responsibly serve needs, manage this process, and associated costs, SUNY has developed the following Continuing Accessibility Commitment:

ii. Contractor will use commercially reasonable efforts to ensure Contractor's EIT and/or the technology solution comprising the Services remain accessible during the term of this Agreement as required by: applicable federal and/or state laws, rules, regulations, policies, and/or standards, as each may be amended and supplemented; and terms and conditions of this Agreement (as amended and supplemented) (collectively, the "Continuing Accessibility Commitment").

iii. In the event that SUNY shall reasonably determine that the Contractor's EIT and/or the technology solution comprising the Services are not accessible, SUNY shall provide written notice via electronic mail to the Contractor's designated accessibility contact, as listed in the Agreement (or such alternative contact as the Contractor may designate pursuant to the notice provision in the Agreement), with a written description of the issue or problem. The Contractor agrees to notify SUNY promptly of any factor, occurrence, or event coming to its attention that may affect the Contractor's ability to meet the Continuing Accessibility Commitment, or that is likely to cause any material interruption in the accessibility of the Contractor's EIT and/or the technology solution comprising the Services.

iv. **SUNY Remedy:** Contractor will use commercially reasonable efforts to promptly respond and correct any material problems in the Contractor's EIT and/or the technology solution comprising the Services, including any failure to satisfy the Continuing Accessibility Commitment. In the event that the Contractor fails to satisfy the Continuing Accessibility Commitment for a period of time greater than 7 calendar days following receipt of electronic mail notification from SUNY to Contractor's designated accessibility contact (or such longer period as the Parties may agree to in writing following said notification process), SUNY shall receive an Accessibility Service Credit equal to the following: a percentage of the monthly fees for the Contractor's EIT and/or the technology solution comprising the Services, or alternatively, a pro-rata portion of the fees for the Contractor's

EIT and the technology solution comprising the Services, if paid on an annual or other basis (the Fees), for the stated Solution Implementation time period listed below:

Solution Implementation (Calendar Days)	Accessibility Service Credit (From Fees)
1-7	0%
8–45	25%
46-90	50%
91-180	75%
181 or more	100%

v. In no event will the Accessibility Service Credit exceed the Fees paid by SUNY for the Contractor's EIT and the technology solution comprising the Services. In the event that the accessibility issue(s) are not resolved to SUNY's satisfaction within 365+ calendar days, SUNY shall have the right to terminate the Agreement and receive a pro-rata refund of any prepaid Fees for the remaining Term, if any.

f. Failure to comply with these accessibility standards shall constitute a breach of the Agreement. Contractor agrees to indemnify and hold harmless SUNY from any claims arising out of its failure to comply with the foregoing accessibility standards.

12. **Electronic Payment Authorization:** Contractor shall submit complete and accurate invoices to SUNY to receive payment for Services under this Agreement. All invoices must include the information and supporting documentation required by SUNY and the New York State Office of the State Comptroller (OSC).

    Except as otherwise authorized in writing by the [Vice Chancellor for Business and Finance of the State University of New York] (or their designee), payment shall be made electronically in accordance with OSC's statewide electronic payment procedures. Contractors must enroll in the OSC electronic payment program and comply with applicable registration and authorization processes. OSC's procedures are available at: https://www.osc.ny.gov/state-vendors.

    Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the OSC's electronic payment procedures, except where [the Vice Chancellor] or designee has expressly authorized payment by paper check as set forth above.

13. **FOIL:** Contractor acknowledges that this Agreement is subject to the New York State Freedom of Information Law ("FOIL"), as codified in Article 6 of the New York State Public Officers Law. Contractor acknowledges that information submitted to SUNY in connection with this Agreement may be subject to public disclosure in response to a FOIL request. Contractor further acknowledges that only information clearly qualifying for exemption under FOIL—such as trade secrets or information submitted to SUNY that is commercial or financial and which, if disclosed, would cause substantial injury to the competitive position of the Contractor—may be withheld under § 87(2)(d).

    In the event that SUNY receives a FOIL request for records identified by the Contractor as potentially exempt under § 87(2)(d), SUNY will follow the procedures set forth in FOIL and its applicable regulations, including notifying the Contractor and providing an opportunity to respond prior to release. SUNY shall determine whether an exemption applies, subject to the Contractor's right to challenge any such determination in accordance with FOIL.

14. **Independent Contractor:** Contractor and its employees, agents, subcontractors, and any persons acting on its behalf shall perform all work under this Agreement as independent contractors and not as employees, agents, or representatives of SUNY. Contractor shall have no authority to act for or bind SUNY in any respect. Nothing in this Agreement shall be interpreted as creating an employer–employee relationship between SUNY and Contractor or its personnel. Contractor acknowledges that neither it nor its personnel are entitled to any benefits provided by SUNY to its employees, including, but not limited to, workers' compensation, unemployment insurance, health insurance, retirement benefits, or paid leave. Contractor shall be solely responsible for the payment of all wages, benefits, and taxes, including applicable income tax, Social Security, and Medicare, arising from compensation paid to its personnel.

15. **Force Majeure:**
Neither Contractor, SUNY, nor the State of New York shall be liable for any failure or delay in performance of its obligations e this Agreement (excluding payment obligations) if such failure or delay arises out of or results from causes beyond the reasonable control of the affected Party, including but not limited to: acts of God; flood, fire, earthquake, storm, or other natural disaster; war (declared or undeclared); acts or threats of terrorism; riot or civil unrest; embargo; government order or law; national or regional emergency; labor strike or other labor disturbance not caused by or involving the affected Party; epidemic or pandemic; failure or delay of third parties or utilities; or other similar events beyond the reasonable control of the affected Party, provided that: (i) the affected Party provides written notice to the other Party as soon as reasonably practicable after the commencement of the force majeure event, stating the nature of the event, its anticipated duration, and the steps being taken to mitigate its effects; (ii) the affected Party makes reasonable efforts to continue performance and to mitigate the effects of the delay or nonperformance; and (iii) obligations of the affected Party shall be suspended only for the duration of the force majeure event.

If the force majeure event continues for more than ninety (90) calendar days, either Party may terminate the affected portion of the Agreement by providing written notice to the other Party. Termination under this clause shall not relieve SUNY of its obligation to pay for Services satisfactorily performed and accepted prior to the force majeure event.

This clause does not relieve either Party of the duty to implement and follow its own disaster recovery or business continuity procedures. It also does not excuse SUNY's obligation to compensate Contractor for any approved Services that were rendered prior to or during the force majeure event to the extent such Services were performed and accepted.

