



Carmen Fariña, Chancellor

## STANDARD FORM OF CONTRACT

Serial No. B3182

### Transportation Services for Students with Disabilities and Their Non-Disabled Peers

Sealed bids will be received by the  
Director, Division of Contracts and Purchasing, The New York City Department of Education,  
65 Court Street, 12<sup>th</sup> Floor, Room 1202, Brooklyn, New York 11201

**ACCEPTED UNTIL 4:00 P.M. on FEBRUARY 22, 2018**

**NO LATE BIDS WILL BE ACCEPTED**

**BIDS WILL BE PUBLICLY OPENED AND READ  
FEBRUARY 23, 2018 AT 11:00A.M. at  
Brooklyn Borough Hall, 209 Joralemon Street, Brooklyn NY 11201**

**Pre Bid Conference on January 19, 2018 at 2:00PM  
Brooklyn Borough Hall, 209 Joralemon Street, Brooklyn NY 11201**

**Only a duly authorized representative of the company shall sign this proposal to  
The New York City Department of Education.**

Name of Bidder \_\_\_\_\_

Address of Bidder \_\_\_\_\_

\_\_\_\_\_ Zip \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Federal ID No. \_\_\_\_\_

Division of Contracts and Purchasing  
65 Court Street • Brooklyn, New York 11201  
Telephone: (718) 935-2300 \* Fax: (718) 935-2155

## TABLE OF CONTENTS

### Section 1: General Instructions to Bidders

- 1.1 Intent and Scope
- 1.2 Contract
- 1.3 Contract Period and Payment Rate Changes
- 1.4 Contract Extension
- 1.5 Termination of Contract
- 1.6 Submission of Bid
- 1.7 Bid Submission Form
- 1.8 Interpretation
- 1.9 Bid Opening
- 1.10 Late Bids
- 1.11 Bid Deposit
- 1.12 Withdrawal of Bids
- 1.13 Bidder's Quotation and Bid Blank Instructions
- 1.14 Bid Process
- 1.15 Unit of Measure
- 1.16 Description of Classes
- 1.17 Samples (Not Applicable)
- 1.18 Estimated Quantity
- 1.19 Tie Bids
- 1.20 Minimum Dollar Quantities (Not Applicable)
- 1.21 Alternate Items (Not Applicable)
- 1.22 Provision for Additional Items (Not Applicable)
- 1.23 Bidder's Qualifications
- 1.24 Use of Subcontractors and/or Affiliates
- 1.25 Minority and Women Owned Business Entities Participation
- 1.26 Award
- 1.27 Affirmation of Responsibility and Paid Taxes
- 1.28 Voluntary Price Reduction
- 1.29 Notice of Award
- 1.30 Assignment of Contract: Transfer of Controlling Interest; Change of Chief Executive
- 1.31 (Intentionally Left Blank)
- 1.32 Availability of Funds
- 1.33 Purchase Orders
- 1.34 Payment Policy
- 1.35 (Intentionally Left Blank)
- 1.36 Acceptance of Final Payment
- 1.37 New Merchandise (Not Applicable)
- 1.38 Packing (Not Applicable)
- 1.39 Workmanship and Quality
- 1.40 Delivery (Not Applicable)
- 1.41 Suspension of Deliveries (Not Applicable)
- 1.42 Rejection of Vehicle
- 1.43 Time Constraints
- 1.44 Waste and Disposal
- 1.45 Post Award Substitutions (Not Applicable)
- 1.46 Guarantee and Warranty

## B3182- Transportation Services for Students with Disabilities and Their Non-Disabled Peers

- 1.47 Reports, Inspections and Records
- 1.48 Liquidated Damages
- 1.49 (Intentionally Left Blank)
- 1.50 Default of Contract
- 1.51 Sales and Marketing Literature (Such literature not permitted)
- 1.52 Usage Report –Purchase Orders (Not applicable)
- 1.53 (Intentionally Left Blank)
- 1.54 Material Safety Data Sheets (MSDS)
- 1.55 New York State “Right to Know” Law
- 1.56 Patent Right: Copyrights; Trademarks; Other Intellectual Property
- 1.57 Code of Ethics
- 1.58 No Discrimination
- 1.59 Compliance with Laws
- 1.60 Forum Provision, Choice of Law, Consent to Jurisdiction and Venue
- 1.61 (Intentionally Left Blank)
- 1.62 Anti-Trust Clauses
- 1.63 Set-Off Rights
- 1.64 Participation in an International Boycott
- 1.65 Investigations
- 1.66 New Laws, Rules, Regulations, By-Laws and/or Vehicle Safety Features
- 1.67 Accounting for BOE Property
- 1.68 No Estoppel
- 1.69 Competent Workers
- 1.69.1 Independent Contractor
- 1.70 Gifts and Gratuities
- 1.71 (Intentionally Left Blank)
- 1.72 Local Law 121
- 1.73 Taxes
- 1.74 (Intentionally Left Blank)
- 1.75 Captions
- 1.76 Conditions Precedent
- 1.77 Unlawful Provisions Void
- 1.78 Religious Activity Prohibited
- 1.79 Political Activity Prohibited
- 1.80 Publication and Publicity
- 1.81 No Extra Compensation
- 1.82 Cancellation of Grant Funding
- 1.83 (Intentionally Left Blank)
- 1.84 Notices
- 1.85 Amendments and Waivers
- 1.86 Board Determinations
- 1.87 Confidentiality
- 1.88 Testimony
- 1.89 No Personal Liability
- 1.90 Antitrust – See Paragraph 1.62, supra.
- 1.91 Non-Collusive Bidding
- 1.92 Duty to Report to SCI
- 1.93 Dispute Resolution
- 1.94 Notice of Claim
- 1.95 Notice of Ownership and/or Relational Changes

## B3182- Transportation Services for Students with Disabilities and Their Non-Disabled Peers

- 1.96 Subject Matter
- 1.97 Inspectors and Administrative Personnel
- 1.98 Prior Contractors
- 1.99 Merger and Choice of Law
- 1.100 *School Bus Contractor's Manual*
- 1.101 Disengagement
- 1.102 Disaster Recovery
- 1.103 Survival
- 1.104 Reserved Rights
- 1.105 Supervision
- 1.106 NYCDOE Procurement Policy and Procedures
- 1.107 MacBride Principles Provisions For Board Of Education Contractors
- 1.108 Paid Sick Leave Law Contract Rider
- 1.109 Whistleblower Protection
- 1.110 Iran Divestment Act Compliance Rider and Certification

### **Section 2: Forms**

- 2.1 Reminder to All Bidders
- 2.2 Company Information
- 2.3 No-Bid Response Form
- 2.4 Equal Employment Opportunity Requirements for Non-Construction Contractors, Vendors and Suppliers
- 2.5 Equal Employment Opportunities
- 2.6 Insurance Requirements
- 2.7 Indemnification
- 2.8 NYCBOE Certification of Insurance Broker or Agent
- 2.9 Instructions on Completing Certificates of Insurance
- 2.10 PASSPort Questionnaires
- 2.11 Violations
- 2.12 Conflicts of Interest
  - 2.12A Representations of Fact
  - 2.12B Affidavit of Acknowledgement
  - 2.12C Non Collusion
  - 2.12D Fair and Ethical Business Practices
- 2.13 Bidder Information Certification and Signature Page
- 2.14 Bidder Information Certification and Signature Page (Continued)
- 2.15 Affidavit of Acknowledgment Form
- 2.16 Affidavit of Acknowledgment Form (Continued)

### **Section 3: Special Bid Terms and Conditions**

- 3.1 Background
- 3.2 Pre-Bid Conference
- 3.3 Inquiries

**Section 4: Bid Specifications**

- 4.1 Scope of Work
- 4.2 Bid Tabulation
- 4.3 Failure to Perform – Assignment of Vehicles
- 4.4 Number of Vehicles
- 4.5 Experienced School Bus Worker Provisions
- 4.6 Definitions
- 4.7 Bidders with Existing Transportation Contracts
- 4.8 Notice to Proceed/Purchase Order
- 4.9 Performance Security
- 4.10 Schedules of Sessions
- 4.11 Increase or Decrease in the Number of Vehicles, Sites or Children; Other Modifications
- 4.12 Assignment of Vehicles; Integration with Work Being Performed Under Existing (and Future) DOE Contracts
- 4.13 School Closings
- 4.14 Authorized Stops
- 4.15 General Terms of Service
- 4.16 Additional Uses of Contractor's Vehicles
- 4.17 Contractor Security Clearance Procedures
- 4.18 Vehicle Operator (Driver) Standards
- 4.19 Attendant Standards
- 4.20 Additional Obligations of Contractors
- 4.21 Other Rules and Procedures Affecting Contractors, Vehicle Drivers and Attendants
- 4.22 Rules of Professional Conduct and Performance Procedures and Duties for School Bus Drivers and Attendants
- 4.23 Special Duties and Responsibilities of Transportation Attendants for Child Care and Sanitation
- 4.24 Personal Identification of Drivers and Attendants
- 4.25 Documentation of Services Provided
- 4.26 Vehicle Specifications
- 4.27 Vehicle and Operator Documentation
- 4.28 Additional Requirements for Contractors
- 4.29 Payment
- 4.30 Consent to Audit
- 4.31 Suspension of Vehicle Use, Performance and Payment
- 4.32 Rules, Procedures and Regulations

Attachment 1 – Performance Bond Sample Form

Attachment 2 – Whistleblower Protection Expansion Act Poster

**PLEASE SEE ALSO THE INFORMATION RELATED TO THE EXPERIENCED SCHOOL BUS WORKER PROVISIONS (SECTION 4.5) BEING POSTED SIMULTANEOUSLY WITH THIS RFB.**

**FOR THE PURPOSES OF THIS RFB, "WE," "US," "OUR" AND "OURS" SHALL MEAN THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK ALSO KNOWN AS THE NEW YORK CITY DEPARTMENT OF EDUCATION (NYCDOE), BOE, DOE, THE DEPARTMENT AND THE BOARD; AND "YOU," "YOUR" "YOURS" SHALL MEAN THE ENTITY SUBMITTING THE BID TO THE NYCDOE. ALTHOUGH THIS AGENCY IS BEING REFERRED TO AS THE NYCDOE, FOR CONTRACT AND INSURANCE PURPOSES, THE AGENCY IS STILL THE BOARD OF EDUCATION; AND THEREFORE, THE CONTRACT AND INSURANCE CERTIFICATES MUST STILL REFERENCE THE BOARD OF EDUCATION OF THE CITY OF NEW YORK.**

## **GENERAL INSTRUCTIONS TO BIDDERS**

### **1.1. INTENT AND SCOPE**

This is a requirements contract (“Contract”) and is intended to cover, during the period of the Contract, the requirements for the provision of school bus transportation to include any and all approved students with disabilities and others as directed by the NYCDOE<sup>1</sup> Office of Pupil Transportation (“OPT”) for any reason whatsoever in accordance with the terms designated in each Contract class’ detailed specifications as listed below and outlined in this Request For Bids (“RFB”). Please note that starting with the 2018-2019 School Year the DOE intends to construct routes to be performed under this (and other) contract(s) based on a wide variety of students being transported on each vehicle. Accordingly, it is anticipated that starting with the 2018-2019 School Year, any vehicle under this contract might transport any combination of students (students with disabilities whose Educational Programs may or may not designate specific transportation requirements as well as non-disabled students).

While this RFB is substantially similar in structure and content to RFB Serial No. B2192 that was released by the New York City Department of Education (“Board”, “BOE”, “NYCDOE” or “Department”) in December 2012 and to RFB Serial No. B2321 that was released by the NYCDOE in April 2013, this RFB contains features, requirements and specifications that are entirely new and/or substantially changed from those RFBs, as well as from the previous NYCDOE school bus transportation contracts advertised for bids prior to the 2012-2013 School Year. Bidders are hereby cautioned to read the entire RFB carefully and to take special note of new and changed features, requirements and specifications.

### **1.2. CONTRACT**

This Contract shall be comprised of the Request for Bids (“RFB”) advertisement under Bid Serial No B3182 for furnishing and delivering transportation services; the RFB in its entirety (i.e., Sections 1 through 4); RFB amendments; RFB addenda, including all written and published Q&A; the awards of contract pursuant to the RFB; and all amendments to the Contract.

### **1.3. CONTRACT PERIOD AND PAYMENT RATE CHANGES**

- A. Initial Contract Term.** The term of this Contract for Classes to provide service during the regular school year shall be for approximately five years commencing (1) on or about September 1, 2018, or (2) earlier upon the mutual agreement of the Parties, and shall extend through and expire on June 30, 2023 (“Initial Contract Period”), unless extended beyond such expiration date or terminated earlier pursuant to the terms and conditions herein expressed. The preceding sentence shall not derogate, diminish or otherwise affect any rights of the NYCDOE to terminate any portion or all of this Contract and/or to increase or decrease the number of vehicles awarded as expressed elsewhere in this Contract.
- B. Implementation Timeframe.** The NYCDOE expects to mail notices of intent to award contracts on or about May, 2018, or earlier in the discretion of the NYCDOE, for regular school year service to start (1) on or about September 1, 2018, or (2) earlier upon the mutual agreement of the Parties. Provided notices of intent are able to be mailed by May 2018, this will allow successful bidders approximately 90 days after notification to complete implementation and manage the requirements as defined in this Contract for school year service. The Department requires that bidders provide an implementation plan based on this timeframe as part of their Qualification Requirements.

---

<sup>1</sup> “NYCDOE” and “DOE” are abbreviations and “Department” is a short form for “New York City Department of Education,” all of which are informal or “doing-business-as” names for the Board of Education of the City School District of the City of New York (“BOE”), a discrete municipal corporation and city school district organized and existing pursuant to the New York State Education Law.

- C. **Contract Years.** Within the Term, distinct “Contract Years” for School Year service shall begin on September 1<sup>st</sup> and shall end on June 30<sup>th</sup>, such that the First Contract Year shall be from September 1, 2018, (or earlier upon the mutual agreement of the Parties), to June 30, 2019; the Second Contract Year shall be from September 1, 2019, to June 30, 2020; the Third Contract Year shall be from September 1, 2020, to June 30, 2021; the Fourth Contract Year shall be from September 1, 2021, to June 30, 2022 and the Fifth Contract Year shall be from September 1, 2022, to June 30, 2023.
- D. The payment rate(s) awarded as a result of this RFB shall be the payment rate(s) for award purposes for the First Contract Year. For the Second through Fifth Contract Years, the payment rate(s) shall be adjusted upon the service anniversary date of September 1<sup>st</sup>. However, each contractor may in its own discretion decline any or all such annual adjustments to the extent they result in an increase in such contractor’s payment rate(s).
- E. Price Adjustments (upward or downward) will be calculated based upon statistics defined by the United States Department of Labor, Bureau of Labor Statistics (“BLS”) <http://data.bls.gov> (or its successor agency). Price Adjustments will be based upon a composite of fifty percent (50%) for labor; eight percent (8%) for fuel; and forty-two percent (42%) for all other costs (collectively, “Composite Index”). The Contractor’s payment rate(s) for each of the second through Fifth Contract Years will be adjusted as of September 1<sup>st</sup> of the affected Contract Year by the same percentage change as the percentage change in the composite index for the just concluded ten month school year compared to the composite index for the year just before that. For the fuel and general cost components, it will be the May indexes that will be used; and for the labor component, it will be the second quarter indexes that will be used. For example, the adjustment for the second Contract Year will be based on the percentage change for May/second quarter 2019 versus May/second quarter 2018. (The foregoing example is not intended to be exhaustive of all possibilities.) If any of the indexes have not been published at the time payments are due to be made for a new Contract Year, the prior year’s rates will be used for those monthly payments until the new indexes are published. The adjustment in rates for the year will be made as soon after the new indexes are published as practicable. If the BLS or its successor agency should discontinue any of the specified indexes or change the categorizations on which they are based and not designate a successor index or index category, the DOE shall designate a successor index that it deems in its sole discretion to be the most appropriate substitute.
- F. Contracted Rates will be adjusted yearly as per the following three categories.
  - o Labor – Employment Cost Index (50%)  
Series Id: CIU20143000000001  
Continuous Occupational and Industry Series  
Total Compensation – Table 5 – For private industry workers  
Private Industry – Transportation and warehousing
  - o Fuel – Producer Price Index – Commodities (8%)  
Series Id: WPU057303  
#2 Diesel fuel
  - o All Other Costs Including Insurance - Consumer Price Index (42%)  
Series Id: CUURA101SA0  
Area: New York – Northern New Jersey-Long Island, NY-NJ-CT-PA  
All Items (1982-84 = 100)

**Example of Composite Index calculation procedures** (using indexes that would have applied for the 2017-2018 school year had contractors been eligible)

	Labor	General	Fuels	Composite
Base price = <b>\$250/per vehicle per day</b>	-	-	-	-

Current period series values	132.8	268.183	178.0	-
Base period series values	129.1	263.312	144.9	-
Change	3.7	4.871	33.1	-
Percentage change [(Chg./Series Base)*100]	2.87%	1.85%	22.84%	-
Assigned weights	50%	42%	8%	-
Contribution to Composite	1.43%	0.78%	1.83%	4.0%
Adjustment (Composite * Base Daily Rate)				\$10.00
<b>New Rate</b>				<b>\$260.00</b>

**G.** All discounts and other terms and conditions expressed in this Contract shall remain unchanged and in full force and effect throughout the Contract Period.

**1.4. CONTRACT EXTENSION**

The Board of Education shall have the option to extend the Initial Contract Period under the provisions of State law which will be followed strictly. Rate changes, if any, shall be limited by the regional CPI-U and documentation of actual changes in the Contractor’s costs. Regarding the preceding sentence, the method of determining annual or other periodic rate adjustments, if any, during a Contract Extension Period(s) shall be governed by the applicable State law at the time of such Contract Extension Period(s), if any.

**1.5. TERMINATION OF CONTRACT**

- A. Termination for Convenience.** On behalf of the Board, the Chancellor or his or her designee(s) or the Director or his or her designee(s) shall have the right to terminate the Contract or any divisible portion thereof (e.g., any one or more of its divisible Classes, sites, routes, runs, group of vehicles and/or other components) for the convenience of the Board upon a minimum of two hundred seventy (270) calendar days advance written notice to the Contractor. In the event of a termination for convenience as expressed in the preceding sentence, the Contractor shall continue to furnish all of the services and goods required hereunder until the effective date of such termination (**unless** otherwise directed in the written termination notice), and the Board shall accept, and be liable to pay for, all contractually compliant provision of such services and goods that shall be delivered through and until the date of termination.
- B. Termination for Default.** If the Contractor violates any provision of this Contract, the Board may pursue any legal and/or equitable remedies available to it. In addition to the grounds for termination set forth elsewhere in this RFB, the Board shall have the right to terminate the Contract(s) or any divisible portion thereof (e.g., any one or more of its divisible Classes, sites, routes, runs, group of vehicles and/or other components) in the event that the Contractor shall cause and/or permit any Default as herein expressed. Upon a finding of Default, the Default determination shall be submitted to the New York City Mayor's Office of Contract Services (or successor agency) for inclusion in the PASSPort database (or its successor contractor performance database). Nothing herein shall derogate, diminish and/or otherwise limit any other rights and remedies of the Board as set forth in this Contract. See **Paragraph 1.50, *infra***, for a detailed definition of the term “Default.”
- C. Determination of Default.** The Chancellor or his or her designee(s) or the Director or his or her designee(s) may seek to have the Contractor declared in Default by the Executive Director of the Division of Contracts and Purchasing or his or her designee(s) (hereinafter, the “DC&P Director”).
  - (1)** Before the DC&P Director shall exercise his or her right to declare the Contractor in Default, the Chancellor or his or her designee(s) or the Director or his or her designee(s) shall give the Contractor **(a)** an opportunity to be heard, upon not less than seven Business Days’ notice, and



(b) with respect to the grounds for default enumerated in **Paragraphs 1.50 (Q), (R), and (U)**, *infra*, ten Business Days within which to cure the Default alleged in the notice. Anything in the preceding sentence to the contrary notwithstanding, the Contractor shall **not** be entitled to cure a Default(s) with respect to the grounds for Default enumerated in **Paragraphs 1.50 (Q), (R), and (U)** if (i) the Contractor shall have been declared in Default previously with respect to the same and/or similar type(s) of ground(s) for Default, or (ii) the ground(s) for Default shall be susceptible to repetition after the period of cure such as, but not necessarily limited to, late school bus service, unclean school buses, vehicular breakdowns, vehicular accidents, moving violations, corporal punishment incidents, controlled substance/alcohol abuse incidents, and/or other service oriented issues that evince severe financial distress of the Contractor and/or a serious inattention to the quality of pupil transportation service.

- (2) The right to declare a Default for any of the grounds specified or referred to in **Paragraph 1.50**, *infra*, shall be exercised by sending the Contractor a notice, signed by the DC&P Director, setting forth the ground(s) upon which such Default is declared (herein expressed as "Notice of Default"), subject to the Contractor's right to cure and/or be heard with respect to the violation(s) alleged.
- (3) The DC&P Director's determination that the Contractor is in Default shall be conclusive, final and binding on the Parties, and such a finding shall preclude the Contractor from instituting a plenary action for any damages relating to the Contract. If the Contractor protests or otherwise disputes the determination of the DC&P Director, the Contractor's sole and exclusive remedy shall be to commence a lawsuit (i.e., a special proceeding) in a court of competent jurisdiction of the State of New York, County of New York under Article 78 of the New York State Civil Practice Law and Rules. (The dispute resolution procedures set forth in **Paragraph 1.93**, *infra*, shall not apply to disputes arising out of or relating to Default determinations or terminations arising out of Default determinations.) However, nothing expressed herein shall deprive the Contractor of its right to such payments to which it may be entitled for work performed under the Contract not subject to, and/or associated with, the ground(s) expressed in the Notice of Default.
- (4) The Board may terminate and/or suspend the Contract immediately without notice and/or an opportunity to cure in cases in which the Board has reason to believe that the Contractor is performing in a manner which would endanger the health, safety and/or welfare of pupils and/or their families. In such case, the Board shall administer the opportunity to be heard provided for in **Paragraph 1.5(C)(1)**, *supra*, in a post-termination manner.

**D. Damages Arising from Default.** In the event the Board shall terminate all or any portion of the Contract due to the Contractor's breach and/or Default of the Contract, the Contractor shall be liable to the Board for any additional cost of completion of the within Services, as well as the Board's other costs in connection with the termination, re-letting and completion of the Services. All such costs, along with any liquidated damages provided herein, may be assessed by the Board against the Contractor and deducted by the Board from payments to be made to the Contractor under this Contract and/or any other contract at any time entered into between the Contractor and the Board and/or the City. In the event that said costs and liquidated damages exceed all sums owed at the termination date of this Contract, the Contractor shall pay the amount of such excess to the Board upon notice from the Board of said amount. If the Board undertakes to secure the Services or any part thereof under this Contract, the certificate of the Chancellor or his or her designee(s) or of the Director or his or her designee(s) indicating the amount of services secured, the cost and excess cost, if any, of completing this Contract, and the amount of liquidated damages hereunder, shall be conclusive and binding upon the Contractor, its heirs, successors, assigns, trustees and all other claimants.

#### **1.6. SUBMISSION OF BID**

The Person, firm or corporation submitting a Bid shall furnish such Bid in a sealed envelope to the Vendor Resources representative at the place designated on or before the day and hour stated. The front of the envelope must indicate the name of the Person, firm or corporation submitting this bid, the **Bid Serial No.**, the date of its submission and the title of the services for which the bid is submitted.

The bid submitted should include the entire Standard Bid Proposal Form as well as any amendments.

**ALL BIDS MUST BE COMPLETED IN INK.**

**1.7. BID SUBMISSION FORM**

The bid blank shall be used to submit pricing for all Classes included in the bid. Bidders must submit a bid for all items requested in a Class on which they are bidding in order to participate in this bid process. Bid Blank submission is to be made in both electronic form and printed form. Electronic submissions must eventually be in Excel. A second copy may be submitted as a PDF, but that PDF cannot be submitted instead of the Excel Workbook. Both the printed and electronic copies are to be submitted in the sealed envelope discussed in Paragraph 1.6, supra, entitled "Presentation of Bid". The printed version will govern in instances where there is a difference. The electronic copy is to be submitted on a disk or flash drive in the same envelope as the rest of the bid package. DO NOT ATTEMPT TO ALTER THE BID BLANK IN ANY WAY.

The bid blanks for each Class included in this RFB are organized into separate tabs on the Excel spreadsheet by borough, county or state. The Standard Form of Bid is to be submitted with the printed bid blank and disk or flash drive.

For the "Citywide Vehicle Capacity" sheet included with the bid blank, in the first blank column of the table provided, bidders must indicate the number of vehicles (including spares) they currently have available to provide services pursuant to this RFB. These vehicles must NOT include vehicles that will be required to provide ongoing services in and after the 2018-19 School Year for continuing DOE contracts. In the second blank column, bidders must indicate the maximum number of additional vehicles they could procure and deploy. Of course, the two numbers together will be read to be the vendor's assessment of its own capacity for ALL classes covered under this bid.

**1.8. INTERPRETATION**

To prevent all disputes, the Director or his or her designee(s) shall in all cases determine the amount, quality, acceptability and fitness of the several kinds of materials delivered and work performed and shall determine any questions in relation to the work and fulfillment of the Contract and methods to be adopted. The Director's or his or her designee's estimate and decision shall be final, conclusive and binding upon the Contractor.

Any doubt as to the meaning of the terms of the Contract or any obscurity as to the wording of the terms will be explained in writing, upon written request, by the Director or his or her designee(s), and all directions and explanations required, alluded to, or necessary to complete any of the provisions of the Contract and to give them due effect shall be given by the Director or his or her designee(s) in writing upon written request. The interpretation of the Director or his or her designee(s) shall be final, conclusive and binding upon the Parties.

**1.9. BID OPENING**

On the date, time and place designated, the bids received will be publicly opened and read by the DC&P's Policy and Public Affairs unit or designee(s).

Minor Informalities. Minor informalities are matters of form, rather than substance, evident from the bid document or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is, at most, negligible. The Director may waive such informalities or allow the Bidder to correct them depending on which is in the best interest of the Board of Education and/or the City.

**THE USE OF VOICE RECORDING DEVICES OF ANY TYPE DURING THE PUBLIC READING OF BIDS IS NOT PERMITTED.**

**1.10. LATE BIDS**

Bids which arrive after the date and time stated on the Standard Form of Bid for the due date of bids will not be accepted and will be returned to the Bidder unread. Bids sent by mail, overnight carriers, messengers, etc., **are at the risk of the Bidder** and will be returned to the Bidder unread if received after the date and time of bid acceptance.

**Prior to the bid acceptance deadline**, additional information pertaining to the bid terms or conditions of the bid or where the Bidder requires an interpretation or clarification of any aspect of the bid that the Bidder feels is ambiguous, must be requested in writing to the DC&P Executive Director or duly designated representative whose response will be final and binding.

No protests will be considered regarding a Bidder's assertion of ambiguity in terms, conditions or specifications after the time set for the acceptance of bids.

**1.11. BID DEPOSIT**

No bid deposit will be required for this bid.

**1.12. WITHDRAWAL OF BIDS**

The rules governing the withdrawal of bids are set forth in the Board's Procurement Policy and Procedures (PPP) sections 3-02(j), (m), and (n). All correspondence regarding withdrawal of bids shall be directed to the DC&P Executive Director. If the DC&P Executive Director's approval of withdrawal is required by the PPP and granted, the following applies: (i) if the procurement is re-advertised because no award is made on the request for bids to which the withdrawn bid responded, the bidder shall be barred from bidding again on the re-advertised request for bids and (ii) if the bidder is granted approval of withdrawal of more than one bid in any 12-month period, such bidder shall be disqualified from bidding on Board contracts for a period of one year from the date of the last request to withdraw in such 12-month period.

**1.13. BIDDER'S QUOTATION AND BID BLANK INSTRUCTIONS**

Bidders are asked to submit a paper copy as well as an electronic copy on a CD or flash drive of their bid submission. Failure to submit electronic copy may result in rejection of the bid. Email transmissions of bids are not acceptable. Bidders must insert, in ink, the unit price for the stated unit of measure and on the paper copy the extended price (i.e., the unit price multiplied by the number of vehicles and attendants when indicated and number of projected service days) for each Class the Bidder proposes to source and deliver. The use of pencils to fill out the bid documents shall result in rejection of the bid. In the event of a discrepancy between the unit price and the extended price, the unit price on the paper copy will govern. Bidders who alter prices, including cross-outs and white-outs, or who change prices inserted under a unit price, must submit with their bids a letter attesting to the fact that the changes were made by said bidder. Failure to submit such attestation may result in rejection of the bid.

When inserting submissions on the electronic template, after including the unit price for the stated unit of measure, the total price will be calculated automatically for each Class which the bidder proposes to source and deliver. Bids submitted on the accompanying CD or flash drive should be the same as the paper signed copy

submitted. In the event of a discrepancy between the paper copy and electronic copy, the PAPER copy will govern.

The Board of Education of the City of New York is exempt from the payment of any federal, state and city sales, excise, compensating use and gross receipts taxes. All prices quoted must be net and not be affected by the imposition of any federal, state and city sales, excise, compensating use and/or gross receipts taxes or fees during the term of this Contract.

**1.14. BID PROCESS**

All parties agree to cooperate fully in any investigation, audit or inquiry conducted by a State of New York or City of New York governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses, to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, contract, lease, permit or license that is the subject of the transaction, investigation, audit or inquiry.

- A. Any vendor who believes that there has been unfairness, favoritism, or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 1005, New York, NY 10007, (212) 669-2323; and
- B. Reports of criminal misconduct or conflicts of interest associated with the bid process shall be directed to the Special Commissioner of Investigation for the New York City School District, 80 Maiden Lane, 20<sup>th</sup> Floor, New York, NY 10038, (212) 510-1500.

**1.15. UNIT OF MEASURE**

All Classes must be bid in accordance with the unit of measure specified. The Board of Education reserves the right to reject any bid if the unit of measure is changed.

**1.16. DESCRIPTION OF CLASSES**

For details as to the quantity of the supplies/service or the nature and extent of the work required or of the materials to be furnished and delivered, the Bidder is referred to the specifications and/or bid blank. Bidders are advised to review specifications prior to submitting their bids.

Technical specifications contained herein are intended to cover the Class(es) listed in this Request in accordance with the latest and accepted Industry Best Practices. Bidders are advised to carefully review the specifications for ambiguity, incompleteness and deficiencies. Questionable specifications should immediately be brought to the attention of the DC&P Executive Director or his or her designee(s) in writing prior to the submission of the bid. Notwithstanding any ambiguity, incompleteness of the specifications, upon award of contract, the Contractor assumes full responsibility for furnishing and delivering the Class(es) awarded.

**1.17. SAMPLES – Not Applicable**

**1.18. ESTIMATED QUANTITY**

Bidders are warned that the NYCDOE's estimate of the number of vehicles required is only an approximation and will not be considered part of the Contract.

The number of vehicles actually required may be less or more than so estimated, and if so, the service must be provided as offered and no claim, action or change order for damages or loss of profits shall accrue to the Contractor by reason thereof.

The Contractor may **not** refuse to deliver the product or services or cancel the Contract if quantities exceed or fall short of any estimated quantity within the limits set forth elsewhere in this Contract (See Section 4.11, below).

- ⇒ **Bidders are warned that the Department's estimates of the number of vehicles required are only approximations and are not considered part of this Contract.**
- ⇒ **The number of vehicles actually required may be less or more than so estimated, and if so, no claim, action or change order for damages or loss of profits shall accrue to the Contractor by reason thereof.**
- ⇒ **All data of any kind that the Department has provided, is providing or may provide in connection with this RFB is offered solely for bidders' guidance. The Department makes no representation as to the accuracy or completeness of any such data. Bidders must rely upon their own expertise to arrive at their bid prices.**
- ⇒ **This is a requirements contract. The number of vehicles, riders, schools, as well as the session times, locations of schools and riders, and other factors, are subject to change at any time.**

#### **1.19. TIE BIDS**

Low tie bids are low responsive bids from responsible bidders that are identical in price, meeting all the requirements and criteria set forth in the bid. In case of low tie bids, the duly designated representative of the Division of Contracts and Purchasing shall break the tie in the following order of priority:

- Select a certified New York City small, minority or woman-owned business entity bidder;
- Select a New York City bidder;
- Select a certified New York State small, minority or woman-owned business entity bidder;
- Select a New York State bidder;
- Conduct a drawing. Tie bidders shall be invited to witness the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

#### **1.20. MINIMUM DOLLAR QUANTITIES – Not Applicable**

#### **1.21. ALTERNATE ITEMS – Not Applicable**

#### **1.22. PROVISION FOR ADDITIONAL ITEMS – Not Applicable**

#### **1.23. BIDDER'S QUALIFICATIONS [These documents are to be submitted upon request of the DOE]**

As part of the process of assessing a potential vendor's ability to perform, the NYCDOE reserves the right to ask for documentation and/or samples of reports as well as any work product deemed determinative of the Bidder's capacity to fulfill any of the specified Bidder's Qualifications. The NYCDOE reserves the right to reject any bid where, after investigation and evaluation, it determines that the evidence of the Bidder's ability to perform is not satisfactory. The NYCDOE will determine whether the evidence of ability to perform is deemed satisfactory and will make awards based on such evidence. Any statement or declaration made by the Bidder which is found to be untrue, or deemed unsatisfactory, will be sufficient cause for rejecting its bid.

There is no limit to the number of Classes for which a Bidder may submit a bid. However, a Bidder may only be awarded the number of Classes that, in total, falls within the maximum capacity that the Bidder has demonstrated it will be able to have by the commencement of service.

Bidders must submit all requested documentation as part of the qualification process. Bidders must submit all requested documentation within a time determined by the NYCDOE. All Bidders, including those that have an existing transportation contract with the NYCDOE, must submit all required documentation.

**Note:** It is in the Department's sole discretion whether the documentation or other materials required here to demonstrate the Bidder's Qualifications and provided by the Bidder satisfy these qualifications.

### **Operational Experience**

1. To be eligible for an award of contract pursuant to this RFB and throughout the term of this Contract, a bidder or at least one of the bidder's actively managing owners or partners must possess at least twenty months of prior management experience in providing satisfactory transportation service to students and/or individuals with disabilities (e.g., School Bus service, Pre-Kindergarten transportation, Early Intervention transportation, "ambulette" service, "Para-transit" service, etc.). The twenty months of prior experience must have been achieved during the three years immediately preceding the day bids are opened. Additionally, if a bidder's experience does not include the transportation of students with disabilities that bidder must include with its bid a formal written plan detailing all steps it will take to implement service to students with disabilities if its bid is successful. Said plan must cover topics such as, but not necessarily be limited to: the acquisition, storage and maintenance of vehicles; and the recruitment, training, certification and retention of staff.
2. Each bidder must submit a separate, signed and notarized certification from the bidder or an actively managing owner on official letterhead stationery concerning the length of time and the capacity of service in which the bidder or an actively managing owner has engaged in the school bus or substantially similar transportation industry. That certification must include specifics including name and location of the company, type of service provided, time period of service, position in the company, responsibilities, etc.
3. Each bidder must submit three letters of reference from extant organizations or individuals to which it has directly supplied school bus or substantially similar transportation service. For purposes of this qualification, each school or site to which a contractor provides (or provided) service, whether public or non-public, is considered a separate organization.
  - i. The letters of reference must be from three extant individuals, agencies, or organizations to which the Bidder or at least one of the Bidder's actively managing owners, shareholders or partners, as referenced in **Paragraph 1.23**, Operational Experience #1, of the Bidder's Qualifications above, has provided transportation services within the last three years.
  - ii. Each reference letter must be printed on official letterhead stationery and signed by the Person who received the service or someone authorized to represent the agency or organization that received the service.
  - iii. The references must specify the nature, dates, location, volume, and quality of transportation service provided to those individuals, agencies, or organizations.
  - iv. At least one letter of reference must state expressly that the signatory has personal or documentary knowledge of the Bidder's compliance with the requirement for at least twenty months of prior management experience in the three years immediately preceding the bid opening
  - v. Each reference letter must provide the full telephone number at which the signatory can be reached during business hours and indicate the position of the signatory.
  - vi. Letters from family members of the owners or employees of the bidder or those with a financial interest in the bid and/or bidder are unacceptable.

- vii. The Person signing the letter must affirmatively state that he or she is not a family member of the owners or employee of the bidder and has no financial interest in the bid.
- viii. Dates of the letters must be no more than three months prior to the bid opening.
- ix. For a reference(s) by an employee(s) of the NYCDOE, the bidder shall not request a letter but shall provide the name(s) and contact information for the NYCDOE employee(s).

### **Financial Capabilities**

Bidders must possess the financial stability and resources to perform the services required under this Contract.

1. Submit financial statements, including balance sheets and profit and loss statements for the last three years, and financial commitments that provide evidence satisfactory to the NYCDOE that the business will have sufficient working capital to meet at least three months of ongoing expenditures once services shall have begun and prior to the start of contract payments.
2. Provide a narrative plan demonstrating that adequate financial resources to fully perform the Contract are in place or a narrative plan demonstrating how such resources will be secured.
3. Provide information on the Bidder's creditworthiness including details with regard to any existing lines of credit which the Bidder holds and revocations of previous lines of credit.
4. Payment of existing creditors will also be considered in the evaluation process; therefore, the Bidder is required to submit information on its payment/financial history.
5. The Bidder must supply documentation of compliance with requirements for commercial general liability insurance, business automobile liability insurance, employment practices liability insurance, Worker's Compensation insurance, and umbrella excess liability (or excess liability) insurance.
6. As part of the documentation of financial ability to perform, the bidder must submit with its bid a written "Performance Security Certification". The Performance Security Certification must state that the performance bond to be furnished shall satisfy the requirements for the total number of vehicles and attendants bid. Together with the Performance Security Certification, the bidder must submit a consent(s) of the surety(ies), a letter(s) of intent from a surety and/or other documentation necessary to show that the bidder will furnish the performance bond herein required. The consent(s) of surety or letter(s) of intent must comply substantially with the sample appended to this RFB.

### **Organizational Capabilities**

1. All bidders must indicate the maximum total number of vehicles the Bidder will be able to furnish.
2. The Bidder shall also supply evidence satisfactory to the NYCDOE that it will have the required type and number of vehicles prior to the beginning of service that meet all applicable federal, State (other states if applicable), City of New York and NYCDOE safety and other standards such as, but not limited to, Title 49, Code of Federal Regulations, Part 571; the State Vehicle and Traffic Law (**see**, e.g., V&TL §§ 375, 1229-c, etc.) and attendant regulations; and the New York City Administrative Code (**see**, e.g., §§ 19-602, 19-604, 19-605, 24-163, 24-163.7, 24-163.9, etc.), and as further specified in this RFB.
3. As part of the qualifications for this Contract, the Bidder shall present documentation acceptable to the NYCDOE of sufficient storage for all of the vehicles it is proposing to use in providing the bid upon services and access to maintenance facilities with sufficient equipment and trained personnel to satisfy all State Department of Transportation requirements. Such documentation must include a floor plan for all storage, parking and maintenance facilities. (Please note that if the Bidder is offering to fulfill more than one Class the documentation must demonstrate to the satisfaction of the NYCDOE the maximum capacity it will

have available to perform work under this and any other DOE Contracts. It may bid on more Classes than it would have the capacity to perform, but it may only be awarded a group of Classes with a total number of vehicles being bid that falls within the maximum demonstrated capacity taking into account already existing DOE work.) The facilities shall be subject to periodic inspection and approval by the NYCDOE during the Contract period. Any change must be submitted to and approved by the NYCDOE prior to implementation.

4. As part of the qualifications for this Contract, the Bidder shall present documentation acceptable to the NYCDOE of an adequate physical plant to house comfortably and efficiently support the operations of all dispatch, clerical, managerial, supervisory, maintenance and any other support staff.
5. Provide brief written descriptions of any safety programs implemented over the past five years and their results. If no safety programs have been implemented in the past explain why. All bidders are to describe any safety programs that will be implemented during the first two years of the Contract.
6. In each garage maintained to provide Services under this Contract, the Contractor shall employ personnel dedicated to customer telephone response at the rate of one customer liaison for every 100 vehicles except during the first three weeks of school opening when the ratio shall be one liaison per 50 vehicles. As part of the qualification for this Contract, the Bidder must submit detailed documentation acceptable to the NYCDOE regarding the implementation of this requirement including the identity of the staff members who will be designated as Customer Liaisons.
7. Each bidder must maintain high speed Internet access (i.e., not standard phone line or dial up based but rather such connectivity as a cable connection, DSL service, satellite/wireless connectivity, a T1 line or a T3 line) for the purposes of the administration of the Contract.
8. The Bidder must maintain a computer system sufficient to run applications developed by OPT. Currently, the minimum computer system required is as follows.

CPU:	Intel Core I5 or equivalent
Memory:	8GB DDR4; at least 1GB reserved for OS and DOE applications
Hard Disk:	500GB; at least 40GB reserved for OS and DOE applications
OS:	Windows 7/10
I.E:	Internet Explorer 10 or equivalent and Broad-Band Connection
Software:	Microsoft Office 2010/2013/2016

During the life of this Contract, the Contractor must upgrade the computer system as required by the NYCDOE where necessary to run any applications developed by OPT.

9. At the time of qualification, the Bidder must be able to demonstrate to the satisfaction of the NYCDOE that flexible billing options are available to the NYCDOE. Bidders may be required to provide flexible billing options to the NYCDOE such as, but not limited to, electronically transmitted consolidated bi-weekly or monthly invoices or billing terms at the class, borough or overall program level.
10. The NYCDOE expects to receive invoices through either FTP files or XML format allowing for automated matching and reconciliation and to maintain hard-copy records for audit purposes only. The NYCDOE reserves the right to change formatting requirements at any time. At the time of qualification, the Bidder must be able to demonstrate to the satisfaction of the NYCDOE that it will be able to provide invoices in any of these formats.
11. The Bidder must provide OPT with requested reports. At the time of qualification, the Bidder must be able to demonstrate to the satisfaction of the NYCDOE that the Bidder's systems have the flexibility and capability to convert and track any data provided to the Bidder in electronic format for reporting purposes. Specific report types and the schedule for providing them will be determined during implementation with the awarded contractors.



12. Upon request, the Bidder must provide a narrative plan acceptable to the NYCDOE detailing the implementation of the bid which must include, among other required elements, discussions of how: drug and alcohol testing will be implemented; field monitoring will be performed; staff training will be conducted and what will be included; and required computer operations will be conducted.

#### **Personnel**

1. The Bidder must provide a narrative acceptable to the NYCDOE describing the Bidder's recruitment and retention policies and procedures for all staff.

#### **1.24. USE OF SUB-CONTRACTORS AND/OR AFFILIATES**

If, during the term of the Contract, the Contractor desires to subcontract any portion of the work specified herein, including any subcontract to an Affiliate, the Contractor must submit a written request detailing the reasons for that request and the terms of the subcontracting agreement to the Director as detailed hereinafter. All subcontracts must be in writing and a copy of the subcontracting agreement must also be submitted. Written approval of the Director must be received **before** the Contractor may actually begin using a Subcontractor<sup>2</sup> to perform any of the work specified herein. Approval or denial of a subcontracting request shall be at the sole and absolute discretion of the Director. The Contractor shall submit to the NYCDOE any and all information such as, but not limited to, PASSPort questionnaires as required by the Director. The Director reserves the right to have the Subcontractor's premises inspected without prior notice as part of the process to decide whether to accept or reject the use of such Subcontractor as well as at any time during the term of the subcontract without prior notice. Any Subcontractor must fulfill all contractual terms and requirements as though it were the Contractor. The Contractor shall remain responsible for the full and faithful execution of the Contract, and all remedies and sanctions permitted by law and this Contract for nonperformance shall remain in effect against the Contractor for any breach of contract by the Subcontractor should said Subcontractor fail to perform as required.

**(A)** It is anticipated that the only Subcontractors that may be granted permission under this Contract are those that might supply attendant services and/or portions of a program of controlled substance and alcohol abuse prevention, training, testing and related services.

**(B)** Before entering into any subcontract, the Contractor shall submit a written request for the approval of the proposed Subcontractor to the Director giving the name and address of the proposed Subcontractor and the portion of the services that it is to perform and furnish. The proposed Subcontractor's PASSPort Questionnaire must be submitted, if required, within ten days after the Director shall have granted preliminary approval of the proposed Subcontractor (i.e., if such approval shall be granted). Upon the request of the Director or his or her designee(s), the Contractor shall provide any other information demonstrating that the proposed Subcontractor has the necessary facilities, skill, integrity, past experience, financial resources and other necessary qualities to perform the specified services according to the terms and conditions of this Contract. The Director shall make a final determination in writing approving or disapproving the Subcontractor after receiving all requested information. For proposed subcontracts that do not exceed \$25,000, the Director's approval shall be deemed granted if the Director does not issue a written approval or disapproval within forty-five days of the Director's receipt of the written request for approval or, if applicable, within forty-five days of the Director's acknowledged receipt of fully completed PASSPort Questionnaires for the Subcontractor.

**(C)** All subcontracts shall contain provisions specifying the following: **(i)** the Contractor shall cause the Subcontractor to comply with and perform its work in accordance with the terms of the Contract between the Board and the Contractor that are applicable to the Subcontractor's work; **(ii)** nothing contained in the agreement between the Contractor and the Subcontractor shall impair the rights of the Board; **(iii)** nothing contained in the agreement between the Contractor and the Subcontractor, or under the Contract

---

<sup>2</sup> The term "Subcontractor" is defined in **Paragraph 4.6(B)**, *infra*.

between the Board and the Contractor, shall vest in the subcontractor any relationship of privity with the DOE; **(iv)** the Subcontractor specifically agrees to be bound by provisions in this Contract about Non-Discrimination, Equal Employment Opportunity Requirements, Confidentiality, Conflicts of Interest, Reports, Inspections and Records (See Section 1.47), and Cooperation with Audits and Investigations and specifically agrees that the Board may enforce such provisions directly against the Subcontractor as if the Board were a party to the subcontract; **(v)** the specific consideration for the Subcontractor's services, including any monetary exchange between the parties and the basis upon which payment will be made; **(vi)** the Subcontractor may not enter into second-tier subcontracting contracts for performance of services for the Board without the prior written approval of the Director, and any such subcontracts must contain all of the provisions set forth herein; **(vii)** the Subcontract specifically agrees to be bound by the Experienced Employee Safeguards in this Contract; and **(viii)** the insurance requirements covering subcontracts set forth in Paragraph 2.6. The Contractor remains responsible for submission and approval of any second-tier subcontracts.

**(D)** The Contractor agrees that it is as fully responsible to the BOE for the acts and omissions of its Subcontractors and of Persons either directly or indirectly employed by such Subcontractors as it is for the acts and omissions of any Person directly employed by the Contractor.

**(E)** To determine the value of a subcontract, all subcontracts with the same Subcontractor shall be aggregated.

**(F)** The Board may revoke the approval of a Subcontractor granted or deemed granted pursuant to this **Section 1.24** if revocation is deemed to be in the interest of the Board in writing on no less than ten days' notice **unless** a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the Subcontractor to cease all work under this Contract. The Board shall not incur any further obligation for Services performed by such Subcontractor pursuant to this Contract beyond the effective date of the revocation. The Board shall pay the Contractor only for services provided by the Subcontractor in accordance with this Contract prior to the effective date of revocation.

**(G)** The Board's approval of a Subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Contract. At the request of the Board, the Contractor shall provide the Board copies of any subcontract.

**(H)** Individual employer-employee contracts are not subcontracts subject to the requirements of this **Section 1.24**.

**(I)** Payments made under the terms of any subcontract for services under this Contract must be supported with documentation of the work performed that includes dated invoices.

#### **1.25. MINORITY AND WOMEN OWNED BUSINESS ENTITIES PARTICIPATION**

The New York City Board of Education ("BOE") strongly encourages the substantive participation of minority and women owned business enterprises ("M/WBE") in the competitive bid process. The bid will be deemed to be M/WBE participating if either, (a) the prime contractor and/or subcontractor(s) are identified by New York City as certified as M/WBEs, or (b) if the prime contractor otherwise demonstrates a clear and strong commitment to, and support of, equal employment opportunity and employee civil rights. Subject to the provisions of Section 1.26 below the award of this Contract shall be on the basis of the lowest price as submitted by a responsible bidder.

To be considered substantive participation for (a) above, the value of the prime contractor's or subcontractor's work must be at least ten percent of the awarded cost, or (b) above, if neither the prime contractor nor its subcontractor(s) are City certified M/WBEs, substantive participation can alternatively be demonstrated by the prime contractor showing a high level of commitment to the principles incorporated in Title VI and Title VII of the

Civil Rights Act of 1964 and with all applicable Federal, State and City Laws and for clear demonstration of implementation thereof.

