

**HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY  
STANDARD TERMS AND CONDITIONS  
(Revised December 10, 2025)**

**1.0 STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT**

The following terms and conditions shall apply to all contracts or purchase agreements made with the Higher Education Student Assistance Authority (“HESAA” or the “Authority”).

**A. ORDER OF PRECEDENCE**

The “Contract” shall consist of the following documents: (1) the HESAA Standard Terms and Conditions; (2) HESAA’s scope of work; and, (3) the Contractor’s Proposal including any attachments or documents incorporated by reference (hereinafter “Proposal”). In the event of a conflict in the terms and conditions among the documents comprising this Contract, the order of precedence, for purposes of interpretation thereof, listed from highest ranking to lowest ranking as noted above. The Authority’s terms and conditions shall prevail over any conflicts set forth in a Contractor’s Proposal.

**B. NO ARBITRATION**

Notwithstanding anything to the contrary in Contractor’s Proposal, Standard Form Agreement (“SFA”) or Scope of Work (“SOW”), HESAA does not agree to binding arbitration or not binding arbitration.

**C. NO AUTO-RENEWAL**

Notwithstanding anything to the contrary in the Contractor’s Proposal, SFA or SOW, HESAA does not agree to auto-renewal of any services, standard software maintenance, technical support or service fees.

**2.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS**

The statutes, laws, regulations or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

**2.1 BUSINESS REGISTRATION**

Pursuant to N.J.S.A. 52:32-44, HESAA is prohibited from entering into a contract with an entity unless the Contractor and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the Contractor who shall provide it to HESAA.

The Contractor shall maintain and submit to the Authority a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director of the Division of Purchase and Property (Director) during the course of contract performance. The Contractor shall submit to the Authority a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The Contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L.1966, c.30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at:

<http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

## **2.2 OWNERSHIP DISCLOSURE**

Pursuant to N.J.S.A. 52:25-24.2, in the event the Contractor is a corporation, partnership or limited liability company, the Contractor must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Proposal. A Contractor's failure to submit the completed and signed form prior to or with its Proposal will result in the Contractor being ineligible for a Contract award, unless the Division of Purchase and Property (Division) has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Proposal submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Proposal.

In the alternative, a Contractor with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

## **2.3 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN**

Pursuant to N.J.S.A. 52:32-58, the Contractor must utilize the Disclosure of Investment Activities in Iran form to certify that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities as directed on the form. A Contractor's failure to submit the completed and signed form will preclude the award of a Contract to said Contractor.

## **2.4 ANTI-DISCRIMINATION**

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts and Constructions Contracts (Exhibit A, attached) as appropriate.

The Contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5- 31 et seq., as amended and supplemented from time to time.

## **2.5 AFFIRMATIVE ACTION**

In accordance with N.J.A.C. 17:27-1.1, prior to award, the Contractor and subcontractor must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Contractors or subcontractors not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at:

[https://www.nj.gov/treasury/contract\\_compliance/](https://www.nj.gov/treasury/contract_compliance/)

## **2.6 AMERICANS WITH DISABILITIES ACT**

The Contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.

## **2.7 MACBRIDE PRINCIPLES**

The Contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

## **2.8 PAY TO PLAY PROHIBITIONS**

New Jersey law insulates the negotiation and award of State contracts from political contributions that pose a risk of improper influence, purchase of access or the appearance thereof. P.L.2005, c.51, as amended by the Elections Transparency Act, P.L.2023, c.30, codified at N.J.S.A. 19:44A-20.13 to 20.25 ("Chapter 51") and Executive Order 333 (2023).

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L.2005, c.51, rev. P.L.2023, c.30), a "fair and open process" means, at a minimum, that the contract shall be: publicly advertised in newspapers or on the Internet website maintained by the public entity in sufficient time to give notice in advance of the contract; awarded under a process that provides for public solicitation of proposals or qualifications and awarded and disclosed under criteria established in writing by the public entity prior to the solicitation of proposals or qualifications; and publicly opened and announced when awarded. A contract awarded under a process that includes public bidding or competitive contracting pursuant to State contracts law shall constitute a fair and open process. N.J.S.A. 19:44A-20.23. The agency conducting the procurement will need to determine whether the procurement meets the Election Transparency Act definition of a "fair and open process" and instruct Contractors on the applicability of Chapter 51.

### **A. For Contracts Awarded Pursuant to a Fair and Open Process**

Pursuant to P.L.2005, c.51, as amended by the Elections Transparency Act, P.L.2023, c.30, codified at N.J.S.A. 19:44A-20.13 to 20.25 ("Chapter 51"), and Executive Order No. 333 (2023), contracts awarded pursuant to a fair and open process do not require a certification or disclosure of any solicitation or contribution of money, or pledge of contribution, including in-kind contributions.