16. **Liability and Indemnification:**

a. The Contractor shall be fully responsible for all acts and omissions of its officers, employees, agents, volunteers, consultants, subcontractors at any tier, and licensors. The Contractor shall indemnify, defend, and hold harmless the State University of New York ("SUNY"), the State of New York, and their officers, agents, and employees from and against any and all claims, actions, damages, liabilities, losses, costs, and expenses, including reasonable attorneys' fees, arising from or relating to personal injury (including death); damage to real or tangible personal property, including information systems, software, or data; infringement or misappropriation of any third-party intellectual property rights; or any other act or omission of the Contractor or its personnel in connection with this Agreement. This obligation shall not apply to the extent that any such claim arises from the negligent act or omission or willful misconduct of SUNY.

   In the event of a third-party claim that may give rise to indemnification under this Section, SUNY shall provide the Contractor:
   i. Prompt written notice of the claim;
   ii. The opportunity to assume the defense and settlement of the claim at the Contractor's sole expense, provided that the Contractor shall not settle any such claim without SUNY's prior written consent if the settlement imposes any obligation or liability on SUNY or restricts SUNY's rights to use any deliverables; and
   iii. Upon request, reasonable cooperation in the defense of the claim at the Contractor's expense.

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

b. Except as otherwise provided in this Agreement, including but not limited to the indemnification obligations under this Section, neither party shall be liable to the other for any consequential, incidental, indirect, or special damages, including lost profits or loss of use, arising from or related to the performance of this Agreement, regardless of the theory of liability asserted.

17. **Office of Federal Contract Compliance Programs:** This Section applies only if this Agreement is funded, in whole or in part, with federal funds and SUNY is acting as a federal contractor or subcontractor subject to the jurisdiction of the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP).

When both conditions are met, the following language is incorporated verbatim, as required by federal regulation:

"This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discriminating against qualified protected veterans and requires affirmative action by covered contractors to employ and advance in employment qualified protected veterans."

"This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against individuals on the basis of disability and requires affirmative action by covered contractors to employ and advance in employment qualified individuals with disabilities."

When this Section applies, the Contractor shall include these exact provisions in all covered subcontracts and shall comply with all applicable federal posting, notice, and recordkeeping requirements.

18. **Safety and Health Compliance:** The Contractor shall, at its sole cost and expense, comply with all applicable federal, state, and local health and safety laws, rules, and regulations, including without limitation those issued by the United States Department of Labor, Occupational Safety and Health Administration (OSHA). If Contractor performs work on SUNY-owned or SUNY-controlled premises, or in proximity to SUNY employees, it shall also comply with:

    - The New York State Public Employee Safety and Health (PESH) Act and applicable regulations;
    - All applicable SUNY site-specific safety policies and procedures, as communicated by SUNY;
    - And, if applicable, New York Labor Law §§ 200, 240, and 241, which govern construction, demolition, maintenance, and repair work performed on SUNY property.

    The Contractor shall take all necessary precautions to prevent injury to persons or damage to property in connection with the performance of this Agreement. SUNY shall have the right to require the removal and replacement of any Contractor personnel who fail to comply with applicable safety requirements. SUNY reserves the right to inspect the Contractor's worksite for compliance with safety requirements and to suspend work, at no cost to SUNY, in the event of a material safety violation.

19. **Piggybacking:** This Agreement may be extended to other New York State government entities authorized by State Finance Law §163 and General Municipal Law §103, as well as to departments, agencies, or instrumentalities of the United States government, and to departments, agencies, offices, political subdivisions, or instrumentalities of other states, provided such use is permitted by their respective procurement laws and regulations.

    Such use shall require the Contractor's consent and any approvals required by law. In all cases, use of this Agreement by another entity must comply with applicable procurement requirements, and SUNY shall not be responsible for the performance of other participating entities.

    Use by private entities, cooperatives, or consortia is not permitted unless expressly authorized in writing by both SUNY and the Contractor and permitted by applicable law.

20. **Public Announcements:** Contractor shall not issue any public statement, press release, marketing material, or other announcement relating to this Agreement or the work performed hereunder without SUNY's prior written approval. Requests for approval must be submitted in writing to SUNY's designated representative. SUNY may withhold such approval in its sole discretion.

21. **Restrictions on the Activities of Current and Former State Officers and Employees:** All Contractor employees must be aware of and comply with the requirements of the New York State Public Officers Law, all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State. The Contractor and their employees are cautioned that the hiring of former state employees may violate the Ethics Law. The governing provisions are set forth in the New York State Public Officers Law §§ 73 and 74, and the underlying principle of law is to prevent conflicts of interest and encourage ethical behavior. The law may be found on the following website: https://ethics.ny.gov/ethics-laws-and-regulations-0

    Failure to comply with those provisions may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

22. **Rights in Deliverables**: "Deliverables" means any materials, work product, or other items created specifically for SUNY under this Agreement that are identified as deliverables in the applicable Statement of Work or similar document and delivered to SUNY. Subject to Contractor's receipt of payment of the applicable fees for such Deliverables, Contractor hereby assigns to SUNY all right, title, and interest in and to the Deliverables. To the extent permitted by applicable law, the Deliverables shall be deemed "works made for hire" under United States copyright law. To the extent any Deliverable (or portion thereof) is not deemed a work made for hire, Contractor hereby irrevocably assigns to SUNY all intellectual property rights in such Deliverable (or portion thereof), effective upon creation and subject to payment as described above, and agrees to execute any documents reasonably requested by SUNY to evidence or confirm such assignment.

    This assignment does not extend to Contractor's pre-existing proprietary tools, software, templates, methodologies, or general-purpose know-how, or any enhancements or updates thereto (collectively, "Contractor Materials"), all of which shall remain the sole property of Contractor, nor does it extend to any third-party materials or components (collectively, "Third-Party Materials"), whether or not embedded in the Deliverables. To the extent any Deliverable includes Contractor Materials or Third-Party Materials, and solely to the extent Contractor has the right to grant such rights, Contractor grants to SUNY a non-exclusive, royalty-free, irrevocable, worldwide license (with the right to authorize others acting on SUNY's behalf) to use, execute, reproduce, and modify those elements solely for SUNY's internal business purposes, including use by SUNY, other SUNY Institutions, and SUNY's external advisors, regulators, and oversight bodies in connection with SUNY's operations, compliance, and legal matters and with SUNY's use, maintenance, and support of the Deliverables.

    Notwithstanding anything to the contrary in this Agreement, Contractor retains all rights in its underlying knowledge, experience, and know-how, including processes, concepts, and techniques used or developed in connection with the Services, provided that such retention of rights does not limit SUNY's rights in the Deliverables as set forth above. Nothing in this Section is intended to waive attorney-client privilege, work product protection, or any applicable ethical obligation, or to limit SUNY's ability to share Deliverables with its legal counsel or oversight bodies in connection with SUNY matters.

23. **Severability and Enforceability:** If any provision of this Agreement is found to be illegal, invalid, or unenforceable, that provision shall be deemed severed from the Agreement and shall not affect the validity or enforceability of the remaining provisions, unless the invalid provision is essential to the overall purpose of the Agreement.