Demonstration of commitment and implementation may consist of, but not be limited to, the following, as documented by supporting data and materials.

- A record of hiring, placement and promotional practices which permit access to all levels within the firm's organization by women, minority, disabled and other employee groups covered by the Civil Rights Act of 1964.
- Policies, initiatives and programs which discourage discrimination against individuals on the basis of age, color, gender, national origin, citizen status, religion or sexual orientation: pregnancy or pregnancy-related conditions, and/or promotes the welfare of people with disabilities, including mentally and physically disabled employees and disabled veterans.

Recognition of the efforts above by governmental authorities, nationally recognized civil rights organizations or other appropriate groups.

#### **1.26. AWARD**

The lowest bidder per Class will be determined using the Bid Blank. The total dollar amount that is automatically calculated for each Class will be used to compare bidder pricing (although those calculations may be corrected to resolve discrepancies between the electronic and hardcopy submissions). The bid will not be calculated unless a price is submitted to cover all vehicles requested within a class.

The NYCDOE will make the determination of award to the lowest responsive and responsible bidders in such a manner that ensures the lowest total (system-wide) program costs. If a Bidder is the lowest responsive and responsible Bidder in more Classes than the NYCDOE determines that such Bidder has the capacity to serve, the NYCDOE will ascertain which Classes to award such Bidder based on the combination of awards that yields the lowest total (system-wide) program cost to the NYCDOE.

The NYCDOE reserves the right to reject any or all bids or to accept any part of any bid and reject the other part, if in its opinion, such action would be in the best interest of the NYCDOE.

Bidders should be aware that the NYCDOE retains the right to refuse to award to any Person who is delinquent in the payment of New York City, New York State or Federal taxes or fines. If your business owes taxes or fines and has paid said obligations within the last thirty days or is contesting/disputing said obligations, you must submit with your bid or upon request proof of payment or letter informing the department that the amount is in dispute; or your bid may be disqualified.

The NYCDOE reserves the right to reject any bid from a Bidder whose bid is submitted improperly and/or is unintelligible and/or incomplete.

#### **1.27. AFFIRMATION OF RESPONSIBILITY AND PAID TAXES**

The Bidder/Contractor affirms and declares that said Bidder/Contractor is not in arrears to the City of New York or the Board upon any debt, contract or taxes and is not a defaulter, as a surety or otherwise, upon any obligation to the City of New York or the Board, and has not been declared not responsible, or disqualified, by any agency of the City of New York or the Board, nor is there any proceeding pending relating to the responsibility or qualification of the Contractor to receive public contracts except as stated in the affirmation pertaining to the foregoing which has been furnished to the Board.

**1.28. VOLUNTARY PRICE REDUCTION**

The Board of Education reserves the right to request Voluntary Price Reductions in the event that any of the price(s) quoted are deemed high on individual item(s) within a Class, individual or contingency items.

**1.29. NOTICE OF AWARD**

The transmission by the Board of a notification to a bidder that the bidder has been awarded a contract shall constitute the Notice of Award with respect to such bidder.

**1.30. ASSIGNMENT OF CONTRACT; TRANSFER OF CONTROLLING INTEREST; CHANGE OF CHIEF EXECUTIVE**

(a) Prohibitions:

- i. The Contractor shall give its personal attention to the performance of this Contract.
- ii. The Contractor shall not sell, assign, transfer, convey, convert, sublet or otherwise alienate and/or dispose of this Contract and/or of the Contractor's right, title or interest therein and/or of the Contractor's power to execute such Contract, to any other Person or corporation without the prior written consent of the Chancellor or his or her designee(s) or the Director or his or her designee(s).
- iii. Without prior written consent of the Chancellor or his or her designee(s) or the Director or his or her designee(s), which consent shall not be unreasonably withheld: (a) the Contractor shall not change its Chief Executive Officer, and/or (b) the Contractor and/or its owners shall not sell, merge, transfer, convey, convert, assign and/or otherwise alienate and/or dispose of a majority interest in the Contractor and/or any Affiliate.
- iv. The foregoing prohibitions listed in 1(a)(i), (ii), and (iii) shall apply equally to any attempt by the Contractor and/or any Person Controlling the Contractor to achieve and/or effectuate the same outcomes.

(b) Request for consent:

- i. Request for consent to (a) sell, assign, transfer, convey, convert, sublet or otherwise alienate and/or dispose of the Contract, and/or of the Contractor's right, title or interest therein and/or of the Contractor's power to execute such Contract, (b) to change the Contractor's Chief Executive Officer, or (c) to sell, merge, transfer, convey, convert, assign and/or otherwise alienate and/or dispose of a majority interest in the Contractor and/or any Affiliate, shall be in writing to the Director.
- ii. A non-refundable processing fee of \$250.00 for contract amounts less than \$100,000.00 and \$500.00 for contract amounts \$100,000.00 or greater shall be submitted with each request. Said fee shall be by check or money order and made payable to the Board of Education of the City of New York.
- iii. The Chancellor or his or her designee(s) or the Director or his or her designee(s) shall grant or deny such requests after consultation with the appropriate Division or Office, and the Board of Education's decision shall be final and binding upon the Parties and any other Persons affected by the subject transaction(s).

(c) Remedies:

- i. Any sale, assignment, transfer, conveyance, conversion, subletting and/or other alienation and/or disposition of the Contract, and/or of the Contractor's right, title or interest therein and/or of the Contractor's power to execute such Contract without prior written consent of the Chancellor or his or her designee(s) or the Director or his or her designee(s) shall be null and void.

- ii. If the Contractor in any way violates paragraphs 1(a)(i), (ii), or (iii), the Board shall have the right to immediately terminate this Agreement. If the Board exercises such right to terminate, then, beginning as of the effective date of the termination, the Board shall be relieved from all further obligations under this Agreement.
  
- (d) Affect. Nothing contained herein shall be construed to affect an assignment by the Contractor for the benefit of its creditors made pursuant to the statutes of the State of New York. No right under this Contract, or to any monies due or to become due hereunder, shall be asserted against the Board or the City in law and/or in equity by reason of a purported assignment of this Contract, or any part thereof, or of any monies due or to become due hereunder, unless authorized as aforesaid.
  
- (e) Assignment by Board. This Contract may be assigned, in whole or in part, by the Board to any corporation, agency, City or other government entity, or instrumentality having authority to accept such assignment. The Board shall provide the Contractor with written notice of any such assignment.

**1.31. This section intentionally left blank**

**1.32. AVAILABILITY OF FUNDS**

In the event that the period of any resulting award extends beyond the end of the current fiscal year, such awards are subject to the availability of funds in succeeding fiscal years.

**1.33. PURCHASE ORDERS**

No delivery shall become due or acceptable without an order in writing issued by the Director. Orders, when issued, will contain instructions regarding point of delivery and invoicing procedures. Orders will be issued throughout the contract period(s) for such quantities as may be required.

**1.34. PAYMENT POLICY**

The Chancellor has made prompt vendor payment an administrative priority of the Board of Education. The DOE endeavors to process for payment bus invoices within two weeks of receipt. Occasionally, circumstances arise where that is not possible.

**1.35. This Section Intentionally Left Blank**

**1.36. ACCEPTANCE OF FINAL PAYMENT**

Receipt and negotiation by the Contractor, or by any Person claiming under this Contract, of the Final Payment hereunder or any portion thereof, notwithstanding whether such payment be made pursuant to any judgment or order of any court, shall constitute a general release of the Board and the City from any and all claims and liability for anything done, furnished, or relating to the labor, materials, or services provided, or for any act of omission and/or commission of the Board, the City and/or their respective agents and employees. Said release shall be effective against the Contractor and the Contractor's representatives, heirs, executors, administrators, trustees, successors, and assigns.

**1.37. NEW MERCHANDISE - Not Applicable**

**1.38. PACKING - Not Applicable**

**1.39. WORKMANSHIP AND QUALITY**

The workmanship and quality of material specified shall be first quality and in accordance with the best standard trade practices and School Bus Industry Best Practices. The Board of Education reserves the right to accept or reject any workmanship and/or quality whichever is deemed in the Board's best interest.

**1.40. DELIVERY – Not Applicable**

**1.41. SUSPENSION OF DELIVERIES – Not Applicable**

**1.42. REJECTION OF VEHICLES**

Any vehicle furnished or offered to be furnished under this Contract for the transportation of school children which is rejected by an inspector as not conforming to the terms, conditions and/or specifications of this RFB/Contract and/or the rules and regulations of the U.S. Department of Transportation, the State Department of Transportation, the State Department of Motor Vehicles and/or or the State Education Department, the City of New York or any of its agencies or those of the Board, shall be immediately removed, and vehicles for the transportation of children which do conform shall be furnished in place thereof. Any vehicle which has been rejected by an inspector cannot be returned to service without OPT's prior authorization.

**1.43. TIME CONSTRAINTS**

Time is of the essence in delivering all items contained on purchase orders issued under this Contract. Contractors are advised not to bid on this RFB unless they are able to perform the Contract in strict accordance with the specified allowable time for delivery. Failure to perform as specified may result in an administrative determination that the Contractor is in Default on its obligation and shall be deemed an irresponsible bidder thereby precluding it from bidding on future proposals for the New York City Board of Education.

**1.44. WASTE AND DISPOSAL**

The Contractor shall be responsible, at the Contractor's sole expense, for the safe and lawful handling or disposal of all Hazardous Materials and/or other wastes generated in the course of the provision and/or delivery of any of the Services hereunder.

**1.45. POST AWARD SUBSTITUTIONS - Not Applicable**

**1.46. GUARANTEE AND WARRANTY**

The Contractor does hereby warrant all work to be in full and complete accordance with the Contract, amendments, addenda, specifications and requirements appertaining thereto, and that all work is free from any and all defects and imperfections and fully suitable for the use and purposes for which each is intended.

**1.47. REPORTS, INSPECTIONS AND RECORDS**

- A. The Contractor shall promptly provide all reports required by the Board including, but not limited to, financial, program, statistical, analytical, narrative and progress reports as well as any and all reports needed to obtain and maintain funding to the NYCDOE and/or other City agencies such as, but not necessarily limited to, information needed for Medicaid payments and/or State aid reimbursement. Unless otherwise provided herein, the Final Payment hereunder shall not be made until all reports have been submitted and approved by the Board.
- B. The Contractor shall, until six years after completion of its services hereunder or six years after date of termination of this Contract, whichever is later, maintain and retain complete and correct books and records relating to all aspects of the Contractor's obligations hereunder, including without limitation, payroll and other records relating to the Contractor's salary and benefits contributions for its employees who perform services in connection with this Contract. Records must be maintained separately, so as to identify clearly the hours, rates and other costs charged to this Contract and be distinguishable from all other hours, rates and other costs charged which are not related to this Contract. Medicaid, State aid and other documentation needed for funding reimbursement must be maintained separately from all other Contractor books and records and must be maintained for not less than seven years from the date expressed in the first sentence of this **Paragraph 1.47(B)**. The Contractor shall insert the contents of this **Paragraph 1.47** into every subcontract. In the provisions required by the preceding sentence, the subcontract shall make the Subcontractor responsible for the Contractor's obligations hereunder.
- C. The Contractor shall make its staff, premises, books, records, operations, vehicles and services provided under this Contract, and those of its Subcontractors and Affiliates, available to the Board and to any person, agency or entity designated by the Board, at any time, for program audit, fiscal audit, inspection, observation, sampling, visitation and evaluation, and shall render all assistance and cooperation for said purposes. The Contractor agrees to attend, upon demand, any investigation conducted by the Board, to produce any records and other documents required by the Board at that investigation, to cooperate with the Board, and to give sworn testimony pertaining to those documents or the subject of the investigation; provided only that the investigation, testimony, records and documents relate to the subject of the Contractor's relationship with the Board of Education. If a corporation, partnership or government agency, the Contractor agrees to require its officers, employees, and partners to comply fully with the foregoing. If the Chancellor or his or her designee(s) or the Director or his or her designee(s) determines that the Contractor has failed to comply fully with the provisions of this **Paragraph 1.47(C)**, and the Chancellor or his or her designee(s) or the Director or his or her designee(s) shall have sent the Contractor notice of such failure, then if the Chancellor or his or her designee(s) or the Director or his or her designee(s) determines that the Contractor shall have failed to cure the breach of the provisions of this **Paragraph 1.47(C)** within ten Business Days of its receipt of such notice, then the Board shall have the right to retain ten percent of monies due to the Contractor until such time as the Chancellor or his or her designee(s) or the Director or his or her designee(s) determines that the Contractor shall have complied fully with the provisions of this Paragraph. In addition to any and all other rights under this Contract and/or at law or equity, the NYCDOE shall have the right to use the ten percent retainage expressed in the preceding sentence as set-off against any amounts due and owing to the NYCDOE and/or the City due to the findings of an investigation and/or audit (i.e., see **Paragraph 1.63** entitled, "Set-Off Rights," *supra*). With respect to the preceding two sentences, the amount of retainage for investigations and/or audits pertaining to Medicaid and/or State aid reimbursement shall be fifteen percent.
- D. In its record keeping, the Contractor shall also comply with all federal, state and local laws and regulations pertaining to such records, including, without limitation, the regulations of the Comptroller, and shall require its Affiliates and Subcontractors to do likewise.
- E. If any federal, state or local government agency, or other public or private agency conducts an audit of any of the Contractor's operations which pertains directly or indirectly to the goods and services provided pursuant to this Contract, within five Business Days after receipt by the Contractor of notice

of the commencement of such audit the Contractor shall give notice of such commencement to the Board; and within five Business Days after receipt by the Contractor of a copy of any resulting interim or final audit report, the Contractor shall supply one copy thereof to the Board.

#### **1.48. LIQUIDATED DAMAGES**

The Parties agree that damages that the Board of Education of the City School District of the City of New York ("Board" or "NYCDOE") and/or the City of New York ("City") shall suffer by reason of contractual violation(s) and/or default(s) on the part of the Contractor are difficult to ascertain. Therefore, the following liquidated damage sums are hereby stipulated, agreed upon, fixed and determined by the Parties as reasonable measures of the anticipated probable harm that the Board and/or City shall suffer by reason of such violation(s) and/or default(s) of Contract by the Contractor and not by way of penalty. Such liquidated damages may be imposed upon the finding of the Director or his or her designee in accordance with the provisions herein that the Contractor and/or any of its agents, officers, directors, employees, subcontractors, affiliates, trustees, successors, assigns and/or other representatives (herein expressed collectively as "Contractor") shall have violated a provision(s) of the Contract. In the event that liquidated damages are imposed, the Contractor must pay to the Board the sum listed below for the item in which the violation occurred, which said sums, are hereby agreed upon, fixed and determined by the parties hereto as the liquidated damages the NYCDOE will suffer by reason of such violations. The setting of liquidated damages shall in no way limit the indemnification obligations of the Contractor otherwise set forth in this Agreement.

- A. The NYCDOE may deduct and retain the amount of such liquidated damages out of monies which may become due to the Contractor.
- B. Nothing herein shall limit the right of the Board of Education to declare the Contractor in Default of the Contract in advance of, in lieu of, or in addition to the assessment of liquidated damages.
- C. The Director shall afford the Contractor written notice of each instance of an assessment of liquidated damages including identification by date and description of the violation (including the facts on which the complaint or finding was founded such as, but not limited to, a school-based complaint or an inspector's inspection of a vehicle) before such liquidated damages shall be deducted from a succeeding payment. The Director shall afford the Contractor an opportunity to respond to or before the OPT Hearing Officer, a designee(s) of the Director, pursuant to rules and procedures promulgated by the Board and published in the Office of Pupil Transportation's ("OPT") *Manual of Standard Operating Procedures for School Bus Contractors Providing Service Under Contracts with the NYCDOE* (herein expressed as "*Contractor's Manual*"), as periodically updated, revised and/or otherwise changed in the sole discretion of the Board with notice to the Contractor. In the event of a conflict between the *Contractor's Manual* and this document, this document shall govern. The Contractor shall have the option to oppose an OPT Notice of Violation either in writing or in person. If the Contractor shall elect to submit a written opposition, the Contractor shall have the same rights as if it shall have appeared in person; however, the Contractor's appeal shall be limited to the evidence presented in its written opposition.
- D. The Contractor shall have the right to appeal the finding of a violation and/or the assessment of liquidated damages by submitting electronically a complete and accurate Notice of Appeal form to the Director within thirty days following the OPT Hearing Officer's determination. In its sole and absolute discretion, the Board shall have the right to update, revise and/or otherwise change the electronic Notice of Appeal form with notice to the Contractor. The Contractor's **(i)** failure and/or refusal to submit the Notice of Appeal form in a timely fashion, and/or **(ii)** failure and/or refusal to provide complete and accurate information may result in OPT's refusal to hear an appeal(s). If OPT hears an appeal, the Director shall designate two individuals (the "review team") to hold a review meeting with the Contractor within sixty days of receipt of the Notice of Appeal form. The review team shall evaluate the appeal and make a recommendation to the Director for disposition of the matter. **However**, the review team's recommendation for disposition shall be advisory **only**, and the Director shall have sole and absolute authority to adopt or overrule said recommendation. The Director shall issue his or her final determination in writing (which shall include electronic communication) within ninety days of receipt of the Notice of Appeal form. The said final determination shall contain a statement of the basis for the



Director’s determination **only** in each case where the Director shall overrule the review team’s recommendation.

- E. Liquidated damages in the amounts below may be assessed for each and every instance (and, if applicable, each day) of any violation listed below provided violations related to physical defects in the bus shall not be assessed unless written notice thereof is provided to the Contractor within forty-five days after the date of such violation. For the avoidance of doubt, any electronic communication including but not limited to, the posting of a violation on OPT’s website, shall constitute written notice. Note: violations shall not be issued to vehicles for abuse and/or vandalism by passengers that occur during the run, **unless** the Contractor shall have had a reasonable opportunity to correct such conditions.
  
- F. As stated hereinafter, Items 5.1 and 5.2 treat the Contractor’s maintenance and equipment of vehicles as required under the Contract. Under Item 5.1, a “Level A” violation pertaining to any vehicle(s) is hereby defined as a violation that has caused the Director and/or any OPT inspector to have rejected a vehicle(s) and required the Contractor to have withdrawn such vehicle(s) from service under the Contract. Under Item 5.2, a “Level B” violation pertaining to any vehicle(s) is hereby defined as any one of the following violations: **(i)** a vehicle(s) does not have the required registration, insurance and/or identification features; **(ii)** a school bus worker(s) does not have proper Photo-Identification and/or uniform; **(iii)** damage to or failure of a vehicle headlight, directional signal, or half or more of a vehicle’s tail lights or brake lights; **(iv)** damage to or failure of more than one vehicle flashing light or marker light; **(v)** the “Checked for Sleeping Children” sign is displayed during a vehicle(s) runs(s); **(vi)** a vehicle(s) is dirty on the inside or outside, a seat(s) is torn, a seat(s) is missing padding, a seat(s) is excessively taped, or a seat(s) is not securely attached to the seat frame(s); **(vii)** a vehicle’s required equipment is not present and operational or fully supplied including, but not necessarily limited to, the “Checked for Sleeping Children” sign, the two-way radio (including a functional base station two-way radio), the first aid kit, the seat belt cutter, vehicle sanitation kit, vehicle safety kit, and bodily fluids clean-up kit; **(viii)** a vehicle’s mirror(s), windshield and/or window(s) has a crack(s) or a chip(s); or **(ix)** safety or emergency features are missing or fail to operate including seat safety belts, emergency buzzers, or reflectorized emergency warning device.
  
- G. As stated hereinafter, Items 5.5 and 5.6 treat the Contractor’s employment, direction, control and operation of school bus drivers and/or attendants as required under the Contract. Under Item 5.5, a “Level A” violation pertaining to any driver(s) and/or attendant(s) is hereby defined as a violation that has caused the Director or his or her designee(s) to have imposed upon such a worker(s) at least a suspension of at least thirty days or a more severe disciplinary action. Under Item 5.6, a “Level B” violation pertaining to any driver(s) and/or attendant(s) is hereby defined as a violation that has caused the Director or his or her designee(s) to have imposed upon such a worker(s) a suspension of fewer than thirty days or a less severe disciplinary action including, but not limited to, the issuance of a written reprimand.

LD #	Violation	Amount
1.1	Failure to conform to and maintain the route, including <b>(a)</b> arriving at the start of school more than 30 or fewer than 5 minutes before the scheduled arrival time, <b>(b)</b> arriving more than 30 minutes after the scheduled pickup time at the end of school, <b>(c)</b> not adhering to schedule changes promulgated by OPT including those changes for only certain days, <b>(d)</b> departure from the school before receiving authorization to do so from the school, <b>(e)</b> not serving an authorized stop, <b>(f)</b> picking up pupils prior to the authorized start time, <b>(g)</b> failing to wait at the pickup or drop-off point until the scheduled pickup or drop-off time in the event the vehicle arrives early, or <b>(h)</b> altering the pickup sequence or other aspects of a bus route (with the exception of route changes by OPT for which the Contractor received less than 48 hours of prior notice) without notifying the Director, school, and parents/guardians of children	\$200

B3182- Transportation Services for Students with Disabilities and Their Non-Disabled Peers

	on the route including not notifying schools and parents/guardians when routes change because of OPT rerouting, <b>(i)</b> failure to update OPT, in whatever reasonable form it requires, about actual bus routing, schedules, ridership and other conditions, or <b>(j)</b> failure to notify OPT if a student with disabilities has not ridden the bus for five consecutive days. There shall be an assessment of \$200 for each run of the route per day for violation of items (c), (h) and (i) in this section.	
1.2	Failure to provide service to a school for “regular” or “mid-day” service.	\$400
1.3	Exclusion of any rider from a run by the contractor, driver and/or attendant.	\$200
1.4	Each instance in which the driver embarks or disembarks a child inappropriately including, but not limited to, the following: <b>(a)</b> at a location not authorized by OPT; <b>(b)</b> when at a school at a specific place not authorized by school officials; <b>(c)</b> when the child refuses to disembark; <b>(d)</b> in the case of door-to-door service at an improper stop; or, <b>(e)</b> in the case of door-to-door service, without an authorized caregiver unless written permission for such discharge exists.	\$400
1.5	Failure to participate in emergency drills or lessons in transportation safety.	\$100
2.1	Failure to dispatch the kind of bus specified by OPT including, when needed, spare vehicles.	\$400
2.2	Failure to have the minimum number of spare vehicles as required by the Contract.	\$200
2.3	Failure to provide a required attendant(s) whether required by law or the instruction of the Director.	\$400
2.4	Failure to provide service for a field trip provided that the Contractor has received written notice at least one business day in advance. In the case of failure to provide field trip service, damages will be for each bus that shall have failed to provide service, and additional assessed damages shall include the out of pocket costs of schools in the event that they were required to forfeit admission tickets or other incurred costs.	\$400
2.5	Failure of the Contractor to require the driver to drive a new run assigned to him or her before being permitted to transport students on the run and truly document same except (i) in instances in which a shape is assigned to cover an unscheduled absence such as for an illness; and (ii) where the Contractor has received less than three business days of advance written notice of such new run.	\$400
3.1	Failure to make prompt report to OPT of overcrowding conditions (such as, but not limited to, one or more standees) on buses.	\$400
3.2	Each instance in which the sign "This Bus Has Been Checked for Sleeping Children" has not been posted in the rear window of the vehicle as specified by OPT.	\$200
4.1	Each instance in which a bus crew fails to properly and promptly clean and disinfect any soiled equipment within a reasonably practicable period after it has been soiled or before exposing another passenger to such equipment and/or accessories.	\$100
4.2	Each time a driver or attendant allows a pupil to enter or leave the vehicle while it is in motion.	\$400
4.3	Each time a driver or attendant is found to use corporal punishment on a child.	\$600

B3182- Transportation Services for Students with Disabilities and Their Non-Disabled Peers

4.4	Each time that a rider is left unattended on a vehicle except in an emergency.	\$600
4.5	Failure to shut off the motor, remove the ignition key, turn the wheels to the curb, and/or set the brakes when the driver leaves his or her seat.	\$100
4.6	Each unauthorized transfer of a child from one vehicle to another, either on the trip to the site or on the homeward trip.	\$100
4.7	Each violation of traffic laws.	\$400
4.8	Failure to follow the procedures for reporting and documenting the following: <b>(a)</b> accidents; <b>(b)</b> physical harm to passengers or pedestrians; <b>(c)</b> misconduct by students, bus staff, school staff or guardians or parents of students; and/or, <b>(d)</b> medical emergencies as set forth in the Contract, the <i>Contractor's Manual</i> , or any federal, state and local laws, rules or regulations, provided however that OPT will provide notice to vendors of any changes in the applicable NYCDOE regulations.	\$400
4.9	Failure to follow procedures for the reporting of any delay due to a breakdown or traffic difficulties as set forth in the Contract, the <i>Contractor's Manual</i> , federal, state and local laws and regulations, with the provision that OPT will provide notice to vendors of any changes in NYCDOE regulations that might affect them.	\$100
5.1	Failure to maintain and equip vehicles in accordance with LEVEL A standards described in the Contract, <i>Contractor's Manual</i> and other regulations.	\$400
5.2	Failure to maintain and equip vehicles in accordance with LEVEL B standards described in the Contract, <i>Contractor's Manual</i> and other regulations.	\$200
5.15	missing or incomplete first aid kit	\$25
5.3	Each failure to provide sufficient seating of the required type for the existing passengers and for each instance of exceeding the posted capacity of the vehicle.	\$200
5.4	Failure to operate a program of preventive maintenance for all vehicles and to maintain acceptable records of such maintenance in accordance with applicable law and DOE regulations.	\$400
5.5	Each driver or attendant on duty or awaiting an assignment to duty for whom LEVEL A requirements specified by Federal or State law or regulation and/or DOE contracts and/or regulations including, but not limited to, those for medical certification, fingerprinting, driving records, reference letters, applications for employment, and/or training, are not met.	\$400
5.6	Each driver or attendant on duty or awaiting an assignment to duty for whom LEVEL B requirements specified by Federal or State law or regulation and/or DOE contracts and/or regulations including, but not limited to, those for medical certification, fingerprinting, driving records, reference letters, applications for employment, and/or training, are not met.	\$200
5.7	For each driver or attendant, each instance of a failure to administer a pre-employment, random, post-accident and/or reasonable suspicion alcohol and/or drug test according to applicable law, NYCDOE regulation, and/or in response to a lawful request from the OPT Director, an OPT Investigator or a Chancellor's Designee(s).	\$600

6.1	Contractor’s failure to provide adequate communication with DOE and families as specified in the Contract, the <i>Contractor’s Manual</i> and other DOE directives including, but not limited to, <b>(a)</b> provision of fax, internet and telephone service, <b>(b)</b> staffing of sufficient English-speaking parent/guardian service staff to answer calls from 10 minutes before the first bus departs until the last bus returns, <b>(c)</b> provision of enough phone lines so that each of the Contractor’s garages and guardian/parent staff can be reached, <b>(d)</b> furnishing DOE with 24 hour emergency contact information, and/or <b>(e)</b> being available to DOE 24 hours per day, 365 days per year.	\$400
6.2	Failure to supply information and documentation as may be required by the Director in whatever reasonable form it is so required that pertains to the following: <b>(a)</b> the documentation of when buses arrive and depart from each stop on the route both in real time (e.g., “please call when the driver makes each stop”) and retrospect (e.g., “after the run please submit documentation showing when the driver was at each stop”); <b>(b)</b> “trip cards” and other regular information collected in the performance of the bus route; <b>(c)</b> the number and names of children who embark and disembark at each stop if such information is requested by the Director in writing; <b>(d)</b> the telephone numbers, individuals authorized to accept children and other information commonly collected by bus staff about their passengers; <b>(e)</b> each vehicle’s capacity, registration, mechanical, body and identification markings; <b>(f)</b> the assignment of routes to garages, vehicles to routes and staff to routes; <b>(g)</b> contact information and names of staff at each Contractor facility; <b>(h)</b> details of untoward incidents (such as accidents, breakdowns, delays, injuries, misconduct, emergencies, etc.) and investigations of these incidents; <b>(i)</b> insurance records and information submitted to insurance carriers and others in conjunction with DOE work; <b>(j)</b> vehicle maintenance records and records of the maintenance and use of any DOE purchased or required equipment; <b>(k)</b> personnel information about employees of the bus company including instances of disciplinary actions, drug and alcohol testing, and other information necessary to maintain certification with OPT and regulatory bodies; and/or, <b>(l)</b> financial information necessary to assist in OPT’s resolution of claims by other entities and to ascertain the ability of the Contractor to continue to provide service.	\$200

**NOTE:** Automated vehicle tracking information (See Paragraph 4.26, L.) will be given special consideration in disputing violations for which the evidence it can produce is relevant (e.g., whether or not the bus stopped for a child, the time the bus arrived at school, etc.) provided the validity of that information is demonstrated to the satisfaction of the Director or his or her designee.

**1.49. This section intentionally left blank**

**1.50. DEFAULT OF CONTRACT**

Wherever the term appears in this Contract and/or RFB, "Default" means the occurrence of any one or more of the following.

- A. The discovery that a representation made in this RFB/Contract by the Bidder/Contractor was false when made, if the nature and magnitude of the misrepresentation was such as to have had a probable and material effect upon the Board's decision to make an award to the Bidder/Contractor or upon the negotiations as to the other terms, conditions and/or specifications of this Contract.
- B. **(1)** The Contractor's insolvency; **(2)** the Contractor's repeated persistent failure to pay its debts in the normal course of business; **(3)** the voluntary or involuntary entrance of the Contractor into receivership or any similar arrangement or composition with creditors generally; **(4)** the filing of a voluntary or involuntary petition that is *not* dismissed within sixty days for the bankruptcy, reorganization, dissolution, or winding-up of the Contractor; **(5)** a voluntary or involuntary assignment for the benefit of creditors of the Contractor; or, **(6)** a seizure or a sale of a material part of the Contractor's property by or for the benefit of any creditor or governmental agency.
- C. The Contractor shall violate the provisions of **Paragraph 1.30**, *supra*.
- D. Debarment of the Bidder/Contractor from performing services with respect to business with the Federal and/or State government.
- E. **Prevention of Delays, Suspensions or Strikes.** Because of the public nature of the services involved, and because of the essential public services performed, the Contractor shall not act in any manner, nor employ labor or means, nor do anything by way of omission or commission that would in any way cause or result in a suspension, delay, work stoppage, work slowdown, strike and/or other organized or unorganized labor and/or other activity affecting the work or any services to be performed hereunder. Any violation by the Contractor (or by any Subcontractor and/or Affiliate) of this requirement may, upon certification of the Director that the precipitating and/or contributory act(s) and/or failure(s) to act demonstrated a lack of good faith effort to assure the performance of the conditions or covenants of this Contract, shall be considered as sufficient cause for finding the Contractor to have caused and/or permitted a Default.
- F. Any failure and/or refusal of the Contractor to comply with the provisions of the paragraph entitled, "Suspension of Vehicle Use, Performance and Payment," as expressed in this Contract.
- G. In the event of significant or repeated safety violations due to acts of commission and/or omission by the Contractor, its employees and/or anyone controlling the Contractor that result from the Contractor's failure and/or refusal to conduct its operations according to pupil transportation Industry Best Practices. For purposes of this provision, the term "safety violations" shall mean significant and/or repeated violation of safety laws and/or regulations of the U.S. Department of Transportation, the State Department of Transportation, the State Department of Motor Vehicles, the NYCDOT and/or the NYCDOE.
- H. If the Contractor, or any of its owners, or any member of the immediate family of any of its owners, acquires an ownership or other controlling interest in any school/site to or from which transportation is being provided hereunder, or the NYCDOE determines that such an acquisition shall have occurred; if the Contractor allows a school/site, or any member of the immediate family of an owner of such a school/site, to acquire an ownership interest in the Contractor, or the NYCDOE determines that such an acquisition shall have occurred; or, if the Contractor allows any individual or business entity that has an ownership interest in any school/site to which transportation is being provided hereunder to acquire an ownership interest in the Contractor, or the NYCDOE determines that such an acquisition shall have occurred.
- I. The Contractor fails to provide and deliver the supplies and/or services, or any part thereof, ordered pursuant to this Contract, or fails to provide same in accordance within the time schedule(s) set forth; or, the Contractor shall substantially cease and/or abandon its performance of all or any portion (e.g., any one or more Classes or other divisible units) of the Contract.

- J. The Contractor submits false or misleading documents to the Board in order to induce the award of this Contract, and/or the Contractor makes any statement or representation in the Contract or in any document submitted by the Contractor with respect to the work and/or services under the Contract that is untrue or incorrect when made.
- K. The Contractor accepts orders from BOE schools, pre-schools, offices, units, bureaus, divisions etc., and/or non-public schools for items not stipulated in this Contract or any other current written agreement with the Board
- L. The Contractor distributes sales or marketing literature to BOE schools, pre-schools, offices, units, bureaus, divisions, etc., and/or non-public schools without the written consent of the Director.
- M. The Contractor delivers supplies pursuant to this Contract which are packaged other than as specified herein.
- N. The Contractor submits any invoice for payment for any item which has not been delivered or any service which has not been performed.
- O. The Contractor delivers items found to be damaged, used or otherwise defective or deficient and fails to substitute conforming items within five Business Days of notice of the problem.
- P. The Contractor is in arrears to the New York City Public School System for any overpayments, liquidated damages and/or other amounts due and owing to the BOE.
- Q. The Contractor fails and/or refuses to obtain and maintain the insurance policies specified in this Contract and/or otherwise fails and/or refuses to comply with material contractual requirements pertaining to insurance such as, but not limited to, obtaining and providing Certificates of Insurance, the Broker's Certification of Insurance, and/or copies of insurance policies.
- R. The Contractor shall, without just cause, reduce its working force to a number which, if maintained, would be insufficient, in the opinion of the Chancellor or his or her designee(s) or the Director or his or her designee(s), to perform the work and/or services of the Contract.
- S. The Chancellor or a Person(s) designated by the Chancellor or the Director or a Person(s) designated by the Director shall be of the opinion that the Contractor is or has been willfully or in bad faith violating any of the provisions of this Contract; or, the Contractor executes this Contract in bad faith.
- T. The Chancellor or a Person(s) designated by the Chancellor or the Director or a Person(s) designated by the Director shall find that the Contractor shall have violated any requirement of an Independent Private Sector Inspector General (herein expressed as "IPSIG") or any provision of the Contractor's agreement with an IPSIG in the event that the Contractor shall be required to engage an IPSIG by the BOE and/or any federal, state, City or other applicable governmental agency.
- U. Violation of material provisions of the Contract including, but not limited to, those set forth below:
  - (1) The Contractor's failure without good cause to perform the Services in accordance with the material terms, conditions and specifications provided in the Contract such as, but not limited to, late school bus service, unclean school buses, vehicular breakdowns, vehicular accidents caused by the vehicle operator, moving violations, corporal punishment incidents, controlled substance/alcohol abuse incidents, and/or other service-oriented issues;<sup>3</sup> or,

---

<sup>3</sup> For late school bus service, unclean school buses, vehicular breakdowns, vehicular accidents caused by the vehicle operator, moving violations, corporal punishment incidents, controlled substance/alcohol abuse incidents, and/or other

- (2) Use of unauthorized Subcontractors; or,
  - (3) Failure to cooperate with reasonable requests of BOE inspectors and representatives with respect to work under this Contract; or,
  - (4) Failure to comply with the provisions of **Paragraph 1.47(A), (B) and/or (C)** of this Contract.
- V. The Contractor or any of its officers, directors, partners, five percent shareholders, principals, or other persons substantially involved in its activities, commits and/or permits any one or more of the following acts and/or omissions:
- (1) Indictment or conviction under any state or federal law of any of the following:
    - (a) a criminal offense incident to obtaining or attempting to obtain or performing a public contract; and/or,
    - (b) an offense indicating a lack of business integrity that seriously and directly affects responsibility as a BOE contractor;
  - (2) Judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
  - (3) Arrears for taxes, fees, assessments, claims, judgments and/or fines owed to the Federal, State and/or City governments, unemployment insurance payments to the State, and/or Worker's Compensation Insurance premiums;
  - (4) Making or causing to be made any false, deceptive, or fraudulent material statement in any bid, proposal, or application for BOE or other government work;
  - (5) Improper conduct, including but not limited to, intentional or grossly negligent billing irregularities, submitting false or exaggerated claims, falsification of documents or records, willful destruction of documents or records the Contractor had an obligation to maintain, bribery, use of false or deceptive statements to obtain some benefit, causing competition to be restrained or limited, misrepresentation, violation of ethical standards established by the BOE, and other dishonesty incident to obtaining, pre-qualifying for, or performing any contract or modification thereof; and/or,
  - (6) Any other cause sufficiently serious and compelling that a reasonable person would seriously doubt the capability of the Contractor to perform its obligations under this Contract.
- W. The Contractor has an out-of-service vehicle rate of twenty percent or greater, as reported by the State Department of Transportation ("NYSDOT"). (See **Paragraph 4.26(AH)**, *infra*.)
- X. The Contractor uses for transportation under this Contract any vehicle that has failed an NYSDOT inspection or has been deemed to be "out-of-service" by the NYSDOT and/or OPT. (Regarding OPT "out-of-service" determinations, see **Paragraph 1.42**, *supra*, and **Paragraphs 1.97** and **4.26(AH)**, *infra*.) Details on the state inspections are contained in the publication entitled *NYS Standard School Bus Safety Inspection Manual* which is available through NYSDOT's website.

**1.50.1 Imputed Conduct.**

---

service-oriented issues, there must be a pattern of repeated incidents for which the Contractor shall have taken insufficient corrective and/or disciplinary action as reasonably deemed appropriate by the BOE.

- (1) The fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, or management employee of the Contractor or an Affiliate, may be imputed to that Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor or with the Contractor's knowledge, approval, or acquiescence. The Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- (2) The fraudulent, criminal, or other improper conduct of the Contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the Contractor who participated in, knew of, or had reason to know of the Contractor's conduct and that such conduct was fraudulent, criminal or otherwise improper.
- (3) The fraudulent, criminal, or other seriously improper conduct of a Contractor's subcontractor(s) may be imputed to the Contractor if the conduct occurred for or on behalf of the Contractor, or with the knowledge, approval, or acquiescence of the Contractor. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

**1.50.2** All other provisions in this Contract that specify a Default and/or grounds for termination of the Contract are included in this definition.

**1.51. SALES AND MARKETING LITERATURE** – Such literature not permitted

**1.52. USAGE REPORT (PURCHASE ORDERS)** – Not Applicable

**1.53. This section intentionally left blank**

**1.54. MATERIAL SAFETY DATA SHEETS (MSDS)**

The Contractor shall produce any Material Safety Data Sheets requested by appropriate OPT staff such as, but not limited to, Inspectors and Investigators.

**1.55. NEW YORK STATE "RIGHT TO KNOW" LAW**

The Contractor shall adhere in every respect with Article 28 of the State Labor Law with particular regard to the requirements to provide notice and training to employees about any and all "toxic substances" in the "workplace," as those terms are defined in Labor Law Section 875.

**1.56. PATENT RIGHT: COPYRIGHTS; TRADEMARKS; OTHER INTELLECTUAL PROPERTY**

The Contractor shall be responsible for any claims made against the Board and/or the City for any infringement of patent rights, copyrights, trademarks, trade secrets and/or any other forms of intellectual property (herein expressed collectively as "Intellectual Property Rights") arising from the sale, supply and/or use of any patented, copyrighted, trademarked and/or otherwise lawfully protected supplies, equipment, information technology and/or services furnished or supplied under this Contract. The Contractor shall defend, save harmless, pay on behalf of, and indemnify the Board and/or the City for all costs, expenses and damages, including reasonable attorney's, accountant's, investigator's and/or consultant's fees, which the Board and/or the City may be obligated to pay, or may otherwise suffer, by reason of any infringement of Intellectual Property Rights resulting from such sale, delivery or use of said supplies or equipment. If the Contractor or anyone employed by the Contractor shall write, record or otherwise produce copyrightable material within the scope or in furtherance of this Contract, the Board shall be considered the author for purposes of copyright, renewal of copyright, and termination of copyright and,



unless expressly waived in a written instrument signed by the Chancellor or his or her designee(s), the owner of all of the rights comprised in the copyright. Any invention or discovery arising out of or developed in furtherance of this Contract shall be promptly and fully reported to the Board. The Board shall have the exclusive right to apply for patent protection on such invention or discovery and to determine how the rights in said invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered.

**1.57. CODE OF ETHICS**

In accordance with policy adopted by the Board of Education, any contract, agreement or order issued as a result of this RFB is authorized subject to the provisions of the Administrative Code and the City Charter relating to a Code of Ethics and to the policies of the Board of Education relating to conflicts of interest. In the event that the Contractor is, employs, retains, or engages the services of any employee of the Board of Education in violation of the provisions of the Administrative Code or the City Charter relating to a Code of Ethics or of the policies of the Board relating to conflicts of interest, the Contractor shall have no claim in law and/or equity under the agreement nor shall the Contractor have any claim in law and/or equity against the Board of Education or any Board of Education agent, servant or employee.

**1.58. NO DISCRIMINATION**

- A.** Compliance: the Contractor, and all of the Contractor's employees, shall strictly comply with all applicable Federal, State and local laws pertaining to the subject of discrimination and harassment on any ground, as they may now read or as they may hereafter be amended. In addition, the Contractor, and all of the Contractor's employees, will comply with all applicable internal Board rules and regulations, including Chancellor's Regulation A-830, the Board's unlawful discrimination/harassment policy
- B.** Equal Employment Opportunity Policy: the Contractor is, and shall remain, an Equal Opportunity Employer. In addition to the other requirements of this Section, the Contractor shall provide employment opportunities for all qualified persons without regard to race, color, religion, creed, ethnicity, national origin, alienage, citizenship status, age, marital status, partnership status, disability, sexual orientation, gender (including gender identity), military status, prior record or arrest or conviction (except as permitted by law), predisposing genetic characteristics, or status as a victim of domestic violence, sexual offenses and stalking. Furthermore, the Contractor will maintain an environment free of harassment on the above-referenced protected categories.
- C.** If this Agreement is 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, the Contractor agrees, as required by New York State Labor Law § 220-e, that:
  - (1)** In the hiring of employees for the performance of work under this Agreement, neither the Contractor, nor any person acting on behalf of such Contractor, shall by reason of race, religion, creed, color, disability, sex or national origin discriminate against any citizen of the state of New York who is qualified and available to perform the work to which the employment relates;
  - (2)** Neither the Contractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, religion, creed, color, disability, sex or national origin;
  - (3)** There may be deducted from the amount payable to the Contractor by NYCDOE under this Agreement a penalty of fifty dollars (\$50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement;
  - (4)** This Agreement may be cancelled or terminated by NYCDOE and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section; and

- (5) The provisions of this Section shall be limited to operations performed within the territorial limits of the State of New York.

**1.59. COMPLIANCE WITH LAWS**

In connection with the performance of this Contract, the Contractor shall comply with all applicable laws, rules and regulations as such may be enacted, promulgated, added, deleted, amended, revised, updated and/or otherwise changed during the Term of the Contract. The Parties hereto agree that every provision of any law, rule and/or regulation required to be inserted herein be deemed a part hereof. It is further agreed that if any such provision is not inserted or is incorrectly inserted, through mistake or otherwise, this Contract shall be deemed amended automatically and without the need for any action by the Parties so as to comply strictly with the law, rule and/or regulation.

**1.60. FORUM PROVISION, CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

The Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York without regard to the State's rules on conflict of laws. The Parties agree that any and all claims asserted by or against the City and/or the Board of Education of the City School District of the City of New York ("NYCDOE") arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("State Courts") located in the City and County of New York. To effect this agreement and intent, the Contractor agrees:

- A. If the City and/or the NYCDOE initiate(s) any action against the Contractor in Federal Court or in State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by certified mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the NYCDOE and City in writing; and,
- B. With respect to any action between the City and/or the NYCDOE and the Contractor in State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of *forum non conveniens*, (ii) to remove to Federal Court; and, (iii) to move for a change of venue to a State Court outside New York County.
- C. With respect to any action between the City and/or the NYCDOE and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any right it may otherwise have to move to transfer the action to a United States Court outside the City of New York.
- D. If the Contractor commences any action against the City and/or the NYCDOE in a court located other than in the City, County and State of New York, upon request by the City and/or the NYCDOE, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City, County and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York County.

If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

**1.61. This section intentionally left blank**

**1.62. ANTITRUST CLAUSES**

The Contractor assigns to the Board its right, title and interest in and to any claim or cause of action arising under the antitrust laws of New York State or the United States relating to the goods or Services purchased or procured by the Board pursuant to this Contract.

**1.63. SET-OFF RIGHTS**

The Board of Education shall have all of its common law, equitable and statutory rights of set-off. These shall include, but shall not be limited to, the Board's option to withhold for the purposes of set-off any moneys due and owing to the Board with regard to this Contract, any other agreement with the Board including, but not limited to, any agreement for a term commencing prior to the term of this Contract, plus any amounts due and owing to the Board for any other reason. The Board shall exercise its set-off rights in accordance with normal Board practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the Board, its representatives, or State or City Comptroller.

**1.64. PARTICIPATION IN AN INTERNATIONAL BOYCOTT**

- A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or of the regulations of the United States Department of Commerce promulgated thereunder.
- B. Under the final determination by the Commerce Department or any other agency of the United States as to the conviction of the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or of the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this contract.
- C. The Contractor shall comply, in all respects, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

**1.65. INVESTIGATIONS**

- A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.
- B.
  - (a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public

authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or,

(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then:

**C.**

(a) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license may convene a hearing, upon not less than (5) calendar days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(b) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph (5) below without the City and Board incurring any penalty or damages for delay or otherwise.

**D.** The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City and Board; and/or

(b) The cancellation or termination of any and all such existing City and Board contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City and Board incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the Board.

**E.** The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:

(a) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City and the Board.

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under paragraph (5) above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in paragraph (3)(a) above gives notice and proves that such interest was previously acquired. Under either circumstances the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

**F.**

(a) The term “license” or “permit” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(b) The term “person” as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(c) The term “entity” as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, licenses, leases, or permits from or through the City or Board or otherwise transacts business with the City or Board.

(d) The term “member” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

(e) The term “commissioner” as used herein includes, but is not limited to, the Chancellor.

(f) The term “agency” as used herein includes, but is not limited to, the Board.

**G.** In addition to and notwithstanding any other provisions of this Agreement, the commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event the Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or Board, or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the Contractor or affecting the performance of this Agreement.

**1.66. NEW LAWS, RULES, REGULATIONS, BY-LAWS AND/OR VEHICLE SAFETY FEATURES**

If any Federal, State, or City, and/or other applicable laws, rules, regulations and/or mandatory policies are enacted, added, repealed, deleted, updated, revised, amended and/or otherwise changed in any manner that requires the Contractor to undertake any new and/or revised procedures affecting school bus personnel and/or operations (such as, but not limited to, school bus personnel drug or alcohol testing, driver licensing or training procedures) or the introduction onto vehicles of new safety features or any other equipment (such as, but not limited to, increased seat-back padding, back-up beepers, stop arms, safety sensors, seat belts, emissions control devices), the Contractor must comply promptly at its sole cost and expense, and the Board and/or the City shall not be liable to pay any additional compensation to the Contractor for such compliance.

**1.67. ACCOUNTING FOR BOE PROPERTY**

If the BOE shall provide to the Contractor and/or the Contractor shall acquire with funds provided by the BOE any goods and/or other property for use by the Contractor during the term of this Contract, the said goods and/or other property shall be deemed purchased by the Board for the use of the Contractor during the Term of this Contract.

The Contractor shall cause and/or permit such goods and/or other property to be permanently embossed "Property of New York City Board of Education." The Contractor shall return all such goods and/or other property to the Board, at the Contractor's expense, within thirty days after the end of said Term, **unless** the Contractor is otherwise notified in writing by the Chancellor, the Director or their designee(s).

**1.68. NO ESTOPPEL**

Neither the City nor the Board nor any of their respective agencies, departments, divisions, offices, officials, agents, or employees thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Contract by the City, the Board, or any other official, agent or employee of the City or Board, either during or after the term of this Contract:

- (a) From showing the true and correct classification, amount, quality or character of the Services actually performed; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular, or that the Services, or any portion of the Services, do not in fact conform to the requirements of this Contract; and
- (b) From demanding and recovering from the Contractor any overpayment made to it, or such damages as the City or Board may sustain by reason of the Contractor's failure to perform each and every part of its Contract.