**B. For Contracts Awarded Pursuant to a Non-Fair and Open Process**

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L.2005, c.51, rev. P.L.2023, c.30), and Executive Order 333 (2023), the State shall not enter into a Contract to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any Business Entity, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a Continuing Political Committee or to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor during certain specified time periods. It shall be a breach of the terms of the contract for the Business Entity to:

- (1) Make or solicit a contribution in violation of the statute;
- (2) Knowingly conceal or misrepresent a contribution given or received;
- (3) Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- (4) Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor;
- (5) Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- (6) Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- (7) Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- (8) Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the Contract, and any extension(s) thereof, at the time any such contribution is made.

A "Continuing Political Committee" means any political organization (a) organized under section 527 of the Internal Revenue Code; and (b) consisting of any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization, which in any calendar year contributes or expects to contribute at least \$5,500 to the aid or promotion of the candidacy of an individual, or of the candidacies of individuals, for elective public office, or the passage or defeat of a public question or public questions, and which may be expected to make contributions toward such aid or promotion or passage or defeat during a subsequent election, provided that the group, corporation, partnership, association or other organization has been determined to be a Continuing Political Committee by the New Jersey Election Law Enforcement Commission under N.J.S.A.19:44A-8. A Continuing Political Committee does not include a "political party committee," a "legislative leadership committee," or an "independent expenditure committee," as defined in N.J.S.A. 19:44A-3.

Prior to awarding any Contract or agreement to any Business Entity pursuant to a non-fair and open process, the Business Entity proposed as the intended Contractor of the Contract shall submit the Two-Year Chapter 51 /Executive Order 333 Contractor Certification and Disclosure of Political Contributions for Non-Fair and Open Contracts, certifying either that no contributions to a

Continuing Political Committee or to a candidate committee or election fund of a gubernatorial candidate have been made by the Business Entity and reporting all qualifying contributions made by the Business Entity or any person or entity whose contributions are attributable to the Business Entity. The required form and instructions are available for review on the Division of Purchase and Property's website at:

<https://nj.gov/treasury/purchase/forms.shtml>.

## **2.9 POLITICAL CONTRIBUTION DISCLOSURE**

The Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L.2005, c.271, rev. P.L.2023, c.30) if in a calendar year the Contractor receives one or more contracts valued at \$50,000.00 or more. It is the Contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

## **2.10 STANDARDS PROHIBITING CONFLICTS OF INTEREST**

The following prohibitions on Contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- A. No Contractor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in HESAA or any other agency with which such Contractor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;
- B. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State Contractor shall be reported in writing forthwith by the Contractor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission;
- C. No Contractor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Contractor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, now known as the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;
- D. No Contractor shall influence, or attempt to influence or cause to be influenced, any

State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

- E. No Contractor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the Contractor or any other person; and
- F. The provisions cited above in paragraphs 2.8A through 2.8E shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with Contractors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards, now known as the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

#### **2.11 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION**

The Treasurer has established a business ethics guide to be followed by a Contractor in dealings with the State. The guide can be found at:

<https://www.nj.gov/treasury/purchase/pdf/BusinessEthicsGuide.pdf>.

#### **2.12 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE**

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L.1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

#### **2.13 COMPLIANCE - LAWS**

The Contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

#### **2.14 CHOICE OF LAW**

It is agreed and understood that any contracts and/or orders placed as a result of this Proposal shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

#### **2.15 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. If a breach or violation of this section occurs, HESAA shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

#### **2.16 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS**

The Contractor should submit the Disclosure of Investigations and Other Actions Form which provides a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a Contractor does not submit the form with the Proposal, the Contractor must comply within seven (7) business days of the HESAA's request or HESAA may deem the Proposal non-responsive.

#### **2.17 DISCLOSURE OF PROHIBITED ACTIVITIES WITH RUSSIA OR BELARUS**

Pursuant to N.J.S.A. 52:32-60.1 et seq. (P.L.2022, c.3), a person or entity seeking to enter into or renew a contract for the provision of goods or services shall certify that it is not identified on the list of persons or entities engaging in prohibited activities in Russia or Belarus. Consistent with the federal law, the list of persons and entities engaging in prohibited activities in Russia or Belarus shall consist of all persons and entities appearing on the list of Specially Designated Nationals and Blocked Persons promulgated by the Office of Foreign Assets Control (OFAC) on account of activity relating to Russia or Belarus.