    If a court or tribunal determines that the illegal or invalid provision prevents the accomplishment of the Agreement's objectives, the matter shall be treated as a dispute subject to resolution under this Agreement. In such event, the Parties shall promptly begin good faith negotiations to amend the Agreement as necessary to achieve its intended purpose, to the extent permitted by law.

    If the parties are unable to agree on an amendment within thirty (30) days of commencing negotiations—or such longer period as SUNY may approve in writing—SUNY, in its sole discretion, may either (i) terminate the Agreement without further obligation or liability, except for payment for Services properly rendered before the termination date, or (ii) direct that the Agreement continue in effect without the severed provision.

24. **Downstream Prohibition**

    a. If Contractor, or subcontractor(s) proposed by Contractor at any level, participated in the development of the solicitation (e.g., specifications, establishing a base for other applications, or otherwise gaining information that would give the Contractor an unfair advantage), they are generally precluded from being able to participate as a vendor in this Agreement, either as a prime vendor or as a subcontractor at any level. See State Finance Law § 163(2); and for technology procurements, see also State Finance Law § 163-a, for guidance and exceptions. Contractor hereby certifies that, to the best of their knowledge, no such downstream prohibition exists with respect to Contractor or any subcontractor proposed by Contractor (at any level). It is in the interest of SUNY and Contractor for Contractor to continuously review these issues and raise any question(s) to SUNY promptly.

    b. Any and all work that may be awarded to a successful Contractor (or subcontractor(s) at any level proposed by the Contractor) pursuant to this Agreement that involves developing specifications, establishing a base for other applications, or otherwise gaining information that would give a business an unfair advantage in a future procurement, will generally result in Contractor (or subcontractor(s) at any level proposed by the Contractor) being precluded from further work (downstream prohibition) due to conflicts of interest, either as a prime vendor or as a subcontractor. See State Finance Law § 163(2); and for technology procurements, see also State Finance Law § 163-a, for guidance and exceptions.

25. Subcontractors, Partners, Joint Ventures and other Third-Party Participants ("Subcontractor"):

a. Prior to commencing services, the Contractor shall submit a statement to SUNY describing the portion of the work and materials which subcontractors are to perform and must furnish any other information to document that such subcontractors have the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and provisions of the Agreement. If SUNY finds that the subcontractors are qualified, it will so notify the Contractor within ten (10) business days following receipt of Contractor's written statement described above. If SUNY determines that a subcontractor is not qualified, it will so notify the Contractor. The Contractor must, within ten (10) business days thereafter, submit a written statement as described above with respect to other proposed subcontractors, unless the Contractor decides to do such work itself and in SUNY's opinion is qualified to do such work.

b. SUNY's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under the Agreement. The Contractor shall be solely responsible to SUNY for the acts, omissions or defaults of such subcontractors and of such subcontractors' officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. No provisions of the awarded contract shall create or be construed as creating any contractual relation between SUNY and any subcontractor or with any person, firm or corporation employed by, contracted with or whose services are utilized by the Contractor.

c. The Contractor shall be fully responsible for the administration, integration, coordination, direction and supervision of all of its subcontractors and of all work. Contractor shall check requirements of the work and coordinate and adjust as required so that conflicts in time, workspace, equipment and supplies do not occur in the work being performed by the Contractor with its own employees and the work being performed by its subcontractors.

d. No subcontractor shall be permitted to work until it has furnished satisfactory evidence to SUNY of the insurance required by this Agreement.

e. The Contractor shall execute a written agreement with each of its subcontractors and shall require all subcontractors to execute with any of their sub-subcontractors a written agreement which shall bind each to the terms and provisions of the prime contract awarded, insofar as such terms and provisions are applicable to the work to be performed by such subcontractors and/or sub-subcontractors. The Contractor shall require all subcontractors and sub-subcontractors to promptly, upon request, file with SUNY a copy of such agreements upon request, from which the price and terms of payment may be deleted.

26. Continuity of Services; Personnel

a. During the Term, Contractor shall provide the Services in accordance with all applicable law and any applicable written SUNY procedures regarding initiation and authorization of Services that are communicated to Contractor.

b. Contractor is responsible for staffing and managing all personnel who perform the Services, including Contractor's employees, agents, subcontractors, and sub-subcontractors (collectively, "Personnel"). All Personnel shall remain under Contractor's direction and control and shall not be deemed employees of SUNY.

c. Contractor shall maintain continuity of the Personnel assigned to provide Services under this Agreement to the extent reasonably practicable. Contractor shall not reassign Personnel materially involved in the performance of the Services without SUNY's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed, except where replacement is required due to factors outside Contractor's control (e.g., resignation, death, illness, or termination of employment for cause). Reassignment of materially involved Personnel to other Contractor projects is not, by itself, a factor outside Contractor's control.

d. Where replacement of materially involved Personnel is required due to factors outside Contractor's control, Contractor shall notify SUNY in writing within one (1) business day of learning that replacement is required.

Contractor shall consult with SUNY regarding the replacement and, within a mutually agreed period (typically five (5) business days), shall submit resumes of one or more comparably qualified candidates for SUNY's review. SUNY shall have the right to approve or reasonably reject proposed replacements. If the parties are unable to agree on a suitable replacement after good-faith efforts, SUNY may exercise its rights under the Agreement, including any applicable termination rights.

e. SUNY may periodically review and evaluate the Services and Contractor's performance under the Agreement and may provide feedback or require corrective action consistent with the Agreement's performance and termination provisions.

27. SUNY Requirements for Contractor Responsibility:

a. *General Responsibility*: The Contractor shall at all times during the Agreement term remain responsible. The Contractor agrees, if requested by the SUNY Chancellor or their designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

b. *Suspension of Work for Non-Responsibility*: The SUNY Chancellor or their designee, in their sole discretion, reserves the right to suspend any or all activities under the Agreement, at any time, when they discover information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Agreement activities may resume at such time as the SUNY Chancellor or their designee issues a written notice authorizing a resumption of performance of the Agreement.

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

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

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

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

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

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

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

f. Upon expiration or termination of this Agreement, Contractor shall, in accordance with this Agreement, provide SUNY with copies of all records, in any form or media, in Contractor's possession that relate to the Services and that SUNY reasonably requests, including records necessary for SUNY to continue or transition the Services. At SUNY's request, Contractor shall, for a reasonable period following expiration or termination and during normal business hours, make appropriate personnel available to respond to SUNY's reasonable questions regarding such records and the Services provided under this Agreement. Contractor shall reasonably cooperate with SUNY and any successor contractor designated by SUNY to support a smooth and orderly transition so that the Services are not materially interrupted or adversely affected, in each case at no additional cost to SUNY.