**1.69. COMPETENT WORKERS**

The Contractor shall employ and/or contract for the services of only competent workers, consultants, independent contractors, and other employees as are, or reasonably may be, necessary for the performance of the Services hereunder. The Contractor warrants that it shall be solely responsible for the work, direction, safety and compensation of its employees, consultants and/or independent contractors. The Contractor agrees to replace immediately any employee, consultant and/or independent contractor, and not engage such Person in the performance of this Contract, if the Contractor is notified in writing that, in the opinion of the Chancellor, the Director, or their designees, such Person is incompetent or otherwise impedes the performance of the services hereunder. As used herein, the terms "consultants" and "independent contractors" shall **not** be construed to mean and/or be synonymous with the terms "Subcontractor" and/or "Affiliate." The terms "consultant" includes professionals who furnish services to the Contractor in areas such as, but not limited to, controlled substances and/or alcohol policy and/or testing, computer programming, etc. The term "independent contractor" may include, but is not necessarily limited to, automotive repair and maintenance specialists, construction contractors, electricians, plumbers, etc. Subcontractors and Affiliates are treated elsewhere in this Contract.

**1.69.1 INDEPENDENT CONTRACTOR**

A. The Contractor and the Board agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office or unit of the Board or City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the Contractor, with respect to the Board or the City, that differs from or is inconsistent with that of an independent contractor.

B. All persons who are employed by the Contractor and all the Contractor's subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the Board and/or the City nor under contract with the Board and/or the City. The Contractor, and not the Board or the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create

any relationship between either the Board or the City and the Contractor's employees, agents, subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the Board or the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor's employees or agents, (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the Board or the City or to any officer, agent or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits, or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the Board or the City, including any department, agency, office, or unit of the Board or the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers or agents, any demand, application or claim upon or against the Board or the City for any right or benefit applicable to an official or employee of the Board or the City or to an employee or officer of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the Board or the City to any person or entity whatsoever.

**1.70. GIFTS AND GRATUITIES**

The Contractor shall not give any gift or thing of value, whether in the form of services, loan, promise of a loan or other thing of value, or in any other form, to any officer, employee, or person whose salary is payable in whole or in part from the City Treasury. Any violation of this section, at the option of the Board, shall terminate and render forfeit and void the contract and work herein; and in such event, the Contractor shall be liable for the additional cost to the Board for completion of the contract. The Board shall have the right to assess damages against the Contractor for that amount over and above the contract price which the Board is required to expend in connection with the termination, re-letting and completion of the contract, and the Board may further regard any violation of this section as sufficient ground to preclude the Contractor from qualifying or pre-qualifying as a responsible bidder on subsequent Board of Education contracts.

**1.71. This section intentionally left blank**

**1.72. LOCAL LAW 121**

Local Law 121 requires City agencies to request that responses to competitive solicitations be printed double-sided on recycled paper.

Bidders should provide all information required in the format below.

- The bid should be printed on both sides of 8 ½" X 11" paper.
- The NYCDOE requests that all bids be submitted on paper having at least 30% post-consumer material content (i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency, for any changes to that standard please consult <http://www.epa.gov/cpg/products/printing.htm>).
- Pages should be paginated.

Failure to comply with any of these instructions will not be considered non-responsive.

Is the response printed on recycled paper containing the minimum percentage of recovered fiber

content as requested by NYCDOE in the instructions to this solicitation?  Yes    _____                      No    _____
---

**1.73. TAXES**

Federal, State and Local Taxes. The NYCDOE represents that it is a municipal corporation and city school district as defined under the Education Law and the General Construction Law of the State of New York and, as such, is exempt from the payment of federal, state or local sales, excise, compensating use, or gross receipts taxes as provided under the U.S. Internal Revenue Code and the Tax Law of the State of New York. The Contractor shall comply with the provisions set forth herein for the elimination of all payments of such taxes for otherwise taxable goods, supplies, equipment, services, and so forth, that the Contractor shall purchase in the provision of the goods and services under this contract for purposes of resale to the NYCDOE, and the Contractor shall pass along all related savings to the NYCDOE.

**1.74. This section intentionally left blank**

**1.75. CAPTIONS**

The headings of this Contract, the paragraphs, and subparagraphs of the Contract, and of any amendments, attachments, etc., are included solely for convenience and reference; and they shall not be used in any way to interpret this Contract.

**1.76. CONDITIONS PRECEDENT**

This Agreement shall not become effective or binding upon the Board until it has been:

- (1) approved as to legal sufficiency by the Board’s Office of Legal Services;
- (2) executed by the Chancellor;
- (3) approved as to legal authority by the New York City Law Department;
- (4) registered in accordance with Education Law section 2590-h(36)(d) and the Board’s Procurement Policy and Procedures section 2-09; and
- (5) approved by the New York State Education Department, if applicable.

**1.77. UNLAWFUL PROVISIONS VOID**

If this Contract contains any unlawful provisions or portions thereof, they shall be deemed deleted from the Contract; and the remainder of the Contract shall remain in full force and effect. If the deletion of such provision frustrates the purpose of this Contract, either Party may make application to the Dispute Resolution Officer (“DRO,” see **Paragraph 1.93, *infra***) for relief.



**1.78. RELIGIOUS ACTIVITY PROHIBITED**

There shall be no religious worship, instruction, proselytizing, or other religious activity in connection with the performance of this Contract.

**1.79. POLITICAL ACTIVITY PROHIBITED**

No Board property provided to the Contractor hereunder for the purposes of this Contract shall be used for any political activity or to further the election or defeat of any candidate for public office. As used herein the term "Board property" shall include, but not be limited to, supplies, work sites, funds advanced and services.

**1.80. PUBLICATION AND PUBLICITY**

The Contractor may not publish anything about any aspects of the Services and other activities regarding this Contract without the prior written approval of the Chancellor or his or her designee(s). All approved publications shall acknowledge that the Services are supported by funds from the Board. Five true copies of each approved publication shall be furnished to the Board without charge. As soon as the Contractor shall become aware of it, the Contractor shall inform the OPT Director about any and all inquiries from news media sources and any and all coverage by news media sources in connection with this Contract.

**1.81. NO EXTRA COMPENSATION**

The Contractor shall not seek, ask for, demand, sue for or recover, as extra compensation or otherwise, any sum for labor, materials or services other than the compensation agreed upon and fixed.

**1.82. CANCELLATION OF GRANT AND/OR OTHER FUNDING**

If any portion or all of the goods or Services to be provided hereunder are to be paid for, in whole or in part, by means of grant and/or other funding received by the Board from federal, state, city, private or other sources, the obligation to pay the Contractor shall be subject to the continuing availability of any and all such funding. The Board shall notify the Contractor within five Business Days from the date the Board receives written notice of the cancellation of grant and/or other funding, in whole or in part. Whereupon, the Contractor may cease further performance of this Contract **to the extent** said performance would not be supported by the affected grant or other funding. **However**, the Board may, at its option, require completion of performance of this Contract by the Contractor upon giving written assurance, signed by the Chancellor or his or her designee(s) or the Director or his or her designee(s), within fifteen Business Days of the date the Board receives written notice of such cancellation, that the completed performance of any affected portion of this Contract shall be supported by other available funds.

**1.83. This section intentionally left blank**

**1.84. NOTICES**

The address provided by the Contractor as its address in this Contract is hereby designated as the place where all notices, letters or other communications directed to the Contractor shall be served, mailed or delivered. Any notice, letter or other communication directed to the Contractor and delivered to such address, or sealed in a post-paid wrapper and deposited in any post office box regularly maintained by the United States Postal Service, shall be deemed sufficient service thereof upon the Contractor. Said address may be changed at any time by an

instrument in writing, executed and acknowledged by the Contractor and delivered to the Director. Nothing herein contained shall be deemed to preclude or render inoperative personal delivery of any notice, letter or other communication, written or oral, to the Contractor. Whenever it shall be necessary or required to prove the delivery of any notice, an affidavit describing such delivery shall be conclusive evidence of such delivery. Reference is hereby made to **Paragraph 4.16(A)** entitled, "Contractor Mail Pick-Up and Delivery," *infra*.

#### **1.85. AMENDMENTS AND WAIVERS**

This Contract may only be amended by a written instrument signed by an authorized officer for the Contractor and by the Chancellor or his or her designee(s). No amendment materially affecting the substance hereof shall be effective unless authorized by the Chancellor and a copy of said authorization is attached to the amendment and incorporated therein. No waiver by the Board of any term or condition hereof shall be effective unless in writing and signed by the Chancellor or his or her designee(s). Any waiver shall be specifically limited to its terms, and shall not be deemed applicable to subsequent like circumstances. Any purported oral amendment or waiver shall be void. Any and all amendments and/or waivers affecting this Contract may be made **only** with "manual signatures" and **not** by click-through or other electronic agreements. The term "manual signature" means a pen-and-ink signature made by authorized representatives of the Parties on typed or printed amendments or waivers in a form(s) approved by the Board (i.e., **excludes** click-through or other electronic agreements).

#### **1.86. BOARD DETERMINATIONS**

The Chancellor, the Director or their designee(s) shall in all cases determine the acceptability of the labor, materials or services which are delivered pursuant to this Contract including, but not limited to, their quality, delivery and condition, and shall in all cases decide every question which may arise relative to the performance of this Contract. The Contractor may not rely upon, and the Board shall not be bound by, any explanations, determinations or other statements by or from the Board which are not in writing and signed by the Chancellor, the OPT Director or their designee(s).

#### **1.87. CONFIDENTIALITY**

##### **(A) CONFIDENTIAL INFORMATION.**

**(1)** "Confidential Information" includes, but is not be limited to, the following: **(i)** all personally identifiable information of DOE public schools' and/or non-public schools' students and/or such student's parents, guardians and/or other family members; **(ii)** all personally identifiable information of BOE employees and their family members; **(iii)** information furnished by one Party to the other Party in connection with the performance of this Contract including, but not limited to, all reports and studies containing such information; **(iv)** trade secrets, technical and non-technical information or data related to prices, costs, formulas, patterns, designs, compilations, systems, databases, equipment, communications networks, programs, inventions, methods, techniques, drawings, processes; **(v)** information pertaining to the Board's pupil's and/or pupil's families' or guardians' use of the Contractor's services; **(vi)** Third Party confidential information disclosed to one Party by the other Party, **(vii)** any disclosures between the Parties related to the services or otherwise related to this Contract whether made prior to, contemporaneous with, or following the award of this Contract **excluding** the documents comprising this Contract such as, but not limited to, the Bid and the Bid Tabulations, and/or **(viii)** any other information that a reasonable Person under similar circumstances would consider to be confidential or proprietary at the time of disclosure, notwithstanding a failure to make it or identify it as such.

**(2)** "Confidential Information" does **not** include any information that is: **(i)** in the public domain at the time of receipt or which comes into the public domain thereafter through no act of the Receiving Party in breach of this Contract, **(ii)** demonstrated to have been known to the Receiving Party prior to disclosure by the Disclosing Party, **(iii)** disclosed with the prior written approval of the

Disclosing Party, **(iv)** demonstrated to have been independently developed by the Receiving Party without reference to the Confidential Information, **(v)** disclosed to the Receiving Party by a Third Party under conditions permitting such disclosure, without breach of this Contract, and/or **(vi)** disclosed as required by court order, subpoena, other validly issued administrative or judicial notice or order and/or as a matter of applicable law, **provided, however**, that in the event disclosure is required of the Receiving Party under the provision of any law or court order, the Receiving Party will **(a)** promptly notify the Disclosing Party of the obligations to make such disclosure sufficiently in advance of the disclosure, if legally possible and permissible, to allow the Disclosing Party to seek a protective order, and **(b)** disclose such Confidential Information only to the extent allowed under a protective order, if any, or necessary to comply with the law or court order.

**(3)** The Contractor stipulates and agrees that any and all forms, documents, questionnaires, work papers and other forms of information, which the Contractor and/or its Subcontractors and Affiliates use to elicit information under this Contract from NYCDOE and/or non-public schools' teachers, administrators, employees, pupils, pupil's parents and/or guardians, and/or other pupil's family members shall not contain any personally identifiable or traceable information, data, marks or images pertaining to DOE public schools' and/or non-public schools' students, such students' parents and/or guardians, and/or other pupil's family members. The Contractor and/or its Subcontractors and Affiliates, if any, shall adhere in every respect to the law, Board policy and the Chancellor's regulations concerning confidentiality of records. The Contractor shall submit to the Board any and all information and data that the Contractor and/or its Subcontractors and Affiliates collect pursuant to this Contract. At the expiration or other termination of this Agreement, the Contractor shall either **(i)** submit to the Board the originals and all copies of any and all information and data that the Contractor and/or, if any, its Subcontractors and/or Affiliates shall have collected pursuant to this Agreement, or **(ii)** submit to the Board a written, notarized certification that any and all information and data that the Contractor and/or, if any, its Subcontractors and/or Affiliates shall have collected pursuant to this Agreement shall have been destroyed as of the date of the said certification.

**(B) FREEDOM OF INFORMATION.**

If Confidential Information supplied by the Contractor, Subcontractor and/or Affiliate to the NYCDOE shall be subject to any federal or state freedom of information law or other disclosure request or demand, the NYCDOE shall notify the Contractor of the same, if and to the extent such notification is permitted under the applicable law. The Contractor stipulates and agrees that the NYCDOE is subject to federal and state freedom of information laws and other legal processes involving information disclosure, and it is possible that such laws or legal processes may require the NYCDOE to disclose Confidential Information supplied by the Contractor, Subcontractors and/or Affiliates to the NYCDOE.

**(C) ACCESS TO AND USE OF CONFIDENTIAL INFORMATION.**

Each Party shall be a "Disclosing Party" regarding Confidential Information provided to the other, and each Party shall be a "Receiving Party" regarding the receipt of Confidential Information from the other. The Receiving Party shall preserve in confidence such Confidential Information and prevent disclosure thereof to Third Parties. The Receiving Party shall further restrict disclosure of such Confidential Information to Subcontractors, Affiliates, employees, agents and/or other representatives who have a "need to know". The Contractor shall provide written notice to all of its Subcontractors, Affiliates, employees, agents and/or other representatives of the confidentiality requirements expressed in this Contract and shall obtain written, signed and dated confirmation from each Subcontractor, Affiliate, employee, agent and/or other representative that he/she will abide by the said requirements. The written notice and confirmation expressed in the preceding sentence shall be subject to advance written approval by the Director or his or her designee(s). Confidential Information delivered by the Disclosing Party to the Receiving Party shall be used solely for the purpose of providing the services hereunder. No other use of Confidential Information is granted without the express written consent of the Disclosing Party.

**(D) COMPLIANCE WITH SECURITY AND CONFIDENTIALITY REQUIREMENTS.**

The Contractor and its Subcontractors, Affiliates, employees, agents and other representatives shall abide by all applicable security policies and procedures of the NYCDOE, both present and future, particularly in its use of NYCDOE information systems and shall not provide access to any NYCDOE information systems to a Third Party who is not under an obligation of confidentiality in accordance with this Contract. The Contractor shall inform its Subcontractors, Affiliates, employees, servants and agents of the requirements of this **Paragraph 1.87** and shall enforce compliance with these requirements.

**(E) IRREPARABLE HARM.**

Each Party acknowledges that any disclosure or misappropriation of Confidential Information of the other Party in violation of this Contract could cause irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law inadequate. Each Party therefore stipulates and agrees that the other Party shall have the right to obtain an order restraining any breach or threatened breach of this Paragraph 1.87 and for any other relief as such Party reasonably deems appropriate. This right shall be in addition to any other remedy available in law or equity.

**(F) BREACH OF CONFIDENTIALITY.**

“Confidentiality Breach” means acquisition without valid authorization from the BOE of Confidential Information by the Contractor and/or any of the Contractor’s Subcontractors, Affiliates, employees, agents and/or other representatives, and/or by any Third Party acting by or through the Contractor (and/or any of the Contractor’s Subcontractors, Affiliates, employees, agents and/or other representatives), or any device, medium, hardware or software owned, licensed and/or used by the Contractor (and/or any of the Contractor’s Subcontractors, Affiliates, employees, agents and/or other representatives). Good faith acquisition of the Board’s Confidential Information by a Contractor’s employee or agent for the purposes of this Contract is not a Confidentiality Breach, **provided**, the Confidential Information is not used or disclosed without valid authorization from the BOE. To determine whether Confidential Information has been acquired, or is reasonably believed to have been acquired, by an unauthorized Person or a Person without valid authorization, the following factors, among others, shall be considered: **(i)** indications that Confidential Information is in the physical possession and/or control of an unauthorized Person such as, but not limited to, a lost or stolen computer or other device containing Confidential Information; **(ii)** indications that Confidential Information has been downloaded or copied; and/or, **(iii)** indications that Confidential Information has been used by an unauthorized Person such as, but not limited to, reports of fraudulent accounts or identity theft. Promptly upon discovery or receipt of notice of a Confidentiality Breach, the Contractor shall give written notice to the Director, which notice shall include, but not be limited to, detailed information about the full nature and extent of any Confidentiality Breach. The Contractor shall undertake promptly all commercially reasonable efforts to recover any Confidential Information that shall have been subject to a Confidentiality Breach, to prevent any further Confidentiality Breaches, and to assist the BOE to investigate, and to mitigate the consequences of, any Confidentiality Breach.

**(G) CONFIDENTIALITY OF RECORDS**

All personally identifiable student and staff information obtained by or furnished to the Contractor by the Board, and all reports and studies containing such information prepared or assembled by the Contractor, are to be kept strictly confidential by the Contractor and shall not be provided or disclosed to any third party without the express written permission of the Chancellor or his designee. The Contractor shall limit access to such material in its control to those of its employees performing services pursuant to this Agreement strictly on a need to know basis. The Contractor shall restrict its use of the information to its performance under this Agreement and shall return all such material to the Board upon the completion of the services herein.

**1.88. TESTIMONY**

If the services that are the subject matter of this Contract at any time become involved in a claim, action, proceeding and/or special proceeding, to which the Board or the City is a party, before any court, board, tribunal, panel, arbitrator, referee or agency, the Contractor shall provide such knowledgeable witnesses as the Board shall require, free of additional compensation of any kind. Nothing herein shall require the Contractor to provide testimony in any proceeding in which it is a party with interests opposed to those of the Board.

**1.89. NO PERSONAL LIABILITY**

Neither the Chancellor, nor any Board (*dba* Panel for Educational Policy) members, nor any officer, employee, agent or representative of the Board or of the City shall be personally liable, based upon any theory of law or equity, to the Contractor or to any party claiming on behalf of or through the Contractor, under this Contract, or by reason of any individual's actions or failure to act in any way connected with this Contract, whether or not the action shall have been within or without an individual's scope of authority. The scope of this provision includes personal injury to any personal interest (commercial or otherwise), physical injury (including death), property damages, and any pecuniary damages where such injuries or damages result from or arise out of negligence. The Contractor further waives any and all rights to make a claim or commence an action or special proceeding, in law or equity, against any of the aforementioned individuals; and the Contractor hereby assigns its complete right, title, and interest in any such claim, action, proceeding or special proceeding to the Board.

**1.90. ANTITRUST** – See Paragraph 1.62, *supra*.

**1.91. NON-COLLUSIVE BIDDING**

- A. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, , under penalty of perjury, that to the best of his or her knowledge and belief:
  - 1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
  - 2. Unless otherwise required by Law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder, and will not knowingly be disclosed by the Contractor 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.
- B. If the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons why the bidder cannot make the certification.

**1.92. DUTY TO REPORT TO SCI**

The Contractor and its employees, agents, Subcontractors and Affiliates must report to the Office of Special Commissioner of Investigation of the New York City School District (“SCI”) any suspected criminal activity and/or conflicts of interest in relation to this Contract, as well as any suspected violation of any NYCDOE, State Department of Transportation and/or State Education Department regulations and/or any other applicable Federal, State, City and/or NYCDOE laws, rules and/or regulations in connection with the performance of this Contract. The Contractor must inform, in writing, each employee, agent, Subcontractor and Affiliate of his or her duty to report.

**1.93. DISPUTE RESOLUTION**

**(A) PRESCRIPTION OF ADMINISTRATIVE DISPUTE RESOLUTION.**

If the Contractor shall be unable to resolve its differences concerning any determination by the Director or any other authorized representative of the BOE, the Contractor may initiate a dispute pursuant to the procedure set forth in this **Paragraph 1.93**. Exhaustion of these dispute resolution procedures shall be a mandatory precondition to any lawsuit permitted hereunder. Notwithstanding the foregoing, a Contractor may not dispute a determination by the BOE where the BOE is acting upon findings or recommendations of the Special Commissioner of Investigation or other law enforcement agency.

**(B) ADMINISTRATIVE DISPUTE RESOLUTION RULES AND PROCEDURES.**

The Contractor does hereby authorize and delegate the Dispute Resolution Officer (herein expressed as "DRO") to decide all questions of any nature whatsoever arising out of, under or in connection with, or in any way related to, or on account of, this Contract (including, but not limited to, claims in the nature of breach of contract, and/or fraud or misrepresentation before or after contract award), and the DRO's decision shall be conclusive, final and binding on the Contractor and its heirs, successors, assigns and representatives as well as upon the NYCDOE. In each case, the DRO's decision may be based on such assistance as he/she may find desirable including, but not limited to, the advice of experts. The effect of the DRO's decision shall not be impaired and/or waived by any negotiations or settlement offers in connection therewith, and/or by any prior decision of others, which prior decisions shall be deemed subject to review, and/or by any termination or cancellation of this Contract. All such disputes shall be submitted in writing by the Contractor to the DRO for his or her decision, together with all evidence and other pertinent information with regard to such questions and/or disputes in order that a fair and reasonable decision may be made. The Contractor must submit a dispute to the DRO no later than thirty days from the Contractor's receipt of the determination that the Contractor wishes to challenge. The Contractor shall send written notice to the OPT Director of each application for redress to the DRO together with a photocopy of all documents submitted to the DRO. In each dispute case, the OPT Director or other respondent may submit to the DRO a written response or answer to the petition together with all evidence and other pertinent information regarding such questions and/or disputes. (The OPT Director or other respondent shall send to the Contractor a copy of the response or answer together with a copy of all evidence or other information submitted to the DRO.) The technical rules of evidence shall not apply to the dispute resolution process expressed in this **Paragraph 1.93**. As a designee of the Chancellor, the DRO may conduct sworn depositions of relevant witnesses, although such depositions shall not be mandatory and shall be within the reasonable discretion of the DRO to determine whether necessary. The DRO shall render a decision in writing and deliver a copy of same to the OPT Director (or other respondent) and the Contractor within forty-five days of the conclusion of submission of all materials and information or such longer time as may be agreed to by the parties. In an unusually complex case, the DRO may render his or her decision in a longer period of time, not to exceed ninety days or such longer time as may be agreed to by the parties, and shall so advise the parties at the commencement of this period. The DRO's decision shall be deemed a final agency action.

**(C) DESIGNATION OF DRO.**

The Contractor and the BOE do hereby appoint, approve, designate and authorize either **(i)** the NYCDOE Chief Executive for School Support Services (or the successor title of a comparable executive function) or his or her designee(s) or **(ii)** the Executive Director of the Division of Contracts & Purchasing ("DC&P") or his or her designee(s) to be and to act as the DRO for all general and particular intents and purposes under this Contract.

**(D) APPEAL FROM DRO DECISIONS.**

If the Contractor protests the determination of the DRO, the Contractor may commence a proceeding in Supreme Court, New York County, under Article 78 of the New York Civil Practice Law and Rules, it being

understood that the review by the Court shall be limited to the question of whether or not the DRO's determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that has not been presented to the DRO prior to the DRO making his or her decision.

**(E) ACCRUAL OF ARTICLE 78 CAUSE OF ACTION**

The Contractor's Article 78 cause of action to challenge an adverse DRO determination shall accrue upon its receipt of that determination, and it shall have four months to commence such a proceeding.

**1.94. NOTICE OF CLAIM**

The Contractor stipulates and agrees that, no later than three months from the Contractor's receipt of the DRO determination, and before instituting, bringing, commencing, filing or otherwise starting an Article 78 proceeding to challenge a DRO determination, the Contractor must and shall file a verified, written notice of claim with the Board of Education of the City School District of the City of New York, % New York City Law Department, 100 Church Street, Room 4-313, New York, NY 10007-2601, or with such other agent and/or at such other location as the Board shall specify with notice to the Contractor. The Contractor stipulates and agrees that the notice of claim requirements set forth herein shall be included in any Subcontract entered into by the Contractor. The Contractor's Article 78 cause of action to challenge a DRO determination may not be maintained unless the verified petition in such Article 78 proceeding shall allege that a verified, written notice of claim was presented in accordance with the above requirements, within three months of accrual of the cause of action, and that such claim was not adjusted or paid within thirty days after such presentment.

**1.94.1 CLAIMS-LIMITATION OF ACTION**

- A. Any claim against the City or Board based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under section 1.94 of this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.
- B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

**1.95. NOTICE OF OWNERSHIP AND/OR RELATIONAL CHANGES**

After award of this Contract, the Contractor shall be obligated to notify the Director in writing within ten Business Days in the event of a change(s) in any of the following: **(i)** beneficial owners (including, without limitation, parent and over-parent entities), limited or general partners, silent or apparent partners, major shareholders (more than five percent stock ownership), officers, managers and/or directors of the Contractor; **(ii)** Affiliates; **(iii)** Subcontractors; **(iv)** transfer payees or payment assignees; and, **(v)** any relationship that might involve or create a conflict of interest.

**1.96. SUBJECT MATTER**

The Contractor shall provide, at its own cost and expense, sufficient plant, equipment and working capital to provide for the transportation of students with disabilities and their non-disabled peers and other authorized passengers in accordance with the terms, conditions, and specifications set forth herein. The Contractor shall accept as full compensation for its faithful performance of this Contract the sums certified by the Director in accordance with the provisions of the Contract, and said sums shall be in the amount at which the Contract was awarded to the Contractor at the public bidding, as may be adjusted pursuant to the provisions expressed in **Paragraph 1.3, supra**.

**1.97. INSPECTORS AND ADMINISTRATIVE PERSONNEL**

The Director will assign inspectors and/or other administrative personnel to inspect vehicles furnished under this Contract, and such inspector(s) shall have the right at any and all times to inspect the vehicles used or proposed to be used under this Contract; to inspect the driver's license, vehicle registration, and proof of insurance; and to require drivers to produce proper identification. Such inspectors are authorized and empowered to reject and forbid the use of any and all vehicles or any part thereof offered under or in fulfillment of this Contract for the reason that the same do not comply with the terms, conditions and/or specifications. Inspectors and/or administrative personnel will be allowed access to all of the Contractor's premises and vehicles for the purpose of carrying out vehicle inspections and related functions, and the review and audit of Contractor records for compliance with the terms of this Contract.

**1.98. PRIOR CONTRACTORS**

The Contractor agrees to be responsible to the Board for any debts owed to the Board by any other transportation contractor, where the Contractor and the other transportation contractor have, or had at any time since the date of execution of a previous school bus contract, substantially the same ownership and/or Control, and provided that those debts arose under a contract for the transportation of children previously entered into between the Board and the other transportation contractor. Incorporated contractors having substantially the same ownership and/or Control, includes, but is not necessarily limited to, corporations having twenty percent of their shares held by the same Persons.

**1.99. MERGER AND CHOICE OF LAW**

This written Contract constitutes the entire agreement of the Parties; and no other prior or contemporaneous agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or bind any of the Parties hereto or to vary any of the terms contained herein. . This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to its conflict of law rules.

**1.100. SCHOOL BUS CONTRACTOR'S MANUAL**

**(A)** The NYCDOE Office of Pupil Transportation's *2017 Manual of Standard Operating Procedures for School Bus Contractors Providing Service under Contracts with the NYCDOE* (herein expressed as "*Contractor's Manual*") is hereby incorporated by reference and made a part of this Contract as if the *Contractor's Manual* were set forth herein in its entirety. The Contractor and its employees, agents, successors, assignees, trustees, Subcontractors, and Subcontractor's employees are required to observe and comply fully with all of the *Contractor's Manual's* rules, requirements, and procedures as if they were set forth in this Contract in their entirety.

**(B)** The Chancellor or his or her designee(s) and/or the Director or his or her designee(s) shall have the power and sole discretion to add, delete, revise, update, reissue and/or otherwise change any or all rules, procedures, and/or requirements contained in the *Contractor's Manual* upon ten calendar days prior notice to the Contractor; **provided, however**, that any such future changes to the *Contractor's Manual* shall not be inconsistent with the material terms of this Contract **except** to the extent required by any applicable federal, State, and/or City laws, rules, and/or regulations.



**1.101. DISENGAGEMENT**

**(A) General Obligations.**

The Contractor shall achieve a complete transition of the Services being terminated from the Contractor and Subcontractors to the BOE, or to any replacement provider designated by the BOE, without any interruption of or adverse impact on the Services or any other services furnished by Third Parties (herein expressed as “Disengagement”). The Contractor shall cooperate with the BOE and any new service provider and otherwise promptly take all steps reasonably required to assist the BOE in effectuating a complete Disengagement. The Contractor shall provide all information regarding the Services needed for Disengagement including, but not limited to, data conversion, interface specifications, and related services. The Contractor shall provide for the prompt and orderly conclusion of all work, as the BOE may direct, including, but not limited to, completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to the BOE or its designee(s).

**(B) Disengagement Period.**

The disengagement period (hereinafter expressed as “Disengagement Period”) shall begin: **(i)** six months prior to the expiration of the Term, or **(ii)** if this Contract or any portion of thereof is terminated by the BOE before the expiration of the Term, on the date of the Contractor’s receipt of a termination notice from the BOE. The Contractor’s obligation to provide the Disengagement Services shall not cease until a Disengagement satisfactory to the BOE including, but not limited to, the performance by the Contractor of all asset-transfers and other obligations of the Contractor provided in this **Paragraph 1.101** shall have been completed.

**(C) Disengagement Services.**

During the Disengagement Period, the Contractor shall provide Disengagement Services to accomplish a complete transition of the Services being terminated to the BOE or any replacement provider designated by the BOE, without any interruption of, or adverse impact on, the BOE. The Contractor’s obligations to provide the Services shall not cease until the disengagement has been completed, including the performance by the Contractor of the Disengagement Services set forth below to the Board’s satisfaction. For any and all Disengagement Services, the Contractor shall not be entitled to any compensation beyond the daily rate(s) that the Contractor shall have quoted in the Bid Blank that the Contractor shall have submitted in its bid and as subsequently adjusted under the terms of this Contract. The Contractor shall cooperate with the BOE or its designated service provider and shall promptly perform any Services required to assist in effecting a complete disengagement (herein expressed as “Disengagement Services”) of this Contract or of any portion thereof including, but not limited to, the following:

- (1)** Providing complete and sufficient information (including all information belonging to the BOE then being utilized by Contractor) regarding the Services;
- (2)** Prompt and orderly conclusion of all work, as the BOE may reasonably direct, including completion or partial completion of tasks and documentation of work in process;
- (3)** After such Disengagement Services are performed and completed, surrendering to the BOE any space on the Board’s premises that are occupied and/or otherwise used by the Contractor;
- (4)** Delivering to the BOE any BOE property that is held by the Contractor; and
- (5)** Delivering to the BOE copies of all the Board’s Confidential Information and any other BOE data (excluding data for archival purposes or warranty support) or in the case of Confidential Information, at the Board’s election, certify in writing that the Board’s Confidential Information shall have been destroyed as of a particular date stated in written notice from the Contractor to the BOE.

**(D) No Interruption and/or Adverse Impact.**

The Contractor shall cooperate with the BOE and all of the Board's other contractors to ensure a smooth transition at the time of Disengagement with **(i)** no interruption of the Services, **(ii)** no adverse impact on the Board's transportation services and other related business and activities, **(iii)** no interruption of any services and/or software provided by Third Parties, and **(iv)** no adverse impact on the provision of services provided by Third Parties.

**(E) Contractor's Failure to Perform Disengagement Services as Specified.**

The Contractor stipulates and agrees that any refusal by the Contractor to provide, or any material breach in the provision of, the Disengagement Services will cause the BOE to suffer irreparable harm for which adequate remedies are not available at law. Therefore, the Contractor stipulates and agrees that the BOE shall be entitled to seek specific performance and/or injunctive relief to enforce its rights to receive Disengagement Services from the Contractor in compliance with this **Paragraph 1.101**. In the event that the BOE obtains specific performance or injunctive relief due to Contractor's failure and/or refusal to provide Disengagement Services, or a material breach in the provision of Disengagement Services, the Contractor shall reimburse the BOE for the costs and expenses incurred by the BOE including, but not necessarily limited to, reasonable administrative fees, consultant fees, legal fees and disbursements, in seeking such specific performance or injunctive relief.

**1.102. DISASTER RECOVERY**

As part of the Services furnished under this Contract, the Contractor shall plan and perform the Disaster Recovery Services expressed hereinafter and in the **Disaster Recovery Plan** (herein expressed as "**DRP**").

**(A) Disasters.**

A "Disaster" means any unplanned interruption of the Services and/or any unplanned disruption, destruction, damage and/or other serious problem affecting the Contractor's vehicles, storage and/or maintenance facilities, offices, computer systems, etc., of more than forty-eight consecutive hours duration that materially affects the ability of the Contractor to provide the Services hereunder pursuant to the terms, conditions and specifications expressed in this Contract. A *Force Majeure* Event may be the cause of a Disaster. The Contractor shall notify the BOE as soon as reasonably possible after an interruption of Services and/or any unplanned disruption, destruction, damage and/or other serious problem affecting the Contractor's vehicles, storage and/or maintenance facilities, offices, computer systems, etc., becomes a Disaster. The Contractor shall move the affected portion of the Services and/or the Contractor's vehicles, storage and/or maintenance facilities, offices, computer systems, etc., to an alternative site as expeditiously as possible. For every facility (e.g., each garage, bus yard and office location) that the Contractor uses for the performance of this Contract, the Contractor must obtain, install and maintain a sufficient system of back-up electricity generators to furnish electricity to maintain the Services during any electrical power outage. The Contractor must have arrangements in place to provide fuel for all such generators for the duration of each electrical power outage. During a Disaster, the Contractor shall furnish optional or on-request services to the Contractor's other customers only after stabilizing the provision of the Services under this Contract and only to the extent that there remains adequate additional capacity at an alternate site.

**(B) Disaster Recovery Plan ("DRP").**

The Contractor shall submit electronically a draft Disaster Recovery Plan (herein expressed as "**DRP**") to the Director within ninety days after the Board's Notice of Award shall have been sent to the Contractor. The **DRP** shall be subject to the approval of the Director or his or her designee(s), which approval shall not be unreasonably withheld, conditioned and/or delayed. If the Director or his or her designee(s) fail to provide written notice to the Contractor within twenty Business Days of the need for any revisions,

corrections and/or other changes to the draft **DRP**, the said plan shall be deemed to be approved. If the Director or his or her designee(s) shall provide written notice to the Contractor within twenty Business Days of the need for any reasonable revisions, corrections and/or other changes to the draft **DRP**, the Contractor shall have thirty days to make the said revisions, corrections and/or other changes **and** to transmit electronically a final version to the Director or his or her designee(s) for final approval.

The Contractor shall update the **DRP** within sixty days from the end of each Contract Year and shall submit copies of each annual update electronically to the Director or his or her designee(s) for approval, which approval shall not be unreasonably withheld, delayed and/or conditioned.

The Disaster Recovery Plan shall include two event type specific sections. The first of those sections will address preparations for and responses to Disasters resulting from events that **may** reasonably be anticipated (e.g., a hurricane or snow storm). Those plans must address, at a minimum, issues such as, but not limited to: location and refueling of generators (or such other method for replacing electrical service as the contractor may propose); the location and plans for use of pumps (e.g., sump pumps) with connections to back-up generators for facilities in flood-prone areas; prior to the anticipated event, the evacuation and secure relocation of equipment and operations that are usually housed in flood-prone, isolated or otherwise vulnerable to disruption locations; relocation and repair of equipment; relocation and restoration of operations; restoration of lost utilities (e.g., electricity, gas and water); repair of damaged equipment and facilities; acquisition of replacement vehicles on an expedited/immediate basis; and standing agreements for alternative facilities in which to conduct operations on a close to immediate basis.

The second of those sections will address preparations for and responses to Disasters resulting from events that **may not** reasonably be anticipated (e.g., vandalism or flooding unrelated to a major weather event such as flooding resulting from a water main break). Those plans must address, at a minimum, issues such as, but not limited to: location and refueling of generators (or such other method for replacing electrical service as the contractor may propose); the location and plans for use of pumps (e.g., sump pumps) with connections to back-up generators for facilities in flood-prone areas; relocation and repair of equipment; relocation and restoration of operations; restoration of lost utilities (e.g., electricity, gas and water); repair of defaced equipment and facilities; acquisition of replacement vehicles on an expedited/immediate basis; and standing agreements for alternative facilities in which to conduct operations on a close to immediate basis.

The **DRP** shall also include, but shall not necessarily be limited to, at least (i.e., **not** less than) the following: **(1)** a statement of the computer software and data security and backup system(s) that the Contractor has in place to protect against attacks by viruses and other types of malware as well as to provide off-site backup of the Contractor's electronically stored business information and electronically stored BOE information and Confidential Information; **(2)** a statement of the Contractor's plans to maintain and/or restore effective voice and data communications as required under **Paragraph 1.102(C)**, *infra*; **(3)** a statement of the Contractor's alternative, off-site access to information and telecommunications systems (i.e., computer and telecommunications hardware, software and peripherals) capable of resuming the Contractor's data and communications operations under the Contract on an interim basis pending the full restoration of the Contractor's operations; and, **(4)** a statement of the Contractor's operational and financial plans, strategies and estimated timelines to restore its operations under the Contract in the event of a Disaster. The Director or his or her designee(s) may require the Contractor to provide additional information in the **DRP** to the extent commercially reasonable in the Director's estimation.

**(C) Voice and Data Communications.**

As part of the **DRP**, the Contractor shall work with the BOE to establish a plan for alternative voice and data communications in the event of a Disaster. The Contractor shall be responsible for furnishing any additional and/or alternative communications equipment and data lines required under the adopted plan with respect to communications between the BOE and the Contractor during a Disaster.

**(D) BOE Information and Contractor Information Security and Back-Up.**

The Contractor shall keep in a separate and safe place additional copies of all BOE data and BOE Confidential Information required to be maintained by this Contract or otherwise and additional tapes or disks necessary to reproduce all such BOE data and BOE Confidential Information. The Contractor shall use reasonable care in accordance with Industry Best Practices to minimize the likelihood of damage, loss of data, delay, and/or error resulting from an uncontrollable event. If such damage, loss of data, delay and/or error shall occur, the Contractor shall undertake all commercially reasonable efforts to mitigate the effects of such occurrence. The Contractor shall provide the BOE with a copy of the Contractor's written information backup policy as part of the **DRP**. In the event of loss of data caused by the fault or negligence of the Contractor, its agents, employees, Affiliates and/or Subcontractors, the Contractor shall forthwith regenerate the lost data at the Contractor's sole cost and expense. The Contractor shall ensure that all BOE Confidential Information stored as backup shall be encrypted and/or accessible only via robust identification protocols with access passwords.

**1.103. SURVIVAL**

Any provision of this Agreement, amendment, exhibit and/or attachment that contemplates performance or observance subsequent to termination or expiration of this Agreement (including, but not necessarily limited to, confidentiality and data protection, limitation of liability, indemnification provisions, insurance and perpetual licenses) shall survive termination or expiration of this Agreement and continue in full force and effect thereafter.

**1.104. RESERVED RIGHTS**

The rights, powers, privileges and remedies reserved to the Board and to the City by this Contract are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the City and the Board may have at law or in equity with respect to the subject matter of this Contract, and a waiver thereof at any time or in any instance shall not affect any other time or instance.

**1.105. SUPERVISION**

The Contractor shall comply with all orders and instructions of the Chancellor or his or her designee(s) and/or the Director or his or her designee(s) not inconsistent with or prohibited by the terms, conditions and/or specifications of this Contract. The scope and substance of said orders and instructions shall be in the discretion of the Chancellor or his or her designee(s) and/or the Director or his or her designee(s), so that the Chancellor and/or the Director may properly discharge his or her function of providing safe and reliable transportation to the students.

**1.106. NYCDOE PROCURMENT POLICY AND PROCEDURES**

The NYCDOE "Procurement Policy and Procedures," as approved by the NYCDOE Panel for Educational Policy ("PEP") is hereby incorporated by reference and made a part of this Contract as if the said "Procurement Policy and Procedures" were set forth herein in its entirety. The Contractor and its employees, agents, successors, assignees, trustees, Subcontractors, Subcontractor's employees and other Persons in the Contractor are required to observe and comply fully with all of the "Procurement Policy and Procedures" as if they were set forth in this Contract in their entirety.

**1.107. MACBRIDE PRINCIPLES PROVISIONS FOR BOARD OF EDUCATION CONTRACTORS**

- (1) In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.
- (2) The Contractor agrees that the covenants and representations in paragraph (1) above are material conditions to this Agreement.
- (3) This section does not apply if the Contractor is a not-for-profit corporation.

**1.108. PAID SICK LEAVE LAW**

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.<sup>1</sup> Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of Contractor. Contractor is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which Contractor can get more information about how to comply with the PSLL. Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

---

<sup>1</sup> Pursuant to the PSL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSL may use sick time for any of the following:

- such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;
- such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee’s place of business by order of a public official due to a public health emergency; or
- such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee’s use of sick time pursuant to the PSL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

### Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

### Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

### Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

### Records

An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

### Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other

information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

#### More Generous Policies and Other Legal Requirements

Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

### **1.109. WHISTLEBLOWER PROTECTION**

- (1) The Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, Executive Director of DCP, or the Chancellor.
- (2) If any of the Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of the previous paragraph, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- (3) The Contractor shall post a notice provided by the City (Attachment \_\_) in a prominent and accessible place on any site where work pursuant to the Agreement is performed that contains information about:
  - a. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and
  - b. the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.



(4) For the purposes of this Whistleblower Protection provision, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

**1.110 IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NEW YORK CITY CONTRACTORS**

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law (“SFL”) §165-a and General Municipal Law (“GML”) §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder’s certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

1.111 CONTINUED

**BIDDER’S CERTIFICATION OF COMPLIANCE WITH IRAN DIVESTMENT ACT**

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

*[Please Check One]*

**BIDDER’S CERTIFICATION**

- By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer 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 its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.
- I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: \_\_\_\_\_, New York  
\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public  
Dated:

## **FORMS**

### **2.1. REMINDER TO ALL BIDDERS**

#### **1. VERIFY THAT THE FOLLOWING FORMS ARE COMPLETED:**

- A. SECTION 2.2 “COMPANY INFORMATION”**
- B. SECTION 2.3 “NO BID RESPONSE FORM”, IF APPLICABLE**
- C. SECTION 2.5 “EQUAL EMPLOYMENT OPPORTUNITIES FORM”**
- D. SECTION 2.8 “CERTIFICATE OF INSURANCE” (SAMPLE)**
- E. SECTION 2.9 “CERTIFICATION BY INSURANCE BROKER” (SAMPLE)**
- F. SECTION 2.10 PASSPORT QUESTIONAIRES**

#### **2. PLEASE COMPLETE THE DOCUMENTS FOUND IN SECTIONS 2.13–2.16.**

- A. BIDDERS INFORMATION, CERTIFICATIONS AND SIGNATURES WITH CORPORATE SEAL.**
- B. AFFIDAVIT OF ACKNOWLEDGMENT, NOTARIZED. IF NOTARIZED BY A PARTY REGISTERED OUTSIDE THE STATE OF NEW YORK, A CERTIFICATION FROM THE COUNTY CLERK OF THE COUNTY IN WHICH THE NOTARY IS REGISTERED IS REQUIRED BY THE COMPTROLLER.**

**ALL ABOVE DOCUMENTS MUST BE ORIGINALS; YOUR COOPERATION IN THIS MATTER WILL EXPEDITE THE AWARDING PROCESS OF THIS BID.**

- 3. IF YOU MADE ANY CORRECTIONS TO YOUR BID PROPOSAL, (WHITEOUT, LINEOUT, ETC.) PLEASE ATTACH A LETTER STATING THAT THE CORRECTIONS WERE MADE BY YOUR COMPANY.**

2.2. **COMPANY INFORMATION** –Include with the bid

**PLEASE PRINT LEGIBLY IN INK**

NAME OF COMPANY BIDDING \_\_\_\_\_

CONTACT PERSON \_\_\_\_\_

ADDRESS OF COMPANY BIDDING \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

IS THIS A NEW ADDRESS? \_\_\_\_\_ YES \_\_\_\_\_ NO

TELEPHONE NO. \_\_\_\_\_ 800 NO. \_\_\_\_\_ FAX NO. \_\_\_\_\_

E MAIL ADDRESS \_\_\_\_\_

FEDERAL TAX IDENTIFICATION NUMBER \_\_\_\_\_

NAME OF PERSON FILLING OUT BID \_\_\_\_\_

TITLE \_\_\_\_\_

AUTHORIZED SIGNATURE \_\_\_\_\_

Principal of Company

Date

PRINT NAME \_\_\_\_\_

**BID MUST BE RETURNED INTACT**

**WE ADVISE THAT YOU MAKE A COPY OF THIS CONTRACT PROPOSAL FOR YOUR FILES. DUPLICATES WILL NOT BE ISSUED.**

**2.3. NO-BID RESPONSE FORM**

**Bid Opening Date:** \_\_\_\_\_

IT IS NOT NECESSARY FOR THE BIDDERS WHO ARE SUBMITTING BIDS ON THE PRODUCTS AND/OR SERVICES SPECIFIED HEREIN TO RETURN THIS FORM.

THE NEW YORK CITY BOARD OF EDUCATION is committed to programs and policies that will result in the procurement of supplies, equipment and services that meet the quality standards required by our educational institutions at the lowest possible prices.

An important aspect of achieving this goal is to promote competitive bidding among as great a number of qualified bidders as possible.

However, the preparation and mailing of Bid Request Packages is time consuming and expensive. In instances where bidders fail to respond or notify the Board of Education of their future intentions, the preparation and mailing of the Bid Request Package represents an unnecessary expense to the Board of Education. Feedback from bidders is also encouraged so that any reasons for not bidding may be evaluated with the intention of improving future solicitations for this commodity or service in the hopes of encouraging and expanding the field of competition.

All bidders who respond with a "No Bid" response or choose not to bid, are requested to provide the information requested below and return this form in the envelope provided, in time for the bid opening. FAILURE OF NON-BIDDERS TO RETURN THIS COMPLETED FORM MAY RESULT IN THEIR BEING DROPPED FROM OUR BIDDER'S LIST FOR THE PRODUCT(S) AND/OR SERVICE(S) SPECIFIED HEREIN.

**REASONS FOR NOT BIDDING AT THIS TIME:**

\_\_\_\_\_  
\_\_\_\_\_

DO YOU WISH TO RECEIVE BID REQUESTS FOR THIS PARTICULAR PRODUCT OR SERVICE IN THE FUTURE? ( ) YES ( ) NO\*

\*If this option is selected, and the bidder desires to be reinstated on the bidder's list in the future, the bidder must forward a written request to the Division of Contracts and Purchasing for reinstatement.

**BIDDER NAME AND ADDRESS:**

\_\_\_\_\_  
\_\_\_\_\_

**SIGNED:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**BID TITLE:** \_\_\_\_\_

2.4. **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS FOR PROFESSIONAL CONTRACTORS**

A. Definition of Terms for the Implementation of a Program of Affirmative Action.

The following terms, when used in this paragraph, shall have the meanings given for them.

- (1) **"Employee"**: Any person employed full or part-time in any capacity by the Contractor or sub-contractor.
- (2) **"Minority Groups and Affected Classes"**: Blacks, Hispanics (Non-European), Asian Americans, American Indians, females and individuals with handicapping conditions.
- (3) **"Program of Affirmative Action"**: A detailed, result-oriented set of written procedures submitted by a Contractor or sub-contractor which when implemented with conscious effort results in compliance with the Equal Opportunity Policy herein, through full utilization and equal treatment of minorities, women and individuals with handicapping conditions at all levels and in all segments of the Contractor's or sub-contractor's work force. An effective Program of Affirmative Action shall include but not necessarily be limited to, the following elements:  
(Rev. 9/20/88)
  - (a) Development or reaffirmation of the Contractor's or sub-contractor's Equal Opportunity Policy;
  - (b) Dissemination of the Policy;
  - (c) Responsibility for implementation;
  - (d) A survey and analysis of employment at all levels and in all categories and aspects of the Contractor's or sub-contractor's work force, which determines if and at which levels, categories, and aspects there is an underutilization of minority and female employees;
  - (e) An analysis of employment policies and practices, including but not limited to seniority systems, recruitment, training, promotion, insurance and job benefits and their effects upon minorities, women and individuals with handicapping conditions;
  - (f) Corrective actions taken, or to be taken, toward the elimination of any employment policy or practice having a discriminatory effect on minority group members and women; and
  - (g) Description of the Contractor's efforts to engage, as sub-contractors, bona fide minority business enterprises and female enterprises.
- (4) **"Goals and Timetables"**: Projected levels of achievement resulting from an analysis by the Contractor or sub-contractor of its deficiencies, and of what it can reasonably do to remedy them within a specified time period.
- (5) **"Underutilization"**: Having fewer minorities, women and individuals with handicapping conditions in a particular job classification than would reasonably be expected by their availability in the appropriate labor force.
- (6) **"The Office"**: The Office of Equal Opportunity of the Board.