### **3.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**

#### **3.1 COMPLIANCE - CODES**

The Contractor must comply with New Jersey Uniform Construction Code and the latest National Electrical Code 70®, B.O.C.A. Basic Building code, Occupational Safety and Health Administration and all applicable codes for this requirement. The Contractor shall be responsible for securing and paying all necessary permits, where applicable.

#### **3.2 PREVAILING WAGE ACT NOTICE**

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into by or on behalf of HESAA, except those contracts which are not within the contemplation of the Act. The Contractor's signature on Proposal is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by Proposal has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the Contractor's signature on the proposal is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by Proposal shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

#### **3.3 Reserved**

### **3.4 Reserved**

### **3.5 Reserved**

### **3.6 Reserved**

### **3.7 SERVICE PERFORMANCE WITHIN U.S.**

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by HESAA shall be performed within the United States, except when HESAA certifies in writing a finding that a required service cannot be provided by a Contractor or subcontractor within the United States and the certification is approved by the Executive Director of HESAA.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the Contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the Contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

### **3.8 BUY AMERICAN**

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States, whenever available, and the Contractor shall be required to so certify.

### **3.9 Reserved**

### **3.10 DIANE B. ALLEN EQUAL PAY ACT**

Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a Contractor performing “qualifying services” or “public work” to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see:

<https://nj.gov/labor/equalpay/equalpay.html>.

### **3.11 EMPLOYEE MISCLASSIFICATION**

In accordance with Governor Murphy’s Executive Order #25 and the Task Force’s July 2019 Report, employers are required to properly classify their employees. Workers are presumed to be employees and not independent Contractors, unless the employer can demonstrate all three factors of the “ABC Test” below:

- A. Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and
- B. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all places of business of the enterprise for which such service is performed; and
- C. Such individual is customarily engaged in an independently established trade, occupation, profession or business. This test has been adopted by New Jersey under

its Wage & Hour, Wage Payment and Unemployment Insurance Laws to determine whether a worker is properly classified. Under N.J.S.A. 34:1A-1.17-1.19, the Department of Labor and Workforce Development has the authority to investigate potential violations of these laws and issue penalties and stop work order to employers found to be in violation of the laws.

### **3.12 CYBERSECURITY INCIDENT REPORTING REQUIREMENT**

Pursuant to N.J.S.A. 52:17B-193.2 et seq. (P.L.2023, c.19), Contractors that have access to, or host the State's network(s), system(s), application(s), or information shall report Cybersecurity Incidents to the New Jersey Office of Homeland Security and Preparedness (NJ OHSP) at <https://www.cyber.nj.gov/report/> within 72 hours of when the Contractor reasonably believes that a Cybersecurity Incident has occurred.

Consistent with N.J.S.A. 52:17B-193.2, "Cybersecurity Incident" means a malicious or suspicious event occurring on or conducted through a computer network that jeopardizes the integrity, confidentiality, or availability of an information system or the information the system processes, stores, or transmits.

Consistent with N.J.S.A. 52:17B-193.3(f), any Cybersecurity Incident notification submitted to the NJ OHSP shall be deemed confidential, non- public, and not subject to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as the New Jersey Open Public Records Act, as amended and supplemented, and may not be discoverable in any civil or criminal action or subject to subpoena, unless the subpoena is issued by the New Jersey State Legislature and deemed necessary for the purposes of legislative oversight.

This reporting required by N.J.S.A. 52:17B-193.2 et seq. (P.L.2023, c.19) to NJ OHSP is in addition to the Contractor's responsibility to report Security Incidents as may be set forth in Contract Scope of Work or the Waivered Contracts Supplement to HESAA's Terms and Conditions. If the Waivered Contracts Supplement is not made part of the contract and a notification period is not specified in the Contract Scope of Work, the Contractor shall give notice of the Cybersecurity Incident to HESAA as soon as practicable, but no less than one business day, after the Contractor reasonably believes that a Cyber Security Incident has occurred.

## **4.0 INDEMNIFICATION AND INSURANCE**

### **4.1 INDEMNIFICATION**

- A. The Contractor's liability to HESAA and its employees in third-party suits shall be as follows:
  - 1. The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the Authority and its officers, officials, agents, servants and employees, from and against any and all third-party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith:
    - a. For or on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under this Contract or the order; and
    - b. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or