29. Trademarks and Service Marks: The Contractor acknowledges that the names, logos, trademarks, and service marks of the State University of New York ("SUNY Marks") are the exclusive property of SUNY. To the extent necessary to perform its obligations under this Agreement, SUNY grants to the Contractor a limited, non-exclusive, non-transferable, royalty-free license to use the SUNY Marks solely in connection with the Services provided under this Agreement, and solely in the form and manner approved in advance by SUNY.

This license is restricted to the specific use authorized by SUNY and does not grant the Contractor any right to use the SUNY Marks for advertising, marketing, press releases, or other external communications without SUNY's prior written consent. Any proposed use must be submitted in advance for review and approval by SUNY. The Contractor shall not modify, misrepresent, or misuse the SUNY Marks in any way and shall not take any action inconsistent with SUNY's ownership of its marks.

The Contractor shall not permit any subcontractor or third party to use the SUNY Marks without SUNY's prior written approval. The Contractor remains responsible for ensuring that any permitted subcontractor's use of the SUNY Marks complies fully with the terms of this Section.

The license granted under this Section shall automatically terminate upon the expiration or earlier termination of this Agreement, or immediately upon any breach of this Section by the Contractor or its subcontractors. Any unauthorized use of the SUNY Marks shall constitute a material breach of this Agreement and may result in immediate termination of the license granted herein. SUNY reserves the right to pursue all legal and equitable remedies available for any misuse or unauthorized use of its Marks.

Exhibit D – SUNY Proposal Submission Guidelines

1. **Article XI of NYS Finance Law:** SUNY shall receive proposals pursuant to the provisions of Article XI of the State Finance Law. All proposals and accompanying documentation shall become the property of the SUNY and shall not be returned.

2. **Bid Protest Procedures:** Bidders wishing to file a bid protest may do so in accordance with SUNY's procedures, available at http://www.suny.edu/sunypp/documents.cfm?doc_id=699.

3. **Confidentiality/Freedom of Information Law:** All proposals submitted for SUNY's consideration will be held in confidence and will become the property of SUNY. However, the resulting contract is subject to the New York State Freedom of Information Law (FOIL), contained in Article 6 of the New York State Public Officer's Law. Therefore, if a Bidder believes that any information in its proposal constitutes a trade secret, should be treated as confidential and should not be disclosed upon a request pursuant to FOIL, Bidder shall submit with its proposal a separate letter addressed to SUNY (find contact information for FOIL Officers here: https://www.suny.edu/contact/foil/campus-foil-officers/), specifically (i) identifying the page number(s), line(s) or other appropriate designation(s) containing such information; (ii) explaining in detail why such information is a trade secret or confidential; and (iii) formally request that such information be held as confidential. Bidder's failure to submit such a letter with its proposal will constitute a waiver by the Bidder of any rights it may have under Section 89(5) of the Public Officers' Law relating to protection of trade secrets. The proprietary nature of the information designated confidential by the Bidder may be subject to disclosure if ordered by a court of competent jurisdiction. A request that an entire proposal be kept confidential is not advisable, because a proposal cannot reasonably consist exclusively of proprietary information.

4. **Conflict of Interest:** Bidder may be requested to provide evidence that the award of a contract will not result in (i) a conflict of interest with regard to other work performed by Bidder; or (ii) a potential conflict of interest among Bidder's staff.

5. **Contract Award:** Receipt of this event does not indicate that SUNY has predetermined Bidder's qualifications to receive a contract award. A contract award, if made, shall be based on evaluation of the proposal in accordance with the method of award and criteria set forth in this event. The Successful Bidder will be notified by SUNY by telephone and confirmed by letter.

6. **Encouraging Use of New York State Businesses:** New York State businesses have a substantial presence in SUNY contracts and strongly contribute to the economies of New York and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

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

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

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

7. **Acceptance of RFP Content:** The terms and conditions included in this RFP, as well as the applicable portions of Bidder's proposal shall become contractual obligations if a contract is awarded with the exception of permitted extraneous terms as described under Extraneous Terms. **BIDDER'S FAILURE TO ACCEPT THESE TERMS AND CONDITIONS AND OBLIGATIONS SHALL RESULT IN REJECTION OF BIDDER'S PROPOSAL.**

8. **Extraneous Terms:** Bids must conform to the terms set forth in this event. Extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection of the bid. Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

9. **Free and Open Competition:** SUNY encourages free and open competition. Whenever possible, terms, specifications, and conditions are designed to accomplish this objective, consistent with the necessity to satisfy the SUNY's needs.

10. **Late Bids:** A bid must be received by the date and time set forth on the Summary Information Form. A late bid is one that is not received at the location, date and time specified in this event. Any bid received at the specified location after the time specified in this event will be considered a late bid. A late bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of this event are received; or; (ii) in the case of a multiple award, an insufficient number of timely bids were received to satisfy the multiple award; (iii) and acceptance of the late bid is in the best interest of SUNY. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of SUNY shall not excuse late bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse late bid submissions. Determinations relative to bid timeliness shall be at the sole discretion of the SUNY Chancellor or her designee.

11. **No Claims or Rights:** By submitting a proposal, Bidder agrees that it will not make any claims for, or have any right to damages because of any misinterpretation or misunderstanding of the specifications or because of any misinformation or lack of information.

12. **Notification of Errors, Inquiries, and Interpretation:** A Bidder is responsible to bring to SUNY's attention any deviations in the technical specifications and to make recommendations for any additional requirements deemed necessary as standard, or for work indicated in the specifications contained in this event If SUNY in its discretion finds the deviations to be significant so as to require a change in the necessary specifications for the work, SUNY will notify all Bidders in writing of the change in specifications. No deviations from the technical specifications provided herein shall be made without written approval of SUNY.

13. **Post Award Procedures, Debriefing, and Protests:** Bidders who responded to this event will be given written notice as to whether their bid was successful or unsuccessful. Upon being notified of their unsuccessful bid, Bidders may request a debriefing in writing within 15 calendar days of such notice. The 15-day period starts once unsuccessful Bidders are notified. Upon a Bidder's request for a debriefing:

    a. SUNY will schedule the debriefing within a reasonable time of such request.
    b. The debriefing will be conducted in person with the Bidder, unless SUNY and the Bidder mutually agree to use another method such as by telephone, video conference or another type of electronic communication.
    c. Bidders' written request must state whether the Bidder will be attending with counsel, to allow SUNY to arrange for SUNY counsel attendance if so determined.
    d. The debriefings will cover, but not be limited to the following:
        i. The reason why the bid was unsuccessful.
        ii. The quantitative and qualitative analysis that was used by the campus to assess the relative merits of the bid, proposal or offer.
        iii. How the selection criteria was applied to the unsuccessful bid.
        iv. If the request for debriefing is made prior to contract award, the debriefing shall be limited to review of that Bidder's bid.
        v. If the debriefing is held after the final award (which means OSC approval, if applicable), it, may cover the reason for the selection of the winning proposal.
        vi. To the extent practicable, general advice and guidance on the ways the Bidder can improve future proposal submission or be more responsive.