B. Required Program of Affirmative Action

- (1) The Contractor is required to identify and eliminate overt and covert discriminatory practices and implement the Program of Affirmative Action. Upon demand of the Office the Contractor shall submit to the Office a detailed written Program of Affirmative Action (hereinafter referred to as a "P.A.A."). In the event the Contractor submits a P.A.A. not acceptable to the Office, the Office will require the correction or revision of the P.A.A. to its satisfaction.
- (2) In the event the Contractor fails to submit such an acceptable P.A.A. within the time specified in the demand, the Contractor may be declared in default. The Director shall be the sole judge of the P.A.A.'s acceptability. The P.A.A. shall:
  - (a) Apply to all Board of Education professional services contracts with the Contractor;
  - (b) Encompass all phases of the employment process, including evaluation of job classification to ensure job relatedness, recruitment, selection, validity of examinations, retention, layoffs, seniority, assignments, training, promotion, salary and benefits;
  - (c) Fulfill the following requirements:
    - (i) Include measurable goals, reasonable timetables and specific programs to be implemented by the contractor to identify and eliminate deficiencies in employment practices with respect to the underutilization of members of minority groups and members of affected classes;
    - (ii) Include a statement of the present utilization of minority group members and women in the Contractor's work force and a projection of the minority utilization in the Contractor's work force for the life of the Contract and for at least a one-year period succeeding its completion. This statement and projection shall include present and projected (1) rates of hiring and promotion of minority group members and women in specific job categories at each wage rate within each level of employment and according to major organizational unit, and (2) percentages of minority group and women utilization in specific job categories at each wage rate within each level of employment, and according to major organizational work force;
    - (iii) Include all of the Contractor's facilities within New York City as well as those facilities located elsewhere within the continental limits of the United States;
    - (iv) Specify the union(s) or other employee organizations to which the Contractor's employees belong, and shall include commitments to good faith efforts to effect Equal Opportunity changes directly or indirectly, in programs by such unions or organizations to recruit, train, qualify or otherwise select members, if such changes are deemed necessary. The P.A.A. shall also include a copy of any agreement with an employee association which affects employment policies and practices;
    - (v) Be submitted in such format as shall be specified by the Director of the Office;

- (vi) Include a commitment to submit to the Director a separate P.A.A., of the form (i) to (v) hereof, for each subcontractor prior to approval of the subcontractor by the Board of Education;
- (vii) Include a written evidence or proof which shows that minority entrepreneurs have been solicited and given an equal opportunity to submit proposals and that such proposals have been given equal consideration for award;
- (viii) Contain commitments as to goals for minority and affected classes employment and adoption of equal employment practices not less strict than the commitments contained in the Contractor's most recent P.A.A. which was approved by the Office.

C. Compliance Inspection Report

Upon demand of the Office the Contractor shall, within the specified time, submit to the Office a Compliance Inspection Report. The completed Compliance Inspection Report must be returned to the Office within such time as is specified in the requisition for information accompanying the report form.

D. Conferences

The Contractor shall attend such conferences as shall be required by the Office for the purpose of acquainting it with the statutory and contractual requirements and what specific measures shall constitute an acceptable P.A.A.

E. Implementation of P.A.A.

During the Term of the Contract, the Contractor shall successfully implement the P.A.A. approved by the Office.

F. Default

If, in the opinion of the Office, the Contractor has breached any of the requirements of paragraphs 36 or 37 hereof it may seek to have the Contractor declared in default by the Chancellor's designee as provided elsewhere herein. (Rev. 10/10/02)

For further information concerning these rules, regulations or procedures, contractors may consult with the Office of Equal Opportunity of the Board.



**2.5. EQUAL EMPLOYMENT OPPORTUNITIES**

The provisions and terms herein will be strictly enforced by the Board of Education. It is the intent of the Board of Education to make this section’s requirements applicable to all its contracts.

Emphasis is placed upon the following:

“Prior to the award of contract of \$100,000 or greater to a bidder, the bidder must submit to the Director, Office of Equal Opportunity, an Affirmative Action Plan. The completed Affirmative Action Plan must be returned to the Office of Equal Opportunity **within twelve calendar days from the effective date stated on the Requisition for information accompanying the report form.**

Failure to submit the Affirmative Action Plan within the period of time specified above may result in a rejection of the bid and the disqualification of the bidder from bidding on Board of Education work for a period of one year”.

To facilitate the processing of Affirmative Action Plans, bidder must furnish the information requested in the spaces provided below. It is recommended that this information be included with its bid. **In turn, said forms will be mailed directly to the office and individual so designated.** Bidders are to alert said office/individual of contemplated direct mailings from our Office of Equal Opportunity.

Corporation Name: \_\_\_\_\_

Address \_\_\_\_\_

(Number and Street/Avenue)

\_\_\_\_\_

(City)

(State)

(Zip Code)

\_\_\_\_\_

Telephone No

(Area Code)

(Number)

(Extension)

Federal I.D. No. \_\_\_\_\_

Email Address: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Name of Corporate Affirmative Action Officer (Authorized to make Statements-Representations):

\_\_\_\_\_

## 2.6 INSURANCE REQUIREMENTS

### 2.6.1 PROOF OF INSURANCE.

The Contractor shall not and shall not allow any Subcontractor to commence the performance of any Services under this Contract until the Contractor and Subcontractors, if any, shall have obtained all insurance required under this **Paragraph 2.6**, and the Director or his or her designee(s) shall have approved such insurance according to the approval standards expressed in this **Paragraph 2.6**. Approval of the Contractor's insurance coverage shall be granted only after the Contractor shall have submitted to the Director or his or her designee(s) either (y) two original certificates of insurance signed by authorized representatives of the insurers, along with any additional insured endorsements required by this **Paragraph 2.6** or, (z) at the request of the Director or his or her designee(s), two certified copies of the required insurance policies. (Proof of insurance for workers' compensation and disability benefits insurance must be submitted on a form approved by the New York State Workers' Compensation Board.<sup>4</sup>) When submitting certified copies of policies, the Contractor may mark such documents confidential, proprietary and trade secret materials. The Contractor shall provide the Director with a copy of any policy required under this Section at any time during the Contract, upon the demand for such policy by the Director or the New York City Law Department. Receipt or approval by the NYCDOE of any certificates of insurance or any insurance policies shall not constitute a waiver by the NYCDOE of the insurance requirements under this Contract. The Contractor and each Subcontractor shall maintain all insurance coverage required under this Contract in full force and effect during the Term. Within five (5) Business Days of the renewal or replacement of each insurance policy required under this Contract, the Contractor shall provide the Director or his or her designee(s) two (2) original certificates of insurance signed by authorized representatives of the insurers along with any additional insured endorsements required by this **Paragraph 2.6** or, at the request of the Director or his or her designee(s), two certified copies of the said required insurance policies. For every Certificate of Insurance required to be provided under this Contract, the Contractor shall supply the Director or his or her designee(s) a signed and notarized "Certification by Insurance Broker or Agent" including all of the content expressed in **Paragraph 2.9** *infra*.

### 2.6.2 SUBCONTRACTOR INSURANCE.

The Contractor shall require every Subcontractor to maintain commercial general liability insurance, commercial auto liability insurance, and employment practices liability insurance to the same extent required of the Contractor hereinafter, **unless** such obligation shall be amended or waived expressly in writing by the Director or his or her designee(s), and workers' compensation insurance, employer's liability insurance, and disability benefits insurance as required by law. The Contractor shall require each Subcontractor to have the Contractor, the NYCDOE and the City, including their respective elected and appointed officials, officers, directors, employees, and volunteers, listed as additional insureds and otherwise comply with **Paragraph 2.6.13**, *infra*, with respect to each Subcontractor's insurance coverage expressed in the preceding sentence, **except** workers' compensation insurance, disability benefits insurance, and employer's liability insurance. The Contractor shall furnish each Subcontractor's certificates of insurance along with the required additional insured endorsements to the NYCDOE within three (3)

---

<sup>4</sup> The following forms have been approved as of the date this RFB was issued:

- Form C-105.2, Certificate of Workers' Compensation Insurance;
- Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;
- Form SI-12, Certificate of Workers' Compensation Self-Insurance;
- Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;
- Form DB-120.1, Certificate of Disability Benefits Insurance;
- Form DB-155, Certificate of Disability Benefits Self-Insurance;
- Form CE-200 – Affidavit of Exemption

Business Days upon request. Notwithstanding the foregoing, the Contractor shall remain responsible for each Subcontractor's compliance with the insurance requirements of this Contract.

**2.6.3 CANCELLATION OR CHANGES.**

In the event the **Contractor** receives notice, from an insurance company or other person, that any insurance policy required under this **Paragraph 2.6** shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Contractor shall immediately forward a copy of such notice to both the Director and to the "New York City Department of Education, Division of Contracts & Purchasing, 65 Court Street, Room 1301, Brooklyn, NY 11201-4954, Attention: Student Services Procurements—Transportation, Food and Facilities". Notwithstanding the foregoing, the Contractor shall ensure that there is no interruption in any of the insurance coverage required under this **Paragraph 2.6**.

**2.6.4 REQUESTS FOR CHANGES.**

If the Contractor and/or any Subcontractor shall be unable to meet the insurance obligations set forth in this Contract and the Contractor believes in good faith that an equal alternative can be supplied, the Contractor shall send a written request to the Director seeking a waiver of the affected insurance obligations and/or the approval of alternate insurance coverage, self-insurance and/or group self-insurance arrangements. Any waiver and/or approval granted by the Director or his or her designee(s) shall not be effective unless it is in writing. Until the Director or his or her designee(s) shall have approved such requests, the Contractor and all Subcontractors must comply with the insurance requirements specified in this Contract. The NYCDOE shall not be required to grant any waiver and/or other deviation from the insurance provisions required under this Contractor, **unless** the Contractor demonstrates in writing to the satisfaction of the Director that alternative insurance coverage, self-insurance and/or group self-insurance arrangements are materially equal to the insurance specifications provided in this Contract.

**2.6.5 INSURERS.**

The Contractor's insurance coverage required hereunder shall be underwritten by insurers allowed to do business in the State of New York. In addition, all insurers providing coverage hereunder must have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest evaluation by A.M. Best Co., or a rating of at least "A" by Standard & Poor's, or a rating of at least A3 by Moody's Investors Service, or a rating of at least A- by Fitch Ratings, or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department **unless** the Director shall grant specific, written approval for an exception.

**2.6.6 DISCLOSURE AND APPROVAL OF DEDUCTIBLES OR RETENTIONS.**

Any deductibles or retentions in excess of Twenty-five Thousand Dollars (\$25,000) shall be disclosed by the Contractor to the NYCDOE and shall be subject to advance written approval by the Director. The Contractor warrants that any deductibles or retentions in excess of Twenty-five Thousand Dollars (\$25,000) shall be disclosed by its Subcontractors to the NYCDOE and shall be subject to advance written approval by the Director.

**2.6.7 OCCURRENCE-BASED RATHER THAN CLAIMS-MADE INSURANCE.**

The Contractor agrees that all insurance supplied under this Contract shall be "occurrence-based" only, and insurance written on a "claims made" basis shall **not** be permitted under this Contract except for Employment Practices Liability insurance which may be written on either an occurrence or claims-made basis.

**2.6.7.1** If Employment Practices Liability insurance is maintained on a claims-made basis, such insurance must either pay the costs of defending and administering claims without eroding policy limits or carry a limit of at least \$1,500,000. In addition, the Contractor shall provide an insurance

certificate(s) evidencing each such “claims made” coverage for a period of two years after the NYCDOE’s Final Payment hereunder. Such certificate(s) must show a retroactive date no later than the start of the Services under this Contract. The Contractor shall purchase an extended (minimum two years) reporting period endorsement for each such “claims made” policy in force as of the date of Final Payment and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the beginning of the Services under this Contract. If the Contractor provides any insurance that is issued on a “claims made” basis, the Contractor may **not** change from such type of coverage to insurance issued on a “per occurrence” basis either during the Term or the two-year post-Term coverage period. For every Certificate of Insurance required for “claims made” policies, the Contractor shall arrange for the Director to receive a signed and notarized “Certification by Insurance Broker or Agent” including all content expressed in **Paragraph 2.9**, *infra*.

**2.6.8 EXCLUSIONS.**

To the extent permitted by law, the insurance policies required to be provided under this Contract may include exclusions relating to sexual molestation or abuse and/or explosion, collapse or underground hazards. Otherwise, such policies shall contain no exclusions other than those required by law or as approved by the NYCDOE.

**2.6.9 CONTRACTOR COMPLIANCE WITH INSURANCE POLICIES.**

The Contractor shall not cause and/or allow any violations of the terms and conditions of any insurance policies required under this Contract, and the Contractor shall perform, satisfy and comply with and/or cause to be performed, satisfied and complied with all of the terms and conditions of the said insurance policies.

**2.6.10 No LIMITATION.**

The minimum coverage limit amounts and types of insurance coverage set forth in this Contract shall not be construed in any manner whatsoever to limit the nature or extent of the Contractor’s responsibility and liability under this Contract to indemnify, pay on behalf of, hold harmless and, at the NYCDOE’s election, protect and defend the NYCDOE Indemnities.

**2.6.11 OBLIGATION TO NOTIFY INSURANCE CARRIER.**

Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this **Paragraph 2.6**, for which NYCDOE and the City, including their respective elected and appointed officials, officers, directors, employees, and volunteers, are additional insureds, the Contractor shall provide the insurer with timely notice thereof on behalf of such additional insureds. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, under the Contractor’s commercial general liability insurance where one of its employees was injured). Such notice shall expressly specify that “this notice is being given on behalf of the Board of Education of the City of New York and the City of New York, including their respective elected and appointed officials, officers, directors, employees, and volunteers, as Additional Insureds” and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, offense or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007-2601. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the NYCDOE and the City for all losses, judgments, settlements and expenses, including reasonable attorneys’ fees, arising from an insurer’s disclaimer of coverage citing late notice by or on behalf of the NYCDOE and/or City, including their respective elected and appointed officials, officers, directors, employees, and volunteers. The foregoing requirements apply with equal force to every Subcontractor, if any.

**2.6.12 PROTECTION OF NYCDOE AND THE CITY.**

The NYCDOE and the City, including their respective elected and appointed officials, officers, directors, employees, and volunteers, shall be listed as additional insureds on the Contractor’s commercial general liability insurance, employment practices liability insurance, commercial auto liability insurance, and umbrella excess insurance policies with respect to liability arising out of any of the Contractor’s operations under this Contract. The insurance required under this **Paragraph 2.6** shall not contain any provision (whether in the form of an endorsement, exclusion or otherwise) that causes such additional insureds coverage to be any narrower than that of the named insured with regard to any vehicle or any of the operations under this Contract.

Insurance provided to the NYCDOE and the City, including their respective elected and appointed officials, officers, directors, employees, and volunteers, as specified herein, including, but not limited to, commercial general liability policies, commercial automobile liability policies and umbrella and excess liability policies, shall apply separately to each insured against whom claim is made or suit is brought, except with respect to insurance limits. Any cross suits or cross liability exclusions shall be deleted from Contractor’s liability insurance policies required under this Contract.

Insurance provided to the NYCDOE and the City, including their respective elected and appointed officials, officers, directors, employees, and volunteers, as specified herein shall be primary, and any other insurance, self-insurance, coverage, or indemnity available to the NYCDOE and the City, including their respective elected and appointed officials, officers, directors, employees, and volunteers, shall be in excess of and non-contributory with insurance, self-insurance, coverage or indemnity provided to the NYCDOE and the City, including their respective elected and appointed officials, officers, directors, employees, and volunteers, .

**2.6.13 Types of Insurance Coverage.**

The Contractor shall purchase and maintain insurance applicable to the Services under this Contract of the following types and minimum limits:

**2.6.13.1** Commercial General Liability (“CGL”) insurance or its equivalent for bodily injury, including death, and property damage including loss of use, with coverage at least as broad as the most recent edition of Insurance Services Office (“ISO”) Form CG 00 01. The limits of CGL insurance shall be at least:

\$1,000,000	each occurrence;
\$1,000,000	personal and advertising injury; and
\$2,000,000	general aggregate.

This insurance shall include coverage, without limitation, for all of the following:

- Liability arising from premises and operations;
- Liability arising from the actions of independent (sub) contractors; and
- Contractual liability including protection for the Contractor from bodily injury and property damage claims arising out of liability assumed under this Contract.

Coverage for the NYCDOE and the City, including their respective elected and appointed officials, officers, directors, employees, and volunteers, as additional insureds under the CGL insurance shall be at least as broad as the most recent edition of ISO Form CG 20 10 or, in the case of any Subcontractor(s), ISO Form CG 20 26.

**2.6.13.2** Workers' compensation insurance, disability benefits insurance, and employer's liability insurance in accordance with applicable law.

**2.6.13.3** Employment practices liability insurance with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence, except as provided in **Paragraph 2.6.7, supra**.

**2.6.13.4** Commercial auto liability insurance or its equivalent with a minimum limit of Five Million Dollars (\$5,000,000.00)<sup>5</sup> per accident and including coverage for all of the following:

- Liability arising out of the ownership, maintenance and/or use of any auto; and,
- Automobile contractual liability.

If any or all vehicles to be used to perform this Contract are not owned by the Contractor, the insurance policies must be endorsed to include the Contractor as well as the NYCDOE and the City, including their respective elected and appointed officials, officers, directors, employees, and volunteers, as additional insureds. Any insurance certificates and/or policies reflecting coverage only for an owner, who is not the Contractor, are **not** acceptable. The Certificate of Insurance submitted in accordance with **Paragraph 2.6.1, supra**, must have the box "Any Auto" checked, and the policy must cover all vehicles used by the Contractor.

**2.6.13.5** Umbrella excess liability insurance or its equivalent, providing coverage applicable to all insureds that is at least as broad as the CGL insurance required in **Paragraph 2.6.13.1, supra**, with minimum limits of:

- \$5,000,000 each occurrence;
- \$5,000,000 personal and advertising injury; and
- \$5,000,000 general aggregate.

**2.6.14 SURVIVAL.** The insurance provisions in this **Paragraph 2.6** shall survive the expiration or other termination of this Contract or any Final Payment.

**2.6.15 WAIVER OF RECOVERY.** The Contractor waives all rights against the NYCDOE and the City, including its officials and employees for any damages or losses that are covered under any insurance required under this **Paragraph 2.6** (whether or not such insurance is actually procured or claims are paid there under) or any other insurance applicable to the operations of the Contractor and/or its Subcontractors in the performance of this Contract.

**2.6.16 OBLIGATION TO PAY PREMIUMS, DEDUCTIBLES, AND RETENTIONS.** The Contractor (and/or Subcontractors, if any) shall be solely responsible for the payment of all premiums for all required policies and all deductibles and self-insured retentions to which such policies are subject, whether or not the NYCDOE and/or the City is an insured under the policy.

**2.6.17 Limits of Additional Insured Coverage.** The limits of coverage for all types of insurance for which the NYCDOE and the City, including their respective elected and appointed officials, officers, directors, employees, and volunteers, are required to be listed additional

---

<sup>5</sup> The Contractor may provide commercial automobile liability insurance with minimum primary limits of \$1,000,000 per accident, **provided** the Contractor also obtains and maintains excess commercial automobile liability insurance to cover automobile liability from \$1,000,000 up to \$5,000,000 per accident. At the Contractor's discretion, such insurance may be included within the scope of coverage in the umbrella excess insurance maintained pursuant to **Paragraph 2.6.13.5, infra**, provided that the commercial automobile liability coverage under such umbrella excess insurance is subject to no aggregate limit.

insureds pursuant to this **Paragraph 2.6** shall be the greater of (i) the minimum limits set forth herein or (ii) the limits provided to the Contractor (or Subcontractor, if any) as Named Insured under all primary, excess and umbrella policies of that type of coverage.

**2.6.18 Other Remedies.** Insurance coverage provided pursuant to this **Paragraph 2.6** or otherwise shall not relieve the Contractor of any liability under this Contract, nor shall it preclude the NYCDOE or the City from exercising any rights or taking such other actions available to them under any other provisions of this Contract or law.

## **2.7 INDEMNIFICATION.**

The following terms and conditions shall prescribe and govern the NYCDOE's and the Contractor's rights, privileges, prerogatives, duties and obligations with respect to protection, defense, indemnification and hold harmless for all general and particular intents and purposes under this Contract:

**2.7.1** To the fullest extent permitted by law, the Contractor shall protect, defend, pay on behalf of, indemnify and hold harmless the Board of Education of the City School District of the City of New York ("NYCDOE"), the City of New York ("City"), and their elected and appointed officials, officers, directors, employees, volunteers and others working on behalf of the NYCDOE and/or the City (herein expressed as "NYCDOE Indemnitees"), without limitation, from and against any and all losses, damages, expenses (including, but not necessarily limited to, reasonable attorney, investigative, forensic and/or accountant fees), claims, demands, judgments, suits, actions, proceedings, special proceedings, allegations, liabilities and costs of every name and description (herein expressed as "Claims") arising from a breach of the representations, warranties, covenants and/or obligations of the Contractor set forth in the Contract, whether or not the conduct constituting such breach is that of Contractor and/or of its partners, Affiliates, employees, agents, volunteers, invitees, licensees, designees, assigns, Subcontractors and/or any Person(s) Controlling the Contractor (herein expressed as "Contractor Group"), **except** to the extent that any Claim(s) shall have resulted from the gross negligence or willful misconduct of an NYCDOE Indemnitee. The Contractor's protection, defense, indemnification and hold harmless obligations regarding the representations, warranties, covenants and/or obligations in this **Paragraph 2.7** shall be without limitation.

**2.7.2** The Contractor shall be fully liable, without limitation, for the negligent, gross negligent, reckless, willful and/or intentional actions and/or omissions of itself and the Contractor Group and shall fully protect, defend, pay on behalf of, indemnify and save harmless the NYCDOE Indemnitees from Claims of every name and description relating to **(i)** personal injury, **(ii)** bodily injury (including, but not necessarily limited to, death, disease, dismemberment and/or disability), **(iii)** damage to real or personal tangible property caused and/or permitted by the negligence, gross negligence and/or recklessness of the Contractor and/or the Contractor Group, **(iv)** gross negligence and/or willful and/or intentional misconduct, and/or **(v)** breach of confidentiality obligations.

**2.7.3** If a Claim at law or equity that is referred to in this **Paragraph 2.7** is commenced against any NYCDOE Indemnitee and the Contractor reasonably believes that the allegations in such action in whole or in part are **not** covered by the protection, defense, indemnification and hold harmless provisions set forth in this Contract, the Contractor shall immediately notify the NYCDOE in writing and shall specify to what extent the Contractor believes that it is and/or is not obligated to protect, defend, pay on behalf of, indemnify and hold harmless any NYCDOE Indemnitee(s) under the terms and conditions of this Contract. In such event, the Contractor shall protect the interests of the NYCDOE Indemnitee(s), the NYCDOE and the City and secure a continuance to permit the NYCDOE and/or City to appear and defend their interests in cooperation with the Contractor as is appropriate including, but not limited to, any jurisdictional defenses the NYCDOE and/or City may have.

**2.7.4 INDEMNIFICATION BY AFFILIATES AND SUBCONTRACTORS.** In all agreements between the Contractor and any Affiliates and/or Subcontractors, the Contractor shall include provisions requiring each such Affiliate and/or Subcontractor to indemnify, protect, defend, pay on behalf of, and hold harmless the BOE,

the City and the Contractor under terms and conditions not materially different from those expressed in this **Paragraph 2.7**.

**2.7.5** At the request of the NYCDOE, the Contractor shall provide legal counsel, approved by the Corporation Counsel of the City of New York or his or her designee, to advise, appear for and on behalf of, and defend the NYCDOE Indemnitees in any and all Claims for which the NYCDOE is entitled to indemnification hereunder. The NYCDOE Indemnitees shall have the right to participate in the defense. The Contractor or its representatives shall make no settlements, stipulations, admissions or take any other action(s) in any such defense that might prove adverse to the interests of an NYCDOE Indemnitee(s) without advance written consent from the General Counsel to the Chancellor, the Corporation Counsel of the City of New York, and/or their respective designees.

**2.7.6** The Contractor's liability under this **Paragraph 2.7** is not dependent upon any question of negligence and/or other act(s) of commission and/or omission on its part and/or on the part of any of the Contractor Group. Any NYCDOE approval of the Contractor's methods to perform the Services, any NYCDOE approval of the Contractor's exercise of any aspect(s) of the rights and privileges granted under this Contract, any NYCDOE failure to call attention to any improper and/or inadequate methods of the Contractor, any NYCDOE failure to call attention to any improper and/or inadequate exercise by the Contractor of any aspect(s) of the rights and privileges granted hereunder, any NYCDOE failure to require a change(s) in the Contractor's methods, and/or any NYCDOE failure to direct the Contractor to do and/or to refrain from doing any particular thing shall **not** excuse the Contractor in any case(s) of any such injury(ies) to person(s), damage(s) to property, and/or any other legal and/or financial liability arising under this **Paragraph 2.7**, and shall not relieve the Contractor of any of its duties and responsibilities under this **Paragraph 2.7**.

**2.7.7 SURVIVAL.** The protection, defense, payment, indemnification and hold harmless provisions in this **Paragraph 2.7** shall survive the expiration or other termination of this Contract or any Final Payment.

**2.7.8 INTENTIONALLY LEFT BLANK.**

**2.7.9 DAMAGE TO CONTRACTOR PROPERTY.** To the fullest extent permitted by law, the Contractor shall be solely responsible for any loss or damage to property of the Contractor and/or its Contractor Group while such property is on, at, and/or adjacent to the NYCDOE's and/or the City's premises and/or used in the performance of this Contract.

**2.7.10 SET-OFF RIGHTS.** Reference is hereby made to the Set-Off Rights provision expressed elsewhere in this Contract.

**2.7.11 INTENTIONALLY LEFT BLANK.**



**2.8 NEW YORK CITY BOARD OF EDUCATION  
CERTIFICATION BY INSURANCE BROKER OR AGENT**

**CERTIFICATES OF INSURANCE**

Instructions to The New York City Board of Education

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

**NEW YORK CITY BOARD OF EDUCATION**  
**CERTIFICATION BY INSURANCE BROKER OR AGENT**

The undersigned insurance broker or agent represents to the New York City Board of Education and the City of New York that the attached Certificate of Insurance is accurate in all material respects.

\_\_\_\_\_  
[Name of broker or agent (typewritten)]

\_\_\_\_\_  
[Address of broker or agent (typewritten)]

\_\_\_\_\_  
[Email address of broker or agent (typewritten)]

\_\_\_\_\_  
[Phone number/Fax number of broker or agent (typewritten)]

\_\_\_\_\_  
[Signature of authorized official, broker, or agent]

\_\_\_\_\_  
[Name and title of authorized official, broker, or agent  
(typewritten)]

State of .....)

) ss.:

County of .....)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_

**2.9 INSTRUCTIONS ON COMPLETING CERTIFICATES OF INSURANCE:**

If you are submitting an ACORD Certificate of Liability Insurance, in the “description of operations” box, please include the following statement:

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
The Board of Education of the City of New York and the City of New York, including their respective officials and employees, are additional insureds.

If you are submitting an ISO Certificate of Commercial Liability Insurance, in the “description of operations box,” please include the following statement:

Description Of Operations/Locations/Vehicles/Endorsements/Special Provisions  
The Board of Education of the City of New York and the City of New York, including their respective officials and employees, are additional insureds.

If you are submitting an ACORD Certificate of Property Insurance, in the “special conditions” box, please include the following statement:

SPECIAL CONDITIONS / OTHER COVERAGES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
The Board of Education of the City of New York and the City of New York, are additional insureds and loss payees as their interests may appear.

If you are submitting an ISO Certificate of Property Insurance (Commercial Risks), in the “special conditions” box, please include the following statement:

Special Conditions/Other Coverages  
The Board of Education of the City of New York and the City of New York, are additional insureds and loss payees as their interests may appear.

And in the certificate holder box of any such forms, please list the Board as follows:

**CERTIFICATE HOLDER**

Board of Education  
Division of Contracts and Purchasing  
65 Court Street, Room 1201  
Brooklyn, NY 11201

**2.10 Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change)**

All organizations intending to do business with the City of New York should complete an online disclosure process to be considered for a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. In anticipation of awards, proposers to RFB B3182 must create online accounts in the new Procurement and Sourcing Solutions Portal (PASSPort) and file all disclosure information. Paper submissions, including certifications of no changes to existing VENDEX packages will not be accepted in lieu of complete online filings.

For more information about PASSPort, please visit <http://www1.nyc.gov/site/passport/index.page>.

**2.11 VIOLATIONS**

Vendors submitting bids in response to this solicitation must disclose if there are any individuals employed by the company or consultants to the company who were convicted or indicted of any felony and/or misdemeanor in relation to any federal, State or City laws, rules or regulations in the past 10 years. You may be barred from doing business with the Board of Education as a result of such indictment and/or conviction.

**2.12 CONFLICTS OF INTEREST**

A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City or the Board, nor any person whose salary is payable, in whole or in part, from the City Treasury or the Board, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

D. The Contractor warrants that, other than a bona fide employee or contractor regularly working as a sales representative for the Contractor, no person, selling agency, or other entity has solicited or secured this Agreement, or has been employed or retained to do so, for a commission, percentage, brokerage fee or contingent fee.

E. The Contractor shall not give, and warrants that it has not given or promised to give, any gift to a community school board member, school leadership team member or to any officer, employee or other person whose salary is payable in whole or part from Board or City funds, or other funds under this Agreement. The word "gift" shall include, without limitation, money, tangible goods, services, loans, promises or negotiable instruments.

F. If the Contractor violates any provision of this Section 2.11, the Board may, at its option: (1) cancel and terminate this Agreement and be relieved of all liability hereunder; (2) deduct all amounts paid by the Contractor or other value given by the Contractor in violation of this paragraph from payments made or to be made to the Contractor under this or any other Agreement at any time; (3) require the refund of any funds paid hereunder; (4) any combination of the foregoing; or (5) any other action the Board deems necessary and appropriate as permitted by law. Any breach of the warranties or violation of the provisions of this Section shall be grounds to find the Contractor or its principals as not a responsible bidder on other Board or City contracts.

G. Provider shall adhere to the Central Board of Education policy on Conflicts of Interest, the Chancellor's Regulations on Conflicts of Interest C-110, and the New York City Charter provisions on Conflicts of Interest which are hereby incorporated by reference as if fully attached hereto.

### **2.12A REPRESENTATIONS OF FACT**

**The bid proposal contains Representations of Fact and notarization which are provided for in Paragraphs 2.13- 2.16. These pages must be original no photocopies will be accepted. These documents must be submitted with the bid. All forms must be included with your bid.**

If bidder omits imprint of Corporate Seal as required and/or does not execute applicable Affidavit of Acknowledgment as required and/or does not provide County Clerk's Certification for Notary Registered outside of New York State; the Director of DCP, may grant an extension of time to correct such deficiencies.

Failure to correct within time allowed will result in rejection of bid and price quoted will not be considered for Award.

### **2.12B AFFIDAVIT OF ACKNOWLEDGMENT**

The bid shall be verified by the oath in writing (Notarization) by an authorized representative, that the declarations stated are in all respects true. If the bidder is a corporation the verification shall be made by an officer of such corporation with knowledge of the facts and having authority to make such sworn statements.

**COMPTROLLER OF THE CITY OF NEW YORK REQUIRES A COUNTY CLERK'S CERTIFICATION OF NOTARY ON ALL OUT-OF-STATE NOTARIZATIONS.**

### **2.12C NON COLLUSION** – See Section 1.91

### **2.12D FAIR AND ETHICAL BUSINESS PRACTICES**

**(A)** Fair and Ethical Business Practices shall be strictly adhered to during the term of this Contract. During the term of this Contract, Contractor shall not:

- (1)** File with a government office or employee, a written instrument which intentionally contains a false statement or false information;
- (2)** Intentionally falsify business records;
- (3)** Give, or offer to give, money, gifts or anything of value or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decisions as a labor official or public servant;

**(4)** Give or offer to give, money, gifts or anything of value or any other benefit to a labor official or public servant for any reason;

**(5)** Give, or offer to give, money, gifts or other benefit(s) to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices;

**(6)** Knowingly participate in the criminal activities of any organized crime group, syndicate or "family," nor shall any Person employed by or associated with any such organized crime "family," syndicate or group participate through criminal means in any of the business affairs of Contractor.

**(B)** Contractor warrants throughout the term of this Contract, that there will be no changes in circumstances, conditions or status of Contractor's qualification(s) as reflected in Contractor Questionnaire or other such documents submitted to the BOE. Any change in the information provided by Contractor in its questionnaire currently on file with the BOE must be immediately reported to the BOE by notice. In addition, Contractor shall immediately give notice to the BOE of any of the following events if it becomes known that any director, partner, officer, member or employee of Contractor, or any shareholder owning 5% or more of Contractor's membership interests:

**(1)** is the subject of investigation involving any violation of criminal law or other federal, state or local law or regulation by any governmental agency; or,

**(2)** is arrested, indicted or named as an un-indicted co-conspirator in any indictment or other accusatory instrument; or,

**(3)** is convicted of any felony under state or federal law and/or any misdemeanor involving a business-related crime.

**2.13 BIDDER INFORMATION CERTIFICATION AND SIGNATURE PAGE**

**Bid to the Board of Education of the City of New York  
(Information requested below must be either typewritten or printed)**

**Business Name:** \_\_\_\_\_

**Place of Business:** \_\_\_\_\_

**Organization under the law of the state of** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_ **Fax Number:** \_\_\_\_\_

**Date of Bid:** \_\_\_\_\_

*(If the bidder is a firm, state below the name(s) and residence(s) of each member thereof)*

**Name of Partners**

**Residence of Partners**

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

*(If the bidder is a corporation, state below the name(s) and residence(s) of each member thereof)*

**Name and Address of President:** \_\_\_\_\_

**Name and Address of Secretary:** \_\_\_\_\_

**Name and Address of Treasurer:** \_\_\_\_\_

The bidder above mentioned declares and certifies

**FIRST** - That the said bidder is of lawful age and the only one interested in this bid and that no one other than herein above named has any interest in this bid of the contract proposed to be entered into

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

- 1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices with any other bidder or with any competitor:
- 2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly by any other bidder or to any competitor:
- 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.

**THIRD** - That no Councilman of the City of New York member of the Board of Education of the City of New York or any officer or employee or person whose salary is payable in whole or in part from the treasury of the City of New York is directly or indirectly interested in this bid or in the supplies, materials, equipment, work or labor to which it relates, or in any portion of the profits thereof except as permitted by Section 524 of the New York City Charter which provides that the prohibition of school officers being interested in Board of Education contracts shall not apply to authors of school books used in any of the public schools because of any interest they may have as authors in such books

**FOURTH** - That said bidder is not in arrears to the City of New York upon debt contract or taxes and is not a defaulter, as surety or otherwise upon any obligation to the City of New York and had not been declared not responsible or disqualified by the he agency of the City of New York or State of New York nor is there any proceeding pending relating to the responsibility or qualification of the bidder to receive public contracts except \_\_\_\_\_

**FIFTH** - That said bidder has carefully examined the standard form of contract proposal approved as to form by the Corporation Counsel including the instruction to bidders, specifications and the schedule prepared by the Director, Office of Purchasing Operations and will if successful perform all its terms covenants and conditions and will furnish and deliver at the prices bid within the time stated, all the materials, supplies, apparatus, goods, wares, merchandise, services or labor named and described therein for which bid is made.

**\*\*SEE FOLLOWING PAGE** \_\_\_\_\_

**2.14 BIDDER INFORMATION CERTIFICATION AND SIGNATURE PAGE**

**(Cont'd)**

**SIXTH - The bidder expressly undertakes and agrees if successful to fully comply with any and all laws orders or regulations of any federal, state or municipal authority or agency insofar as any of the same may affect the execution of this contract and to promptly notify the Director, Office of Purchasing Operations in writing of any such order regulation or law that may be promulgated at any time during the course of the execution of this contract that affects the execution of the contract**

**SEVENTH - By signing this bid, Contractor agrees that the provisions regarding the MacBride Principles constitute material conditions of this contract with the Board of Education.**

It is certified that the prices quoted herein are exclusive of all federal; state and city sales or excise taxes.

The total number of classes for which bids are submitted is \_\_\_\_\_

The total cost of said classes is the sum of \_\_\_\_\_

\_\_\_\_\_  
Dollars \$ \_\_\_\_\_

Signature \_\_\_\_\_  
(individual, firm or corporation, as case may be)

(Please note that applicable affidavit of acknowledgment on the following two pages must be executed)

By \_\_\_\_\_  
(Where bidder is a corporation add:)

Attest:

\_\_\_\_\_  
Secretary (Seal)

- Notes:**
1. Where bidder is a firm, the bid must be signed in the name of the firm by a member thereof, who must sign his own name immediately thereunder as, A. & B. Co., by C. A., Partner.
  2. Where the bidder is a corporation, each bid must be signed in the name of the corporation by some duly authorized officer or agent thereof having knowledge or the matters stated in the bid, and such officer or agent shall also subscribe his own name, as: A. B. Company, C.D., by President. The Seal of the corporation should also be affixed.
  3. Individuals doing business under a trade name must present the bid in such individual's correct name. The style "Thomas Jones, doing business as (d/b/a) Celestial Paper Co." may be used.
  4. Said bidder is not in arrears to the Board and/or City of New York upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the Board and/or City of New York, and has not been declared not responsible, or disqualified, by the Board and/or any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the bidder to receive public contracts except \_\_\_\_\_

The bidder shall file with the bid an affirmation that it has paid all applicable City income, excise and other taxes for all years it has conducted business activities in New York City, and indicate on its bid its Tax Identification Number



**2.15                    AFFIDAVIT OF ACKNOWLEDGMENT FORM**  
**(BY AN INDIVIDUAL)**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ ss.:

ON THE \_\_\_\_\_ Day of \_\_\_\_\_ 20\_\_\_\_\_

before me personally came \_\_\_\_\_

residing at \_\_\_\_\_ in the City of \_\_\_\_\_  
to me known and known to me to be the same person described in and who executed the foregoing instrument and acknowledged to me that he had executed the same

\_\_\_\_\_  
**Commissioner of Deeds, The City of New York or Notary Public**

-----  
**(BY A PARTNERSHIP)**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ ss.:

ON THE \_\_\_\_\_ Day of \_\_\_\_\_ 20\_\_\_\_\_

before me personally came \_\_\_\_\_

residing at \_\_\_\_\_ in the City of \_\_\_\_\_

to me known and known to me to be a member of \_\_\_\_\_

the firm described in and which executed the foregoing instrument, and he acknowledge to me that he subscribed the name of said firm thereto on behalf of said firm for the purposes therein mentioned.

\_\_\_\_\_  
**Commissioner of Deeds, The City of New York or Notary Public**

-----  
**(BY CORPORATION - ONE OFFICER ACKNOWLEDGING)**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ ss.:

ON THE \_\_\_\_\_ Day of \_\_\_\_\_ 20\_\_\_\_\_

before me personally came \_\_\_\_\_

residing at \_\_\_\_\_ in the City of \_\_\_\_\_

to me known, who, being by me duly sworn, did say, for himself that he resides at \_\_\_\_\_

in the City of \_\_\_\_\_ and is the \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_

the corporation described in and which executed the foregoing instrument, that he knows the corporate seal of said Corporation, that the seal affixed to the foregoing contract is such corporate seal and was affixed thereto by order of the Board of Directors of said corporation, and that by like order he thereto signed his name official designation.

\_\_\_\_\_  
**Commissioner of Deeds, The City of New York or Notary Public**

WHEN NOTARIZED BY A PARTY REGISTERED OUTSIDE OF NEW YORK STATE, A CERTIFICATION FROM THE COUNTY CLERK OF THE COUNTY IN WHICH NOTARY IS REGISTERED IS REQUIRED BY THE COMPTROLLER.

2.16

**AFFIDAVIT OF ACKNOWLEDGMENT FORM**  
**(Cont'd)**

**(BY A CORPORATION - TWO OFFICERS ACKNOWLEDGING)**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ ss.:

ON THE \_\_\_\_\_ Day of \_\_\_\_\_ 20\_\_\_\_\_

before me personally came \_\_\_\_\_

and \_\_\_\_\_

each to me known, who being by me severally duly sworn, did say, each for himself as follows:

The said \_\_\_\_\_

that he/she resides at \_\_\_\_\_ in the City of \_\_\_\_\_

in the state of \_\_\_\_\_

the corporation described in and which executed the foregoing instrument, and the said \_\_\_\_\_

that he resides in the City of \_\_\_\_\_ and

is the \_\_\_\_\_ of said Corporation; that he knows the corporate seal of said

Corporation; that the seal affixed to the foregoing instrument is such Corporate seal; that it was affixed by the order of the Board of Directors of said corporation, and that by like order he thereto signed his name and official designation.

\_\_\_\_\_  
**Commissioner of Deeds, The City of New York or Notary Public**

**(BY AN ATTORNEY IN FACT)**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ ss.:

ON THE \_\_\_\_\_ Day of \_\_\_\_\_ 20\_\_\_\_\_

before me personally came \_\_\_\_\_

residing at \_\_\_\_\_ in the City of \_\_\_\_\_

the attorney in fact of \_\_\_\_\_

the Contractor named in the foregoing instrument, to me known to be the individual described in and who as such attorney, executed the foregoing contract and acknowledged before me that he executed the same as the act and deed of said party or parties, therein described as the Contractor, and for the purposes therein mentioned, by virtue of a power of attorney duly executed by the he said Contractor, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_\_

\_\_\_\_\_  
**Commissioner of Deeds, The City of New York or Notary Public**

**WHEN NOTARIZED BY A PARTY REGISTERED OUTSIDE OF NEW YORK STATE, A CERTIFICATION FROM THE COUNTY CLERK OF THE COUNTY IN WHICH NOTARY IS REGISTERED IS REQUIRED BY THE COMPTROLLER.**

**SPECIAL BID TERMS AND CONDITIONS**

**3.1. BACKGROUND**

The New York City Board of Education (NYCDOE or DOE) is seeking bids from organizations experienced in providing safe, reliable and efficient transportation services to students and/or individuals with disabilities (e.g., School Bus service, Pre-Kindergarten transportation, Early Intervention transportation, "ambulette" service, "Para-transit" service, etc.). It is anticipated service will begin for the 2018-2019 school year on or about September 1, 2018. The NYCDOE anticipates entering into a series of requirements contracts with multiple vendors as a result of this Request for Bids (RFB). Those contracts will be for five years (i.e., through June 30, 2023) for school year service with the possibility of extensions under terms defined in state statute for firms that establish a solid history of providing quality service to children and their schools.

Schedule of Vehicles. OPT shall schedule students with disabilities in conformance with their Educational Programs and other riders on bus routes so as to provide maximum utilization of each vehicle. With the 2018-2019 School Year, the DOE intends to construct routes to be performed under this (and other) contract(s) based on a wide variety of students being transported on each vehicle. Accordingly, it is anticipated that any vehicle under this contract might transport any combination of students (students with disabilities whose Educational Programs may or may not designate specific transportation requirements as well as non-disabled students).

The specification of the contract classes included in this RFB follow. **PLEASE NOTE THAT BIDS MUST BE FOR ALL VEHICLES REQUESTED IN A CLASS.** The stated passenger seating capacities refer to the NYS DOT child seating ratings posted on the sides of the vehicles. Also, please note that passenger minimum and maximum seating capacities do not include a seat for either the driver or attendant. There must be a seat for the driver and one for the attendant (when one is required), but those seats do not count toward passenger seating capacity. A second attendant, nurse or Para can use a passenger seating capacity seat.

All vehicles used in performance of this contract must conform with: all NYC Administrative Code sections applicable to NYCDOE school bus operations; all State Education Department regulations about school bus drivers, attendants, safety drills, etc., under 8 N.Y.C.R.R. § 156.3; Vehicle & Traffic Law Article 19-A; and all specifications of this RFB unless specifically directed otherwise in this RFB or subsequent written instructions from the Director or his or her designee. Motor vehicles used to perform under this contract with seating capacities of eight or more passengers must also comply with Vehicle & Traffic Law § 375 and 17 N.Y.C.R.R. Parts 720, 721, 722 and 723 which require specific school bus equipment, signage, etc.