- appliance ("Intellectual Property Rights") furnished or used in the performance of this Contract.
2. In the event of a patent and copyright claim or suit involving third-party Intellectual Property Rights, the Contractor, at its option, may:
    - a. procure for HESAA the legal right to continue the use of the product;
    - b. replace or modify the product to provide a non-infringing product that is the functional equivalent; or
    - c. in the event that the Contractor cannot do "a." or "b.", refund the purchase price less a reasonable allowance for use that is agreed to by both parties.
  - B. The Contractor's indemnification and liability under subsection "A" is not limited by but is in addition to the insurance obligations. The provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in the Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude HESAA from taking any other actions available to it under any other provisions of the contract or otherwise at law or equity. The Contractor agrees that any approval by HESAA of the work performed and/or reports, plans or specifications provided by the Contractor shall not operate to limit the obligations of the Contractor assumed in the Contract.
  - C. Contractor will be relieved of its responsibilities under Subsection "A." for any claims made by a third-party that arise solely from the actions or omissions of HESAA, its officers, employees or agents.
  - D. Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, HESAA will be responsible for any cost or damage arising out of actions or inactions of the Authority, its employees or agents under Subsection A.1 which results in an unaffiliated third party claim.
  - E. The Authority will:
    1. promptly notify Contractor in writing of the claim or suit;
    2. give Contractor control of the defense and settlement of any claim that is subject to Section "A.1"; provided; however, that HESAA must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. HESAA may observe the proceedings relating to the alleged claim and confer with the Contractor at its expense.
  - F. Neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the HESAA, State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of HESAA, the State of New Jersey or any Authorized Purchaser, without having provided notice HESAA. HESAA may, at its election and expense, assume its own defense and settlement.
  - G. HESAA will not indemnify, defend, pay or reimburse for claims on behalf of the Contractor.

#### **4.2 INSURANCE**

The Contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to HESAA at the address shown below. If the Contractor's insurer cannot provide 30 days written notice, then it will become the obligation of the Contractor to provide the same. The Contractor shall provide HESAA with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The Contractor shall not begin to provide services or goods to HESAA

until evidence of the required insurance is provided. The certificates of insurance shall indicate the title of the contract in the Description of Operations box and shall list the Higher Education Student Assistance Authority, P.O. Box 545, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to HESAA at: [Procurements@hesaa.org](mailto:Procurements@hesaa.org). The insurance to be provided by the Contractor shall be as follows:

- a. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name HESAA, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;
- b. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. HESAA must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
  - \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
  - \$1,000,000 DISEASE EACH EMPLOYEE; and
  - \$1,000,000 DISEASE AGGREGATE LIMIT.

This \$1,000,000 amount may be raised when deemed necessary by HESAA;

- b. Professional Liability Insurance: The Contractor shall carry Errors and Omissions, Professional Liability Insurance, and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of not less than \$1,000,000 and in such policy forms as shall be approved by HESAA. If the Contractor has claims-made coverage and subsequently changes carriers during the term of this Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

## **5.0 TERMS GOVERNING ALL CONTRACTS**

### **5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR**

The Contractor's status shall be that of an independent Contractor and not as an employee of HESAA.

### **5.2 FORCE MAJEURE**

Neither party will be liable to the other for any delay or inability to perform its obligations if such delay or inability arises from any act of God, fire, natural disaster, act of war (declared or undeclared), act of terrorism (domestic or international), riot, civil disturbance, pandemic or other public health crisis (arising during the term of the contract). In the event of such a delay or inability to perform, the time for performance will be extended by an amount reasonable under the specific circumstances and mutually agreed-upon date sufficient to allow Contractor to perform the work delayed by the force majeure.

### **5.3 CONTRACT TERM AND EXTENSION OPTION**

If, in the opinion of HESAA, it is in the best interest of HESAA to extend a contract, the Contractor shall be so notified of HESAA's Intent at least 30 days prior to the expiration date of the existing contract. The Contractor shall have 15 calendar days to respond to HESAA's request to extend the term and period of performance of the contract. If the Contractor agrees to the extension, all terms and conditions of the original contract shall apply unless more favorable terms for HESAA have been negotiated.

### **5.4 HESAA's OPTION TO REDUCE SCOPE OF WORK**

HESAA has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, HESAA shall provide to the Contractor advance written notice of the change in scope of work and what HESAA believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the Contractor does not agree with HESAA's proposed adjusted contract price, the Contractor shall submit to HESAA any additional information that the Contractor believes impacts the adjusted contract price with a request that HESAA reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, HESAA shall make a prompt decision taking all such information into account, and shall notify the Contractor of the final adjusted contract price; and
- B. If the Contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the Contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the Contractor shall submit to HESAA an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information HESAA may request. HESAA shall make a prompt decision taking all such information into account, and shall notify the Contractor of the compensation to be paid for such work effort. Any changes or modifications to the terms of this Contract shall be valid only when they have been reduced to writing and signed by the Contractor and HESAA.