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

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

Attachment 1: Bid Submission Checklist

☐	**Description**
☐	RFP Summary Information Form (Page 1 of the RFP)
☐	Notary Acknowledgement Form (Page 22 of the RFP)
☐	Attachment 1: Bid Submission Checklist
☐ ☐	Attachment 2: Bidder Qualifications Submission Form If required: Narrative addressing ability and experience
☐	NYS Finance Law 139 Forms: Form B - Affirmation with respect to SFL §§139-j & 139-k Form C - Disclosure and Certification with respect to SFL §§139-j & 139-k
☐	Public Officers Law Form (Form XIII)
☐	Bidder Certification Forms: EO 177 Certification (Non-Discrimination) State Finance Law 139-L Certification Non-Collusive Bidding Certification State Finance Law 139-M Certification
☐	NYS Executive Order 16 Certification / Russia Attestation
☐	Diversity Practices Questionnaire
☐	Encouraging Use of NYS Businesses (Subcontractor Identification Form)
☐	Cost Proposal Worksheet
☐	Freedom of Information Law (FOIL) Notification
☐	Vendor Responsibility: File the required Vendor Responsibility Questionnaire online via the NYS VendRep System or complete and submit a paper questionnaire
☐	MWBE Form 7557-104: Equal Opportunity Policy Statement
☐	MWBE Form 7557-107: MWBE Utilization Plan
☐	MWBE Form 7557-108: EEO Staffing Plan
☐	SDVOB Form 7564-107: SDVOB Utilization Plan

Digital Marketing Services RFP # PROC2026-01

ATTACHMENT 2: BIDDER QUALIFICATIONS SUBMISSION FORM

Req. #	Description	Yes/No	Comments
1	The Bidder must be a digital marketing services firm with a minimum of four (4) years of experience across major digital ad platforms (Google, Facebook/Instagram, YouTube, TikTok, Snapchat).		
2	The Bidder must have at least three (3) years of experience working with higher education clients.		
3	The Bidder must affirm the ability to establish lines of credit with Facebook and Google for media purchases.		
4	The Bidder must demonstrate proficiency using Google Analytics — preferably GA4 — to measure conversions and optimize performance, including support for CRM integrations, such as Slate.		
5	The Bidder must have the ability to conduct secure file transfers and ensure data-privacy compliance.		
6	The Bidder must demonstrate experience conducting keyword research and developing paid search strategy.		
7	The Bidder must affirm that they have not exceeded client campaign budgets in previous engagements.		
8	The Bidder must provide a real-time reporting dashboard with campaign performance metrics.		
9	The Bidder must complete and submit Attachment 2: Bidder Qualifications Submission Form and accompanying narrative.		
10	The Bidder must be able to begin work immediately upon contract execution.		

11	The Bidder must provide visual examples of creatives produced for other clients, including multiple ad sizes and links to video ads when available.		
12	Because SUNY Fredonia operates with a small internal marketing team, the selected vendor must be fully capable of producing all creative assets for digital campaigns — including concepting, copywriting, design, and video editing. At the same time, SUNY Fredonia may choose to provide raw assets (such as photography or raw video). The vendor must demonstrate flexibility to produce all creative materials independently, collaborate using University-provided assets, or support hybrid workflows as needed.		

By signing below authorized representative verifies compliance with all stated Mandatory Minimum Qualifications / Technical Requirements, including the vendor's ability to meet all project specifications and deliverables throughout the full contract term.

Offeror's Name:	
Offeror's Address:	
FEIN #:	
Authorized Representative's Name and Title:	
Signature:	
Date:	

FORM A
Summary: Policy and Procedure of the State University of New York
Relating to State Finance Law §§139-j and 139-k

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

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

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

A complete copy of the State University of New York Procurement Lobbying Policy and Procedure is available for review at www.suny.edu/sunypp/.

FORM B

Affirmation with respect to State Finance Law §§139-j and 139-k

A complete copy of the State University of New York Procurement Lobbying Policy and Procedure is available for review at www.suny.edu/sunypp/.

Procurement Description/ID No.

Offerer **AFFIRMS** that it has reviewed and understands the Policy and Procedure of the State University of New York, relating to State Finance Law §§139-j and 139-k, and agrees to comply with State University's procedure relating to Contacts with respect to this procurement.

Name of Offerer:
Address:
Person Submitting Form:
Name:
Title:

FORM C

Disclosure and Certification with respect to State Finance Law §§139-j and 139-k

Procurement Description/ID No.________________________

1. Has a Governmental Entity, as defined in State Finance Law §139-j(1)(a), made a determination of non-responsibility with respect to the Offerer within the previous four years where such finding was due to a violation of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility?

No ___
Yes ___

If yes, provide the following details:
Governmental Entity which made the finding:
Date of finding:
Basis of finding:

2. Has a Governmental Entity terminated or withheld a procurement contract with the Offer because of violations of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility?

No ___
Yes ___

If yes, identify the following:
Governmental Entity which terminated the contract:
Date of contract termination or withholding:
Identify the related procurement contract:

Offerer **CERTIFIES** that all information provided by Offerer with respect to its compliance with State Finance Law §§139-j and 139-k is complete, true and accurate.

Name of Offerer:

Address:

Signature of Person Submitting Form: __________________________________

Name:
Title:
Date:

State University of New York
Public Officers Law

Form XIII

Purchasing and Contracting Procedures
(Procurement)

Inquiry to determine compliance with the provisions of Public Officers Law
§ 73 (4)

Please indicate if you or any officer of your organization, or any party owning or controlling more than 10 percent of your stock if you are a corporation, or any member if you are a firm or association, is an officer or employee of the State of New York or of a public benefit corporation of the State of New York.

_____ Yes   _____No

NY HUMAN RIGHTS LAW EXECUTIVE ORDER 177 CERTIFICATION

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Bidder Name: ____

By (signature): ____

Name: ____

Title: ____

Date: _______________________, 20______

NEW YORK STATE FINANCE LAW 139-L CERTIFICATION

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

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

Bidder Name: ____

By (signature): ____

Name: ____

Title: ____

Date: _______________________, 20______

NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, Bidder and each person signing on behalf of Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

1. The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

3. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A bid shall not be considered for award nor shall any award be made where [1], [2], [3] above have not been complied with; provided however, that if in any case the Bidder(s) cannot make the foregoing certification, the Bidder shall so state and shall furnish below a signed statement which sets forth in detail the reasons therefor:

Subscribed to under penalty of perjury under the laws of the State of New York, this _____ day of

______________, 20____ as the act and deed of said corporation of partnership.

IF BIDDER IS A SOLE PROPRIETER OR PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS LEGAL RESIDENCE

____ ______________________________

____ ______________________________

____ ______________________________

____ ______________________________

IF BIDDER IS A CORPORATION, COMPLETE THE FOLLOWING:

NAME LEGAL RESIDENCE

President:____ ______________________________

Secretary:____ ______________________________

Treasurer:____ ______________________________

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

Identifying Data:

Bidder	
Address	
Telephone	
Name of Responsible Corporate Officer	
Title of Responsible Corporate Officer	

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

____

Legal name of person, firm or corporation

By (signature): ____

Name: ____

Title: ____

Address:____

NEW YORK STATE FINANCE LAW 139-M CERTIFICATION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing gender-based violence and the workplace and has provided such policy to all of its employees, directors and board members. Such policy shall, at a minimum, meet the requirements of subdivision 11 of section five hundred seventy-five of the executive law.