LINE ITEM	SERVICE AREA	DESCRIPTION
<b>Class 1</b>	Inter Borough	Service on a FMVSS Type A or B vehicle with an 18 passenger minimum seating capacity to schools in Brooklyn
<b>Class 2</b>	Inter Borough	Service on a FMVSS Type A or B vehicle with (wheelchair) track seating and flat floor with a hydraulic lift and with seating capacity for up to 20 passengers or at least 6 wheelchair securement positions with the capability to convert to any appropriate mix of passenger seats and wheelchair positions between those extremes as required to schools in Brooklyn

B3182- Transportation Services for Students with Disabilities and Their Non-Disabled Peers

<b>Class 3</b>	Inter Borough	Service on a Non-Wheelchair Accessible Alternative School Bus with a maximum passenger seating capacity of 3 to schools in Brooklyn
<b>Class 4</b>	Inter Borough	Service on a Wheelchair Accessible Alternative School Bus with capacity for at least 2 non-ambulatory riders and 2 sitting ambulatory passengers to schools in Brooklyn
<b>Class 5</b>	Within Borough	Service on a FMVSS Type A or B vehicle with an 18 passenger minimum seating capacity to schools in Brooklyn
<b>Class 6</b>	Within Borough	Service on a FMVSS Type C or D Vehicle with (wheelchair) track seating and flat floor with a hydraulic lift and with seating capacity for up to 35 passengers or at least 10 wheelchair securement positions with the capability to convert to any appropriate mix of passenger seats and wheelchair positions between those extremes as required to schools in Brooklyn
<b>Class 7</b>	Within Borough	Service on a FMVSS Type C or D vehicle with dual passenger doors and a 35 passenger minimum seating capacity to schools in Brooklyn
<b>Class 8</b>	Inter Borough	Service on a FMVSS Type A or B vehicle with an 18 passenger minimum seating capacity to schools in Manhattan
<b>Class 9</b>	Inter Borough	Service on a FMVSS Type A or B vehicle with (wheelchair) track seating and flat floor with a hydraulic lift and with seating capacity for up to 20 passengers or at least 6 wheelchair securement positions with the capability to convert to any appropriate mix of passenger seats and wheelchair positions between those extremes as required to schools in Manhattan
<b>Class 10</b>	Inter Borough	Service on a Non-Wheelchair Accessible Alternative School Bus with a maximum passenger seating capacity of 3 to schools in Manhattan
<b>Class 11</b>	Inter Borough	Service on a Wheelchair Accessible Alternative School Bus with capacity for at least 2 non-ambulatory riders and 2 sitting ambulatory passengers to schools in Manhattan
<b>Class 12</b>	Within Borough	Service on a FMVSS Type A or B vehicle with an 18 passenger minimum seating capacity to schools in Manhattan

B3182- Transportation Services for Students with Disabilities and Their Non-Disabled Peers

<b>Class 13</b>	Within Borough	Service on a FMVSS Type A or B vehicle with (wheelchair) track seating and flat floor with a hydraulic lift and with seating capacity for up to 20 passengers or at least 6 wheelchair securement positions with the capability to convert to any appropriate mix of passenger seats and wheelchair positions between those extremes as required to schools in Manhattan
<b>Class 14</b>	Within Borough	Service on a FMVSS Type C or D vehicle with dual passenger doors and a 35 passenger minimum seating capacity to schools in Manhattan
<b>Class 15</b>	Within Borough	Service on a Non-Wheelchair Accessible Alternative School Bus with a maximum passenger seating capacity of 3 to schools in Manhattan
<b>Class 16</b>	Inter Borough	Service on a FMVSS Type A or B vehicle with (wheelchair) track seating and flat floor with a hydraulic lift and with seating capacity for up to 20 passengers or at least 6 wheelchair securement positions with the capability to convert to any appropriate mix of passenger seats and wheelchair positions between those extremes as required to schools in Queens
<b>Class 17</b>	Inter Borough	Service on a Non-Wheelchair Accessible Alternative School Bus with a maximum passenger seating capacity of 3 to schools in Queens
<b>Class 18</b>	Within Borough	Service on a FMVSS Type A or B vehicle with an 18 passenger minimum seating capacity to schools in Queens
<b>Class 19</b>	Within Borough	Service on a FMVSS Type A or B vehicle with (wheelchair) track seating and flat floor with a hydraulic lift and with seating capacity for up to 20 passengers or at least 6 wheelchair securement positions with the capability to convert to any appropriate mix of passenger seats and wheelchair positions between those extremes as required to schools in Queens
<b>Class 20</b>	Within Borough	Service on a FMVSS Type C or D Vehicle with (wheelchair) track seating and flat floor with a hydraulic lift and with seating capacity for up to 35 passengers or at least 10 wheelchair securement positions with the capability to convert to any appropriate mix of passenger seats and wheelchair positions between those extremes as required to schools in Queens
<b>Class 21</b>	Within Borough	Service on a FMVSS Type C or D vehicle with dual passenger doors and a 35 passenger minimum seating capacity to schools in Queens

B3182- Transportation Services for Students with Disabilities and Their Non-Disabled Peers

<b>Class 22</b>	Within Borough	Service on a Non-Wheelchair Accessible Alternative School Bus with a maximum passenger seating capacity of 3 to schools in Queens
<b>Class 23</b>	Inter Borough	Service on a FMVSS Type A or B vehicle with (wheelchair) track seating and flat floor with a hydraulic lift and with seating capacity for up to 20 passengers or at least 6 wheelchair securement positions with the capability to convert to any appropriate mix of passenger seats and wheelchair positions between those extremes as required to schools in the Bronx
<b>Class 24</b>	Inter Borough	Service on a Wheelchair Accessible Alternative School Bus with capacity for at least 2 non-ambulatory riders and 2 sitting ambulatory passengers to schools in the Bronx
<b>Class 25</b>	Within Borough	Service on a FMVSS Type A or B vehicle with an 18 passenger minimum seating capacity to schools in the Bronx
<b>Class 26</b>	Within Borough	Service on a FMVSS Type C or D vehicle with dual passenger doors and a 35 passenger minimum seating capacity to schools in the Bronx
<b>Class 27</b>	Inter Borough	Service on a Wheelchair Accessible Alternative School Bus with capacity for at least 2 non-ambulatory riders and 2 sitting ambulatory passengers to schools in Staten Island
<b>Class 28</b>	Inter Borough	Service on a FMVSS Type A or B vehicle with an 18 passenger minimum seating capacity to schools in Westchester County
<b>Class 29</b>	Inter Borough	Service on a FMVSS Type A or B vehicle with (wheelchair) track seating and flat floor with a hydraulic lift and with seating capacity for up to 20 passengers or at least 6 wheelchair securement positions with the capability to convert to any appropriate mix of passenger seats and wheelchair positions between those extremes as required to schools in Westchester County
<b>Class 30</b>	Inter Borough	Service on a Non-Wheelchair Accessible Alternative School Bus with a maximum passenger seating capacity of 3 to schools in Westchester County

B3182- Transportation Services for Students with Disabilities and Their Non-Disabled Peers

<b>Class 31</b>	Inter Borough	Service on a Wheelchair Accessible Alternative School Bus with capacity for at least 2 non-ambulatory riders and 2 sitting ambulatory passengers to schools in Westchester County
<b>Class 32</b>	Inter Borough	Service on a FMVSS Type A or B vehicle with (wheelchair) track seating and flat floor with a hydraulic lift and with seating capacity for up to 20 passengers or at least 6 wheelchair securement positions with the capability to convert to any appropriate mix of passenger seats and wheelchair positions between those extremes as required to schools in Nassau County
<b>Class 33</b>	Inter Borough	Service on a Wheelchair Accessible Alternative School Bus with capacity for at least 2 non-ambulatory riders and 2 sitting ambulatory passengers to schools in Suffolk County
<b>Class 34</b>	Inter Borough	Service on a FMVSS Type A or B vehicle with (wheelchair) track seating and flat floor with a hydraulic lift and with seating capacity for up to 20 passengers or at least 6 wheelchair securement positions with the capability to convert to any appropriate mix of passenger seats and wheelchair positions between those extremes as required to schools in Bergen County
<b>Class 35</b>	Inter Borough	Service on a Non-Wheelchair Accessible Alternative School Bus with a maximum passenger seating capacity of 3 to schools in Bergen County
<b>Class 36</b>	Inter Borough	Service on a FMVSS Type A or B vehicle with an 18 passenger minimum seating capacity to schools in Connecticut
<b>Class 37</b>	Inter Borough	Service on a Non-Wheelchair Accessible Alternative School Bus with a maximum passenger seating capacity of 3 to schools in Connecticut
<b>Class 38</b>	Inter Borough	Service on a FMVSS Type A or B vehicle with an 18 passenger minimum seating capacity to schools in Rockland County
<b>Class 39</b>	Inter Borough	Service on a Wheelchair Accessible Alternative School Bus with capacity for at least 2 non-ambulatory riders and 2 sitting ambulatory passengers to schools in Rockland County

**3.2. PRE-BID CONFERENCE**

A Pre-Bid Conference, at which Bidders will have the opportunity to ask questions related to this RFB, will be held on the date, time, and location as set forth on the Title Page of this bid or as may be subsequently designated by the NYCDOE.

**3.3. INQUIRIES**

Specific questions concerning this RFB should reference the RFB by section number and be submitted in writing before the Pre-Bid Conference via email to [BusBidB3182@schools.nyc.gov](mailto:BusBidB3182@schools.nyc.gov). No telephone calls will be accepted regarding this RFB.

If possible, these questions will be answered at the Pre-Bid Conference and additional questions may be submitted orally at the Conference. Questions received at least seventy-two hours prior to the scheduled beginning of the Pre-Bid Conference shall be answered in the Questions & Answers (Q & A). Bidders are advised that the BOE is not able to ensure it shall respond to all inquiries received after the Pre-Bid Conference.

Bidders should not rely on any representations, statements, or clarifications other than those made in this RFB or in an amendment or addendum hereto (including without limitation, any written and published Q & A).



## BID SPECIFICATIONS

### **4.1. Scope of Work**

This RFB is intended to result in contracts covering the Board of Education's requirements for the transportation between the homes and/or stops and schools of city residents with disabilities and other riders between five and twenty-one years of age attending Educational Programs located within the greater metropolitan area (i.e., the five boroughs of New York City; Westchester, Rockland, Nassau and Suffolk Counties in New York; sites in New Jersey; and, sites in Connecticut so long as they are within a 50 mile radius of the City's boundaries). In addition, this RFB is intended to cover the Board of Education's requirements for transportation between residential treatment facilities and schools, between schools (within and outside of the City) and field trip destinations (within the City only), from after school programs to home or alternative afternoon drop-off locations, and for such other uses as provided herein. For the 2018-2019 School Year, the DOE intends to construct routes to be performed under this (and other) contract(s) based on a wide variety of students being transported on each vehicle. Accordingly, it is anticipated that any vehicle under this contract might transport any combination of students (students with disabilities whose Educational Programs may or may not designate specific transportation requirements as well as non-disabled students).

On occasion, it may be necessary to assign a second attendant to a vehicle. In anticipation of those occasions, Bidders must quote for each class on which they are bidding a base daily rate for the vehicle and driver and a base daily rate for an attendant which summed together will constitute the Daily Rate. In addition to the Daily Rate, contractors will be paid the attendant daily rate for each day that an authorized additional attendant is required to ride and actually rides on the vehicle. The contractor will be paid a 4% premium for each attendant providing Porter Service.

### **4.2 Bid Tabulation**

For each Class, the NYCDOE shall provide each bidder with the description of the items being bid. In addition, the NYCDOE shall indicate the estimated number of service days and vehicles to be provided in each Class. Bidders shall indicate on their Bid Blanks a base daily rate in dollars per day for each vehicle of the specified type and driver. Bidders shall also indicate on their Bid Blanks an attendant daily rate in dollars per day for each attendant who will be providing service in that Class.

The Total Annual Cost for price comparison purposes for each Class shall then be calculated in the following manner.

The listed "Total Number of Vehicles Needed" will be multiplied by the Base (i.e., vehicle and driver) Daily Rate to produce a Base Daily Cost. The listed "Total Number of Attendants Needed" will then be multiplied by the Attendant Daily Rate to produce an Attendant Daily Cost. The Base Daily Cost will then be summed with the Attendant Daily Cost to produce the Total Daily Cost. The Total Daily Cost will then be multiplied by the Estimated Days (i.e., 180) to yield the Total Annual Cost. These calculations will be performed automatically in the electronic Bid Blanks but will have to be completed by the bidder for the hardcopy submission.

That Total Annual Cost will be used for price comparison purposes in evaluating bids. The contract document shall include the actual Daily Rates dollar amounts agreed upon for each Class.

- ⇒ **Bidders are warned that the Department's estimates of the number of vehicles required are only approximations and are not considered part of this Contract.**
- ⇒ **The number of vehicles actually required may be less or more than so estimated, and if so, no claim, action or change order for damages or loss of profits shall accrue to the Contractor by reason thereof.**

- ⇒ **All data of any kind that the Department has provided, is providing or may provide in connection with this RFB is offered solely for bidders' guidance. The Department makes no representation as to the accuracy or completeness of any such data. Bidders must rely upon their own expertise to arrive at their bid prices.**
- ⇒ **This is a requirements contract. The number of vehicles, riders, schools, as well as the session times, locations of schools and riders, and other factors, are subject to change at any time.**

**NOTE:** Prior to vendor selection, the Department reserves the right to assess whether or not a bid price is fair and reasonable by using price analysis and, where appropriate, cost analysis. The Department reserves the right to reject any bid as non-responsive if, at the sole discretion of the Department, any of the daily rates are deemed unfair, unreasonable or unbalanced. A class bid, showing evidence of obviously unbalanced bidding, may be declared non-responsive. The Department may request supporting detailed cost and price data from a vendor in order to assist the Department in making a final determination. Failure of a vendor to supply such information within ten calendar days of the Department's request may result in a finding that the vendor is non-responsive.

#### **4.3 Failure to Perform – Assignment of Vehicles**

The Director may, in his or her sole discretion, determine that the Contractor performing work in a particular Class is unable or unavailable to perform a given task or order for reasons of Default, lack of capacity or any other reason "(Unavailable Contractor)". In the event that such a determination is made, the Director shall have the option, but not the obligation, to offer all or a portion of the work of the Unavailable Contractor to the other contractors who are in the Unavailable Contractor's Class(es) in order of increasing daily rate, then to any contractor having a contract with the NYCDOE for the provision of transportation services giving preference to those contractors holding contracts to provide service to school age children, so long as they are economically most advantageous to the DOE, provided, a contractor (including any of a contractor's Affiliates) may not decline work in a lower priced Class and then be awarded that work subsequently in a higher priced Class. All such vehicles will be treated as additional vehicles and not as Contract vehicles and the Contractor should pay particular attention to the decrease provision herein as it relates to additional vehicles.

#### **4.4 Number of Vehicles**

As previously stated under Bidder's Qualifications, all bidders must indicate the maximum total number of vehicles the Bidder will be able to furnish.

#### **4.5 EXPERIENCED SCHOOL BUS WORKER PROVISIONS**

##### **1. Priority in Hiring and Experienced School Bus Worker Lists.**

There shall be established two Experienced School Bus Worker Lists. One such list, which shall be referred to as the "Drivers ESBW List," shall be composed of drivers, as well as mechanics and dispatchers who are certified by the DOE Office of Pupil Transportation ("OPT") as drivers, and the other such list, which shall be referred to as the "Attendants ESBW List," shall be composed of attendants (sometimes referred to as "escorts" or "matrons") as well as mechanics and dispatchers who are certified by OPT as attendants. Drivers and attendants, as well as mechanics and dispatchers who are certified as drivers or attendants (together, "School Bus Workers") shall become eligible for placement on the ESBW List applicable to their most recent job function (or in the case of mechanics or dispatchers certified as drivers or attendants, the relevant certification) if they (a) were employed as of June 30, 2018 or at any time thereafter by (i) a contractor that was a party to any Department of Education ("DOE") contract for the transportation of children in kindergarten through twelfth grade (a "School Age Bus Contract") or (ii) any sub-contractor of a School Age Bus Contract (a "School Age Bus Subcontract"), in connection with such contract or subcontract, (b) have been furloughed or become unemployed as a result of expiration, termination or other loss of such contract or subcontract or any part thereof by their employers, or as the result of a reduction in service directed by the DOE during the term of such contract or subcontract, and (c)

## B3182- Transportation Services for Students with Disabilities and Their Non-Disabled Peers

are not eligible at the time they are furloughed or become unemployed for placement on the Master Seniority Lists maintained in connection with DOE School Age Bus Contract serial numbers 0065, 0070, 0075, 4515, 4516, 4894, 4952, 7164, 7165, 7200, 7263, 7291, 8107, 8108, G-8805, G-8891, G-9325 and 9888 and subcontracts of such contracts. School Bus Workers shall be listed on each applicable ESBW List according to the date on which they were most recently certified by OPT, beginning with the workers whose most recent certifications were earliest. In order to remain on an ESBW List, each eligible School Bus Worker must keep current with all of the requirements referenced in this Contract including, but not limited to, training, medical evaluation, controlled substance/alcohol testing, and all other requirements for OPT certification to the extent that a School Bus Worker can satisfy such requirements while unemployed.

The Contractor and any subcontractor of the Contractor shall fill all positions for drivers and attendants who provide services in connection with a School Age Bus Contract awarded pursuant to this Request for Bids (hereafter "a B3182 Contract"), or a School Age Bus Subcontract entered into in connection with a B3182 Contract, with School Bus Workers from the appropriate ESBW List, on the basis of position on the List until that List has been exhausted; except that, for purposes of services provided in connection with the Second through Fifth Contract Years of a B3182 Contract, a Contractor or its subcontractor may retain and/or rehire School Bus Workers who were employed by and performed services for such Contractor or subcontractor in connection with a B3182 Contract as of June 30 of the immediately prior school year.

The Contractor shall maintain, and continuously update, a list of all School Bus Workers employed in connection with a B3182 Contract and all School Bus Workers employed by any subcontractor in connection with a B3182 Contract, sorted by each such employee's current function (e.g., driver, mechanic, dispatcher, attendant) by means of a Web-Based Application to be supplied by the DOE.

### 2. Compensation.

For all School Bus Workers hired from an ESBW List ("ESBW Hirees"), each Contractor that hires an ESBW Hiree for purposes of services provided in connection with a B3182 Contract (a "Hiring Contractor") and each subcontractor that hires an ESBW Hiree for purposes of services provided in connection with such a B3182 Contract (a "Hiring Subcontractor") shall (a) employ each ESBW Hiree on a full-time basis and (b) compensate each ESBW Hiree at a wage at least equivalent to the highest wage such ESBW Hiree received for work performed as a driver or attendant, as applicable, in connection with a School Age Bus Contract or School Age Bus Sub-contract since June 30, 2010, or any higher wage for which the ESBW Hiree would now be eligible based on the wage scale that was in effect on the last date of such employment, to the extent the ESBW Hiree provides documentation of such wage and wage scale to the Hiring Contractor or Hiring Subcontractor.

ESBW Hirees shall be available to perform additional work within their job category (i.e., drivers as drivers and attendants as attendants) without additional compensation during the work day and time spread provided for in any collective bargaining agreement covering such employees.

### 3. Health/Welfare.

For all ESBW Hirees, the Hiring Contractor or Hiring Subcontractor shall contribute at least \$1,252.48 per month on behalf of each ESBW Hiree on a twelve-month basis towards health/welfare benefits.

### 4. Pensions.

For each ESBW Hiree who participated in one or more pension funds or plans in connection with their employment under a School Age Bus Contract or School Age Bus Subcontract as of June 30, 2010 or thereafter, the Hiring Contractor or Hiring Subcontractor shall (a) make contributions to the fund or plan in which the ESBW Hiree most recently participated (the "Prior Plan") in the amount of contributions currently being made for employees of equivalent seniority in the job function for which they are hired (i.e., driver or attendant) by the contractor or subcontractor that most recently contributed to the Prior Plan on behalf of the ESBW Hiree in connection with a School Age Bus Contract or School Age Bus Subcontract (or if the contractor or subcontractor that most recently contributed to the Prior Plan on behalf of the ESBW Hiree in connection with a School Age Bus Contract or School Age Bus Subcontract is no longer contributing to the Prior Plan, in the amount of contributions

most recently made by such contractor or subcontractor for employees of equivalent seniority in the same job function) and (b) withhold from the ESBW Hiree's pay any corresponding employee contributions to the Prior Plan paid by employees of equivalent seniority in the same job function, to the extent the ESBW Hiree provides the Hiring Contractor or Hiring Subcontractor with documentation of his or her participation in such Prior Plan and of the amount of contributions to be made.

In order to facilitate such contributions and in compliance with 29 U.S.C. § 186(c)(5), each Hiring Contractor or Hiring Subcontractor shall enter into a participation agreement with the Prior Plan covering each ESBW Hiree hired by the Hiring Contractor or Hiring Subcontractor.

5. Enforcement.

By the end of each school year, each Hiring Contractor or Hiring Subcontractor must make all payments required by this section that are attributable to such school year. Upon the expiration or other termination of the School Age Bus Contract awarded pursuant to this RFB and/or any extension or amendment, the Hiring Contractor shall remain liable for any outstanding payments and contributions still due and owing from the Hiring Contractor or any of its Hiring Subcontractors for the benefit of ESBW Hirees.

In addition to any other remedies provided in the Contract between the DOE and the Contractor, a School Bus Worker, a union representing School Bus Workers, or a welfare or pension fund in which School Bus Workers participate, that believes a Hiring Contractor or Hiring Subcontractor is in violation of the foregoing Experienced School Bus Worker Provisions regarding the payment of wages or benefits may submit to the DOE a request for attachment of amounts it contends are owed to it ("Request"). Where the Request relates to a Hiring Contractor, the party submitting the Request (the "Requestor") shall submit a copy of the Request to the Hiring Contractor at the same time it submits the Request to the DOE and the Hiring Contractor shall have ten (10) business days from its receipt of the Request to submit to the DOE and the Requestor a written objection to the Request ("Objection"). Where the Request relates to a Hiring Subcontractor, the Requestor shall submit a copy of the Request to both the Hiring Subcontractor and the Contractor with whom such Hiring Subcontractor has a subcontract at the same time it submits the Request to the DOE, and such Contractor shall have ten (10) business days from its receipt of the Request to submit an Objection to the DOE and the Requestor on behalf of the Hiring Subcontractor.

If the DOE does not receive a timely Objection to a Request that relates to a Hiring Contractor, the DOE shall, within thirty (30) days of its receipt of the Request, withhold the amounts identified in the Request from the payments due to the Hiring Contractor and pay such amounts to the applicable union for the benefit of the School Bus Worker(s) affected, or if there is no applicable union, to the applicable School Bus Worker(s). If the DOE does not receive a timely Objection to a Request that relates to a Hiring Subcontractor, the DOE shall, within thirty (30) days of its receipt of the Request, withhold the amounts identified in the Request from payments then due to the applicable Contractor, under whose School Age Bus Subcontract with the Hiring Subcontractor the affected School Bus Worker(s) had performed the relevant services, and pay such amounts to the applicable union for the benefit of the School Bus Worker(s) affected, or if there is no applicable union, to the applicable School Bus Worker(s); provided, however, that in any month, such withholding of payments due to a Contractor based on amounts owed by its Hiring Subcontractor shall not exceed the amount due to the Hiring Subcontractor from the Contractor at such time.

If the DOE does receive a timely Objection, the DOE will take no action with respect to the Request unless and until (a) the DOE is notified in writing by the Requestor and the relevant Hiring Contractor and/or Hiring Subcontractor that the Objection has been resolved and that payment(s) of specified sums in a specified manner have been agreed upon, or (b) the Requestor submits to the DOE an order or judgment issued by a court or a U.S. government agency (such as the National Labor Relations Board) holding that the Hiring Contractor or Hiring Subcontractor is in violation of the foregoing Experienced School Bus Worker Provisions regarding the payment of wages or benefits.

If the Requestor submits to the DOE an order or judgment issued by a court or a U.S. government agency (such as the National Labor Relations Board) holding that a Hiring Contractor or Hiring Subcontractor is in violation of the foregoing Experienced School Bus Worker Provisions regarding the payment of wages or benefits, the DOE

shall, within thirty (30) days of its receipt of such order or judgment, withhold and place in escrow any amounts identified in the order or judgment as being owed by the Hiring Contractor or Hiring Subcontractor from payments then due to the applicable Contractor; except that if the order or judgment relates to a Hiring Subcontractor, the amount of funds withheld and placed in escrow by the DOE in any month will not exceed the amount due to the Hiring Subcontractor from the Contractor at such time. The DOE shall retain any amounts withheld pursuant to this section in escrow until 30 days after entry of a final judgment by a court or U.S. government agency and exhaustion of any and all avenues of appellate review, at which time the DOE shall distribute the funds according to the judgment and pay any remaining funds held in escrow to the applicable Contractor. If a final judgment is entered in favor of the Hiring Contractor or Hiring Subcontractor or if any judgment adverse to the Hiring Contractor or Hiring Subcontractor is vacated on appeal, the DOE shall, after entry of final judgment and exhaustion of any and all avenues of appellate review, release the full amount held in escrow to the Contractor.

6. Contracts Involving Five or Fewer Vehicles.

Contractors providing a total of five vehicles or fewer pursuant to all contracts with the DOE for the transportation of pupils, as well as subcontractors providing services in connection with a total of five vehicles or fewer pursuant to all contracts with the DOE for the transportation of pupils, shall not be subject to the foregoing Experienced School Bus Worker Provisions. For purposes of this paragraph 6 corporate bidders, Contractors and subcontractors of Contractors who are subject to common control as determined by the DOE based upon analysis of (a) ownership of the corporation's assets, (b) coincidence of corporate officers and directors, and (c) such other factors as the DOE determines to be relevant, shall be deemed to be one entity.

7. Dates.

The DOE may in its sole and unfettered discretion change any date in this section, including any date that governs the status of any School Bus Worker, including any ESBW Hiree, Contractor, subcontractor of a Contractor or other entity under this section of the Contract.

The foregoing provisions do not constitute or reflect an obligation by the DOE under any provision of labor law or ERISA. The DOE shall not be liable or responsible for any obligations under any collective bargaining agreement that is negotiated by or on behalf of the Contractor or any subcontractor nor any other obligations owed by the Contractor or any subcontractor to its employees, to any union representing the Contractor's or any subcontractor's employees or to any pension or welfare fund in which the Contractor's employees or any subcontractor's employees are participants. Nothing herein shall be asserted by the Contractor or any subcontractor as a basis for a claim that the DOE is liable as an employer of the Contractor's or any subcontractor's employees, or liable under any theory for the Contractor's or any subcontractor's obligations to its employees, including without limitation obligations relating to wages or benefits of any kind.

4.6 Definitions

A. **GENERAL PRINCIPLES OF INTERPRETATION.**

1. The definitions given for words and phrases herein shall apply equally to both the singular and the plural forms of the words and phrases defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Whenever the words "include," "includes," "including," "such as" and/or "like" are used in this Contract in the context of a list of one or more items, things, ideas, services, etc., the said words shall be deemed to be followed immediately by the words "without limitation". (The exception to the preceding sentence shall be where such words are followed by language expressly limiting the affected list to the stated items, things, ideas, services, etc.) The words "aforementioned," "hereby," "herein," "hereinafter," "hereof," "heretofore," "hereunder," "infra," "supra," "above," "below," and words of similar import refer to this Contract as a whole and not merely to the specific paragraph, section, provision or clause in which such word appears, **unless** the context otherwise requires.

2. All references herein to amendments, attachments, schedules, sections and paragraphs shall be deemed references to this Contract, **unless** the context otherwise requires.
3. All other words used in this Contract, shall have their ordinary meanings in the English language, **except** that scientific, technical, specialized, legal or foreign words or phrases, shall be given their appropriate scientific, technical, specialized, legal or foreign meanings.
4. In the event that the NYCDOE shall undergo any reorganization(s) during of the term of this Contract (inclusive of the Initial Period and, if any, the Contract Extension Periods), it is possible that one or more NYCDOE functional units (e.g., Office of Auditor General, Division of Contracts & Purchasing, Division of Financial Operation, Division of Human Resources, Office of Pupil Transportation, etc.) may be merged into other functional units, renamed, and/or otherwise changed to reflect changed priorities and/or policies of the NYCDOE. The same may be true regarding executive positions and/or titles within the NYCDOE (e.g., Chief Executive for School Support Services, DC&P Executive Director, OPT Executive Director, etc.). Upon the Contractor's receipt of written notice from the Chancellor or his or her designee(s) that any change, as expressed in the two preceding sentences, shall have occurred, this Contract (including, but not limited to, the Definitions) shall be deemed amended automatically and without the need for any further action by the Parties to reflect such changes in the organizational structure and/or executive positions of the NYCDOE.
5. Reference is hereby made to definitions expressed in other provisions and footnotes in this Contract, which shall be fully effective and shall govern within the contexts expressed for them.

**B. DEFINITIONS.**

Capitalized terms in this Contract shall have the meanings ascribed to them below. Paragraph references are to the Paragraphs of this Contract.

**"Affiliate"** means (i) any entity that owns at least twenty percent of the Bidder/Contractor, (ii) any entity in which the Bidder/Contractor owns at least twenty percent of the entity, (iii) any entity in which an owner or a group of owners which own at least twenty percent of the Contractor own(s) at least twenty percent of the entity, or (iv) any two or more Bidders/Contractors that share one or more Principals.

**"Attendant"** (with or without capitalization) shall have the meaning expressed in **Paragraphs 4.19, 4.20, 4.21, 4.22, 4.23 and 4.24, *infra***, and shall mean any Person employed or engaged by the Contractor and approved by the Chancellor or his or her designee(s) or the Director or his or her designee(s) to perform the functions specified in the Paragraphs expressed heretofore in this sentence and elsewhere in this Contract. Under this Contract, **"Attendants"** perform all of the duties, functions and responsibilities of both "attendants" and "monitors," as those two terms are used and defined in State Education Law Section 3624 and the State Education Department's ("SED") regulations expressed at 8 N.Y.C.R.R. Section 156.3, **plus** such other duties, functions and responsibilities as are expressed in this Contract. A **"Porter Attendant"** means an **Attendant** with the added duties, responsibilities, functions and training expressed in **Paragraphs 4.1, 4.15, and 4.23, *infra***, and in the *Contractor's Manual*.

**"Bidder"** (with or without capitalization) means a Person who submits a bid in response to this RFB under Bid Serial No. B2394 and who submits information and/or affidavit(s) in conformity with the requirements stated herein. For the purposes of all post-award activities and Services during the Term of the Contract, the words "Bidder" and "Contractor" (with or without capitalization) shall be deemed to be the same for all general and particular intents and purposes.

**"Board of Education of the City School District of the City of New York", "BOE", "Board", "Board of Education", "New York City Department of Education", "Department", "NYCDOE" and "DOE"** mean the Board of Education of the City School District of the City of New York as

expressed in State Education Law §§ 2551, 2554, 2590 *et seq*, and the Party of the first part of this Contract. The BOE is a domestic city school district, municipal corporation and political subdivision within the State.

**“Business Day”** means the days of the year when BOE/NYCDOE administrative offices shall be open for regular business in accordance with the Board’s official “Scheduled Closings of Learning Support Centers, Regional Operations Centers and Central Headquarters Offices,” as published, updated, revised or otherwise changed on the official NYCDOE website, <http://schools.nyc.gov> or such other website(s) and/or publication(s) as the NYCDOE shall prescribe with written notice to the Contractor. The NYCDOE shall not be required to furnish the Contractor with any advance notice regarding any changes to the Business Days on which BOE/NYCDOE administrative offices shall be open for regular business. The Contractor is responsible to consult the aforementioned official NYCDOE website regularly to ascertain whether any changes shall have occurred.

**“Business Hours”** means the hours during each Business Day when the NYCDOE Office of Pupil Transportation shall be open for business (i.e., from six o’clock in the forenoon, 6:00 a.m., through seven o’clock in the evening, 7:00 p.m., Eastern Time).

**“Chancellor”** means Carmen Fariña, Chancellor and chief executive officer of the Board of Education, or her successor(s) as well as the following: **(i)** Eric Goldstein, BOE Chief Executive for the Office of School Support Services, or his successor(s); **(ii)** Charlette Hamamgian, Executive Director, BOE Division of Contracts & Purchasing (“DC&P”), or his successor(s); **(iii)** any Person(s) serving as a Chancellor’s designee(s), as authorized by the State Education Law, § 2590-h(19), for the specific purposes of the delegation granted by the Chancellor to that Person(s); or, **(iv)** such other Person(s) whom the BOE shall designate periodically with written notice to the Contractor. In addition, the term “Chancellor” shall have the meaning set forth in the State Education Law, §§ 2590-a through 2590-h. In the event of conflicting instructions from two or more of the aforementioned Persons, the Contractor shall make a written request for conflict resolution to the “N.Y.C. Department of Education, Office of Deputy Chancellor for Operations (or successor title or position), 52 Chambers Street, Room 320, New York, NY 10007-1222 (or such other address as the Chancellor or his or her designee(s) or the Director or his or her designee(s) shall specify with written notice to the Contractor).”

**“City”** shall mean the City of New York or any political subdivision and/or public authority thereof.

**“Class(es)”** means the individual Item(s) and divisible contract unit(s) that comprise this RFB and the resultant Contract with the Contractor. The Classes for this RFB are described with specificity in the table expressed in **Paragraph 3.1**, *supra*. Each Class is described by and encompasses a FMVSS or other Vehicle Type, vehicle characteristics including capacity and location of the schools and riders to receive service.

**“Commercially reasonable effort”** (with or without capitalization) means that degree of effort and those actions that would be taken by a reasonably prudent and reasonably diligent person faced with a substantially similar set of circumstances and giving reasonable consideration to the economic and operational consequences of his, her or its actions for both Parties.

**“Comptroller”** and **“Commissioner of Finance”** mean the Comptroller and the Commissioner of Finance of the City respectively.

**“Confidential Information”** shall have the meaning expressed in **Paragraph 1.87.**, *supra*, and shall include, without limitation, all information subject to the purview of all applicable federal, State and/or BOE laws, rules and regulations.

**“Consumer Price Index,” “CPI”** and **“CPI-U”** mean, as of any specified date, that statistic of the United States Department of Labor, Bureau of Labor Statistics or its successor agency, which the State Education Department (herein expressed as “SED”) deems to be the “regional consumer

price index for the New York, New York-Northeastern, New Jersey area, based upon the index for all urban consumers (CPI-U),” according to State Education Law §305(14)(a) as the same may be updated, revised or otherwise changed during the Term. See <http://www.bls.gov/cpi>. For SED information, see [http://www.p12.nysed.gov/schoolbus/Contracts/html/consumer\\_price\\_index.html](http://www.p12.nysed.gov/schoolbus/Contracts/html/consumer_price_index.html).

“**Contract**” shall have the meaning expressed in **Paragraph 1.2**, *supra*.

“**Contract Extension Period(s)**” shall have the meaning set forth in **Paragraph 1.4**, *supra*.

“**Contract Year(s)**” (with or without capitalization) shall have the meaning expressed in **Paragraph 1.3**, *supra*

“**Contractor**” means the Party of the second part to this Contract (i.e., the Person constituting the Bidder under Bid Serial No. B2394 who shall have completed and submitted a bid(s) and shall have received an award of contract from the Board of Education pursuant to the terms and conditions of this RFB). For the purposes of all post-award activities and Services during the Term of the Contract, the words “Bidder” and “Contractor” shall be deemed to be the same for all general and particular intents and purposes.

“**Daily Standard Service Period**” and “**DSSP**” shall have the meaning set forth in **Paragraph 4.29**, *infra*.

“**Default**” shall have the meaning expressed in **Paragraph 1.50**, *supra*, and as defined elsewhere in this Contract.

“**Director**” means the Executive Director of the NYCDOE Office of Pupil Transportation (or one or more Persons serving as his or her designee) delegated by the NYCDOE to supervise the work solicited under this RFB. In the absence of the Director due to vacation, leave of absence, etc., and/or in the event that the position of Director shall be vacant, the Chancellor shall have the discretion to designate an NYCDOE employee(s) to act as the Director under this Contract for a stated period or for an indefinite period and to rescind and/or modify any such designation with written notice to the Contractor.

“**Disaster**” (with or without capitalization) shall have the meaning expressed in **Paragraph 1.102**, *supra*. “**Disaster Recovery Plan**” and/or “**DRP**” shall have the meaning expressed in **Paragraph 1.102**, *supra*. “**Disaster Recovery Services**” shall have the meaning set forth in **Paragraph 1.102**, *supra*.

“**Disengagement**” shall have the meaning set forth in **Paragraph 1.101**, *supra*. “**Disengagement Period**” shall have the meaning set forth in **Paragraph 1.101**, *supra*. “**Disengagement Plan**” shall have the meaning set forth in **Paragraph 1.101**, *supra*. “**Disengagement Services**” shall have the meaning set forth in **Paragraphs 1.101**, *supra*.

“**Dispute Resolution Officer**” and “**DRO**” shall have the meaning set forth in **Section 1.93**, *supra*.

“**Division of Contracts & Purchasing**” “**DC&P**” and “**DCP**” mean the NYCDOE functional unit with responsibility for the school district’s general purchasing planning, administration and operations.

“**Division of Financial Operations**” and “**DFO**” mean the NYCDOE functional unit with responsibility for planning, administration and operations of the school district’s general accounting, financial, payroll administration, and other administrative functions.



**“Division of Human Resources”** and **“DHR”** mean the NYCDOE functional unit with responsibility for the school district’s human resources and personnel planning, administration and operations.

**“Driver,” “Operator”** and **“Vehicle Operator”** (with or without capitalization) are deemed to be synonymous for the purpose of this Contract, and shall have the meaning expressed in **Paragraphs 4.18, 4.20, 4.21, 4.22** and **4.24, *infra***, and shall mean any Person employed by the Contractor and approved by the Chancellor or his or her designee(s) or the Director or his or her designee(s) to drive or operate a school bus in the performance of this Contract and otherwise perform the services specified in the Paragraphs expressed heretofore in this sentence and elsewhere in this Contract. Under this Contract, **“Drivers,” “Operators”** and **“Vehicle Operators”** perform all of the duties, functions and responsibilities of “school bus drivers” and “drivers,” as those two terms are used and defined in State Education Law Section 3624 and the State Education Department’s (“SED”) regulations expressed at 8 N.Y.C.R.R. Section 156.3, ***plus*** such other duties, functions and responsibilities as are expressed in this Contract.

**“Educational Community”** means the BOE city school district’s elected and appointed officials, employees, pupils, pupils’ families and/or guardians, volunteers and invitees as well as the directors, officers, employees, pupils and pupils’ families and/or guardians for all the non-public schools served by the Contractor as designated by the Chancellor or his or her designee(s) and/or the Director or his or her designee(s).

**“Educational Program”** means an Individualized Education Program (“IEP”) and/or a 504 Plan.

**“Environmental Laws”** shall mean all applicable Federal, State, City or BOE statutes, laws, regulations, rules, ordinances, codes, licenses, orders or permits of any governmental entity relating to environmental matters including, but not limited to, the following: **(i)** the Clean Air Act (42 U.S.C. § 7401 *et seq.*); **(ii)** the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); **(iii)** the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*); **(iv)** the Toxic Substances Control Act (“TSCA”) (15 U.S.C. § 2601 *et seq.*); **(v)** the Resource Conservation and Recovery Act (“RCRA”), Subtitle C, 42 U.S.C. § 6921 *et seq.*, the Code of Federal Regulations (“CFR”), Identification and Listing of Hazardous Waste, 40 CFR Part 178, Part 261, Part 262, Part 263, Parts 264/265, Subparts A-E, and Part 268; **(vi)** the Endangered Species Act (16 U.S.C. § 1531 *et seq.*); **(vii)** the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 110011 *et seq.*); and, **(viii)** similar State, regional, City and BOE provisions.

**“Extended Time”** (with or without capitalization) shall have the meaning set forth in **Paragraph 4.29, *infra***.

**Federal Motor Vehicle Safety Standards (FMVSS)** as contained in the United States Code of Federal Regulations, Title 49, Part 571, which in part mandate standards for the manufacture of school buses and include size and Gross Vehicle Weight (GVW) specifications set by the National Highway Traffic Safety Administration (NHTSA).

**“Field Trip”** (with or without capitalization) shall have the meaning set forth in **Paragraph 4.29, Subparagraph “C,” *infra***.

**“Final Payment”** (with or without capitalization) means **(i)** the payment or refund by the BOE or the City of any moneys that exhausts the amount of money encumbered under the Contract, **(ii)** the last payment made by the BOE or the City upon an invoice or other notice from the Contractor signaling the material completion of the Services (notwithstanding retainage, if any), or **(iii)** any payment marked “Final Payment by the BOE.”

**“504 Plan”** means a plan developed by the DOE for a student with a disability that offers the student an appropriate education of regular or special education and related aids and services,

which may include transportation services and meets the requirements of Section 504 of the Rehabilitation Act (29 USC 594) and 34 CFR 104.33-104.36

**“Force Majeure”** (with or without capitalization) means acts of God, acts of civil or military authority, acts of public enemies, war, terrorism, insurrection, governmental action, fires, floods, explosions, epidemics, earthquakes, quarantine restrictions, documented industry-wide component constraints, loss or interruption of electrical power or other public utility, and/or other, similar events beyond the reasonable Control of a Party (each such occurrence herein expressed as a *“Force Majeure Event”*), **provided**, such prevented or delayed Party shall have used reasonable efforts to avoid and overcome a *Force Majeure Event*. For purposes of this Contract, unusually severe weather conditions shall **not** constitute a *Force Majeure Event*, **unless** the Chancellor or his or her designee(s) or the Director or his or her designee(s) shall specify otherwise in writing. For purposes of this Contract, work stoppages, slowdowns, strikes and/or other forms of labor unrest shall **not** constitute a *Force Majeure Event*, **unless** the Chancellor or his or her designee(s) or the Director or his or her designee(s) shall specify otherwise in writing, i.e., see **Paragraph 1.50(E)**, *supra*. For purposes of this Contract, vehicular traffic congestion, road construction, vehicular accidents and/or other street/road/highway conditions shall **not** constitute a *Force Majeure Event*, **unless** the Chancellor or his or her designee(s) or the Director or his or her designee(s) shall specify otherwise in writing. Notwithstanding the foregoing, the BOE shall have no obligation to render any payment to the Contractor with respect to any Services that shall not have been supplied by the Contractor and/or a Subcontractor due to a *Force Majeure Event*.

**“Hazardous Materials”** include any substances the presence of which requires investigation or remediation under any Environmental Law, or that is or becomes defined as a “hazardous waste,” “hazardous substance,” “pollutant” and/or “contaminant” under any Environmental Law.

**“Home”** (with or without capitalization) means the residence building or overnight childcare location for each child served by the Contractor.

**“Individualized Education Program”** and **“IEP”** mean a written statement developed by an IEP team that includes the IEP team’s recommendations for the student, including without limitation special education, related services and/or supplementary aids and services. An **“Individualized Education Program”** and **“IEP”** shall include the meaning(s) expressed in the Individuals with Disabilities Education Act of 2004, 20 U.S.C. § 1401 (14), and 8 N.Y.C.R.R. § 200.4(d)(2).

**“Industry Best Practices”** means a management idea asserting that, for a given industry, there is a body of techniques, methods, processes, activities, incentives and/or rewards that is more effective at delivering a particular outcome than any other body of techniques, methods, processes, etc. (i.e., with a proper system of processes, checks and testing, a desired outcome can be delivered with fewer problems and unforeseen complications).

**“Initial Contract Period”** or **“Initial Contract Term”** shall have the meaning set forth in **Paragraph 1.3 (A)**, *supra*.

**“Intellectual Property”** (with or without capitalization) means any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, moral rights, know-how and any other similar rights or intangible assets recognized under laws or international conventions in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter existing in any country or jurisdiction in the world.

**“Itinerant Service”** (with or without capitalization) shall have the meaning set forth in **Paragraph 4.29, Subparagraph “C,”** *infra*.

**“Manual of Standard Operating Procedures for School Bus Contractors Providing Service under Contracts with the NYCDOE”** and **“Contractor’s Manual”** shall have the meaning expressed in **Paragraph 1.100**, *supra*.

**“New York City Department of Transportation,” “City Department of Transportation”** and **“NYCDOT”** mean the New York City Department of Transportation, a department of the City government, existing pursuant to the City Charter and Administrative Code (e.g., the Transportation Law, § 2 *et seq.*).

**“New York State Department of Motor Vehicles,” “State Department of Motor Vehicles”** and **“DMV”** mean the New York State Department of Motor Vehicles, a department of the State government, existing pursuant to State law (e.g., the Vehicle and Traffic Law, § 200 *et seq.*).

**“New York State Department of Transportation,” “State Department of Transportation”** and **“NYSDOT”** mean the New York State Department of Transportation, a department of the State government, existing pursuant to State law (e.g., the Transportation Law, § 2 *et seq.*).

**“Occupational Safety & Health Laws”** shall mean all applicable federal, state or local statutes, laws, regulations, rules, ordinances, codes, licenses, orders or permits of any governmental entity relating to environmental matters including, but not limited to, the following: **(i)** the Occupational Safety & Health Act of 1970, as amended (29 U.S.C. § 651 *et seq.*); **(ii)** 29 C.F.R. § 1902.1 *et seq.*; **(iii)** the State Labor Law, §§ 27, 27-a, 200 *et seq.*, 240 *et seq.*; **(iv)** 12 N.Y.C.R.R. §§ 12-1.1 *et seq.*, 36-1.1 *et seq.*, 38.0 *et seq.*, 50.1 *et seq.*, 56-1.1 *et seq.*, 800.1 *et seq.*; and, **(viii)** similar State, regional, City and BOE provisions.

**“Office of Pupil Transportation”** and **“OPT”** mean the NYCDOE functional unit with responsibility for planning, administration and operations of the school district’s school bus transportation and public transportation facilities for Early Intervention, Pre-Kindergarten and school age students with disabilities and their non-disabled peers.

**“Party”** and **“Parties”** mean each or both of the Board of Education and the Contractor.

**“Person”** (with or without capitalization) means any natural person, corporation, limited liability company, limited liability partnership, general partnership, limited partnership, trust, association, sole proprietorship, governmental organization or agency, political subdivision, body politic, or other legal person or entity of any kind, legally constituted.

**“Principal”** (with or without capitalization), in connection with a School, means the chief administrative official for each public school as designated by the Chancellor in accordance with the Education Law and applicable bylaws, rules and regulations of the BOE. In the case of private or charter schools, “Principal” (with or without capitalization) means the chief administrative officer of each school as identified either by an official representative of the said school or by the Director.

**“Principal”** (with or without capitalization), in connection with the Contractor, any Subcontractor and/or Affiliate, means the Person(s) who exercises managerial and/or operational control over the Contractor, Subcontractor or Affiliate, including, but not limited to, through interlocking officers, directors and/or managers.

**“Producer Price Index”** and **“PPI”** mean, as of a specified date, that statistic of the United States Department of Labor, Bureau of Labor Statistics or its successor agency, which is the official measure of producer prices in the United States, which measures on a monthly basis average changes in prices received by domestic producers for their output. See <http://www.bls.gov/ppi>.

**“Purchase Order”** means any paper and/or electronic form(s), mechanism(s) and/or web application(s) that the BOE shall use to place an order(s) for the Services under this Agreement. DCP uses a “Notice to Proceed” (*aka* “Proceed Order”) mechanism which is deemed to be

synonymous with a Purchase Order. **Purchase Orders** shall conform to the rules, regulations, policies and procedures expressed in the BOE Standard Operating Procedures for Financial Management Centers ("SOPM") which is hereby incorporated into, and made part of this Contract as if the SOPM were set forth herein in its entirety.

**"Purchasing Agency Letter"** shall have the meaning set forth in **Paragraph 1.74, supra**.

**"Request for Bids"** and **"RFB"** shall have the meaning expressed in **Paragraph 1.2, supra**.

**"Route"** (with or without capitalization) means the actual course followed by a contracted vehicle in transporting children to and from a school(s) and/or site(s). This could also mean a series of "runs".

**"Run"** (with our without capitalization) means a series of stops, pickups or drop-offs designated by OPT for a school(s) and/or site(s).

**"School"** (with or without capitalization) means any and all of the kindergartens, primary schools, elementary schools, middle schools, intermediate schools, junior high schools, senior high schools, general high schools, schools serving students with disabilities and other schools or programs within the school system of the New York City School District. "School" (with or without capitalization) shall also include any and all non-public (secular and/or non-secular) schools serving students with disabilities and/or their non-disabled peers designated by the Director for pupil transportation service under this Contract wherever any such school may be located (i.e., within the geographical areas contemplated in this RFB and any resulting Contract). If listed in a written notice from the Director to the Contractor, "School" shall also include any charter schools **(i)** chartered by the BOE, or **(ii)** within the geographical boundaries of the New York City School District. The Chancellor or his or her designee(s) and/or the Director or his or her designee(s) shall have the sole and absolute discretion to add to, delete from, update, revise and/or otherwise change the Schools served under this Contract including, but not limited to, changing the names and numerical designations of Schools without notice to the Contractor. Multiple Schools may be co-located at any given address(es). Schools may also have annex locations that will be served by the Contractor under this Contract, if specified by the Director or his or her designee(s) with written notice to the Contractor.

**"School Day"** (with or without capitalization) means the days of the year when BOE Schools shall be open for regular academic sessions (session times) in accordance with the Board's official "School Year Calendar" and "Comprehensive Calendar," as published, updated, amended, revised and/or otherwise changed without notice to the Contractor on the official BOE website, <http://schools.nyc.gov> (or any successor website)

**"School Year"** (with or without capitalization) means the period of the year when BOE Schools shall be open for regular academic sessions in accordance with the Board's official "School Year Calendar" and "Comprehensive Calendar," as published, updated, amended, revised and/or otherwise changed without notice to the Contractor on the official BOE website, <http://schools.nyc.gov> (or any successor website).

**"Services"** (with or without capitalization) means the Contractor's services, any Subcontractor services and Third Party Services rendered by and/or through the Contractor under this Contract and shall include, **but** shall not be limited to, all activities to be performed by or through the Contractor, any Subcontractor and/or other Third Party as expressed in the RFB and Contract. The term "Work" (with or without capitalization) is deemed to be synonymous with "Services."

**"Service Day(s)"** means each day on which individual Schools shall be open and operating to receive students but shall exclude all federal holidays, Saturdays and/or Sundays **unless** directed otherwise in advance in writing by the Director or his/her designee(s) regarding particular instances of federal holidays, Saturdays and/or Sundays. See **Paragraph 4.10, Subparagraph "A," infra**, for operational details.

“**State**” means the State of New York or any political subdivision or public authority thereof.

“**State Education Department**” and “**SED**” mean the New York State Education Department, a department of the government of the State of New York, existing pursuant to State law (e.g., the Education Law, § 101 *et seq*).

“**Student(s) with Disabilities**” means a student(s) with an Educational Program.

“**Subcontractor**” (with or without capitalization) shall have the meaning expressed in **Paragraph 1.24, supra**, and means any Person other than the Contractor who provides, furnishes, supplies, delivers and/or otherwise gives services to the NYCDOE pursuant to an agreement with the Contractor. Any Contractor’s Affiliate that provides Services to the BOE pursuant to such an agreement shall be deemed a Subcontractor.

“**Term**” means the Initial Contract Period and, if any, the total length of the Contract Extension Periods.

“**Third Party**” (with or without capitalization) means any Person or entity other than the Parties, and the said Third Party’s directors, officers, employees, agents, servants and authorized representatives.

“**Third Party Services**” (with or without capitalization) mean any Services that are originated and/or performed by a Third Party.

“**United States Department of Transportation**,” “**U.S. Department of Transportation**” and “**USDOT**” mean the United States Department of Transportation, a department of the United States government, existing pursuant to Federal law (e.g., 49 U.S.C., § 101 *et seq*).

“**Vendor**” (with or without capitalization) is deemed to be identical in meaning with “Bidder” and “Contractor”.

“**Workforce**” means the agents, servants, employees, Principals, managers, administrators and other representatives of the Contractor and each Subcontractor and/or Affiliate.

#### **4.7 Bidders with Existing Transportation Contracts**

Bidders having an existing transportation contract(s) with the NYCDOE must submit all of the required documentation stipulated in this RFB.

#### **4.8 Notice to Proceed/Purchase Order**

The Contractor shall commence work pursuant to the Contract on the date specified in the Department’s written Notice to Proceed/Purchase Order.