☐ Cannot Certify. If the bidder cannot make the foregoing certification, the bidder shall so indicate by checking this box and shall furnish with the bid a signed statement that sets forth in detail the reasons that the bidder cannot make the certification.

Note: Your bid will not be considered for award if it lacks (i) this certification or (ii) a signed statement explaining why you cannot certify, furnished with the bid. If you submit a statement instead of the certification, SUNY will review it and reserves the right to reject the bid.

Bidder (legal name): ____

Authorized Signatory (print name): ____

Title: ____

Email / Phone: _______________________________________

I am authorized to sign this certification on behalf of the Bidder and affirm it is true under the penalties of perjury under the laws of the State of New York.

Signature: _____________________________________ Date: ______________ ______, 20____

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

NYS Executive Order 16 Certification / Russia Attestation

Executive Order No. 16 provides that "all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia."

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an "entity conducting business operations in Russia" means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above?
Please answer by checking one of the following boxes:

☐ 1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.

☐ 2a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)

☐ 2b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)

☐ 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor's business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Vendor Name: ____

By: ____

Printed Name: ____

Title: ____

Date: _____________________

Diversity Practices Questionnaire

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

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Circle one: **Yes / No**

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

   ____

   ____

   ____

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

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

4. Does your company provide technical training[2] to minority- and women-owned business enterprises? Circle one: **Yes / No**

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

   ____

   ____

   ____

---

[1] Do not include onsite project overhead.

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

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

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

   ____

   ____

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Circle one: **Yes / No**

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

   ____

   ____

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

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

   ____

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

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

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

Signature of Owner/Official ____

Printed Name of Signatory ____

Title ____

Name of Business ____

Address (City, State, Zip) ____

ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

New York State businesses have a substantial presence in SUNY contracts and strongly contribute to the economies of New York and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers/contractors for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers/contractors need to be aware that to the maximum extent practical and consistent with legal requirements, they are strongly encouraged to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers/contractors are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

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

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

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract? _____ _____
Yes ***No***

If yes, identify on reverse, New York State Business(es) that will be used; (identifying information, e.g., contact information, dollar value of the subcontract or supply contract.)

Project: ____

Contractor: ____

Signature: ______________________________ ***Date:*** ________________

**ENCOURAGING USE OF NEW YORK STATE BUSINESSES
IN CONTRACT PERFORMANCE**

Sub-Contractor Name: ______________________________

Sub-Contractor Address: ______________________________

Contact Person: ____________________ *Title* ____________________

Type of subcontract (description of work): ______________________________

Dollar Value: $__________________

Sub-Contractor Name: ______________________________

Sub-Contractor Address: ______________________________

Contact Person: ____________________ *Title* ____________________

Type of subcontract (description of work): ______________________________

Dollar Value: $__________________

Sub-Contractor Name: ______________________________

Sub-Contractor Address: ______________________________

Contact Person: ____________________ *Title* ____________________

Type of subcontract (description of work): ______________________________

Dollar Value: $__________________

Sub-Contractor Name: ______________________________

Sub-Contractor Address: ______________________________

Contact Person: ____________________ *Title* ____________________

Type of subcontract (description of work): ______________________________

Dollar Value: $__________________

<u>Cost Proposal Worksheet</u>

This attachment must be thoroughly completed and returned with all proposals.

The Offeror must indicate the cost of the Administrative fee as a percentage of the anticipated / estimated annual digital media buy of $250,000.^{00}.

The Administrative fee should be all-inclusive, including the day-to-day management of all digital campaigns and their ad operations. This includes bid adjustments, change out ad copy and creative, account management, ad-serving and verification, managing compliance with targeting tactics, travel, out-of-pocket expenses.

Anticipated Annual Digital Media Buy: **$250,000.00***

Administrative fee Percentage: ___________**%**

Administrative fee Dollar Value, based on Anticipated Media Buy: **$**___________

Anticipated Annual Expense

(Anticipated Media Buy + Administrative Fee Dollar Value): **$**____________

Anticipated three (3) Year Expense: **$**____________

Vendor Name: ____

________________________________ Name of Authorized Representative

________________________________ Title of Authorized Representative

____ Signature of Authorized Representative

__________________ Date

*Amounts are estimated based on the University's anticipated needs for future projects. There is no guarantee on volume of the services to be purchased. Estimated amounts will be used for evaluation purposes in determining the lowest cost.

Freedom of Information Law (FOIL) Notification

Vendor Response Form

The New York State Freedom of Information Law (Public Officers Law section 84 et seq.) generally requires that records of state entities, including all bid documents submitted in response to Request for Proposals with SUNY Fredonia be made accessible upon request unless they fall within certain limited exceptions. Contracts and other records with state entities are also usually considered to be public documents subject to release under the New York State Freedom of Information Law (FOIL).

The law does provide for an exemption from disclosure of records or portions thereof that are trade secrets or that if disclosed would cause substantial injury to the competitive position of the enterprise which submitted the records (Public Officers Law section 87(2)(d)). In consideration of the FOIL, SUNY Fredonia request vendors to identify on this form (or on additional pages) those sections, forms or pages of bid documents they would want exempt from disclosure because release of the information would cause substantial injury to the competitive position of the subject enterprise.

Final determination of what information and/or records in a bid document would be disclosed will be made by the Records Access Officer for SUNY Fredonia after consideration of the request for exemption by the vendor AND only if directed to do so as a result of a request under the FOIL. Bid documents, including those submitted by unsuccessful vendors, are accessible to the public only after a contract has been issued.

Please be specific in identifying the sections, forms or pages and the justification for requests of non-disclosure for each section, form or pages. A request for an exemption of an entire document will not be considered nor will a request that release of the information contained in the document would cause substantial injury to the competitive position of the subject enterprise. Justification must be thorough and complete.