#### **4.9 Performance Security.**

(A) The Contractor shall furnish a performance bond to guarantee the Contractor’s full and faithful performance of its obligations hereunder for the First Contract Year. The performance bond(s) (and the consent of surety and/or letter of intent expressed in **Paragraph 1.23, supra**) must be issued by an insurer and/or surety licensed to do business in the State by the State Superintendent of Insurance. The performance bond(s) must provide that surety’s or insurer’s obligation to undertake performance of the

Contract shall commence within five Business Days upon receipt of written notice from the Director that the Director has determined that Contractor is in Default of its obligations under the Contract pursuant to **Paragraphs 1.5, supra**. The requirement for a performance bond shall apply to the First Contract Year only (i.e., see **Paragraph 4.9(D), infra**, for the performance security provisions applicable to the Second Contract Year and all succeeding Contract Years) unless the Contractor shall request and the Director shall grant permission to use a performance bond for any succeeding Contract Year.

(B) The penal sum of the performance bond for the first Contract Year shall be half the value of the Contract Year namely, ninety days multiplied by the sum of the number of vehicles awarded to the Contractor multiplied by the daily rate(s) per vehicle and driver plus the number of attendants multiplied by the daily rate(s) per attendant.

(C) The Contractor shall furnish the performance bond to the Director within thirty Calendar Days after the NYCDOE shall have mailed the Notice of Award to the Contractor. Failure of the Contractor to furnish a compliant performance bond within the time expressed in the preceding sentence shall constitute grounds for rescinding the Award. The performance bond(s) that the Contractor supplies hereunder must be in strict compliance with the sample bond appended to this RFB.

(D) For the periods of the Second Contract Year and all succeeding Contract Years, no performance bond is required. The form of performance security shall be retainage unless the Contractor shall request and the Director shall grant permission to use a performance bond for any succeeding Contract Year. For each of the Second and succeeding Contract Years, ten percent of the Contractor's payments for the first five months of the applicable Contract Year shall be retained in escrow in a non-interest bearing account to assure true and faithful performance. Such money is to be used to secure replacement service if the Contractor shall fail to perform and/or otherwise commit and/or permit a Default and for such other purposes permitted under the contract and/or applicable law such as, but not necessarily limited to, the satisfaction of any outstanding Liquidated Damages. Upon written application, eighty percent of the retainage, without interest, shall be returned to the Contractor after the end of each Contract Year provided that the NYCDOE is not entitled to some portion of the affected retainage. The remaining twenty percent shall be returned after the payments for September service shall have been made. In the alternative, the Contractor may elect to leave its retainage in escrow and not have any deductions from its payments in the remaining Contract Years except as may be necessary to reflect increases in the volume of service (i.e., the number of vehicles that the Contractor supplies to the NYCDOE).

#### **4.10 Schedules of Sessions**

The Director will provide to the Contractor the various schedules of session days and times for each School to be served under this Contract prior to the commencement of transportation service for any given semester. For purposes of this Contract, the schedules of session days and times may vary significantly for each child and each School. The DOE does not guarantee, nor may the Contractor rely upon, the durable stability of any schedules.

- A. Number of Days of Service. Service is to be provided as required. The Contractor must conform to the school calendar and daily time schedules of all the different Schools and sites involved in the routes assigned. In most cases, the school calendar shall be furnished prior to the beginning of service. It is the responsibility of the Contractor to adhere to this calendar at all times, unless notified otherwise by the Director or his or her designee. This shall include responsibility for adhering to any special schedules or shortened schedules. The school calendar varies from year to year; however, the Board reserves the right to change the hours and/or days of attendance including the addition or deletion of days at any and all Schools any time prior to the letting of the Contract and at any time thereafter. No change in compensation will be made for such adjustments, unless such adjustments necessitate the use of additional or fewer vehicles by the Contractor (i.e., additional vehicles will increase compensation to the Contractor, while fewer vehicles will reduce compensation to the Contractor and as otherwise provided for in this contract). In rare instances, it may be necessary to provide limited amounts of service on weekend days and/or federal holidays in which instances the Director shall provide advance notice in writing.
- B. Period of Operation and Requirements for Service. Service must be provided pursuant to the terms, conditions and specifications of this Contract (See Daily Standard Service Period in Paragraph 4.29, A., *supra*, and elsewhere in this Contract). Service is defined as the provision of transportation for children between home or the address on file and schools as well as other approved destinations; and it includes, but is not limited to, the following elements:
- i. Service commences with the initial pickup at the designated children's residences, at school bus stops specified by the Director or his or her designee(s), and/or addresses on file for delivery to school;
  - ii. Arrival at school in the morning is to be no more than thirty minutes before and no less than five minutes before the scheduled session start time;
  - iii. Service continues with the transportation of additional children as routed and/or authorized by OPT;
  - iv. Service continues with the pickup of children at the schools no more than 30 minutes after the end of the daily sessions and/or after school programs for final delivery; and,
  - v. Service concludes after all children have been delivered safely to their designated PM drop-off locations and in the case of students with disabilities into the custody of a parent(s) or authorized guardian or care-giver or for either students with disabilities or their non-disabled peers safely delivered as otherwise instructed by the school's Principal or designee in the event of an emergency. In the event said disabled student's parent, guardian, or caregiver is not present to receive a child, the driver will drop off the other riders on the route and then return to the child's home. In the event that a designated adult is still not there, the driver will have been instructed to radio the dispatcher who will contact OPT to determine if there is a pre-existing agreement to return the student to the school. If there is no agreement, the dispatcher will contact 911. The Police will then determine the best course of action. When the student's stop is the final one on the route, the driver will radio the dispatcher who will contact OPT to determine the appropriate waiting time before calling 911.
  - vi. At the conclusion of service each day, it is the responsibility of the Contractor to update a web-based application designated by the Director to report that all students with disabilities have been safely delivered to the custody of a parent or authorized guardian or care-giver and all non-disabled peers (if any) have been delivered safely to their designated PM drop-off locations.
  - vii. Service includes only those stops authorized by the Director, unless there is an emergency.

- viii. The hours of service for particular bus runs will vary based on the amount of time necessary to meet the start of any first sessions to the amount of time necessary to deliver all passengers after the end of any last sessions for the children assigned to those runs. Under normal circumstances (and there will be exceptions especially for children whose placements are particularly remote from their homes), children who reside in and attend school in the same borough should not spend more than one and one-half hours on the run each way. Under normal circumstances (and there will be exceptions especially for children whose placements are particularly remote from their homes), children who reside in one borough and attend school in another borough or county should not spend more than one and three-quarters hours (105 minutes) on the run each way. Regarding the preceding two sentences, the Contractor shall make its best efforts to meet these requirements.
- ix. School session times may vary widely during the year. The Contractor shall transport children in accordance with each School's session times.

**4.11 Increase or Decrease in the Number of Vehicles, Sites or Children; Other Modifications**

- A. Decrease. At any time during the term of the Contract, the Director shall have the right, power, and authority to reduce the number of vehicles contracted and/or schools served by the Contractor and to adjust affected schedules due to reasons including but not limited to the following: changes in the population or distribution of children; the closing of existing schools or sites; default or voluntary surrender of a school bus contract; changes in educational or budgetary policies or directives adopted by the NYCDOE, the City of New York, the State Education Department, the State government, the United States government, and/or the Financial Control Board (e.g., reducing contracted vehicles or schools served to reimburse nonpublic schools or their contractors pursuant to Educ. Law §3627); and/or other educational, financial, school bus operational, efficiency and/or other relevant reasons in the discretion of the Director. Compensation to the Contractor will be reduced based on the number of vehicles actually being contracted according to terms elsewhere in this RFB, and the NYCDOE shall not be liable to pay for any services eliminated.
- B. Increase. If at any time during the term of the Contract the NYCDOE determines that there is a need to transport additional children, or a need to provide service to additional schools or sites, to replace an existing contractor or to address other factors, the NYCDOE reserves the right to increase the number of vehicles providing transportation services by the Contractor. The Contractor must then supply additional vehicles as necessary up to 15% of the number of vehicles awarded). Additionally, it is the sole discretion of the NYCDOE to offer additional vehicles beyond the initial 15% increment; if additional vehicles beyond the initial 15% are offered the Contractor may elect to accept or decline the vehicles.
- C. In the event of a Contractor's failure or inability to perform (due to lack of operational, organizational, or financial capacity, or otherwise, as may be determined by the Director, in his or her sole discretion), or in the event of a Contractor's default, in addition to the procedures set forth above, the Director may assign and/or offer that work to another vendor in any manner consistent with the NYCDOE "Procurement Policy and Procedures", which document is hereby incorporated into, and made part of, this Contract as if set forth herein in its entirety.
- D. Notice and Liability
  - i. The Department shall notify the Contractor at least five Business Days in advance of the date that modifications pursuant to this Section 4.11 are effective.
  - ii. If the modifications pursuant to this Section 4.11, when effective, terminate the need for any part of any of the services rendered by a particular Contractor, or result in the Contractor's inability to perform, neither the City (or any political or governmental subdivision thereof) nor the Board of Education shall be liable for any damages or costs of the Contractor, and/or any Subcontractor as a consequence thereof.



**4.12 Assignment of Vehicles: Integration with Work Being Performed Under Existing (and Future) DOE Contracts**

Some of the Classes covered by this Contract will be integrated with Items or Classes under contracts awarded pursuant to Bid Serial No. B2321 (“B2321 Contracts”), contracts originally awarded pursuant to Bid Serial Nos. 0070, 4515, 4516, 4894, 4952, 7164, 7165, 7200, 7291, 8108, G-8805, G-8891, and G-9325 (“Continuing Contracts”) and/or contracts awarded in a future procurement (“Future Contracts”). Those Classes that will be integrated with items/classes under Continuing Contracts and/or B2321 Contracts are so noted in Section 3.1. Mini-Wagons under Continuing Contracts are equivalent to type A or B vehicles with a minimum seating capacity of 18 without an hydraulic lift under this Contract and B2321 Contracts, Standard Buses under Continuing Contracts are equivalent to Type C or D vehicles with dual passenger doors and without an hydraulic lift under this Contract and B2321 Contracts and General Education Standard Buses under Continuing General Education Contracts are equivalent to Type C or D vehicles with a single passenger door and a 65 passenger seating capacity under this Contract and B2321 Contracts. The “Within” designation used for Items under Continuing Contracts is also used for Classes in the B2321 Contracts and hereunder and has the same meaning in both (i.e., all of the riders on the routes in a “Within” Item or Class reside in the same borough in which all the schools in such Item or Class are located). The “Between” designation used for Items under Continuing Contracts is the equivalent of the “Interborough” designation used for Classes in the B2321 Contracts and hereunder (i.e., at least one of the riders on the routes in a “Between” Item or in an “Interborough” Class will reside outside of the borough, county or state in which all the schools in such Item or Class are located).

- A. Each contractor awarded a contract under this RFB (“B3182 Contractor”) will be assigned the number of vehicles as of the date its contract was awarded plus or minus any additions and deletions per such contract. The number of vehicles required to begin the school year is determined by the Office of Pupil Transportation. Each contractor will keep the same number of originally contracted vehicles operated in the previous year to the extent that said vehicles are needed to provide service at the start of the new School Year. The number of vehicles contracted will be adjusted on a Class by Class basis according to the increased or decreased need.
- B. OPT will determine and construct each route which is composed of one or more **runs**. Runs are subject to adjustment and revision due to changes in the need for service, including without limitation, session time changes and the addition or deletion of pupils and schools. Each contractor must provide service to accommodate such changes. Runs may be assigned to field trips or other work during the middle of the day.
- C. For any School Year in which one or more Continuing Contracts are in effect, routes in Classes with corresponding Items under Continuing Contracts will be distributed using a “Run Pick.” Shortly before the start of each such School Year, within each Class that has a corresponding Item under a Continuing Contract, the lowest-priced contractor [B3182 Contractor, Contractor with a B2321 Contract (“B2321 Contractor”), Contractor with a Continuing Contract (“Continuing Contractor”) or Contractor with a Future Contract (“Future Contractor”) in such Item/Class], based on a comparison of the contractors’ respective total daily rates, as described in Paragraph 4.12 (D) below, will be allowed first choice of the runs up to the number of Contract Vehicles allocated under its particular contract (as extended where applicable).
- D. For each School Year in which one or more Continuing Contracts are in effect, in classes that have corresponding items under Continuing Contracts, the B3182 Contractors who are awarded contracts for such corresponding Classes will be slotted into the Pick Order in each such Class/Item based on their total daily rates (i.e., base – driver and vehicle – rate plus the attendant rate(s) from lowest to highest. Any Continuing Contractors, B2321 Contractors or Future Contractors in each such Class/Item will also be slotted into the Pick Order. For Continuing Contractors, in accordance with the terms of their contracts, as extended, their respective total daily rates for each School Year will be determined as of late August approximately two business days prior to the Pick itself; the total daily rates for B2321 Contractors, B3182 Contractors and Future Contractors shall be determined as set forth in the contract under which each contractor is operating. The relative Pick Order slots held by one or more Continuing

## B3182- Transportation Services for Students with Disabilities and Their Non-Disabled Peers

Contractors, B3182 Contractors, B2321 Contractors and/or Future Contractors within an Item/Class may change from year to year in accordance with terms of the contracts under which each contractor is operating. If the number of Contract Vehicles for all contractors in a corresponding Class/Item exceeds the number of required runs, the Pick will stop once all of the required runs have been selected or assigned. Until October 30 of each School Year, in those Classes/Items that have one or more Continuing Contractors, runs remaining after every contractor (B3182 Contractors, B2321 Contractors, Continuing Contractors and Future Contractors) has received runs for its Contract Vehicles will be offered as Additional Vehicles to the Continuing Contractor(s) in the price order described above until each Continuing Contractor in such Items shall have been restored to each such Continuing Contractor's number of Additional Vehicles providing service under said Continuing Contractor's contract (as extended) as of June 30 of the preceding School Year. In Classes/Items that have one or more Continuing Contractors, runs created between the date of the Run Pick and October 30 of each School Year and which exceed the number of Additional Vehicles that have been restored to the Continuing Contractors, as described above, as well as any runs to be distributed after October 30 of each School Year, will be offered in the lowest to highest price order described above to all active contractors (i.e., B3182 Contractors, B2321 Contractors, Continuing Contractors and Future Contractors). Any further runs in a Class/Item with one or more Continuing Contractors beyond those offered on or before October 30 of each School Year for restoration of the Continuing Contractors' number of Additional Vehicles as of June 30 of the prior School Year, or any further runs to be assigned after October 30 of each School Year (collectively, "Further Runs"), when offered to a Continuing Contractor, shall be offered as "Additional Additional" (which will become "Additional" subject to restoration for the following School Year, in accordance with the terms of the Continuing Contracts, as extended, if such Contractor remains in such Class/Item in the following School Year pursuant to a Continuing Contract), and when offered to a B3182 Contractor, B2321 Contractor or Future Contractor, shall be "Additional," but they will not be subject to restoration rights in the following School Year.

- E. Additional vehicles that are assigned in any School Year to any B3182 Contractor, whether or not such Contractor's Class corresponds with a Class/Item under another contract, shall not be subject to restoration to such Contractor in any other School Year.
- F. When new work is offered during the course of a School Year, it will not be permissible for any B3182 Contractor to refuse work under a lower priced daily rate (i.e., base – driver and vehicle - rate plus the attendant rate(s)) only to have an Affiliate in the same Class/Item accept it under a higher priced daily rate.
- G. For Classes awarded hereunder which do not have corresponding Continuing Contract Items, runs for such Classes shall be assigned as NYCDOE deems appropriate.
- H. At such time as contracts of Continuing Contractors in Items that correspond with Classes hereunder expire or are terminated, upon expiration or termination of all Continuing Contract work in such Items, runs for such Classes shall be assigned as NYCDOE deems appropriate.
- I. Subject to the provisions in paragraph D above, in Classes with corresponding Items/Classes where there is one or more Continuing Contractor and/or a B2321 Contractor or Future Contractor, additions will be offered in the lowest to highest price order described above to all contractors and deletions will be applied to contractors in the highest to lowest price order.
- J. For specific procedures and examples pertaining to additions and deletions, see the *Contractor's Manual*.

### **4.13 School Closings**

- A. If inclement weather and/or other conditions result in the closure by the Chancellor of the NYCDOE's educational facilities, the NYCDOE will suspend all transportation services hereunder for the duration of the said conditions. Should the closure of the NYCDOE's schools occur, or if the Contractor is uncertain

whether or not transportation services hereunder are in effect, the Contractor should contact the Office of Pupil Transportation's Customer Service Unit at (718) 392-8855 (or such other telephone number as the NYCDOE shall provide with notice to the Contractor). If transportation services have been suspended, a recorded message will serve as notification. As noted herein, there shall be 85% payment to the Contractor for days when vehicles do not operate due to school closings only when the days canceled are not rescheduled before the end of the School Year.

- B. The Contractor shall comply with all orders and instructions of the Director or his or her designee(s) consistent with or not prohibited by the terms of this Contract.
- C. The scope and substance of said orders and instructions shall be in the discretion of the Director so that the Director may properly discharge his or her function of providing timely, clean, safe and reliable transportation.

#### **4.14 Authorized Stops**

The Contractor will transport each child between each child's school and home, stop or authorized delivery site. The Director will assign a particular school bus "run(s)" to each vehicle contracted in accordance with this RFB. A school bus "run" is a series of "authorized stops" which includes students' homes, schools and other destinations as prescribed by the Director. The authorized stops shall be established solely by the Director.

#### **4.15 General Terms of Service**

Students with disabilities whose Educational Programs designate specific requirements for their transportation will receive transportation services as specified in their Educational Programs. Other students will have their eligibility for transportation services determined by grade and distance criteria detailed in Regulation of the Chancellor: A-801. The Contractor will transport each child between each child's school and home, stop or authorized delivery site. Runs will be distributed by means of a Route Allocation Protocol as described earlier in this RFB. Please note that the DOE intends to construct routes to be performed under this (and other) contract(s) based on a wide variety of students being transported on each vehicle. Accordingly, it is anticipated that starting with the 2018-2019 School Year any vehicle under this contract might transport any combination of students (students with disabilities who's Educational Programs may or may not designate specific transportation requirements as well as non-disabled students).

- A. In some cases, for students with disabilities (except for "Porter" Service) whose Educational Programs specify and for all other students with relevant medical variances, the Contractor must provide "door-to-door" transportation service to each student who commutes between his or her designated school and a home site. In the unusual case where, because the child lives on a dead-end street<sup>6</sup> or because of traffic regulations, it is impossible for the vehicle to discharge the child at the curb in front of the pupil's home, the drop off point will be at the "closest safest stop" to where the child resides. Such designated stops will once again only be authorized by the Director or his or her designee. Vehicles will load and unload at the school at the point designated by the Principal of the school. For "Porter" Service which must be specified on the Educational Program, the two Porter Attendants assigned to the route must enter each student's home building in the morning and physically assist the student from the apartment door to the street. In most instances, this will require a student and his or her necessary mobility and/or medical equipment to be physically carried. Such assistance and carrying will only be performed by those attendants who have been trained in proper lifting and carrying techniques. For the return trip, the Porter Attendants must provide assistance comparable to what they provided in the morning from the street to the child's apartment door. The Contractor will be paid 104% of its bid attendant rate (as adjusted) for each day that each Porter

---

<sup>6</sup> The term "dead-end street," as used in this Contract includes, without limitation, streets with or without signs and includes, without limitation, "no outlet" streets, *cul-de-sacs* and other roadways for which there is only one entry and exit point.

Attendant provides service to children. For students with disabilities whose Educational Programs do not designate specific requirements for their transportation and almost all of their non-disabled peers, the Contractor must provide "stop-to-school" transportation service to each student who commutes between his or her designated school and a home site.

- B. Except in an emergency, or when the Director indicates, no pupil will be required to transfer from one vehicle to another vehicle on the trip to school, on the homeward trip, or on a field trip.
- C. For each run, the Director will furnish to the Contractor a schedule of the assigned children and/or the assigned bus stops and the school(s) to be served which constitute the authorized stops.
- D. The authorized stops for each run are subject to change as the program session(s) is altered, as children move or as schools or children are added to or deleted from the transportation lists. The Contractor must comply with changes in the authorized stops within the time frame(s) stipulated by the Director or his or her designee in accordance with the terms of this Contract. The Director or his or her designee will have the power and authority to notify the Contractor of changes to runs verbally and/or via telephone, although written or electronic notice will be delivered within seven School Days after oral notification. The Contractor will not alter the schedule of the vehicle serving scheduled stops without prior approval from the Director.
- E. Only children and other individuals who are designated by OPT shall be carried in the vehicles used under this Contract while such vehicles are used to transport school children, except as otherwise stated in the Contract or as authorized by the Director or his or her designee.
- F. On all School Days and/or Business Days during periods when service is scheduled, any vehicles which have been reported to the Office of Pupil Transportation for use pursuant to this Contract shall be available solely to OPT for the entire Daily Standard Service Period and such Extended Time hours as OPT shall schedule. During that entire service period the driver and attendant must be accessible by radio, telephone or other mutually agreed upon communications device. In addition to transporting children to and from school during those times, the vehicles and transportation crews shall also be available to perform related tasks assigned by the Director such as, but not necessarily limited to, field trips and mail pickups at OPT's office (see Section 4.16, *infra*, regarding Mail Pickup). The Contractor is further prohibited from the utilization of any such vehicles for any other public or private purpose or work, except as otherwise stated in the Contract or authorized expressly in writing by the Director. Also, the Contractor is prohibited at any time from the utilization for service pursuant to this Contract any vehicles which the vendor has not reported to OPT as exclusively for its use.
- G. If a school Principal or other authorized NYCDOE school official requests permission for paraprofessionals or other adults to ride on any vehicle(s) for a specific reason (other than to supervise or chaperone a field trip as that permission is implied in the approval of the field trip request), such permission may be granted only by the Director or his or her designee(s); and, the Contractor will be notified accordingly. Upon receipt of notice from the Director or his or her designee(s), the Contractor shall transport all such paraprofessionals and other adults specified by the Director or his or her designee(s).

#### **4.16 Additional Uses of Contractor's Vehicles**

##### **(A) Contractor Mail Pickup and Delivery**

In addition to all other uses of vehicles prescribed in this Contract, the Director shall have the right, power and authority to require the Contractor to provide a vehicle(s) for the pick up and delivery of notices, correspondence and other mail between the Department and the Contractor with no additional compensation due to the Contractor and on a day of the Director's choosing. At the direction of the Director, the Contractor and/or its Affiliate(s) shall be required to utilize one vehicle per mail run for the several affected contractors. For routine notices, correspondence, and mail transmitted via this procedure including, but not limited to, Notices of Violations (i.e., for notification to the Contractor of an alleged violation which may result in the assessment of

liquidated damages), the signature of the Contractor's courier on a mail pickup receipt shall satisfy all notice requirements, any other provisions in the Contract to the contrary notwithstanding.

**(B) Federal, State, City and/or Other NYCDOE Use of Vehicles**

In addition to all other uses of vehicles prescribed in this Contract, the Chancellor and/or the Director shall have the right, power and authority to require the Contractor and/or Affiliate(s) to provide one or more vehicles for use by the federal, state and/or city governments, by other governmental agencies, and/or by the NYCDOE for uses other than pupil transportation services while such vehicle are not in use for such pupil transportation services. (If the Contractor and/or Affiliate(s) has extra vehicles and drivers that meet the requirements expressed in this Contract and are not otherwise committed, the NYCDOE may use such vehicles for the uses contemplated in this **Paragraph 4.16(B)** during School Days.) Such uses may include, but shall not necessarily be limited to, transportation during emergency situations, transportation for special events, transportation of governmental employees, and transportation of other Persons designated by the Chancellor and/or the Director. In addition, such uses shall not be restricted to the schools specified in this Contract. The NYCDOE shall pay the Contractor pursuant to the provisions expressed in **Paragraph 4.29, infra**. With reference to the preceding sentence, if any services under this **Paragraph 4.16(B)** shall occur on days other than School Days or Service Days (e.g., Saturdays, Sundays, federal holidays and/or NYCDOE holidays) and result in the Contractor's incursion of labor costs over and above those covered by the provisions expressed in **Paragraph 4.29, infra**, the NYCDOE shall pay the Contractor for the additional labor costs **only** up to the difference between the payment afforded under **Paragraph 4.29, infra**, and the actual added labor costs up to a maximum of double overtime. For any additional payments under the preceding sentence, the Contractor must submit to the Director or his or her designee(s) documentary evidence of its actually incurred additional costs over and above payments allowed under **Paragraph 4.29, infra**.

**4.17 Contractor Security Clearance Procedures**

At least five Business Days prior to any Qualification Meeting with an apparent low bidder, all of that Contractor's officers, managers, safety directors, personnel directors, dispatchers, and owners, shareholders and/or partners (i.e., all individuals with a five percent or greater interest in the Contractor) and Subcontractors that perform direct services to and/or for students and/or vehicles (i.e., all officers, managers, safety directors, personnel directors, dispatchers, Controllers, and all owners, shareholders and/or partners with at least five percent interest in the affected Subcontractor or Affiliate) must have appeared at OPT and been fingerprinted, unless they are listed by the Board of Education as active drivers or attendants with clearance dates after July 1, 1990. The results of those fingerprint investigations will be discussed at the Qualification Meeting. The costs for such criminal history investigations shall be borne by the Contractor, Subcontractor(s), Affiliate(s) and/or the individual personnel. There shall be no additional compensation to the Contractor for the cost of criminal history investigations performed under the Contract. All new and/or replacement Contractor, Subcontractor, and/or Affiliate personnel, as described in this **Paragraph 4.17**, shall be subject to criminal history investigation prior to employment or other association with the Contractor during the Term of this Contract. The DOE is willing to consider the use of an independent third party to perform the fingerprinting function for the individuals specified in this and only this Paragraph 4.17 but only: for the individuals in that population who can demonstrate that appearing at OPT would be a hardship, undue expense, etc.; and with the Director's prior approval.

**4.18 Vehicle Operator (Driver) Standards**

All Drivers, including all substitutes and temporaries, must be approved by the Director (or designee) before they begin work. This requires that all Drivers must meet all the requirements listed below, and that all required documentation must have been received by the Office of Pupil Transportation prior to commencement of service unless otherwise specified below. All documentation sent to the Office of Pupil Transportation must show the name, social security number and company of the Driver. The photo identification cards that Drivers are required to wear will not be issued until all requirements have been met.

- A. To protect the safety and welfare of the children and other passengers, as well as for other reasons, the Contractor must employ only Persons of good moral character and thorough reliability to serve as vehicle operators (including shapes, substitutes and casuals) pursuant to this Contract.
- B. As required by NYSDOT, before employing a new driver; the motor carrier shall perform an investigation of the driver's employment record during the preceding three years. "Article 19A was enacted to further highway safety by creating standards for qualifying bus drivers. A person shall not be permitted to operate a bus unless he/she is qualified as provided in this article [19A]".
- C. **Competency in Verbal Communication.** The Contractor must assure that all drivers employed pursuant to this Contract are able to speak and understand the English language sufficiently well to: communicate with all passengers and school officials; to summon assistance in case of an accident or other emergency; and to communicate with, and understand directions from, police, emergency service workers and other authorities in case of an accident or emergency. Whereupon the Director or his or her designee(s) determines that a vehicle operator cannot communicate effectively in the English language, the Contractor is prohibited from employing such a driver on any part of the work pursuant to this Contract or any other NYCDOE transportation contract, until such time as the vehicle operator is able to demonstrate to the sole satisfaction of the Director or his or her designee(s) an acceptable facility with the English language.
- D. If, during the term of this Contract or any extensions thereof, OPT requires an independent course of training, instruction and/or written examinations to test the proficiency levels of vehicle operators as an adjunct to SED school bus driver instruction and training, each vehicle operator will be required to undergo such training, instruction and/or testing.
- E. **NYCDOE Not Responsible for Processing or Examination Costs.** The NYCDOE will not be required to pay for any costs associated with the processing of fingerprints, background investigations, medical examinations, or any other reports or information required by the NYCDOE for any vehicle operator. Depending on the Contractor's own arrangements, any such costs must be borne by either the Contractor or each vehicle operator.
- F. The Contractor must not cause or allow any individual to work as a vehicle operator pursuant to this Contract until receipt of written approval from the Director or his or her designee(s). As specified in the New York State Education Law and New York State Vehicle and Traffic Law, the Director or his or her designee(s) shall have the right, power, and authority to refuse approval for any individual to serve as a vehicle operator under the Contract. Prior to the approval of each candidate and at the Contractor's expense, the Contractor must arrange for the following information to exist on file at the Office of Pupil Transportation in a manner approved by the Director and/or on the forms listed below or otherwise prescribed by the Director (the NYCDOE shall have the right to add to, delete from, update, amend, revise and/or otherwise change the forms and/or the information listed below upon written notice to the Contractor):
  - I. **Initial Submission By Vendor - NYS Office of Court Administration Criminal History Records Search (CHRS) Request**
    - a. Letter from the contractor on company letterhead stationery requesting CHRS check
    - b. Copies of the driver's NYS Commercial Driver License
      - 1. Class A and B with a P (passenger) endorsement, [and an S (school bus) endorsement if the driver will be operating a school bus with a gross vehicle weight rating (GVWR) of 26,001 pounds or more] or Class C with a P and N1 endorsement [if the driver will be operating a school bus with a gross vehicle weight rating (GVWR) of 26,000 pounds or less]. N2 endorsements will NOT be accepted.

2. A conditional or restricted use license is not acceptable, except for an operator whose license has been restricted solely due to a lapse of insurance on his or her personal vehicle
  3. Vehicle operator must be fully competent, thoroughly reliable, at least twenty-one years of age, and must possess good moral character.
- c. Copy of Social Security Card
- d. A full and complete abstract that is no more than thirty days old of the candidate's official vehicle operating record from the DMV indicating an S19A Status of Active-School Qualified
- e. A full and completed "Information Form, School Bus Driver" (BE/OPT 9817A)

II. Upon CHRS clearance, the Following Items Are Required For Certification and Maintaining Certification

Within two weeks of each driver's completion of each training, instruction, and/or testing requirement, the Contractor must arrange for delivery to OPT a written certification signed and dated by an SED–OPT approved school bus driver instructor to state that the particular requirement has been completed successfully.

a. Paperwork

1. A satisfactory CHRS that was completed no more than sixty calendar days prior to the request for certification
2. Two forms of Identification (e.g., NYS Driver's License, Social Security Card)
3. A full and completed "Information Form, School Bus Driver" (BE/OPT 9817A)
4. Three letters of reference dated not earlier than three years from the start of service pursuant to any resulting Contract from extant individuals, organizations, firms, and/or agencies not related by blood or marriage to the candidate, which attest to his or her personal character, work record and habits, and extent of experience, if any, in a related transportation field
5. A Final Qualification Letter from the Division of Driver Program Regulation, DMV
6. Any other documentation as required in this Contract, by Article 19-A standards or as may be required by the Director or his or her designee(s) or due to changes in local, state or federal laws, rules or regulations

b. Training and Instruction Requirements

The Contractor must comply fully with the regulations of the Commissioner of the SED pertaining to the training and instructions for each vehicle operator utilized pursuant to this Contract. At present, the section mandates the following requirements for each vehicle operator:

1. The Contractor must certify in writing that each vehicle operator has received the appropriate training and instruction as specified in this Contract.
2. An official, written certification of approval from a school bus driver training instructor approved by the State Education Department, that the candidate has successfully completed all **Pre-Service Training** requirements.

- a. Each Contractor must utilize instructors approved by the SED and OPT to conduct training sessions for school bus drivers. All training programs must be approved by the SED and OPT before the program is offered.
  - b. Each school bus driver employed initially either by a board of education or any transportation contractor subsequent to July 1, 1973, or initially employed by a non-public school on or after July 1, 2004, must have received at least two hours of instruction on school bus safety practices prior to the start of service as an operator.
  - c. Each driver of a vehicle, who is initially employed subsequent to January 1, 1976, or initially employed on or after July 1, 2004, for non-public school bus drivers, must have received an additional hour of instruction concerning the special needs of a child with a disability prior to the start of service as an operator.
3. All drivers must receive a minimum of two hours of **Refresher Instruction** in school bus safety at least two times each year, at sessions to be conducted prior to the first day of school and prior to February first of each year (spring and fall).
    - a. Refresher courses for drivers of vehicles transporting students with disabilities must also include instruction relating to the special needs of a handicapped child, wheelchair security when necessary as well as information on the nature, needs and characteristics of the specific disability [as required by the Individuals with Disabilities Education Act (IDEA)].
    - b. Documentary certification of the vehicle operator's completion of the two hour training course required by "PJ's Law"
  4. Within the first year of employment, each driver must complete the **School Bus Driver Basic Training Program (Thirty Hour)** which consists of twenty hours mandated by the SED and ten hours mandated by the NYCDOE. Two hours of instruction concerning the special needs of a handicapped child must be included in the training.
  5. Each driver must be available at no additional cost to the NYCDOE for specialized training on two days within three weeks of starting to operate a new route, where a new route shall mean a route that had been staffed by another driver, a route that previously did not exist, either portion of a "split route", and similar circumstances. Even students with similar appearing special needs may differ greatly in how those needs are best met. Such training is to provide the driver with special skills to better address the special needs of the children being transported (e.g., how to interact with children with autism, best practices for maneuvering wheelchairs, etc.). Such training is to be selected in consultation with and provided by the principal or chief administrator of the school or site. Said training is to be provided between the morning and afternoon runs or as approved by the Director.
- c. Background
    1. A full and complete Abstract that is no more than one year old of the candidate's Official Vehicle Operating Record from the DMV indicating an S19-A Status of Active-School Qualified, is required annually.
      - a. For new employee certification, the driver is required to submit a current Abstract which is no more than 30 days old.
      - b. Driver licenses are accepted from outside NYS only if from one of the following states: Maryland, New Jersey, Connecticut, or Pennsylvania.



- c. If the license is from outside NYS a full and complete Abstract of the candidate's Official Vehicle Operating Record from the issuing state is required every three months.
- d. Testing
  1. Each vehicle operator must meet the physical fitness requirements of the SED regulations and the State Motor Vehicles Commissioner's regulations.
    - a. New vehicle operators require certification that he or she has successfully completed a Physical Performance Test, within the period of the sixty days immediately preceding the applicant's appearance at OPT to be certified.
    - b. In addition, each vehicle operator is required to successfully complete a Physical Performance Test every two years.
  2. Medical Examinations - A full, completed and approved "Medical Examination Report of Driver Under Article 19-A" form (NYS DMV Form DS-874) is required and additional examinations and documentation as prescribed hereinafter.
    - a. The Physician who performs the physical exam must be a New York State licensed physician who is not the operator's personal physician and who is authorized by the operator's employer. The physician must date and sign his or her findings upon completion of each examination. The Contractor must replace any certifying physician at any time upon request by the Director or the Medical Director of the NYCDOE.
    - b. Each operator's physical exam at initial employment must be dated within the period of the ninety days immediately preceding the applicant's appearance at OPT to be certified, as well as a PPD with date taken, no more than one year previous or a Chest X-Ray with date taken, no more than two years previous.
    - c. Each vehicle operator must submit to an annual examination.
    - d. Each operator's annual physical examination must include tests for hearing, vision, tuberculosis, and all other conditions, illnesses, and/or diseases required pursuant to State regulations. These tests must be reported on the noted forms. If the operator has a positive reaction to the tuberculosis skin test or the QFT (blood test), a chest x-ray must be provided to OPT indicating that the tuberculosis infection is latent (i.e., the infection is not active, contagious or making the person sick).
    - e. In addition to all other representations of physical condition, the physician's report for each vehicle operator must certify that the driver "does not use an amphetamine, narcotic, or any habit-forming drug and has no current clinical diagnosis of alcoholism" as required pursuant to the State Motor Vehicles Commissioner's regulations.
    - f. The Contractor must report the results of each annual physical examination immediately to the Director on forms approved by the SED. These forms constitute the medical certificate.
    - g. In no case will the interval between annual physical examinations exceed a thirteen month period.



specify with written notice to the Contractor. A list of enrollment centers and the option to schedule an appointment can be found at <http://www.L1Enrollment.com> or by calling (877) 472-6915.

- a. As expressed above, the Department of Education shall not be responsible for the payment of any fingerprinting fees needed for the certification of approval for vehicle operators.

**G. Suspension and Revocation of Approval Pertaining to a Vehicle Operator**

- I. Whereupon the Director or his or her designee(s) determines any of the following, the Contractor must adhere to, and carry out, all instructions pertaining to retraining, suspension of approval, or revocation of approval to work as a vehicle operator or provide services pursuant to this and any other NYCDOE contract.
  - a. A vehicle operator's competency, level of performance, reliability, professional conduct, or physical fitness falls below standards acceptable to the Director or his or her designee(s).
  - b. A vehicle operator has made any unauthorized stop or any unauthorized change in an established route for which the driver may or may not have accepted additional remuneration from someone other than his or her employer.
  - c. A vehicle operator has a previous record, or has engaged in any current episodes, of careless or unsafe driving.
  - d. A vehicle operator has failed or refused to obey any relevant provisions of this Contract, the State Education Department's School Bus Driver Instructional Program, the Office of Pupil Transportation's policies, the *Contractor's Manual*, any relevant, subsequent Department of Education manuals and/or any local, state or federal law or relevant regulation.
  - e. A vehicle operator has engaged in any other types of performance, conduct, or practices which endanger the safety and/or welfare of his or her passengers and/or crew.
- II. Upon receipt of written notice from the Director or his or her designee(s), the Contractor must adhere to and fully carry out, all instructions for employee discipline including retraining or performance counseling, reprimands, suspension of approval, revocation of approval, or such other forms of discipline as the Director or his or her designee(s) may specify. In a case of suspension of approval, the Contractor is prohibited for the period of time specified by the Director or his or her designee(s) to employ a vehicle operator on any part of any work to be performed pursuant to this or any other NYCDOE transportation contract. In a case of revocation of approval, the Contractor is prohibited permanently from the employment of a vehicle operator on any part of the work to be performed pursuant to this or any other NYCDOE transportation contract. Regulation of the Chancellor: C-100 shall apply to all disciplinary actions with respect to vehicle operators as such regulation may be updated, revised, amended or otherwise changed during the term of the Contract without notice to the Contractor.

**4.19 Attendant Standards**

All Attendants, including all spares, substitutes and temporaries, must be approved by the Director (or designee) before they begin work. This requires that all Attendants must meet all the requirements listed below, and that all required documentation must have been received by the Office of Pupil Transportation prior to commencement of

service and thereafter as specified below. All documentation sent to the Office of Pupil Transportation must show the name, social security number and company of the Attendant. The photo identification cards that Attendants are required to wear will not be issued until all requirements have been met.

- I. To protect the safety and welfare of the children and other passengers, as well as for other reasons, the Contractor must employ only Persons of good moral character to serve as attendants (including spares, substitutes and temporaries) pursuant to this Contract.
- II. Each attendant must be thoroughly reliable, fully competent, at least twenty-one years of age, and must possess good moral character. Each attendant must be physically fit and properly qualified by training and experience to perform his or her duties.
- III. **Competency in Verbal Communication**. The Contractor must assure that all attendants employed pursuant to this Contract are able to speak and understand the English language sufficiently well: to communicate with all passengers and school officials; to summon assistance in case of an accident or other emergency; and to communicate with, and understand directions from, police, emergency service workers and other authorities in case of an accident or emergency. Whereupon the Director or his or her designee(s) determines that an attendant cannot communicate effectively in the English language, the Contractor is prohibited from employing such attendant on any part of the work pursuant to this Contract or any other NYCDOE transportation contract, until such time as the attendant is able to demonstrate to the sole satisfaction of the Director or his or her designee(s) an acceptable facility with the English language.
- IV. The Contractor must not cause or allow any individual to work as a regular or substitute attendant pursuant to this Contract until receipt of written approval from the Director or his or her designee(s). The Director or his or her designee(s) shall have the right, power, and authority to refuse initial and/or subsequent approval for any individual to serve as a regular or substitute attendant as specified in the State Education Law and the State Vehicle and Traffic Law. Prior to the approval of each candidate, the Contractor must arrange for the following information to exist on file at OPT in a manner approved by the Director and/or on the forms listed below or otherwise prescribed by the Director (the NYCDOE shall have the right to add to, delete from, update, amend, revise and/or otherwise change the forms and/or the information listed below upon written notice to the Contractor).
- V. **PROCEDURES FOR ATTENDANT CERTIFICATION:**
  1. To initiate a request for Attendant certification, vendors must email the following details to the designated employee from OPT Contracts Management Unit :
    - Name of vendor applicant will be working for:
    - First Name:
    - Last Name:
    - Social Security Number:
    - Date of Birth:
    - Primary Phone Number:
    - Address (including Zip Code)
    - Email address (Note: The email address **must** be the applicant's personal email account; Vendor(s) cannot use a generic email address)
  2. Upon receipt, this information will be entered by OPT into the DOE's PETS (Personnel Eligibility Tracking System).

3. The information entered will be used to generate an email to the applicant. (The email will be sent from [PETSAdminSupport@schools.nyc.gov](mailto:PETSAdminSupport@schools.nyc.gov)) Within the email will be a link to the DOE's "Applicant Gateway" system.
4. The link (in the email) will require the applicant to establish a "Profile" in the "Applicant Gateway" and complete an electronic Moral Questionnaire (MQ). After completing all necessary forms in the Applicant Gateway, each applicant will then be required to print a copy of a "Fingerprint Referral Form" (FRF), which should be included in the package submitted to the DOE during the certification process.
5. After the applicant has completed the registration process and the necessary paperwork / training / testing, a certification appointment can be set up.

I. Paperwork

- a. Two separate requests on company letterhead stationery signed by an authorized representative of the Contractor requesting certification of the applicant
- b. A full, completed, and approved "Fingerprint Referral Form"
- c. A full, completed, and approved "I-9 Employment Eligibility Verification" form
- d. Copies of a government issued Driver License or Identification Card and Social Security Card
- e. Three letters of reference dated not earlier than three years prior to the start of service pursuant to this Contract from extant individuals, organizations, firms, and/or agencies not related by blood or marriage to the candidate, which attest to his or her personal character, work record and habits, and extent of experience, if any, in a related transportation field
- f. A full and completed "Information Form, School Bus Attendant" (Form BE/OPT 9817A)
- g. Any other documentation as required in this Contract or as may be required by the Director, his or her designee(s) or due to changes in local, state or federal laws, rules or regulations.

II. Training and Instruction Requirements

Each attendant must meet the requirements for the successful completion of each basic, advanced, specialized, and refresher course required or as ordered by the Director:

- a. A full, completed, and approved official certificate from an instructional agency approved by the SED and OPT attesting to the candidate's successful completion of the "NYS Attendant/Monitor **Pre-Service Training**" course of instruction
  1. Each Contractor must utilize instructors approved by the SED and OPT to conduct training sessions for school bus attendants. All training programs must be approved by the SED and OPT before the program is offered.
- b. The Contractor must comply fully with the regulations of the SED pertaining to the instruction and training of each attendant utilized pursuant to this Contract. Prior to utilization for services pursuant to the Contract, each attendant must undergo and complete a minimum of **Thirty Hours of Basic Training** concerning the transportation, supervision, and care of students with disabilities. Courses will be held at the training sites that are OPT approved training facilities. At the Director's sole discretion, the NYCDOE may require each attendant to undergo additional, advanced, or specialized training pursuant to the needs of the students with disabilities.

1. A full, completed, and approved official certificate from the NYCDOE attesting to the candidate's successful completion of the ten hours "School Bus Attendant Basic Training Program" conducted under the direction of OPT
  2. A full, completed, and approved official certificate from the University of the State of New York Education Department attesting to the candidate's successful completion of a SED approved twenty hours "School Bus Attendant/ Monitor Basic Course of Instruction".
- c.** Each attendant must successfully complete the American Red Cross, Multi-Media Starter Course in **First Aid**.
1. This course shall provide the knowledge and skills called for in situations where emergency first aid care is required and medical assistance is not excessively delayed. The Multi-Media Starter in First Aid also instructs on personal safety and accident prevention so that a Person can learn the causes of accidents and act to eliminate or minimize such causes.
  2. Each attendant must supply an approved official certificate attesting to the candidate's successful completion of the American Red Cross First Aid Training course every two years.
- d.** Each attendant providing service under this contract must be certified as having successfully completed a course or courses in child and adult **CPR**, by the American Red Cross, before serving as an attendant on any vehicle. That certification must be kept current at all times in conformance with the standards established by the NYCDOE.
1. New employees must have a full, completed and approved official certificate attesting to the candidate's successful completion of the specified American Red Cross CPR course.
  2. Each attendant must supply an approved official certificate attesting to the candidate's successful completion of the American Red Cross child and adult CPR Training course(s) every two years.
  3. The NYCDOE will not be required to pay for any CPR training for any attendant.
- e.** Each attendant must be available at no additional cost to the NYCDOE for specialized training on two days within the first three weeks of starting to staff a new route where a new route shall mean a route that had been staffed by another attendant, a route that previously did not exist, either portion of a "split route", and similar circumstances. Even students with similar appearing special needs may differ greatly in how those needs are best met. Such training is to provide the attendant with special skills to better address the special needs of the children being transported (e.g., how to interact with children with autism, best practices for maneuvering wheelchairs, etc.). Such training is to be selected in consultation with and provided by the principal, chief administrator or Person in charge of the site being served. Said training is to be provided between the morning and afternoon runs or as approved by the Director.

III. Testing

An attendant's routine duties will likely include lifting, carrying, and handling ambulatory and non-ambulatory children. As a prerequisite to NYCDOE approval, each attendant must be physically fit and fully capable to lift, carry, and handle in safety and comfort each child he/she will serve pursuant to this Contract.

- a. Before an attendant can start work, he or she must pass a test of physical suitability as prescribed by the Director:
  1. Pursuant to the New York State Vehicle and Traffic Law, each attendant must meet the same physical fitness requirements as mandated for vehicle operators by the SED regulations and the State Motor Vehicles Commissioner's regulations, except those physical fitness requirements limited only to driving operations.
    - a. Each new attendant requires Certification attesting to the candidate's successful passage of the Monitor/Attendant **Physical Performance Test** no more than sixty days prior to the applicant's appearance at OPT to request certification.
    - b. In addition, each attendant is required to successfully complete a Physical Performance Test every two years.
  2. **Medical Examinations** - A full, completed and approved "**Medical Examination**" form (BE/OPT 9606) must be supplied and such other examinations and documentation as prescribed hereinafter.
    - a. The Physician who performs the physical exam must be a New York State licensed physician who is not the attendant's personal physician and who is authorized by the attendant's employer. The physician must date and sign his or her findings upon completion of each examination. The Contractor must replace any certifying physician at any time upon request by the Director or the Medical Director of the NYCDOE.
    - b. Each attendant's physical exam at initial employment must be dated within the period of the ninety days immediately preceding the applicant's appearance at OPT to be certified, as well as a PPD with date taken, no more than one year previous or a Chest X-Ray with date taken, no more than two years previous.
    - c. Each attendant must submit to and pass an annual examination.
    - d. Each attendant's annual physical examination must include tests for hearing, vision, tuberculosis, and all other conditions, illnesses, and/or diseases required by the above noted forms and pursuant to state regulations. These test results must be reported on the above noted forms. If the attendant has a positive reaction to the tuberculosis skin test or the QFT (blood test) a chest x-ray must be provided to OPT indicating that the tuberculosis infection is latent (i.e., the infection is not active, contagious or making the person sick).
    - e. The Contractor must report the results of each annual physical examination immediately to the Director on forms provided by OPT. These forms constitute the Medical Certificate.
    - f. In no case will the interval between annual physical examinations exceed a thirteen month period.
    - g. In addition to annual examinations by a physician, the Director or his or her designee(s) will have the right, power, and authority to require any attendant to undergo a general and/or specific medical examination at any time during the term of this Contract.
    - h. The NYCDOE will not be required to pay for any physical examination or test for any attendant. Depending on the Contractor's own arrangements, any such costs must be borne by either the Contractor or each attendant.

3. Each year attendants must successfully complete both a spring and a fall **Refresher course** (or as required by the Director) in attendant skills as specified by OPT as well as provide evidence to the Director or his or her designee(s) of the successful completion of each course.
  - a. Attendants must also submit documentary certification of his or her completion of the two hour training course required annually by "PJ's Law" as part of the Spring Refresher Course.
4. The Contractor must follow the procedures established by the Director for submittal of fingerprint records and medical certificates.
5. The Director has the right to require the Contractor to assign an additional attendant to a particular rider (i.e., a one-on-one companion) for which the contractor will be compensated.
6. As long as they work under this Contract, the Contractor and all attendants must remain current with all requirements set by the NYCDOE (e.g., Fall and Spring Refresher courses, annual physical, etc.) as well as any required by local, state or federal laws, rules or regulations.