Check one:

- ☐ Offeror affirms that it understands and agrees that there is no reason to deny release of this information/bid document in response to a request under the New York State Freedom of Information.
- ☐ Offeror is requesting an exemption for one or more sections, forms, or pages in the accompanying bid document. (Please specify on the other side of this page what sections, forms or pages you should be exempt and provide a justification.)

By: ______________________________ Date: ____________________

Name: ______________________________

Title: ______________________________

Contractor Name: ______________________________

Contractor Address: ______________________________

____

Request for Exemption of New York State Freedom of Information Law

Agency No: 28180
Department ID: 3320209

MINORITY AND WOMEN'S BUSINESS - EQUAL EMPLOYMENT OPPORTUNITY PROGRAM POLICY STATEMENT

Policy Statement

The ______________________commits to carrying out the intent of the New York State
(Name of Campus, Consultant, Contractor)
Executive Law, Article 15-A which assures the meaningful participation of minority and women's business enterprises in contracting and the meaningful participation of minorities and women in the workforce on activities financed by public funds.

Minority Business Officer

_________________________is designated as the Minority Business Enterprise Officer
(Name of Designated Officer)
responsible for administering the Minority and Women's Business-Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

___% Minority Business Enterprise Participation

___% Women's Business Enterprise Participation

EEO Contract Goals

10% Minority Labor Force Participation

10% Female Labor Force Participation

____
(Authorized Representative)

Title: ________________________________

Date: ___________________

SUNY The State University of New York

UNIVERSITY-WIDE MWBE PROGRAM
UTILIZATION PLAN

SUNY Project No. ____________________ Bid Date: Click here to enter a date. Agreement/Contract Value: ____________________

Contractor: ____________________ Primary Contact: ____________________

Address: ____________________ City: ____________________ State: ____________________ Zip Code: ____________

Phone Number: ____________________ Fax Number: ____________________ E-Mail: ____________________

GOALS: **MBE** _____% **WBE** _____% **Campus:** ____________________

SUBCONTRACTOR	FEDERAL ID #	DOLLAR VALUE OF CONTRACT OR PURCHASE ORDER	DESCRIPTION OF WORK OR SUPPLIES	SUBCONTRACTOR/SUPPLIER SCHEDULE	
				START DATE	COMPLETION DATE
Company Name: ____________ **Street Address:** ____________ **Contact Name:** ____________ **E-Mail Address:** ____________ **Check One:** MBE ☐ WBE ☐				Click here to enter a date.	Click here to enter a date.
Company Name: ____________ **Street Address:** ____________ **Contact Name:** ____________ **E-Mail Address:** ____________ **Check One:** MBE ☐ WBE ☐				Click here to enter a date.	Click here to enter a date.
Company Name: ____________ **Street Address:** ____________ **Contact Name:** ____________ **E-Mail Address:** ____________ **Check One:** MBE ☐ WBE ☐				Click here to enter a date.	Click here to enter a date.
Company Name: ____________ **Street Address:** ____________ **Contact Name:** ____________ **E-Mail Address:** ____________ **Check One:** MBE ☐ WBE ☐				Click here to enter a date.	Click here to enter a date.

In accordance with the SUNY Contract Documents and Executive Law Article 15-A, my firm seriously expects to use the NYS certified MBE/WBE certified firms listed above. The Contractor shall immediately notify and request approval prior to any changes to this plan from the University-wide MWBE Program Office. ☐

NAME: ____________________ TITLE: ____________________ COMPANY OFFICER'S SIGNATURE ____________________ DATE: Click here to enter a date.

APPROVED:☐ DEFICIENT:☐ MWBE PROGRAM COORDINATOR: ____________________ DATE:____________

EEO STAFFING PLAN

Instructions on page 2

Solicitation No.:	**Reporting Entity:**	**Report includes Contractor's/Subcontractor's:** □ Work force to be utilized on this contract □ Total work force
Offeror's Name:		□ Offerer □ Subcontractor **Subcontractor's name________________**
Offeror's Address:		

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

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification													
		Total Male (M)	Total Female (F)	White		Black		Hispanic		Asian		Native American		Disabled		Veteran	
				(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary /Apprentices																	
Totals																	

PREPARED BY (Signature):	**TELEPHONE NO.:** **EMAIL ADDRESS:**	**DATE:**
NAME AND TITLE OF PREPARER (Print or Type):	**Submit completed with bid or proposal**	

General instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (ADM/EEO 100) and submit it as part of the bid or proposal package. For construction, except for contracts of $100,000 or less, the three lowest bidders shall submit to the University for its approval an EEO Staffing Plan within seven (7) calendar days after the opening of bids. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract <u>cannot</u> be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

Instructions for completing:

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female

SUNY The State University of New York

UNIVERSITY-WIDE SDVOB PROGRAM
UTILIZATION PLAN

SUNY Project No. ____________________ Bid Date: Click here to enter a date. Agreement/Contract Value: ____________________

Contractor: ________________________ Primary Contact: ____

Address: ________________________ City: ____________________ State: ____________________ Zip Code: ___________

Phone Number: ______________________ Fax Number: _________________ E-Mail: ___________________________

GOALS: **SDVOB** _____% **Campus:** ___________________________________

SUBCONTRACTOR	FEDERAL ID #	DOLLAR VALUE OF CONTRACT OR PURCHASE ORDER	DESCRIPTION OF WORK OR SUPPLIES	SUBCONTRACTOR/SUPPLIER SCHEDULE	
				START DATE	COMPLETION DATE
Company Name: ____________ **Street Address:** ____________ **Contact Name:** ____________ **E-Mail Address:** ____________				Click here to enter a date.	Click here to enter a date.
Company Name: ____________ **Street Address:** ____________ **Contact Name:** ____________ **E-Mail Address:** ____________				Click here to enter a date.	Click here to enter a date.
Company Name: ____________ **Street Address:** ____________ **Contact Name:** ____________ **E-Mail Address:** ____________				Click here to enter a date.	Click here to enter a date.
Company Name: ____________ **Street Address:** ____________ **Contact Name:** ____________ **E-Mail Address:** ____________				Click here to enter a date.	Click here to enter a date.

In accordance with the SUNY Contract Documents and Executive Law Article 17-B, my firm seriously expects to use the NYS certified SDVOB firms listed above. The Contractor shall immediately notify and request approval prior to any changes to this Utilization Plan from the Campus MWBE Program Coordinator.

☐

NAME: ____________________ TITLE: ____________________ COMPANY OFFICER'S SIGNATURE ____________________ DATE: Click here to enter a date.

APPROVED:☐ DEFICIENT:☐ MWBE PROGRAM COORDINATOR: ______________________________ DATE: _____________

UNIVERSITY-WIDE SDVOB PROGRAM
UTILIZATION PLAN
SDVOB FORM (107) INSTRUCTIONS

A letter of explanation and documentation of efforts must accompany any SDVOB Utilization Plan that falls short of the stated goals. Without an approved SDVOB Utilization Plan, SUNY's Notice of Award and Contract may be withheld.