VI. Suspension and Revocation of Approval Pertaining to a Vehicle Attendant

- a. Whereupon the Director or his or her designee(s) determines any of the following, the Contractor must adhere to, and carry out, all instructions pertaining to retraining, suspension of approval, or revocation of approval to work as a vehicle attendant or provide services pursuant to this and any other NYCDOE contract:
  1. A vehicle attendant's competency, level of performance, reliability, professional conduct, or physical fitness falls below standards acceptable to the Director or his or her designee(s);
  2. A vehicle attendant has failed or refused to obey any relevant provisions of this Contract, the State Education Department's School Bus Driver Instructional Program, the Office of Pupil Transportation's policies, the *Contractor's Manual*, any relevant, subsequent Department of Education manuals and/or any local, state or federal law or relevant regulation; or
  3. A vehicle attendant has engaged in any other types of performance, conduct, or practices which endanger the safety and/or welfare of his or her passengers.
- b. Upon receipt of written notice from the Director or his or her designee(s), the Contractor must adhere to and fully carry out, all instructions for employee discipline including retraining or performance counseling, reprimands, suspension of approval, revocation of approval, or such other forms of discipline as the Director or his or her designee(s) may specify. In a case of suspension of approval, the Contractor is prohibited for the period of time specified by the Director or his or her designee(s) to employ a vehicle attendant on any part of any work to be performed pursuant to this or any other NYCDOE transportation contract. In a case of revocation of approval, the Contractor is prohibited permanently from the employment of a vehicle attendant on any part of the work to be performed pursuant to this or any other NYCDOE transportation contract. Regulation of the Chancellor: C-100 shall apply to all disciplinary actions with respect to vehicle attendants as such regulation may be updated,



revised, amended or otherwise changed during the term of the Contract without notice to the Contractor.

#### **4.20 Additional Obligations of Contractors**

- A. Rules, Procedures and Requirements - The NYCDOE and/or the Director will have the power and sole discretion to add, delete, revise, update, reissue, or otherwise change any or all rules, procedures, and/or requirements governing drivers and attendants at any time upon ten days prior notice to the Contractor, **provided, however**, that any such future changes shall not be inconsistent with the material terms of this Contract **except** to the extent required by any applicable Federal, State, and/or City laws, rules, and/or regulations. The NYCDOE and/or the Director will have the power and sole discretion to promulgate any new and future manuals pertaining to driver and attendant qualifications, standards of professional conduct, and minimum levels of proficiency and performance, which shall be incorporated by reference and made part of this Contract as if set forth in their entirety, **provided, however**, that any such future manuals shall not be inconsistent with the material terms of this Contract **except** to the extent required by any applicable Federal, State, and/or City laws, rules, and/or regulations. (See **Paragraph 1.100 (B)**, *supra*.)
- i. The Contractor is required to comply fully with the laws, rules, procedures, and requirements pertaining to driver and attendant qualifications, standards of professional conduct, and minimum levels of proficiency and performance promulgated by OPT in the *Contractor's Manual* and elsewhere. Moreover, the Contractor is required to enforce such rules, procedures, and requirements with all of its employees, agents, Subcontractors, and Subcontractor's employees.
  - ii. Where it becomes necessary for the Office of Pupil Transportation to take disciplinary measures with any of the Contractor's employees, agents, Subcontractors, or Subcontractor's employees due to the Contractor's failure or refusal to enforce to the Director's satisfaction any provision of law, rule, procedure or OPT requirement, the Director will have the right and power to deduct all administrative and other costs associated with any investigations and disciplinary conferences from any payments then or subsequently due to the Contractor. This remedy shall exist in addition to all other remedies available under this Contract.
  - iii. Safety and emergency drills for every vehicle providing Services are required by State Education Law § 3623, 8 N.Y.C.R.R. § 156.3(f), and this Contract. Safety and emergency drills shall include practice and instruction in the location, use and operation of the emergency door, fire extinguishers, first-aid equipment and windows as a means of escape in case of fire or accident. Drills shall also include instruction in safe boarding and exiting procedures with specific emphasis on when and how to approach, board, disembark, and move away from the bus after disembarking. Each drill shall include specific instructions for pupils to advance at least ten feet in front of the bus before crossing the highway or street after disembarking. Each drill shall emphasize specific hazards encountered by children during snow, ice, rain, and other inclement weather including, but not necessarily limited to, poor driver visibility, reduced vehicular control and reduced hearing. Each drill shall include instruction on the importance of orderly conduct by all school bus passengers with specific emphasis given to student discipline rules and regulations promulgated by the NYCDOE.<sup>7</sup> Drills shall include situations which might result from both fire and accidents. Before the start of Services each Contract Year, the Contractor shall provide written notice to each school principal and/or site director of the need to conduct a minimum of three safety drills for each school pursuant to the State Education Law and the State Education Commissioner's regulations. The Contractor's annual written notice shall state that drills must be held within the first seven days of the start of the fall school term each year, between November 1<sup>st</sup> and December 31<sup>st</sup>, and between March 1<sup>st</sup> and April 30<sup>th</sup>. The Contractor's annual written notice shall request the school principal and/or site director to designate in writing a transportation coordinator/liaison with full contact information to enable the scheduling of

---

<sup>7</sup> See, e.g., Regulation of the Chancellor A-801.

drills. The Contractor's annual written notice shall request the school principal and/or site director to designate in writing a transportation coordinator/liason with full contact information to enable the scheduling of drills. Such instruction and the conduct of drills shall be given by a member or members of the teaching staff as arranged between the contractor and the principal of each school. No emergency drills shall be conducted while vehicles are *en route* on runs. The Contractor and operator shall make arrangements with schools/sites for emergency drills so as to minimize disruptions in service and instructional time.

- B. Controlled Substances and Alcohol Consumption. The Contractor shall comply fully with all Federal, State, City and NYCDOE laws, bylaws, rules, regulations,<sup>8</sup> procedures and policies applicable to the prohibition of consumption of, and testing for, controlled substances and alcohol with respect to its employees and Subcontractor's employees that affect the safe operation of vehicles as the same currently exist or shall be added, deleted, updated, amended, revised or otherwise changed during the Term of this Contract. As it currently exists or shall be added, deleted, updated, amended, revised, republished or otherwise changed during the Term of this Contract, the Regulation of the Chancellor: C-102, entitled "Controlled Substance and Alcohol Use by School Transportation Workers", is hereby incorporated into, and made part of, this Contract as if set forth herein in its entirety. The Contractor shall administer effectively a program of controlled substance and alcohol abuse prevention, training, testing and other services, for portions of which the Contractor may elect to use professional Subcontractors. The Contractor shall submit to the Director for advance and continuing approval<sup>9</sup> full and detailed written information<sup>10</sup> about every Subcontractor that the Contractor shall elect to use to provide controlled substance and alcohol abuse prevention, training, testing and other services under this Contract.<sup>11</sup> If the Director shall determine that the total or partial vacatur, reversal, disqualification or other nullification by a Federal Court, State Court, the State Education Department, the Chancellor and/or any other tribunal of competent jurisdiction of a positive test result for a controlled substance(s) and/or alcohol shall have been caused and/or permitted by the Contractor's (including any Subcontractor used by the Contractor) failure and/or refusal to administer effectively a program of controlled substance and alcohol abuse prevention, training, testing and other services, the Contractor shall pay all NYCDOE and City costs for disciplinary conferences, other forms of procedural due process, and the defense of judicial, administrative and/or other claims, actions, proceedings, special proceedings and/or appeals. Such BOE and City costs may include, but shall not be limited to, BOE administrative personnel hourly rates, BOE facilities use fees, expert witness fees, subcontractor and other document production fees, back pay for Contractor employees, and reasonable attorney fees. Reasons for an OPT Director's determination that a total or partial vacatur, reversal, disqualification or other nullification of a positive test result for a controlled substance(s) and/or alcohol shall have been caused and/or permitted by the Contractor's failure and/or refusal to administer effectively a program of controlled substance and alcohol abuse prevention, training, testing and other services may include, but shall not be limited to, failure to maintain adequate records, failure to produce evidence and/or expert testimony from a subcontractor(s), failure to safeguard the chain of custody of a test sample(s), and failure to use adequate and/or approved scientific testing methods.

---

<sup>8</sup> Examples of regulations include, but are not limited to, Regulation of the Chancellor C-100, Regulation of the Chancellor C-102, and New York City Administrative Code §§ 17-601 through 17-615.

<sup>9</sup> In the event that the Director or his or her designee(s) shall inquire into any allegation(s) that any previously approved Subcontractor shall have provided unsatisfactory performance of its controlled substance and alcohol abuse prevention, training and/or testing responsibilities, the Contractor shall furnish full and detailed written information about the affected Subcontractor and shall otherwise provide all reasonable assistance in the conduct of any such BOE inquiry. Whereupon the OPT Director shall determine after such an inquiry that any previously approved Subcontractor shall have provided unsatisfactory performance of its controlled substance and alcohol abuse prevention, training and/or testing responsibilities, the Contractor shall cease and desist from any use of such Subcontractor immediately upon receipt of written notice from the OPT Director to that effect.

<sup>10</sup> The Director may prescribe the types of Subcontractor information to be supplied, in which case the BOE shall supply with-out cost to the Contractor a form(s) for the provision of such information.

<sup>11</sup> See **Paragraph 1.24**, *supra*, regarding the approval and use of Subcontractors.

- C. Spare Drivers & Attendants – The number of spare drivers the Contractor shall employ should equal 15% of the total number of vehicles being serviced under this contract. All spare drivers must meet all driver standards and requirements as per vehicle operators in this contract (See, e.g., **Paragraphs 4.18**).

The number of spare Attendants the Contractor shall employ should equal 15% of the total number of vehicles being serviced under this contract. All spare Attendants must meet all Attendant standards and requirements in this contract (See, e.g., **Paragraphs 4.19**).

#### **4.21 Other Rules and Procedures Affecting Contractors, Vehicle Drivers, and Attendants**

- A. No vehicle operator and/or attendant will attempt to hasten the dismissal time, nor will he or she leave the service site at dismissal time until the school's designated representative has verified that all children are aboard. Contractors must not permit their employees to make stops at unauthorized locations.
- B. If any tolls are involved in any scheduled run or other service, it will be the responsibility of the Contractor to pay all such tolls at its own expense.
- C. All "school bus accidents" and "student emergencies" or other emergencies, as defined by OPT in the *Contractor's Manual* and elsewhere will be handled as follows.
- i. The driver or attendant will notify the dispatcher/Contractor immediately on the vehicle's two-way radio (or other available communications system). The driver, attendant or dispatcher will call 911 and request police and when warranted ambulance rescue assistance.
  - ii. The Contractor will notify OPT immediately with the details of the accident or emergency in the manner prescribed by the Director.
  - iii. The Contractor will assist school administrators in contacting parents and providing them with information on their children when requested by the school and/or OPT.
  - iv. The Contractor will prepare full, complete, and accurate accident reports for the State Education Department, OPT (on line report), and all relevant insurance companies within twenty-four hours using the appropriate forms. The Contractor will also supply copies of any police reports to OPT within five Business Days of the accident.
  - v. The Contractor must make each driver and attendant familiar with the locations of emergency medical facilities in the vicinity of each route prior to the commencement of service on any particular route.
  - vi. In the event it is necessary to take a child (or children) to an emergency medical facility, the attendant will remain at the facility with the child (children) until the child (children) is (are) discharged to the care of the parent(s) or guardian(s) or until the attendant is directed to leave by OPT or the police.
  - vii. The Contractor must follow all rules, procedures, and requirements for school bus accidents and student accidents stated in the *Contractor's Manual*.
- D. The Contractor must follow all rules, procedures, and requirements for vehicle accidents, breakdowns, exclusion of passengers, permanent run assignments, practice days and dry runs stated by OPT.
- i. In case of a vehicle breakdown during the course of any service pursuant to this Contract, the driver must notify the Contractor via two-way radio (or other available communication system) of the nature and location of the breakdown and the likely length of any resulting delay. Immediately thereafter, the Contractor must notify the school administrator(s) and OPT via telephone and/or

electronic entry. Upon request, the Contractor will assist the school administrator(s) and/or other designated agency in contacting parents or guardians with information concerning any delays.

- ii. Where a vehicle cannot proceed with any required service due to a breakdown or accident, the Contractor must provide a spare, replacement vehicle and another driver and, if needed, attendant within a reasonable amount of time to continue the transportation assignment. However, if it will take the replacement bus thirty minutes or more to reach the site of the breakdown once it leaves the Contractor's garage or yard that replacement bus is to be dispatched to the breakdown site as soon as the Contractor is made aware of the breakdown or accident.
- iii. The Contractor may not exclude unilaterally any authorized passenger. This rule includes prohibitions against both the refusal to pick up and deliver any authorized passenger and the expulsion of any authorized passenger while a vehicle is in route. A routed student cannot be excluded from his or her bus without the prior authorization of the Director. Instances in which a student is excluded on an "emergency" basis and a violation is written will be adjudicated by the OPT Hearing Officer and/or the OPT review team. In any instance in which the Contractor desires to exclude a rider, it must immediately assign a Contractor-employed safety officer to ride all runs carrying the subject child until a resolution is reached. It will be the responsibility of the said safety officer to assure the safety of all riders as well as that of the transportation crew. It will further be the responsibility of the said safety officer to analyze the situation and implement remedies that will allow the safe transportation of everyone or to demonstrate the need to exclude the subject pupil until such time as he/she can be included and everyone transported safely.
- iv. At the outset of any particular service, all drivers and attendants employed pursuant to this Contract must be given permanent run assignments for the duration of the school program receiving service. No change shall be made in the driver and attendant(s) assigned to a route except as needed to address an illness or other absence or as approved or directed by the Director.
- v. In OPT's sole discretion, the Contractor must require each vehicle operator and attendant to make at least one complete practice day of his or her assigned morning and afternoon runs using the vehicle (or at least vehicle type) they will be assigned for regular service and following procedures issued by OPT. The practice day is to be completed before the start of the regular service year and will be designated by the Director. These practice runs must be documented as specified elsewhere in this RFB. The Contractor commits to maintaining the runs as they are practiced at least until there is a change in the riders on the route. The Contractor will be reimbursed for each successfully completed and properly documented practice day as though it were a normal service day. Such documentation (as specified by OPT) shall be returned to OPT by midnight of the practice run day.
- vi. The practice day dry runs (a.m. and p.m.) are to be completed as close to the scheduled times as possible.
- vii. In OPT's sole discretion, each driver may be required to attest to the pickup and drop-off times he/she believes based on the practice day to be the times that can be sustained during the regular service year as well as such other information the Director may deem relevant. A website may be implemented where each driver or Contractor's designee can enter any changes that need to be made to pick up or drop-off times and that will reflect how the run will be executed once full service begins. There may also be a check-off for each run which would need to be completed if no changes are needed. The run times as modified may be posted on OPT's web site as a reference for parents.
- viii. A Contractor will be liable for liquidated damages for each dry run practice day not completed in full and/or not documented in full or falsely documented.
- ix. If a Contractor notifies OPT in advance that a practice day will not be completed as scheduled, the Director has the authority to authorize a second practice day and to waive the issuance of violations

and/or assessment of liquidated damages so long as the practice day is actually completed prior to the start of full service.

- x. Any driver or attendant who does not complete his or her full practice day after being appropriately notified and equipped by the Contractor as well as any driver or attendant who falsely documents a practice day will be subject to appropriate disciplinary action.
  - xi. For morning practice runs serving students with disabilities, the transportation crew will stop at each pupil's pickup address just as they would on a regular service day and attempt to present to the parent or guardian (if available) a letter of introduction that will include at a minimum the following: the Contractor's name; address and phone number; the names of the vehicle operator and attendant; the anticipated pickup and drop-off times; and any other information specified by the Director. During those stops, it will be the attendant's responsibility to ask for and record a contact phone number for the household. Subsequently, it will be the attendant's responsibility to maintain an updated contact phone list for the households of all pupils transported on his or her runs. The Contractor may be asked to forward such updated telephone numbers to OPT. If an attempt to deliver the letter of introduction in person is not successful it will be the Contractor's responsibility to provide the family with the specified information through a telephone call. If after three attempted phone calls at different times during the day the family has not been contacted, the Contractor shall notify OPT with all of the details.
  - xii. Where possible, at the end of the morning dry run, the driver and attendant shall contact the school(s) administration and discuss the Services they will be providing and deliver a letter of introduction that will include at a minimum the following: the Contractor name; address and phone number; the names of the vehicle operator and attendant; the anticipated pickup and drop-off times; and any other information specified by the Director.
  - xiii. If at any time during a semester or program year any driver is assigned to a new permanent run, the Contractor must provide for such a driver to make and document at least one complete practice trip before the start of service at no additional cost to the NYCDOE.
  - xiv. If a route is not being completed successfully and the Director determines that it should be documented via a dry run (rather than during the execution of the run) that shall be done on a date designated by the Director and at no additional cost to the NYCDOE.
  - xv. During the course of the Contract Year, when it becomes necessary for a substitute driver to replace a regular driver, the Contractor shall supply the substitute driver with turn by turn driving directions ("left-right" sheets) for both the morning and afternoon runs. Additionally, the Contractor shall have the assigned substitute driver complete a dry run of the replaced driver's afternoon run between the morning and afternoon runs. There shall be no additional reimbursement for said dry runs.
- E. The driver and attendant must instruct all passengers to use appropriate occupant restraint devices (e.g., seat belts) at all times while a vehicle is in motion. The attendant is responsible for buckling each rider into an appropriate occupant restraint device before the vehicle starts in motion and assuring the restraints remains properly engaged while the vehicle is in motion.

#### **4.22 Rules of Professional Conduct and Performance Procedures and Duties for Bus Drivers and Attendants.**

- A. The Contractor and all drivers and attendants are responsible for the observance of all rules and procedures of performance and professional conduct for drivers and attendants promulgated by OPT in the *Contractor's Manual* and elsewhere including, but not necessarily limited to, the following.

## B3182- Transportation Services for Students with Disabilities and Their Non-Disabled Peers

- i. Drivers and attendants must be courteous at all times to everyone with whom they interact, including, but not limited to, passengers, school/program personnel, Department of Education personnel, parents, guardians, and the general public. In this connection, drivers and attendants must refrain completely from the use of abusive, impolite, vulgar, obscene, or otherwise improper language or gestures.
- ii. Drivers and attendants must not allow passengers to embark, disembark, hang outside, ride running boards, or otherwise conduct themselves in a dangerous manner.
- iii. Drivers and attendants must not allow passengers to thrust or otherwise place any part of their bodies out of any window or emergency exit or to throw objects or litter out of the vehicle.
- iv. As necessary or as ordered by the Department, drivers and attendants must assist each pupil entering or exiting the vehicle or entering or exiting a child seat or other location within the vehicle.
- v. In the event of a temporary hindrance (e.g., snow, construction, excavation, etc.) that prevents a vehicle's access to any home building, school/site building, or other building, the driver must make alternative arrangements for the bus to stop at a place both convenient and safe for passengers. In such cases, the attendant (if one is assigned to the vehicle) must use special care to supervise safe loading and unloading, and she or he must escort the affected passenger(s) any extra distance(s).
- vi. In the event of any emergency on the vehicle, the driver and/or, if any, the attendant, after the vehicle has been secured (i.e., brought to the curb, engine shut off, ignition key removed, brake set and front wheels turned to the curb) will arrange for emergency and/or medical assistance where necessary.
- vii. If a passenger's behavior on the vehicle is seriously disruptive and/or potentially dangerous to himself or herself or to others, the driver and/or, if any, the attendant must request the individual to cease such behavior. If a passenger continues to misbehave, the driver and/or attendant must discuss the problem with the principal, site supervisor, and/or the appropriate teacher in charge. Where such disruptive and/or dangerous conduct continues in spite of intervention by the appropriate school personnel, the driver and/or attendant must file a written report with the Contractor and the principal or site supervisor on a form approved by the Director for events as specified by the Director. The Contractor must forward a copy of each such report to OPT. In rare and extraordinary instances in which the intervention requested from parents and program site staff have been unsuccessful in curbing behavior that is dangerous to the child, other riders and/or the transportation crew and the attempts to curb said behavior have been documented by the bus company and OPT, the Director may suspend the child's transportation privileges for an amount of time consistent with the degree of danger posed.
- viii. As specified in the *Contractor's Manual* and elsewhere, drivers and, if any, the attendants must report all incidents of physical harm to a passenger, weapons on the vehicle or any illegal activity immediately to the Principal or site supervisor and the Contractor. Upon such notification, the Contractor must relay a full and complete report to the Director.
- ix. Drivers and attendants are strictly forbidden to employ any form of "corporal punishment" for any reason against any passenger. Corporal punishment is defined as any type of offensive physical contact and/or touching employed by a transportation worker against a passenger for any reason. Offensive physical contact or touching includes the driver's or attendant's use of any body part or any other instrumentality to achieve any such contact or touching. It is not necessary to demonstrate physical injury, bruises, or other marks for the Chancellor or his or her designee(s) and/or the Director or his or her designee(s) to find an occurrence of corporal punishment.
- x. Contractors, drivers and/or attendants have no authority to exclude any authorized passenger from transportation. This prohibition extends both to the refusal to pick up and deliver any authorized passenger and the expulsion of any authorized passenger while a vehicle is in route.

B3182- Transportation Services for Students with Disabilities and Their Non-Disabled Peers

- xi. Drivers and attendants must be fully familiar with, and adhere to, all applicable federal, State and local regulations and laws including the vehicle and traffic laws, the regulations of the Commissioner of the Department of Motor Vehicles, the NYSDOT Commissioner and the Commissioner of the State Education Department pertaining to school bus transportation.
  - xii. Each driver must make a full stop at all railroad crossings (whether or not controlled by gates or lights), except that no stop is necessary at any railroad crossing where a police officer, New York City Department of Transportation traffic control officer, or a traffic control signal directs traffic to proceed.
  - xiii. The driver is in charge of the vehicle at all times, and the attendant must perform under the driver's supervision and direction. The driver is responsible for the attendant's performance and conduct.
  - xiv. Before a driver leaves his or her seat at the controls of the vehicle for any period of time (no matter how short) while passengers are on board, he or she must first bring the bus to the curb, shut off the engine, remove the ignition key(s), set the brakes, and turn the front wheels toward the curb.
  - xv. To protect against the concentration or build-up of carbon monoxide or other noxious fumes, the driver must not idle the vehicle's engine except as provided for in State Law and City Administrative Code.
  - xvi. All transportation crew members (i.e., drivers and attendants) must conform to the pre-employment, post-accident, return-to-duty, reasonable suspicion and random alcohol and controlled substances testing requirements of federal, State, City and NYCDOE laws, rules, regulations and policies such as, but not necessarily limited to, Regulation of the Chancellor No. C-102 and/or those in the *Contractor's Manual*.
  - xvii. In the absence of an attendant, each driver must maintain a file for each child in a manner approved by OPT which contains emergency medical data as well as other relevant information.
  - xviii. Each driver shall be responsible to monitor, supervise and assist the attendant(s) in the compilation, maintenance, storage and delivery of daily attendance records, Run Sheets and any other required records. (See, e.g., **Paragraphs 4.22(B)(iv)** and **4.25**, *infra*.) If required by the NYCDOE and/or any Federal, State, City and/or other governmental agency with applicable jurisdiction, each driver shall undergo training approved by the Director or his or her designee(s) in relation to the duties expressed in the preceding sentence, which training the Contractor shall furnish at its sole cost and expense. With respect to the training requirements expressed in the preceding sentence, the NYCDOE shall have the sole and absolute discretion to determine whether and, if so, to what extent to furnish any portion of the said training, any training materials and/or any level of funding for such training.
  - xix. In the absence of an attendant, each driver must keep, manually on paper and/or using an OPT-approved electronic device, any and all attendance and other data as directed by OPT for purposes of obtaining transportation funding such as but not limited to, Medicaid and for other purposes as directed by OPT.
- B. Attendant Duties. The attendant will serve as an assistant to the vehicle operator and will notify the driver of any emergency situations that occur on the vehicle.
- i. Except for those attendants assigned to vehicles equipped with a hydraulic lift, each attendant must step from the vehicle to the pavement at each stop and/or destination to supervise the embarkation and/or disembarkation (i.e., loading and/or unloading) of passengers. Attendants must always work as a team with the driver of the school bus, but this effort must be especially coordinated during the loading and unloading of passengers who use mobility devices for non-ambulatory students and the hydraulic lift. When students are being placed on the lift, being removed from the lift and while the lift is in operation one of the team, either the driver or attendant, must be on the vehicle at the top of the lift's range of motion and the other is on the outside of the vehicle at the bottom of the lift's range of motion. No one is to ever be in a standing position while being transported on the lift. Riders are to be seated in an approved mobility device while the lift is in motion. Otherwise, the duties of attendants

assigned to vehicles equipped with an hydraulic lift remain the same as those of all other attendants. The attendant must assist each pupil to and from the vehicle, home building, school building, or the building at each other authorized destination. Attendants must ensure that every child embarks and disembarks the vehicle safely. The passenger supervision rules for attendants apply regardless of any inclement weather conditions.

- ii. Attendants will secure each passenger into a seat with the occupant restraint device approved for use in a particular case (e.g., safety belt, safety harness restraint vest, safety seat, booster seat, etc.). For each non-ambulatory child in a wheelchair, or other approved mobility device, the attendant must secure the conveyance device to the floor of the vehicle and the child separately to the conveyance device with the approved occupant restraint system.
- iii. Each attendant will supervise all passengers and ensure that each remains secured in his or her occupant restraint device throughout any run or other trip.
- iv. On forms provided by the Contractor and approved by the NYCDOE, each attendant must keep daily attendance records for each student who is authorized to ride the vehicle indicating the boarding and exiting times for each pupil. These daily records must be maintained by the Contractor for seven years, pursuant to the Contract, and furnished to the Director at his or her request. The Contractor may be required to enter attendance information on a web based system or electronic tracking system, if such system(s) shall be introduced.
- v. Each attendant must remain on board his or her assigned vehicle to supervise passengers, except to walk a child assigned to the route between the vehicle and his or her home or between the vehicle and his or her school or other authorized site or to perform other duties as specified by the school principal or the Director.
- vi. Each attendant must gain a working knowledge of and adhere to all applicable written transportation policies.
- vii. Each attendant must ensure that while the vehicle is in motion no child enters or leaves the vehicle or otherwise behaves in a hazardous manner.
- viii. Each attendant must ensure that no passenger places any body part out of any windows or emergency exits or throws objects or litter out of the vehicle.
- ix. Each attendant must be familiar with the vehicle's route and the name of every passenger authorized to ride the vehicle.
- x. Following DOE policy and NYS and DOE Attendant Training, each attendant must ensure that each student with a disability and each non-disabled peer for whom such arrangements have been specified is delivered only to the properly identified Authorized Person.
- xi. Each attendant in concert with each driver must ensure the Checked for Sleeping Children sign is removed from the back window and/or turned to face the interior of the vehicle at the beginning of each run.
- xii. Each attendant in concert with each driver must check his or her vehicle carefully at the end of each run to ensure that all children have been delivered safely to their appropriate service site, home or other authorized location. Scanning a vehicle from the front of the bus is inadequate; a thorough physical inspection of the entire bus is required including, but not limited to, in, around and under each seat. After completing his or her inspection of the vehicle at the conclusion of each run, the attendant shall ensure the Checked for Sleeping Children sign is posted in the rear window of the bus and that the automated electronic reminder system is deactivated.



- xiii. Because the driver is in charge of the vehicle at all times, the attendant must perform under the driver's supervision and direction. The attendant is responsible for failures to adhere to the driver's instructions.
- xiv. Each attendant must maintain a file for each child in a manner approved by OPT which contains emergency medical data as well as other relevant information.
- xv. Each attendant must keep, manually on paper and/or using an OPT-approved electronic device, any and all attendance and other data as directed by OPT for purposes of obtaining transportation funding such as, but not limited to, Medicaid and for other purposes as directed by OPT.

#### **4.23 Special Duties and Responsibilities of Transportation Attendants for Child Care and Sanitation**

- A. The attendant shall be obliged to treat each pupil with gentle yet firm and secure care. The attendant shall be responsible to follow consistently all special instructions regarding the physical handling of individual pupils as prescribed by appropriate parents, medical doctors, teachers, school administrators or the Office of Pupil Transportation.
- B. For each child who uses safety seat belts, the attendant shall be responsible to ensure that the passenger is safely and comfortably positioned and secured according to the needs of the individual pupil. The attendant must follow consistently special instructions for the individual use of safety seat belts as prescribed by an appropriate parent, medical doctor, teacher, school administrator, or the Office of Pupil Transportation. Such special instructions include but are not limited to the following: (a) specific positioning of a child on the seat and within the safety seat belt; and (b) adjustment of the safety seat belt.
- C. For each non-ambulatory child in a wheelchair or other approved mobility device, the attendant must work with the driver as a team and consistently follow special instructions for the individual use of safety seat belts as prescribed by an appropriate parent, medical doctor, teacher, school administrator and/or OPT. Such special instructions include but are not limited to the following: (a) specific positioning of a child on the conveyance device; (b) adjustment of the occupant restraint system; and (c) use of special adaptive and other equipment.
- D. For each non-ambulatory child in a wheelchair to whom Porter Service is provided, the attendants must enter the student's home building in the morning and physically carry the student and his or her wheelchair or other similar equipment from the apartment door to the street, where the attendants and driver shall work cooperatively to load the child safely onto the vehicle. For the return trip to each such student's home, the attendants and driver shall work cooperatively to unload the student from the vehicle, and the attendants shall physically carry the student and his or her wheelchair and/or similar equipment to the child's apartment door.
- E. For each child using a Child Safety Restraint System such as a safety vest or car seat, the attendant shall be responsible to ensure that the passenger is safely and comfortably positioned and secured according to the needs of the individual pupil and in conformance with the manufacturer's instructions for that particular device. The attendant must consistently follow special instructions for the individual use of Child Safety Restraint Systems such as safety vest or car seat as prescribed by the appropriate parent, medical doctor, teacher, school administrator or OPT. Such special instructions include, but are not limited to, the following:
  - (a) Specific positioning of a pupil on the seat and within the Child Safety Restraint System such as safety vest or car seat as specified in NYSED approved twenty hours "School Bus Attendant/Monitor Basic Course of Instruction";

- (b) Use of a Child Safety Restraint System such as a special safety vest in accordance with the manufacturer's instructions;
  - (c) Adjustment of Child Safety Restraint Systems such as safety vest straps; and
  - (d) Use of special adaptive and other equipment such as neck supports, head rests, cushions, liners, blankets, padding, etc.
- F. The attendant is responsible to assure that each child is secured on the vehicle as specified in this Section and elsewhere in this RFB.
- G. Some children may be loaded onto and/or unloaded from a vehicle in authorized boarding chairs or other approved conveyance devices. In certain instances, however, these children will not remain seated in the boarding chairs or other approved conveyance devices during transit but will sit on a seat with an occupant restraint system. In such cases, the attendant shall be responsible to store the conveyance device safely and securely during transit. The attendant shall also be responsible to deliver each child's conveyance device along with the child at each destination.
- H. When seated, each child must face squarely forward. A child must not have any body parts in the aisle. Each child must have the proper seating and sufficient seating space even if the result is that the number of children riding on the bus is less than the state authorized maximum capacity.
- I. Generally, the attendant shall not change the clothing or diaper of any child under his or her supervision. However, where a child soils him/herself, the car seat, car seat liners, the safety harness restraint vest, other equipment or supplies, or the immediate area around the seat and/or floor of the vehicle during transit, the attendant shall be responsible to ensure that available supplies are used to clean the child (i.e., face, hands, arms, legs and surface clothing) and to clean and disinfect the affected equipment as soon as safely possible. Where a parent, adult guardian, or service site staff member is present with a child, that individual shall be responsible to clean the child, but the attendant shall be responsible to clean and disinfect the equipment and surface area(s). Where a parent or adult guardian is not present, the attendant shall be personally responsible to clean the child and to clean and disinfect the equipment and surface area(s) when he or she can do so safely. The attendant shall not permit a child to sit in a soiled condition for any unreasonable length of time during transit. If the changing of a diaper or the cleaning of a child is required it is to be done while the bus is stopped. The term "soil" as used in this paragraph includes all bodily excretions and secretions including but not limited to urine, feces, saliva, mucus, vomit, etc. In no event shall any other child be permitted to come into any contact with soiled equipment, surface area(s) or supplies. The vehicle driver shall assist the attendant in cleaning and disinfecting equipment, surface area(s) and supplies as necessary to maintain efficient schedules and service using the entire contents of vehicle's Bodily Fluids Clean-Up Kit.

#### **4.24 Personal Identification of Drivers and Attendants**

- A. The Contractor must supply and maintain the cleanliness and good condition of uniform attire for each driver and attendant in service pursuant to this Contract. An acceptable uniform shall consist of: solid color pants or skirt; a solid color button front collared shirt; closed toed shoes and a solid color tie with identification clearly displayed and company logo on both the shirt and jacket. Before the start of service under the Contract or before any planned alteration of driver and attendant uniforms, the Contractor must submit to the Director samples of proposed driver and attendant uniforms. The Director shall have the power to disapprove the Contractor's choice of uniform attire if, in the Director's sole discretion, such a choice is unsatisfactory. Each driver and attendant must wear the uniform attire as supplied by the Contractor throughout the performance of duties pursuant to the Contract.
- B. Photo-identification cards issued by OPT must be carried on drivers' and attendants' persons at all times while in the performance of any duties under the contract. Whereupon any photo-identification card

becomes difficult to read due to age or use or has been lost or stolen, the Contractor must arrange for the driver or attendant to obtain a new card. Lost or stolen ID cards must be reported to the local New York City Police Department precinct immediately.

#### **4.25 Documentation of Services Provided**

The contractor shall provide to the NYCDOE such documentation of the services provided as the Director may conclude is necessary to the administration and oversight of the transportation program. Such documentation is to be provided in the form, by the method and at the time the Director shall specify at his or her sole discretion.

#### **4.26 Vehicle Specifications**

All vehicles (including spares) and equipment to be used and all transportation operations contracted for as a result of this RFB must comply with the applicable regulations of the United States Department of Transportation, National Highway Traffic Safety Administration (NHTSA), Federal Motor Vehicle Safety Standards (FMVSS), the State Education Department, the State Department of Transportation, the State Department of Motor Vehicles, as well as comply with and satisfy all laws, rules and regulations of any other agency of the federal government, the State, the City and the NYCDOE that are deemed to be applicable to this Contract by the Director, or as the same may be added, updated, revised, re-codified and/or otherwise changed during the term of the Contract.

- A. All vehicles (including spares) to be used in the performance of any duties under this Contract and all transportation operations shall meet all applicable federal, State, City and NYCDOE safety and other standards such as, but not limited to, Title 49, Code of Federal Regulations, Part 571; the State Vehicle and Traffic Law (see, e.g., V&TL Section 375) and attendant regulations; the State Education Law (see, e.g., Education Law Section 3623) and attendant regulations; and the City Administrative Code (see, e.g., Sections 19-602 and 19-604), and as further specified in this RFB.
  - i. During the Term of this Contract, no vehicle being used to perform service under said Contract may be more than sixteen (16) years old based on its model year except for Non-Wheelchair Accessible Alternative School Buses that are not FMVSS Type A, B, C or D vehicles which may be no more than five years old.

Any vehicles that shall be first placed into service after the first day of the regular School Year of the first Contract Year as documented in the NYCDOE School Calendar shall be not more than five years old at the time such vehicle is placed into service unless inspected by OPT personnel and approved in writing by the Director. The continued use of any given contractor's vehicles that are in service in accordance with the terms hereof shall be authorized for use pursuant to the terms of this provision by a contract assignee, upon assignment of a contract with approval of the Director.
  - ii. All vehicles to be utilized in the performance of this Contract (including spares) must comply with the laws, rules, regulations, specifications, terms and conditions herein described as well.
  - iii. At any time during the period of the Contract, the Contractor shall be required to replace any one or more vehicles (including spares) that the Director shall determine based on an inspection performed by OPT personnel (such as Inspectors, routers and managers):
    - a. To be out of compliance with any material provision of applicable federal, State, City, and/or NYCDOE laws, rules, and/or regulations; and/or
    - b. To be out of compliance with any material provision(s) of the Contract.
  - iv. Upon receipt of written notice from the Department or in person notice from an OPT inspector to replace a vehicle, the Contractor must refrain immediately from any further use of the identified

vehicle in any capacity under this Contract or any other NYCDOE Transportation Contract and shall replace the affected vehicle with one that meets all applicable federal, State, City and/or Department of Education laws, rules and/or regulations and all applicable terms, conditions and specifications of this Contract.

- B. different types of vehicles are required to perform the services requested all of which, except as noted below, can potentially be bid as either an Interborough (I\_\_\_), having at least one rider from outside the borough (county or state) of the school(s), or a Within Borough (W\_\_\_), all riders and schools in the same borough. In addition to compliance with applicable governmental laws, rules, and regulations and all DOE rules and regulations as determined by the DOE and/or the Director, the vehicles must also conform to the following standards in addition to those which appear elsewhere in this RFB. FMVSS means Federal Motor Vehicle Safety Standards.
- i. FMVSS Type A or B vehicle with an 18 passenger minimum seating capacity (A/B-18)
  - ii. FMVSS Type A or B Vehicle with (wheelchair) track seating and flat floor. Vehicle with an hydraulic lift with seating capacity for up to 20 passengers or at least 6 wheelchair securement positions with the capability to convert to any appropriate mix of passenger seats and wheelchair positions between those extremes as required by the route (A/B-WCTS); however, most routes assigned to this vehicle type will have at least one non-ambulatory rider.
  - iii. FMVSS Type C or D vehicle with dual passenger doors and a 35 passenger minimum seating capacity (C/D-35)
  - IV. FMVSS Type C or D Vehicle with (wheelchair) track seating and flat floor. Vehicle with an hydraulic lift and with seating capacity for up to 35 passengers or at least 10 wheelchair securement positions with the capability to convert to any appropriate mix of passenger seats and wheelchair positions between those extremes as required by the route (C/D-WCTS); however, most routes assigned to this vehicle type will have at least one non-ambulatory rider.
  - V. Non-Wheelchair Accessible Alternative School Bus with a maximum passenger seating capacity of 3 (NWAASB)
  - VI Wheelchair Accessible Alternative School Bus with seating capacity for at least 2 non-ambulatory riders and 2 sitting ambulatory passengers (WAASB).
- C. The Director, in his or her sole discretion, may dictate the size of the vehicle (based on seating capacity) to be used on any given run/route in the performance of any Contract resulting from this RFB, within the specified requirements of said Contract.
- D. No standees will be permitted at any time on any vehicle used to perform this Contract.
- E. If at any time during the Term of this Contract the Contractor identifies a route that could be performed more economically and/or more efficiently using a different vehicle type, it shall be the Contractor's obligation to propose such a change to the Director following the terms of this Contract.
- F. The bidder must include a description and documentation of how the bidder will meet, for the initial term of the contract, the vehicle vintage requirements specified above.
- G. The Director will have the right to disapprove any vehicle for service under this Contract and require the Contractor to present and utilize a compliant replacement.
- H. All occupants must be seated correctly and safely and wearing appropriate safety restraints any time a vehicle used in the performance of this Contract is moving.

- I. Each vehicle employed in the service of this Contract that meets the FMVSS definition of a school bus must be equipped with an automated electronic reminder system that prompts the driver and attendant to check the vehicle for sleeping or hiding children and left behind personal property. Following the completion of each run, either to a particular school or other site, or to the pupils' residences, or any other authorized destination, both the driver and attendant are required to inspect the bus for children and, upon the completion of said inspection, deactivate the reminder system.
- J. Each vehicle used under this Contract, including maintenance and spare vehicles, must be equipped with fully operational communication devices (e.g., two-way radios, etc.) which must be approved by the Director. The Contractor must possess, use and maintain in fully operational condition a communications system for each dispatching installation, garage and after hours location.
  - i. Each device must be approved and licensed by the Federal Communications Commission. For security purposes, the communication devices may be removable. However, each vehicular communication device must possess a mounting bracket or casing which holds the equipment securely in place within easy reach of the vehicle driver, as approved by the New York State Department of Transportation and to allow operation in compliance with the New York State *Vehicle & Traffic Laws*.
  - ii. Each communication device must have sufficient minimum power output capability to ensure fully audible contact between each of its dispatching installations and/or garages within the following distances: (a) for Contractors with routes only within the City of New York, the minimum power output capability must be sufficient to ensure fully audible contact between any two points within the City; and (b) for Contractors with routes beyond the City's borders, the minimum power output capability must be sufficient to ensure contact with any vehicle at the farthest point on the route from the base station.
  - iii. The Contractor must provide training to each vehicle driver and attendant regarding the effective use of the communication system that the Contractor employs to ensure that adequate communication shall be maintained between each vehicle and the base station. The Director shall have the option to review training materials and/or shall have the option to require the Contractor to send all of its vehicle drivers and attendants for relevant training. The NYCDOE will not bear the cost of any associated training. At any time when vehicles are in service, the Contractor and its employees are prohibited to use the communication devices for personal reasons or reasons other than those pertaining to the performance of the Contract.
- K. Vehicle Tracking. From the start of service under this Contract, the Contractor shall have the ability to remotely locate (e.g., an Automatic Vehicle Location, AVL, functionality) and monitor each of its vehicles being used to provide service under this Contract and report that location and status to OPT in close to real time (i.e., no more than a five minute lag in the automatic report from the vehicle and the Contractor's report of that location and status to OPT). That automatic reporting must be accomplished without the need for any human action on the vehicle although human actions can trigger reports in addition to those done based on passage of a specified time interval (e.g., activation of an alarm mechanism, a change in direction of X degrees, etc.). At the Director's sole discretion, the Contractor must make its unedited vehicle location and status data available to OPT as it is generated. If the NYCDOE elects to proceed with the collection, processing, display and analysis of that data (i.e., integration) all of the necessary components, programming and equipment shall be purchased and paid for or supplied by the NYCDOE along with any needed telecommunication equipment and services. Title to and ownership of the said systems and equipment shall vest and remain in the Board of Education. Automated vehicle tracking information as described here will be given the utmost credence in disputing violations for which the evidence it can produce is relevant (e.g., whether or not the bus stopped for a child, the time the bus arrived at school, etc.) provided the validity of that information is demonstrated to the satisfaction of the Director or his or her designee(s).
- L. In the event new equipment specifications are required, the Contractor shall install equipment meeting the new specifications within the timeframe specified by the law, rule or regulation requiring the new equipment or within thirty days of official notification of an approved requisition or change order in writing for such new

specifications if there is no time specified in the mandating law, rule or regulation. Only the federal government, State government, City government or the DOE shall have the right to mandate new equipment.

- M. Air Conditioning/Heating Systems. The Contractor must maintain the reliable operation of the heating and air conditioning components on every bus and operate such components in full compliance with all applicable current and future federal, state and local laws and regulations, including without limitation, the New York State Department of Transportation regulations expressed at 17 N.Y.C.R.R. § 720.4(l)(1)(a) and New York City Administrative Code § 19-605. Whether or not the requirements set forth below are also imposed by law or regulation, the Contractor must comply with the following requirements in addition to complying with all applicable laws and regulations; and to the extent that applicable laws and regulations impose additional requirements beyond those set forth below, the Contractor must fully comply with all such additional requirements as well as with those set forth below.
- i. Cold weather: As measured en route, the interior bus temperature must be maintained at a minimum of forty degrees Fahrenheit during cold weather. The heating system shall be capable of maintaining bus interior temperatures as specified in test procedure SAE J2233.
  - ii. Warm weather: Buses operated on days when the ambient outside temperature exceeds seventy degrees Fahrenheit must be equipped with air-conditioning systems. Any failure, mechanical or otherwise, of an air-conditioning system required by this section shall be repaired and restored to operable condition as soon as is practicable, but in no event more than three business days subsequent to the failure.

Drivers shall utilize such air conditioning systems in order to make the internal climate of such vehicles comfortable to passengers and in order to protect or enhance the health of students with a disability (as defined in New York Education Law Section 4401(1)) who require an air-conditioned environment for health reasons. The interior bus temperature shall be maintained at no more than seventy-eight degrees Fahrenheit during warm weather or at least fifteen degrees Fahrenheit lower than the outside air temperature when the outside temperature exceeds ninety-three degrees Fahrenheit.

- N. Fire Extinguisher. All vehicles must be equipped with at least one all-purpose fire extinguisher, dry chemical or CO<sub>2</sub> type, rated at least 2A10BC, equipped with a calibrated or marked gauge indicating the unit's readiness which can be read easily without the need to move a unit from its mounted position. The fire extinguisher(s) must be of a type approved by Underwriters Laboratories, Inc.; and the operating mechanism must be sealed with a type of seal which will not interfere with the use of the fire extinguisher(s). The fire extinguisher(s) must be mounted in an automotive bracket located in the driver's compartment in full view and easily accessible. Fire extinguishers must be inspected and certified at least annually.
- O. First Aid Kit. Each vehicle must be equipped with a first aid kit marketed by a reputable purveyor of emergency supplies as determined by the Director in an easily removable, moisture-proof and dust-proof medical container to be located in the driver's compartment. The Contractor must replenish first aid kit supplies as needed to conform with the purveyor's original product description and at the Contractor's expense. Each first aid kit must contain at least the following components:

- Bandages (1" by 10 yards);
- Sterile gauze pads (3" by 3");
- Adhesive tape roll (1" by 25 yards);
- Adhesive bandages (3/4" by 3");
- 0.9 gram individual packets of antiseptic ointment;
- Bandage compresses (2");
- Bandage compresses (3");
- Sterile gauze roller bandages (2" by 6 feet);

Pair of medical examination gloves;  
Hand sanitizer;  
Instant cold packs;  
Rounded end scissors;  
Non-sterile triangular bandages with 2 safety pins (minimum 39" by 35" by 54");  
Sterile gauze pads (36" by 36");  
Single units of sterile eye pads (one per unit); and  
Mouth-to-mouth airway.

- P. Safety Equipment. Each vehicle must be equipped with appropriate safety equipment which must include at a minimum: a seat belt cutter; a fire blanket (each fire blanket must comply with the specifications expressed in 17 N.Y.C.R.R. § 720.8(b)(21)(ii) regarding location, availability and size, i.e., thirty-five (35) square feet in size with a minimum width of four (4) feet); small flashlight with extra batteries (or other lighting device approved by the Director or designee); emergency triangles; and a Bodily Fluids Clean-Up Kit. That safety kit must be in a container which can be secured in the driver's compartment, clearly labeled, and replenished as its contents are consumed or wear out.
- Q. Bodily Fluids Clean-Up Kit. The Contractor must maintain and replenish on board each vehicle a "Bodily Fluids Clean-Up Kit" as required to meet all applicable Federal, State, City, NYCDOE and/or other applicable laws, rules and regulations such as, but not limited to, 29 C.F.R. Section 1910.1030. The Bodily Fluids Clean-Up Kit and the Bus Sanitation Kit expressed in **Paragraph 4.26, T, iii., supra**, may be combined into one kit, **provided**, the said combined kit shall nevertheless comply with all specifications herein stated. Said kit shall be removable and moisture-proof, mounted making it accessible to the driver, and identified as a Bodily Fluids Clean-Up Kit,
- R. Identification Features
- i. The vendor will assign each vehicle a number consisting of the OPT vendor code followed by four digits suitable for identification purposes. That number shall be displayed in black on the exterior surfaces on the front, the rear and both sides of each vehicle; and the numerals used for those numbers shall not be less than four inches high. Any vehicle put into service specifically to perform work under this contract or put into service after the start of this contract shall also have that number displayed on the exterior roof of the vehicle in numerals that are at least twenty-four inches (two feet) in height and fifteen inches in width. The number shall be applied to the roof of the vehicle using a decal with a gloss covering and a warranty of at least seven years.
  - ii. Also displayed on each vehicle shall be the name and address of the Contractor providing the service in letters not less than three inches high.
  - iii. Numbers and letters shall be applied to the surface of each vehicle with black paint or permanent decals as approved by the New York State Department of Transportation.
  - iv. The name displayed on each vehicle must be the name of the vendor as it appears on this Contract, unless use of a different name is authorized in writing by the Director.
  - v. If, in an emergency, vehicles must be rented or borrowed on a short term basis, a temporary sign to exhibit the name of the operator shall be deployed to cover any other name painted on the vehicle. Numbers and letters on such temporary signs shall be not less than three inches high and shall be applied with black paint. The Contractor shall notify the Director of any such emergency in writing within forty-eight hours of the deployment of such temporary signs. The notification shall state the nature and duration of the emergency; and, the Director shall have sole discretion to grant or withhold extensions.
  - vi. Signs to display a "run number" that may be assigned by the Office of Pupil Transportation shall appear on both sides of each vehicle mounted on the inside of each first side window. For Non-Wheelchair Accessible Alternative School Buses that are not FMVSS Type A, B, C or D vehicles, there is to be one sign affixed to the top of the passenger side of the dashboard so that it can be

seen through the windshield. The Contractor must equip each vehicle with two permanent display mountings into which each "run number sign" must be inserted. Such display mountings shall be subject to prior approval by the Director and/or the NYSDOT. The lettering of each "run number sign" must be sufficiently large and distinctly legible so that it can be seen clearly from a distance outside of the vehicle of not less than fifteen feet. The "run number signs" must not obscure the driver's vision.

- vii. The color of all vehicles used in the performance of this Contract shall be National School Bus Chrome Yellow.

S. Safety Features

- i. Safety Seat Belts. All vehicles must be equipped with individual safety seat belts for each passenger to be transported, and such safety seat belts must comply with the applicable standards of the Society of Automotive Engineers as well as all applicable federal, State, local, and NYCDOE laws, rules and regulations on occupant securement, or as the same may be created, revised or otherwise changed during the term of the Contract. All safety seat belts must be of sufficient design and adjustable length to accommodate all safety seats and other occupant restraint devices which are secured by use of safety seat belts.
- ii. Safety Vests and Other Devices Supplemental to the Use of Safety Seat Belts. When an occupant securement device or system other than a wheelchair is required for a passenger for safe transport, as required in the IEP or at the Director's direction, the Contractor must provide that device or system inclusive of securement straps or supplemental attachments necessary for the system to function as designed. This rule may be varied for the needs of an individual child only in the discretion of the Director. (Under this specification, it is unnecessary for every vehicle to be equipped at all times with such devices; but each vehicle must be properly equipped when such devices are needed for the safe transport of any child (i.e., the Contractor must have, or have immediate access to, a sufficient supply of such equipment to meet the need, if any, as it may arise during the Term of this Contract).
- iii. Backup Warning Alarm. Every vehicle must be equipped with an automatic audible alarm system installed behind the rear axle. The alarm system must comply with the Society of Automotive Engineers published "Backup Alarm Standards" (SAE 994b) specifying  $97 \pm 4$  dBA for rubber tired vehicles and all applicable federal, State, and local laws, rules and regulations, or as the same may be created, revised or otherwise changed during the term of this Contract.
- iv. For students with disabilities who use travel chairs, wheelchairs, car seats (Child Safety Restraint System – CSRS) or any similar equipment which, in the discretion of the Director requires a specialized occupant restraint system, the Contractor must secure such children in forward facing tie-down occupant restraint systems which meet all State Department of Transportation regulations and all federal, State, local, and DOE laws, rules, and regulations, or as the same may be created, revised, or otherwise changed during the term of the Contract. Such occupant restraint systems must be able to secure the equipment to the floor and the passenger, separately, to the equipment. The occupant restraint devices must be furnished and maintained at the Contractor's expense (i.e., with no additional cost to the NYCDOE) and must be properly installed to the Director's satisfaction. The NYCDOE reserves the right to disapprove any occupant restraint system, if a system does not meet safety standards acceptable to the Director. Upon written notice of the unacceptability of any occupant restraint systems, the Contractor will remove the same forthwith and replace them with such approved by the Director.
- v. Whereupon there come to exist newly created, revised, and/or otherwise changed federal, State, City or DOE laws, rules, or regulations which necessitate the addition, incorporation, or retrofitting of new and/or different improvements or features or new and/or different versions of the required vehicle specifications (e.g., seat back padding, crossover mirrors, etc.) during the Term of this Contract, the Contractor must comply promptly. The Contractor and not the DOE will assume the full costs of



compliance with this paragraph, and the Contractor shall not be entitled to any additional remuneration from the NYCDOE.

- vi. Increased Visibility. To increase the visibility of the vehicles operating under this Contract except for those operating as Non-Wheelchair Accessible Alternative School Buses that are not FMVSS Type A, B, C or D vehicles, the vehicles must all be "outlined" in reflective material in conformance with State law. Specifications for these markings can be found in 17 N.Y.C.R.R. Part 720 (N) entitled, "Paint and Other Markings on School Buses; (2) Reflective Material".
- vii. Exterior Stencils. The successful bidder(s) must apply and maintain on the exterior of each vehicle information specified by the DOE and/or the Director in addition to the vehicle and operator information required by federal, State, and local laws, rules, and regulations or other sections of this Contract. The Contractor will apply such information directly on the surface of each vehicle in black paint, by stencil to be provided by the DOE or by decal provided by the DOE, and in a location to be specified by the Director.
- viii. Bumper Stickers. The successful bidder(s) must affix and maintain bumper stickers on the rear of each vehicle at the request of the Director. The DOE will provide an initial supply of such bumper stickers at no expense to the Contractor; however, if such bumper stickers are removed, lost, destroyed, or found to be no longer legible for reasons other than normal wear and tear as determined by the Director or his or her designee, the Contractor will pay for replacements as supplied by the DOE.

T. Vehicle Safety and Sanitation Requirements

- i. Condition. All vehicles to be used in the performance of this Contract must be maintained in good operating and physical condition.
- ii. Vehicle and Equipment Cleanliness. The interior of each vehicle must be cleaned and either swept or vacuumed thoroughly at least once each day. The Contractor shall be responsible to clean and disinfect seats and all safety equipment and accessories as often as necessary for sanitary reasons and to maintain the comfort of passengers. All vehicles must be graffiti free at all times they are used to provide service under this Contract. In addition, the exterior of each vehicle must be washed at least weekly and be maintained in as clean a condition as possible, weather and other conditions permitting.
- iii. Bus Sanitation Kit. Each vehicle must be equipped with a sanitation kit for use by the attendant and/or vehicle driver. Each kit must be contained in an easily removable and accessible, moisture-proof, dust-proof and sealable container (e.g., large zippered tote bag) with the words, "Bus Sanitation Kit", clearly and legibly stenciled or otherwise appearing on the outside. The Director shall have sole discretion to disapprove a Contractor's choice of packaging as unsatisfactory. In addition, all containers in the Sanitation Kit must be clearly and properly labeled indicating their contents. The Contractor must replenish school bus sanitation kit supplies and containers as needed at the Contractor's expense. Each Bus Sanitation Kit must include at least the following components in at least the following quantities:

Two eleven inch rolls of two-ply paper towels;

Four disposable cloth towels (12" x 12");

One aerosol or pump spray non-glass container of surface cleaner with ammonia (24 fluid oz.);

One aerosol or pump spray non-glass container of anti-bacterial and germicidal disinfectant (24 fluid oz.);

One natural fiber whisk broom (6" by 12");

- Four plastic litter bags (24" by 36") with a tie closure for each bag;
- Twelve pre-moistened, sterilized personal sanitary towelettes in individual packets; and
- Four pairs of disposable gloves in individual packets that meet current legal requirements for such gloves.
- iv. All bench seats must be fitted with fire block, flame retardant upholstery.
  - v. The Contractor must maintain on board each bus an up-to-date listing of all riders assigned to each route covered by that bus. If mandated by the NYCDOE the list shall include for each child the medical condition, allergies, and medication or medical procedures the child requires.
- U. The Contractor and/or its Affiliate(s) shall provide spare vehicles equaling 15% (rounded up to the nearest whole number) of each vehicle type being operated under this Contract. All spare vehicles must meet the vehicle specifications and requirements set forth in this contract.
- V. Spare vehicles being used to transport eligible riders must be staffed with OPT certified personnel qualified to handle emergency service. Such personnel must be conversant in the English language. Spare vehicles must be located within a reasonable distance for break-down/replacement use during the hours that children are being transported under the Contract.
- W. The Person on the replacement vehicle shall maintain continuous contact with the dispatch base to better coordinate relief efforts and have responsibilities besides performing emergency service including, but not be limited to the following:
- i. Dispatching or expediting vehicles to ensure a smooth operating fleet;
  - ii. Prompt dispatching of spare vehicles in the event of breakdown of vehicles; and
  - iii. Maintaining a log in a form approved by the Director, in which will be entered reports of disruptions of service or delays. Disruptions must be reported in the manner prescribed by the Director which may include entering the information on line on the Internet.
- X. All maintenance or spare vehicles of a Contractor shall be equipped with two-way radios or other communication devices as specified herein and shall have continually open contact with the Contractor's garage so that the Contractor can dispatch vehicles expeditiously to replace vehicles with breakdowns. All equipment and personnel referred to herein shall be supplied by the Contractor and maintained by the Contractor at its own expense (i.e., at no additional cost to the BOE).
- Y. Operational Supervision. The Contractor shall ensure direct telephone access to the Contractor's garage during the hours of operation from before the time the first vehicle leaves the garage until after the last vehicle returns to the garage. Answering services or answering machines shall not qualify as direct telephone access. The Contractor shall have available sufficient telephone accessibility to handle problems and inquiries properly in English and in Spanish and at all times during the hours of operation.
- Z. The Contractor is responsible for monitoring operator and attendant performance in the field and resolving problems with parents and school personnel.
- AA. The Contractor shall provide to the Director the name, phone number and email address of a responsible Person available after Business Hours (twenty-four hours a day, seven days a week) who may be contacted in the event of an emergency. Also, the Contractor shall provide to the Director the phone number of an available fax machine where OPT documentation may be faxed.
- AB. If a vehicle varies from its schedule the Contractor shall have available sufficient telephone accessibility and staff to handle problems and inquiries properly.
- AC. All personnel who deal with pupils, their parents (or guardians), teachers, school officials or OPT staff either in person or by telephone must be able to communicate effectively in English.

AD. Required field supervision shall include but is not limited to the following:

- i. Spot checking each operator's and attendant's performance at specific stops, on field trips and at schools at least once a year;
- ii. Maintaining on file documentation of the spot checks performed and their results and submitting that documentation to OPT as requested;
- iii. Having a Safety Officer ride a specific run on which problems have occurred to define and correct problems independently and/or at OPT's request;
- iv. Providing on-the-job training to operators and attendants for new employees and existing employees who have been identified through supervision or complaint to be providing substandard service;
- v. Resolving problems between the Contractor's personnel and school officials or parents;
- vi. Expediting vehicles and continuing service where bus breakdowns occur; and
- vii. Supervisory activities must be recorded; records of same must be made available for review upon the request of the Director; and reports of the content and in the form specified by OPT must be submitted as requested by the Director.

AE. Vehicles withdrawn from service shall not be returned to service without the prior approval of the Director.

AF. **Maintenance Facility.** All contractors will have unfettered access to an indoor repair facility that it either operates or contracts for in operation during vehicle operation hours. Said facility will be located within a 15 mile radius of schools served. That facility shall be staffed with trained repair personnel and include at least one mechanic technician per every 25 vehicles or part thereof and one Automotive Service Excellence (ASE) Certified technician for every 50 vehicles or part thereof.

AG. The Contractor shall operate a program of preventive maintenance for every vehicle in accordance with the NYS Department of Transportation ("NYSDOT") requirements and shall maintain records as evidence that the vehicles are receiving acceptable periodic maintenance. Part of that evidence will consist of forwarding to OPT within five Business Days of the Contractor's receipt of each periodic report from NYSDOT indicating the Contractor's Out-of-Service Rate. Generally, the Contractor shall undertake all commercially reasonable efforts to design, schedule and perform its preventive maintenance program to maintain the safety and reliability of all vehicles used under this Contract and to reduce the frequency and severity of vehicle breakdowns and accidents attributable to vehicle mechanical systems. As a minimum, the Contractor's regular preventive maintenance program must achieve a level of effectiveness such that the Contractor's NYSDOT inspection reports Out-of-Service Rate never exceeds twenty percent in any six month reporting period.

AH. The Contractor will withdraw from service any vehicle which, in the opinion of an OPT inspector(s), presents a hazard to the safe transportation of pupils and/or other passengers and replace it with a vehicle which, in the OPT inspector's opinion, meets the safety standards of this Contract.

AI. **Snow Tires.** All Vehicles should be outfitted with aggressive snow tires when needed, during inclement weather months (November 1<sup>st</sup> – April 30<sup>th</sup>). Snow tread tires shall be utilized on all drive wheels. Tires shall be Federal class D/A, STC (with snow traction capability), or one of the following classes S/T, A/T or AP with STC. Tires furnished on the rear wheels shall be the same size and adequate for axle's GAWR.

AJ. **Emissions Control Technology.** All diesel fuel-powered vehicles that is not equipped with an engine certified to the applicable 2007 United States Environmental Protection Agency standard for particulate matter as set forth in section 86.007-11 of title 40 of the code of federal regulations or to any subsequent

United States environmental protection agency standard for such pollutant that is at least as stringent, shall be required to utilize the Best Available Retrofit Technology ("BART") as defined by the EPA.

**4.27 Vehicle and Operator Documentation** [Unless otherwise noted, these documents shall be submitted upon request of the NYCDOE.]

- A. Each bidder, including any currently holding a contract(s) with the NYCDOE, will submit upon request in an Excel spreadsheet or enter onto an Internet website application (as to be subsequently determined by OPT), the following data for each vehicle under the company's control at the time of the bid opening as well as for each additional vehicle intended to be used for the transportation of riders under the Contract:
  - i. Make, year of manufacture and bus number;
  - ii. Vehicle Identification Number and plate number;
  - iii. Whether or not the vehicle is equipped with year round climate control systems;
  - iv. Seating capacity and vehicle type;
  - v. Name of the owner and whether the vehicle is under the company's control or will be added;
  - vi. Preventive maintenance schedules; and
  - vii. Corrective maintenance history.
- B. If the information required in the paragraph immediately above is not available, then the bidder will submit upon request satisfactory evidence of the following: (a) that the bidder will have 50% of the required number of vehicles three months prior to the beginning of the contract period or the beginning of service; (b) that the bidder will have an additional 25% of the vehicles two months prior to the beginning of the contract period or the beginning of service; (c) that the bidder will have the remaining 25% of the vehicles one month prior to the beginning of the contract period or one month prior to the beginning of service; and (d) that the vehicles will be prepared at those times for inspection by OPT. Such evidence must state that the manufacturer or lessor has reserved and will continue to reserve the required number of vehicles necessary to do the work. Evidence may be a signed statement on official letterhead from an acceptable vehicle manufacturer, dealer, or rental corporation to the effect that it will furnish the required number of vehicles at the times specified. If the bidder or any of the bidder's parent, subsidiary or other affiliated units or any employee thereof is the owner of the company providing the vehicles, the bidder is asked to submit the information specified (both as to content and method) in the paragraph immediately above. Vehicles must be documented as described in the paragraph immediately above once they come under the Contractor's control.
- C. As part of the qualification process and no later than one month prior to the start of service at the outset of this Contract and continually kept up-to-date thereafter throughout the life of said Contract and within three Business Days of any change, the Contractor will submit to the Director via an Internet website application (to be subsequently provided by OPT) a list of the vehicles to be used by the Contractor in the performance of said Contract. On the list, the Contractor will state for each vehicle all appropriate information as specified in OPT's "Vehicle Information System" including information such as, but not limited to, the year, make, type, seating capacity, Vehicle Identification Number, bus number, plate number, owner, the expiration date of the State Department of Transportation certificate, mileage, number of brake lights, fuel type and an indication whether each vehicle is equipped with a cellular backup system, GPS, emission filter, and year round climate control system. The Contractor will provide this information for all vehicles including spares.
- D. For each vehicle under the company's control at the time of the bid opening, the Contractor must supply documentation of compliance with umbrella excess commercial automobile liability vehicle insurance requirements.
- E. The Contractor must also supply documentation of compliance with requirements for commercial general liability insurance, business automobile liability insurance, employment practices liability insurance,

Worker's Compensation insurance, employer's liability insurance (if required), umbrella excess liability (or excess liability) insurance, and "all risk" fire and other casualty insurance.

- F. Each year the NYSDOT issues to each school bus company an annual summary of the results of its inspections of the company's vehicles through March 31 of that year. Each bidder, including any currently holding a contract(s) with the NYCDOE, will submit upon request copies of the three most recent NYSDOT annual summaries (or for the period the company has been in operation if fewer than three years) that have been issued. The submitted summaries should correspond with the period of management experience being used to satisfy the Bidder's Qualification experience requirements. The annual NYSDOT summary for the period of April 1, 2017 – March 31, 2018 must be submitted within ten days of its issuance. At any time during the Term of the Contract, the Contractor shall submit copies of such NYSDOT annual summaries to OPT upon request.
- G. Each bidder, including any currently holding a contract(s) with the NYCDOE, will submit upon request in an Excel spreadsheet or enter onto an Internet website application (as to be subsequently determined by OPT), the following data for each accident during the last five school years (or for the period the company has been in operation if fewer than five years) affecting all motor vehicles that the company uses to perform its business operations. For each accident, indicate the information specified by the Director including, but not limited to, the following: date; description of accident (e.g., pedestrian struck, vehicle hit from the rear, etc.); driver's name; bodily injuries; and amount of property damage.
- H. Each bidder, including any currently holding a contract(s) with the NYCDOE, will submit documentation of the driving history for the company's employees for the last two school years (or for the period the company has been in operation if fewer than two years). This information shall cover accidents, violations (e.g., traffic tickets), convictions, license suspensions, license revocations, injuries, and property damage. This information must be submitted with the Bid in an Excel spreadsheet or entered onto an Internet website application (as to be subsequently determined by OPT). At any time during the Term of the Contract, the Contractor shall submit copies of such driving histories to OPT upon request.
- I. A successful bidder must provide the data specified above in Bidder's Qualifications and Scope of Work with reference to each vehicle being furnished and used for the transportation of children under the contract both at the inception of the contract and for any additional vehicle(s) acquired thereafter. The successful bidder must also inform the Director of any vehicle(s) withdrawn from service or replaced during the life of the Contract.
- J. Records to be Transmitted
  - i. A record of vehicles incorporating a Daily Record of Crews (i.e., drivers and attendants) used each day for the transportation service under this contract shall be maintained on forms to be prescribed by the Director. The Contractor shall furnish to the Director copies upon request. In the future, the Contractor may be required to submit this information electronically in a format specified by the Director.
  - ii. The Contractor shall supply on five days written notice any information or documentation as may be requested by the Director.
  - iii. Contractors supplying service under this contract shall keep up-to-date the information on pickup and drop-off times on a website provided by OPT.
  - iv. Contractors are to develop re-routing suggestions that they believe will result in better and/or more efficient service and to submit them to the Director for approval prior to implementation.
  - v. On a frequency specified by the Director which may vary during the course of each Contract Year, the Contractor will enter on a web application developed and maintained by OPT all runs not getting to school on time. OPT will review and take corrective action on those runs as necessary.

- K. Upon notification, financial statements for the Bidder's operations for the past three years, or for the period that the business entity has been in operation if fewer than three years, must be submitted. All financial documents which are submitted as a response to this solicitation must be prepared in accordance with generally accepted accounting principles, by an independent Certified Public Accountant. All statements must be either a review or an audit, expressing the CPA's opinion on the statements. Financial compilation statements are not acceptable. Bidders will have five Business Days to provide these documents from notification by the NYCDOE.
- L. As part of the evaluation process, the Bidder will be asked to provide Dun and Bradstreet Supplier Evaluation and Business Information Reports dated within one month of the bid opening. If D&B reports are not available, the Department will use other means to assess a vendor's responsibility and capacity. In such cases, vendors should expect that the Department will require other materials/information that evidences the financial capacity to perform on the contract. Upon notification by the NYCDOE, the Bidder will have five Business Days to provide these documents. Any extension of time to submit those reports must be requested and approved prior to the end of that five Business Days period.

#### **4.28 Additional Requirements for Contractors**

- A. Facilities and Maintenance. The bidder shall have sufficient storage and access to maintenance facilities with sufficient equipment and trained personnel to satisfy the New York State Department of Transportation requirements. The facilities shall be subject to periodic inspection and approval by the NYCDOE during the period of the Contract.
- B. Fuel Responsibilities. All gasoline, diesel fuel, and other fuel payments required to complete regularly scheduled service will be provided by the Contractor at its own expense (i.e., at no additional cost to the NYCDOE).
- C. System Capabilities. The Contractor may be required to maintain the following: (i) online route establishment, deletion and modification capability; (ii) high speed Internet connectivity; and (iii) company specific information on a website provided by OPT which shall include updated (on a basis as specified by the Director) pickup and drop-off times for the routes performed by the Contractor. During the life of this Contract, the Contractor must update the computer system as required by the Director.
- D. Summary Billing. Flexible-billing options should be available to the NYCDOE. The Contractor may be required to provide electronically consolidated monthly or billing terms at the class, contract, borough or overall program level.
- E. Electronic Invoicing. The DOE expects to establish a communal e-mail address to receive summary invoices for automated matching and reconciliation and to maintain hardcopy records for audit purposes only. The DOE reserves the right to change formatting requirements at any time. The Contractor must be able to provide invoices in any of the formats as required by OPT.
- F. Reporting. The Contractor must provide OPT with requested reports. The Contractor's systems should have the flexibility and capability to convert and track any data provided to the Contractor in electronic format for reporting purposes. Specific report types and the schedule for providing them will be determined during implementation with the selected vendors.
- G. Telephone System. The telephone system maintained by the Contractor must be of sufficient capacity that parents, schools and NYCDOE staff can readily reach the Contractor's office even during high volume times of the year such as school opening without the Contractor's phone ringing for more than one minute. Continuous busy signals are not acceptable. It should never take numerous attempts or an extended period of time to get through to the Contractor's office on the phone. Additionally, the

Contractor must maintain a separate phone number (that is not disseminated to the public, other customers, etc.) that assures OPT quick access at all times. The bid must include specification of the type of telephone system, a description detailing why it will be sufficient and documentation of its acquisition. See also telephone access specifications at **Paragraph 4.26.Y**, Operational Supervision.

- H. **Safety Specialist – Single Point of Contact (SPOC) – and Additional Safety Staff.** The Contractor shall provide a full time Safety Specialist to act as the Single Point of Contact (“SPOC”) to the OPT Safety Director. Under this Contract, the Contractor’s Safety Specialist must coordinate all aspects of transportation safety for OPT’s school bus program. The SPOC Safety Specialist will be responsible to attend all safety meetings held with the NYCDOE Transportation Team. Additional responsibilities of the SPOC Safety Specialist are:
- i. Decrease the frequency, rate, and severity of, and potential for, crashes involving motor vehicles, pedestrians, and bicycles through the implementation of comprehensive safety programs;
  - ii. Develop, document and submit to the Director for his or her approval said comprehensive safety programs which must include a discussion of intent and specification of procedures that will be used to retain safe drivers and retrain and/or discipline drivers with unsatisfactory safety records;
  - iii. Maintain a valid accident investigation certificate;
  - iv. Investigate accidents according to the guidelines laid out in the Pupil Transportation Safety Institute (PTSI) course titled *School Bus Accident Investigation and Scene Management*;
  - v. Present findings to the OPT safety committee;
  - vi. Provide procedures, training and awareness activities that foster safe work practices for bus company employees;
  - vii. Plan, organize and supervise mandated training according to DMV, SED, and NYCDOE rules and regulations;
  - viii. Conduct regular safety meetings to inform bus company staff of any changes in laws, regulations, and procedures;
  - ix. Develop and implement safety related programs, safety workshops, and information systems for the purpose of evaluating driver safety performance; and
  - x. Report at least quarterly using a format to be supplied by the Director on all safety related initiatives and their results and more frequently as specified by the Director in follow up on individual issues or problem areas.

The Contractor must also employ on a full time basis, in addition to the Safety Specialist, supporting safety staff (i.e., Safety Officers) in a number appropriate to the size of the Contractor’s fleet. The Safety Specialist shall assign the above safety personnel to follow buses, ride buses and generally take whatever investigative and remedial actions are necessary to cure the problems they are assigned to alleviate. Each Safety Officer must be OPT certified as either a driver or attendant and have been trained to determine those instances and behaviors that properly trigger reasonable suspicion drug/alcohol testing.

- I. **PETS Personnel Manager:** The Contractor must designate at least one manager or approved office staff that will oversee PETS (Personnel Eligibility Tracking System) and ensure that all personnel maintain their OPT eligibility status. The PETS Personnel Manager may not be an active driver or attendant.
- J. Within ninety days after the end of each of the Contractor’s fiscal years, the Contractor shall provide to the Director full and accurate copies of its annualized balance sheets, cash flow statements, statements of income and expenses and such other similar documents as the Director may reasonably request. All documents expressed in the preceding sentence must be prepared by a Certified Public Accountant (“CPA”) licensed by the State of New York. All such documents must be accompanied by a written

review report stating that a review shall have been performed in accordance with AU623, *et seq.*, as established and periodically updated by the American Institute of Certified Public Accountants (herein expressed as "AICPA") as of the date of a given review report, and that the information in each such document shall have been based upon the representations of the Contractor's management. Each review report shall describe the nature of a review as distinct from an audit and shall describe the standard procedures that the CPA shall have performed (e.g., an inquiry and an analytical review). Each review report shall give the limited assurance that, based upon the review, the CPA shall not have been aware of any material modifications that should be made to each such document for it to be in conformity with AU623, *et seq.*, as established and periodically updated by the AICPA. A compilation report is insufficient to meet the requirements of this Paragraph 4.28(l). The CPA who shall prepare each of the aforementioned documents must have no interest in this Contract, the Contractor and/or any entity affiliated in any manner with the Contractor and must so certify in writing in each review report.

K.

- i. **DOE Option To Require Additional Equipment and/or Devices To Be Paid For by DOE:** In DOE's sole discretion, DOE may direct the contractor to utilize additional equipment and/or devices for performance of the contract during the term of the contract, in order to provide standardized tools to enhance elements of service including, but not limited to, ridership reporting/tracking devices, routing applications and adaptive snow equipment. Contracted vendors will be required to implement, maintain, and utilize any such additional equipment and/or devices, to comply with all reporting and other related directives and to cooperate in any related training. Any additional equipment and/or devices required by the DOE to be installed, implemented and/or maintained by the contracted vendor, and all related training, will be at the DOE's cost and expense. Any equipment and/or devices installed on vehicles pursuant to this provision must be utilized by Contractor personnel including but not limited to Drivers and Attendants, as directed by OPT.
- ii. **Low or No Emission Vehicles:** During the term of the contract the Department may issue new vehicle specifications applicable to all or part of the transportation services to be provided under this contract, including specifications requiring the use of low-emission or no emission vehicles. Upon the issuance of any such specifications, the Department may, in its sole discretion: (a) direct contractors to acquire (by purchase, lease or otherwise) the necessary compliant vehicles and bill the Department for the net excess cost associated with the acquisition and use of such vehicles for the contract during the term of the contract; (b) supply the necessary compliant vehicles to contractors for use for the contract during the term of the contract, and allow such contractors to bill the Department for the net excess cost associated with the use of such vehicles for the contract during the term of the contract; or (c) allow contractors to elect either option "(a)" or "(b)", above. To the extent that a contractor is either directed to, or elects to, acquire compliant vehicles, all costs associated with such acquisition must be approved in writing by the Department before the contractor incurs any such cost or makes any commitment to incur any such costs. In addition, before the contractor incurs any costs associated with the use of vehicles pursuant to (a), (b) or (c) above, all such costs must be approved in writing by the Department before the contractor makes any commitment to incur any such costs. For purposes of this paragraph, "net excess cost" shall mean the total cost (capital and operating) to each contractor of acquiring and/or operating the newly specified vehicles in excess of the total cost (capital and operating) of acquiring and/or operating the vehicles replaced by the newly specified vehicles; such costs may include, without limitation, costs associated with the purchase, lease or other means of acquisition of vehicles, purchase, lease or other acquisition/installation and operation of or access to vehicle charging stations, and employment of specialized maintenance personnel.

#### **4.29 Payment**

For each Class of service they propose to provide, Bidders are to provide a Daily Rate which shall represent full payment for the vehicle, driver and all required support services, other than attendants (the "Vehicle and Driver Daily Rate"). Where attendant service is required to be provided under this Contract, Bidders shall also provide the rate for each attendant (the "Attendant Daily Rate") where indicated on the Bid Blank. Bids are to be based



on providing all requested vehicles and attendants for that Class. Bids on less than the full amount of vehicles and attendants requested will not be tabulated. The Vehicle and Driver Daily Rate is to represent full payment for the vehicle, driver and all required support services for the Daily Standard Service Period. The Attendant Daily Rate will represent full payment for an attendant on the vehicle for the Daily Standard Service Period. Where indicated on the bid blank, bidders are to quote both Daily Rates. For routes that entail Porter Service (i.e., carrying a student as part of the service), the bid Attendant Daily Rate will be increased by 4% and will apply to each attendant (i.e., the vendor will be paid two times 104% of the bid Attendant Daily Rate for each day there are two attendants providing Porter Service).

- A. Daily Standard Service Period ("DSSP"). The Daily Standard Service Period outlines the time during which a contractor's vehicle must be available for use for the DOE. That availability will fall within the current school session times that the said contractor will serve. Availability will begin at the time of the first scheduled pickup and will end at the last scheduled student drop-off within an 11-hour period. The time spent providing service shall be defined as: the time between the first student pickup and arrival at the last scheduled school in the AM; the time between the first scheduled school pickup and arrival at the last scheduled student drop-off in the PM; and the time between the scheduled departure of a mid-day service (whether Field Trip, Itinerant Service and/or other mid-day service) and the scheduled arrival time at the service site for one-way service or the time between the scheduled departure of a mid-day service and the scheduled arrival time back at the school for two-way service. For determining extended time and all other purposes, the end of service is the last scheduled student drop-off in the afternoon/evening. The start of the Period may change during the course of each Contract Year as routes are adjusted. Any last school day dismissals which occur outside of the DSSP will qualify a run to be paid for extended time as will any time in excess of eight in-service hours within the DSSP.
- B. Extended Time. Extended Time payments will be made at an hourly rate equivalent to one-eighth of the Daily Rate(s). Under this Contract, the Contractor will receive one-eighth of the Vehicle and Driver Daily Rate per hour plus one-eighth of the Attendant Daily Rate(s) when one (or more) is assigned.

Payments will be calculated in increments of one-quarter hour. For each quarter-hour, or part thereof, of Extended Time, the Contractor shall be entitled to receive one-quarter of the hourly rate [i.e., one-eighth of the appropriate daily rate(s)], for each day for each vehicle providing that service.

- C. Payment for Field Trips, Itinerant Service and/or Other Mid-Day Service. The NYCDOE may determine to: (i) provide field trips, itinerant service and other mid-day service directly, (ii) contract separately for the provision of field trips, itinerant service and/or other mid-day service with the Contractor or with a separate contractor, or (iii) require the Contractor to provide field trips, itinerant service and/or other mid-day service in addition to transportation between pick-up points and schools. If the NYCDOE determines to require the Contractor to provide field trips, itinerant service and/or other mid-day service in addition to transportation between pick-up points and schools, the Contractor shall be compensated in the manner provided in this **Paragraph 4.29(C)** in addition to any and all other compensation to which the Contractor is entitled under the terms of this Contract. Field Trips are defined as runs between the morning runs (bringing pupils from home to school) and the afternoon runs (taking pupils home from school) on which pupils and their chaperones are transported from school to a remote site and may be either one-way (the group returns to school on public transportation) or round trip. Itinerant Service is defined as a one-way or two-way mid-day trip between a school(s) and a remote location(s) for a pupil(s) to receive therapeutic services, remedial services and/or other "related services," as the term "related services" is defined under the Individuals with Disabilities in Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.* For each day on which the Contractor shall provide mid-day service for field trips, itinerant service and/or other purposes approved by the Director (such as, but not limited to, shuttle service), the Contractor shall be paid an additional amount equal to 2% of its quoted Vehicle and Driver Daily Rate for the DSSP. If this service does not require work outside of the DSSP the Field Trip Payment will be deducted from the payment made for the DSSP. This additional payment shall not apply to mid-day dismissals, other early dismissals and/or to mail pick-up/delivery service.
- D. Additional Attendant(s). Upon receipt of notice from the Director, the contractor will assign an additional attendant(s) to one or more specified runs at an additional cost to the NYCDOE of the Attendant Daily

Rate for each such attendant as agreed upon in response to this RFB and as subsequently adjusted in the second and later Contract Years.

- E. Invoices and Adjustments. The Contractor shall submit invoices electronically in a manner set by the DOE (or in a hardcopy format specified by the DOE until such time as DOE can implement electronic submission) at the end of each calendar month for the number of vehicles, the number of attendants (where appropriate) and the number of days for which services were rendered during the preceding calendar month as well as for field trips and itinerant service. Invoices will be audited for payment after each month in which the services are rendered. The DOE through the Office of Pupil Transportation will have the right to make adjustments in compensation for the following: (i) assessment(s) of liquidated damages; (ii) charges for increases or decreases in the number of vehicles; (iii) assessment(s) of costs which arise from the Contractor's default of contractual obligations; and (iv) as otherwise provided in this Contract or by law.
- F. Claims for Payment Deadline. Any invoices or other claims for payment for service rendered under this Contract that are received any more than sixty calendar days after the end of the calendar month in which the service shall have been rendered shall be returned to the Contractor unprocessed and no payment will be made (i.e., the Contractor shall not be entitled to, nor shall the Contractor make any demand for, payment on such late invoices).
- G. Routing on School Holidays. On days when the public schools are closed and service is required for non-public schools as well as on days when the public schools are open and service is not required for non-public schools, OPT reserves the right to re-route vehicles in order to maximize vehicle use; and the Contractor will be paid only for vehicles authorized to operate on those dates.
- H. No Payment for Days Not Operated. The Contractor shall be paid only for days on which school buses operate and only for those buses that actually provide school bus service. There shall be no payment to the Contractor for any days on which school buses do not operate regardless of the reason(s) therefore, including, without limitation, lack of advance notice from the DOE to the Contractor, and/or change(s) to the NYCDOE school calendar. The sole exception to this provision is an instance of school closure, as ordered by the NYCDOE Chancellor or his or her designee, due to weather or other emergency when the day of closure is not rescheduled resulting in a reduction in the number of School Days scheduled for the School Year. In those instances only, the Contractor shall be paid 85% of its Daily Standard Service Period rate(s) for the buses and attendants that/who had been scheduled to run/work on the date(s) in question.

#### **4.30 Consent to Audit**

The Contractor hereby consents to an audit of any and all financial records related to this Contract by the NYCDOE and/or its agents, the Comptroller, the State Department of Audit and Control, the State Education Department ("SED"), the State Department of Health ("NYSDOH," e.g., Office of Medicaid Inspector General), the U.S. Department of Health and Human Services ("HHS," e.g., Centers for Medicare & Medicaid), the City Department of Investigation ("NYCDOI," e.g., Office the Special Commissioner of Investigation for the New York City School District), and/or any other federal, State, City and/or other governmental agency with appropriate jurisdiction. During the period of the Contract and upon the request of the State Department of Audit and Control, the NYCDOE Office of the Auditor General, the Comptroller, NYCDOI, the SED, HHS and/or any other governmental agency with applicable jurisdiction, the Contractor shall furnish information and documents as specified by any of these agencies including, but not necessarily limited to, the Contractor's income tax and other tax forms filed with federal, State, other state, City, other local, and other governments for the Term of this Contract; and balance sheets.

#### **4.31 Suspension of Vehicle Use, Performance and Payment**

- A. The Contractor shall not commence or continue to perform any transportation Services or other Services or operations pursuant to this Contract in the absence of full compliance with the requirements as delineated in this Contract. Whereupon the Contractor causes or allows any transportation Services or other Services or operations to commence or continue in the absence of required insurance coverage and/or certified

personnel, such action or omission will constitute the material breach and Default of the Contractor's obligations under the Contract.

- B. The Contractor shall not commence or continue to perform any transportation Services or other Services or operations pursuant to this Contract: with any vehicle that does not conform in all respects to the requirements as delineated under "Vehicle Specifications", "Safety Features" and elsewhere in this RFB or other specifications that may come into effect as a result of changes, deletions or additions to NYCDOE, local, state or federal laws, rules or regulations; with any vehicle which has not been approved by the State Department of Transportation (NYSDOT), as evinced by a currently valid inspection approval sticker displayed on the vehicle; with any driver or attendant not duly certified by OPT; or, without all of the insurance coverages specified in this Contract or other specifications that may come into effect as a result of changes, deletions or additions to NYCDOE, local, state or federal laws, rules or regulations. Whereupon the Contractor causes or allows any transportation Services or other Services or operations to start or continue with any vehicle which does not meet these requirements without the permission of the Director or his or her designee(s), with any driver or attendant not properly certified, or without all required insurance coverage, such action or omission will constitute the material breach and Default of the Contractor's obligations pursuant to the Contract.
- C. In addition to all other remedies available under this Contract, whereupon the Office of Pupil Transportation discovers that a Contractor has utilized, or plans to utilize, any particular vehicle which does not conform to the requirements stated in the Contract either before or during any period of service, the Director or his or her designee(s) will have the power to suspend a Contractor's use of the affected vehicle until such time as the Contractor delivers physical and documentary proof of compliance with said requirements. The Contractor will refrain from the use of any affected vehicle in any capacity pursuant to a resulting Contract until such time as the Director approves resumed utilization. The Contractor must continue to provide all required transportation services with a replacement vehicle which conforms in all respects to all applicable requirements in this Contract.
- D. In addition to all other remedies available under this Contract, whereupon the OPT discovers that the Contractor has failed to meet the requirements either before or during any period of service, the Director or his or her designee(s) will have the power to suspend the Contractor's total performance and right to payment pursuant to this Contract. Also, the Director's or designee's power of suspension of the Contractor's total performance and right to payment pursuant to this Contract will arise whereupon the Contractor fails and/or refuses to supply to the OPT any contractually required documentation pertaining to compliance with the requirements stated above. Prior to the imposition of such a suspension, the Director or his or her designee(s) must be able to make a reasonable finding that the Contractor has used, or plans to use, in the performance of the Contract, vehicles out of compliance with said requirements of the Contract; or, the Director or his or her designee(s) must be able to make a reasonable finding that the Contractor has failed or refused to supply contractually required documentation for vehicles, certified personnel and/or insurance coverage under the Contract.
- E. A period of suspension may not exceed thirty NYCDOE School Days, **unless** the Director determines a longer period of suspension to be in the best interests of the NYCDOE. The Director or his or her designee(s) will communicate notice of a suspension in a signed writing. For purposes of transmittal of such notice, the Director or his or her designee(s) will have the power to require via telephone or email notification the Contractor's personal appearance at the Office of Pupil Transportation's or Division of Contracts and Purchasing's headquarters to personally receive the Notice of Suspension. Failure or refusal by the Contractor to heed an order to appear personally for receipt of such notice will automatically constitute constructive notice of a suspension. The Director or his or her designee(s) will then transmit the notice via electronic notification or Certified Mail, Return Receipt Requested. However, the suspension will take effect on the date of the telephone order to appear for receipt of notice.
- F. During any period of suspension pursuant to this provision, the NYCDOE and/or the City of New York will have no obligation whatsoever to pay the Contractor for any Services which the Contractor would have provided but for the suspension.

- G. Whereupon the Contractor fails and/or refuses by the end of a period of suspension to comply with the requirements of the Contract, such failure and/or refusal shall be deemed to constitute conclusive evidence of the fatal and material breach and Default of the Contract.
- H. By acceptance of an award of contract pursuant to this public offer, the Contractor hereby agrees and covenants to release, hold harmless, and indemnify the Board and the City of New York for any actions, claims, damages, and any other liabilities which arise in any form or from any source due to the reasonable exercise of this suspension power and/or any resulting termination of the Contract. The Contractor agrees and covenants further not to cause or allow any claims, actions, lawsuits, litigations, Article 78 actions, or any other proceedings to be brought against the Board and/or the City of New York as a result of the reasonable exercise of this suspension power and/or any resulting termination of the Contract.

#### 4.32 **Rules, Procedures and Regulations**

- A. The NYCDOE and/or the Director will have the power and discretion to add, delete, revise, update, reissue, or otherwise change any or all rules, procedures, and/or requirements contained in the Office of Pupil Transportation's policies and/or any relevant, subsequent NYCDOE directives at any time upon ten days prior notice to the Contractor, ***provided, however***, that any such future changes shall not be inconsistent with the material terms of this Contract ***except*** to the extent required by any applicable federal, State, and/or City laws, rules, and/or regulations (See **Paragraph 1.100 (B) & 4.20, A., supra**).
- B. **Designated Customer Liaisons**. The Contractor shall maintain on staff personnel whose primary function all throughout every Contract Year is to answer the questions of, research issues raised by, and expedite the resolution of problems identified by OPT staff, children, parents, guardians, and school staff. In any emergency situation, at least one liaison must remain on duty at each of the Contractor's sites until OPT authorizes the release of all Liaisons.
  - i. Each Contract Year, starting one calendar week before the fall opening of the school with the earliest start date among those schools to which the Contractor will be providing service and continuing through three calendar weeks after the opening date for public schools, the Contractor will have on duty (*from 6:00 a.m. until all children have been delivered safely to their afternoon/evening drop-off location*) one Customer Liaison per 50 vehicles, or part thereof, scheduled to provide service that day. The number of Customer Liaisons on duty may be reduced as vehicles complete their routes. For example, once the number of vehicles that have yet to deliver all riders safely to their afternoon/evening drop-off locations falls to fifty or fewer only one Customer Liaison must remain on duty until all riders are safely delivered.
  - ii. For the remainder of each Contract Year, the Contractor will have on duty (*from 6:00 a.m. until all children have been delivered safely to their afternoon/ evening drop-off location*) one Customer Liaison per 100 vehicles, or part thereof, scheduled for service that day. The number of Customer Liaisons on duty may be reduced as vehicles complete their routes as described immediately above.
  - iii. In any emergency situation, at least one Customer Liaison must remain on duty at each of the Contractor's sites functioning solely as specified in this Section until OPT authorizes the release of all Liaisons.
  - iv. Any Customer Liaisons hired from outside the Contractor must be on site at the Contractor's location(s) observing operations and being trained for a minimum of three Business Days before being allowed to interact with the public or NYCDOE staff.
- C. **Additional Documentation**. In addition to the documentation specified elsewhere in this Contract for inclusion in the bid, the bid must include documentation of the following except as otherwise noted.
  - i. That the bidder has sufficient storage for all of the vehicles it is proposing to use in providing the proposed Services to children as well as access to maintenance facilities with sufficient equipment

and trained personnel to satisfy all NYSDOT requirements. Letters of Intent, lease options and similar instruments will be considered as possible documentation so long as the commitment is firm and timely and the facilities adequate. Such documentation shall include a floor plan for all storage, parking and maintenance facilities. (Please note that, if the bidder is offering to fulfill more than one Class, that the documentation must demonstrate vehicle capacity to perform all work contemplated under the Contract to the satisfaction of the Director for all of the Classes being bid upon.) The facilities shall be subject to periodic inspection and approval by the NYCDOE during the Term. Any change must be submitted to and approved by the NYCDOE prior to implementation.

- ii. The bidder must provide a narrative acceptable to the NYCDOE describing the bidder's recruitment, training and retention policies and procedures for all staff.
- iii. Upon request, the bidder must provide a narrative plan detailing the implementation of the contract which must include, among other required elements, discussions of how:
  - a. Adequate financial resources will be secured;
  - b. Drug and alcohol testing will be implemented;
  - c. Field monitoring will be performed;
  - d. Staff training will be conducted and what will be included; and
  - e. Required computer operations will be conducted.

**END OF SPECIFICATION**

**Attachment 1 – Performance Bond Sample Form**

**PERFORMANCE BOND**

**KNOW ALL PEOPLE BY THESE PRESENTS:**

That we, \_\_\_\_\_

---

---

hereinafter referred to as the "Principal," and, \_\_\_\_\_

---

---

hereinafter referred to as the "Surety" ("Sureties") are held and firmly bound to THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, hereinafter referred to as the "Board" or to its successors and assigns in the penal sum of \_\_\_\_\_

---

---

(\$ \_\_\_\_\_ ) Dollars, lawful money of the United States for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,** The Principal is about to enter, or has entered, into a Contract in writing with the Board for

---

---

a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full; **NOW, THEREFORE,** the conditions of this obligation are such that if the Principal, his or its representatives or assigns, shall well and faithfully perform the said Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, including repair and or replacement of defective work and guarantees of maintenance for the periods stated in the Contract, and shall fully indemnify and save harmless the Board from all cost and damage which it may suffer by reason of the Principal's default of the Contract, and shall fully reimburse and repay the Board for all outlay and expense which the Board may incur in making good any such default and shall protect the said Board of Education of the City School District of the City of New York against, and pay any and all amounts, damages, cost and judgments which may or shall be recovered against said Board or its officers or agents or which the said Board may be called upon to pay any person or corporation by reason of any damages arising or growing out of the Principal's default of the Contract, then this obligation shall be null and void, otherwise to remain in full force and effect.

The Surety (Sureties), for value received, hereby stipulates and agrees, upon written notice from the Board that the Board has determined that the Principal is in default of the Contract, to either (1) pay the full amount of the above penal sum in complete discharge and exoneration of this bond and of all the liabilities of the Surety relating to this bond, or (2) fully perform and complete the Work to be performed under the Contract, pursuant to the terms, conditions, and covenants thereof. The Surety (Sureties) further agrees, at its option, either to tender the penal sum

or to commence and diligently perform the Work specified in the Contract, including physical site work, within five (5) business days after written notice thereof from the Board and to complete all Work within the time set forth in the Contract or such other time as agreed to between the Board and Surety in accordance with the Contract. The Surety and the Board reserve all rights and defenses each may have against the other; provided, however, that the Surety expressly agrees that its reservation of rights shall not provide a basis for non-performance of its obligation to commence and to complete all Work as provided herein.

The Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any Work to be performed or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal.

**IN WITNESS WHEREOF**, The Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this

\_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ .

(Seal)

\_\_\_\_\_  
Principal (L.S.)

By \_\_\_\_\_ .

(Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_ .

(Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_ .

(Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_ .

(Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_ .

(Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_ .

Bond Premium Rate \_\_\_\_\_ .

B3182- Transportation Services for Students with Disabilities and Their Non-Disabled Peers

Bond Premium Cost \_\_\_\_\_.

If the Contractor (Principal) is a partnership, the bond should be signed by each of the individuals who are partners.

If the Contractor (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Contract.



**ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_; that he/she is the \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and which executed the foregoing instrument; and that he signed his name to the foregoing instrument by order of the directors of said corporation as the duly authorized and binding act thereof.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

**ACKNOWLEDGMENT OF PRINCIPAL IF A PARTNERSHIP**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_; that he/she is \_\_\_\_\_ partner of \_\_\_\_\_, a limited/general partnership existing under the laws of the State of \_\_\_\_\_, the partnership described in and which executed the foregoing instrument; and that he/she signed his/her name to the foregoing instrument as the duly authorized and binding act of said partnership.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

**ACKNOWLEDGMENT OF PRINCIPAL IF AN INDIVIDUAL**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me personally came \_\_\_\_\_  
to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_  
\_\_\_\_\_, and that he/she is the individual whose name is  
subscribed to the within instrument and acknowledged to me that by his/her signature on the instrument, said  
individual executed the instrument.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

Affix Acknowledgments and justification of Sureties

**ATTACHMENT 2- Whistleblower Protection Expansion Act Poster**

**REPORTING INFORMATION TO THE  
NEW YORK CITY DEPARTMENT OF  
INVESTIGATION**

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:



**Department of Investigation (DOI) Complaint Bureau  
212-825-5959**

**or by mail or in person at:  
DEPARTMENT OF INVESTIGATION  
80 MAIDEN LANE, 17th FLOOR  
NEW YORK, NEW YORK 10038  
Attention: COMPLAINT BUREAU**

**or file a complaint on-line at:  
[www.nyc.gov/doi](http://www.nyc.gov/doi)**

*All communications are confidential.*

**THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT  
CORRUPTION**

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract over \$100,000 to DOI or to certain other government officials all of whom must forward the report to DOI.
- Any employee who has made such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.



SERIAL NO. B3182

DATE:

CONTRACT FOR FURNISHING AND DELIVERING  
**Transportation Services for Students with Disabilities and Their Non-Disabled Peers**

BETWEEN THE NEW YORK CITY DEPARTMENT OF EDUCATION  
AND

---

CONTRACTOR

---

AMOUNT OF CONTRACT \$

SPECIAL SCHOOL FUND

SEPTEMBER 1, 20 ~ JUNE 30, 20

CODE NO. \_\_\_\_\_

\$ \_\_\_\_\_

CONTRACT AWARDED \_\_\_\_\_

APPROVED AS TO FORM CERTIFICATION AS TO LEGAL AUTHORITY

---

CORPORATION COUNSEL

---