If you have questions or need assistance related to the SUNY's Service-Disabled Veteran-Owned Business requirements call the University-wide MWBE Program Office at 518-320-1340 or email MWBEprogram@suny.edu.

1. The three low bidding contractors ("Contractors") are required to submit an SDVOB Utilization Plan (Form 7465-107) to the MWBE Program Coordinator within seven (7) calendar days after the opening of bids for construction contracts exceeding $100,000.

2. The MWBE Program Coordinator is required to submit the mandatory SDVOB documentation to the University-wide MWBE Program Office after the opening of bids for commodity, service and construction related consultant service contracts exceeding $25,000 for the lowest bidding Contractor.

3. The SDVOB goals are not related to any other goals. Dual certified firms may be used to meet both MBE and SDVOB or WBE and SDVOB goals.

4. The SDVOB firms included are businesses the bidder *seriously expects* to include in the project activity.

5. The Contractor must reasonably commit to the values included in the Utilization Plan for participation by SDVOB subcontractors and suppliers.

6. SDVOB firms must be certified by the New York State Office of General Services Division of Service-Disabled Veterans' Business Development. A directory of NYS Certified Service-Disabled Veteran-Owned Businesses is available on the internet at http://ogs.ny.gov/Core/SDVOBA.asp.

7. Contractors utilizing SDVOB firms for supplies/materials/equipment whose NYS certification profile designates them as a Broker will receive an SDVOB utilization credit for the actual monetary value of the broker fees or the actual markup percentage of the items brokered.

8. SDVOB Participation:

   The actual services provided by the SDVOB must be essential in the performance of the scope of work for the applicable contract. Utilization of a certified SDVOB as a conduit or pass through for participation credit is strictly prohibited. It is the discretion of the SUNY to determine whether services are essential in the performance of the scope of work and to offer a determination of the appropriateness of work allowed for lower tier subcontracting, in accordance with practices generally accepted in the construction industry. The services the SDVOB will provide must be among those explicitly identified in the profile (codes) of the firm as listed in the NYS Office of General Services Directory of Certified SDVOBs. Firms submitted or firms that participate in the project outside of these conditions and without specific prior approval by SUNY will not be credited toward the SDVOB Utilization Plan and goals for the contract.

9. Prior to submitting the Utilization Plan, the bidders should confirm the following:

   a. SDVOB firms are NYS certified;
   b. SDVOB designation ~ Dual certified firms may be used as *MBE/SDVOB and/or WBE/SDVOB*;
   c. SDVOB firms are being used for item(s) within their certification product codes as indicated in their SDVOB Directory firm profile;
   d. SDVOB firms will perform work for which they have been submitted; and
   e. 2nd tier subcontractors and/or suppliers are identified as such and SDVOB Utilization credit shall be given for 60% of the total contract value of supply purchases or services rendered (for example, when an electrical subcontractor purchases from a 3rd party supplier an SDVOB utilization credit will be given for 60% credit of the total contract value).

UNIVERSITY-WIDE SDVOB PROGRAM
UTILIZATION PLAN

The prime Contractor is responsible for ensuring participation provided by subcontractors for 2nd and 3rd tier SDVOB participation.

Submission of a Utilization Plan which fails to meet or exceed each goal shall be accompanied by documentation of specific efforts undertaken both pre and post bid. The campus MWBE Program Coordinator will review and notify Contractor of its assessment.

The University-wide MWBE Program Office in collaboration with the campus MWBE Program Coordinator will review the Utilization Plan and notify the Contractor of any deficiencies and determine necessary actions to bring the Utilization Plan into compliance. The University-wide MWBE Program Office reserves the right to require the Contractor to provide sufficient documentation of the efforts made in the development of the Utilization Plan. The documentation should be responsive to good faith efforts and demonstrate the Contractor's commitment to providing opportunities for SDVOB firms in the development of the Utilization Plan.

A copy of the approved Utilization Plan will be provided to the Contractor after issuance of Notice of Award.

☐

UNIVERSITY-WIDE SDVOB PROGRAM
UTILIZATION PLAN

Requested information must be completed and submitted within seven (7) days after the bid opening.

Subcontractor Name & Address
Name & Address of each SDVOB subcontractor or supplier.

SDVOB
Service-Disabled Veteran-Owned Designation.

Federal ID
Provide accurate Federal ID number of each SDVOB subcontractor or supplier.

Dollar Value of Subcontract or Purchase Order
This is the total value of the signed subcontract. If this value is different from the amount in the approved SDVOB Utilization Plan, an explanation should be provided.

Description of Work or Supplies
Brief description of work performed or supplies provided by the SDVOB subcontractor or supplier.

Schedule
This is the anticipated start and completion dates for each SDVOB subcontractor or supplier. Do not include the construction schedule for the life of the entire project.

Signature
To be signed by an Officer of the Company.

- The information included on the form is subject to verification by the University-wide MWBE Program Office.
- The University-wide MWBE Program Office must be notified prior to changes made to the approved SDVOB Utilization Plan.

Questions regarding this form should be directed to the University-wide MWBE Program Office at (518) 320- 1452 or via e-mail: mwbeprogram@suny.edu.

Submit To:

State University of New York
Office of Diversity, Equity and Inclusion University-wide MWBE Program
353 Broadway
Albany, NY 12246
or MWBEProgram@suny.edu

FORM A

New York State Consultant Services
Contractor's Planned Employment
From Contract Start Date Through the End of the Contract Term

State Agency Name:
State Agency Department ID: Agency Business Unit:
Contractor Name: Contract Number:
Contract Start Date: / / Contract End Date: / /

Employment Category	Number of Employees	Number of Hours to be Worked	Amount Payable Under the Contract
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
Total this Page	0.00	0.00	$ 0.00
Grand Total			

Name of person who prepared this report:
Title: Phone #:
Preparer's Signature: ________________________________
Date Prepared: / /

(Use additional pages, if necessary)

FORM B

New York State Consultant Services
Contractor's Annual Employment Report

Report Period: April 1, to March 31,

Contracting State Agency Name:
Contract Number: Agency Business Unit:
Contract Term: / / to / / Agency Department ID:
Contractor Name:
Contractor Address:
Description of Services Being Provided:

Scope of Contract (Choose one that best fits):

☐ Analysis ☐ Evaluation ☐ Research ☐ Training
☐ Data Processing ☐ Computer Programming ☐ Other IT consulting
☐ Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services
☐ Health Services ☐ Mental Health Services
☐ Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting

Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
	0.00	0.00	$0.00
Total this Page	0.00	0.00	$ 0.00
Grand Total			

Name of person who prepared this report:
Title: Phone #:
Preparer's Signature: ________________________________
Date Prepared: / /

(Use additional pages, if necessary)