### **5.5 CHANGE IN LAW**

If, after award, a change in applicable law or regulation occurs which affects the Contract, the parties may amend the Contract, whether including new work required by the change in law or to eliminate work no longer required by the change in law along with a commensurate price change. The parties shall negotiate the terms of the change in good faith, however if agreement is not possible after reasonable efforts, HESAA shall make a prompt decision taking all relevant information into account, and shall notify the Contractor of the final adjusted scope of work and contract price.

## **5.6 SUSPENSION OF WORK**

The Authority may, for valid reason, issue a stop order directing the Contractor to suspend work under the contract for a specific time. The Contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Contractor shall resume work upon the date specified in the stop order, or upon such other date as HESAA may thereafter direct in writing. The period of suspension shall be deemed added to the Contractor's approved schedule of performance.

## **5.7 TERMINATION OF CONTRACT**

### **A. For Convenience:**

Notwithstanding any provision or language in this contract to the contrary, the Authority may terminate this contract at any time, in whole or in part, for the convenience of the Authority, upon no less than 30 days written notice to the Contractor;

### **B. For Cause:**

1. Where a Contractor fails to perform or comply with a contract or a portion thereof, the Authority may terminate the contract, in whole or in part, upon ten (10) days' notice to the Contractor with an opportunity to respond; and
2. Where in the reasonable opinion of the Authority, a Contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, and there has been a failure on the part of the Contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Authority may terminate the contract, in whole or in part, upon ten (10) days' notice to the Contractor with an opportunity to respond.

### **C. In cases of emergency the Authority may shorten the time periods of notification and may dispense with an opportunity to respond; and**

### **D. In the event of termination under this section, the Contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.**

## **5.8 SUBCONTRACTING**

The Contractor may not subcontract other than as identified in the Contractor's proposal without the prior written consent of HESAA. Such consent, if granted in part, shall not relieve the Contractor of any of his/her responsibilities under the contract, nor shall it create a privity of contract between the Authority and any subcontractor. If the Contractor uses a subcontractor to fulfill any of its obligations, the Contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws. Nothing contained in any of the contract documents shall be construed as creating any contractual relationship between any subcontractor and HESAA.

## **5.9 RESERVED**

## **5.10 MERGERS, ACQUISITIONS AND ASSIGNMENTS**

If, during the term of this contract, the Contractor shall merge with or be acquired by another firm, the Contractor shall give notice to the Authority as soon as practicable and in no event longer than 30 days after said merger or acquisition. The Contractor shall provide such documents as may be

requested by the Authority, which may include but need not be limited to the following: corporate resolutions prepared by the awarded Contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the Contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Authority must be so notified. All responsible parties of the dissolved business entity must submit to the Authority in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Authority. The Contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Authority.

#### **5.11 PERFORMANCE GUARANTEE OF CONTRACTOR**

The Contractor hereby certifies that, if applicable:

- A. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;
- B. All equipment supplied to the Authority and operated by electrical current is UL listed where applicable;
- C. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the Authority. The Contractor shall render prompt service without charge, regardless of geographic location;
- D. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
- E. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
- F. During the warranty period the Contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
- G. All services rendered to the Authority shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the Authority is rendered.

#### **5.12 DELIVERY REQUIREMENTS**

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
- B. The Contractor shall be responsible for the delivery of material in first class condition to the Authority under this contract and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the contract; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, HESAA shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the Contractor. Unless otherwise noted elsewhere in the scope of work, all delivery times

are 30 calendar days after receipt of order (ARO) and prices for items in proposals shall be submitted Freight On Board (F.O.B.) Destination (30 calendar days ARO/F.O.B.).

- E. The Contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the Authority or designated purchaser. Thirty-calendar days ARO/F.O.B. does not cover "spotting" but does include delivery to HESAA at its offices in Quakerbridge Plaza, Hamilton New Jersey unless otherwise specified. No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at the Contractor's convenience when a single shipment is ordered. The weights and measures of HESAA shall govern.
- F. Collect On Delivery (C.O.D) terms will not be accepted.

### **5.13 APPLICABLE LAW AND JURISDICTION**

This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

### **5.14 CONTRACT AMENDMENT**

Except as provided herein, the contract may only be amended by written agreement of HESAA and the Contractor.

### **5.15 MAINTENANCE OF RECORDS AND AUDITS**

- A. Pursuant to N.J.A.C. 19:70-1.6(b), the contract partner as that term is defined pursuant to N.J.A.C. 19:70-1.2, shall maintain all documentation related to products, transactions, or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.
- B. The State Comptroller may request, receive, review, and audit copies of any and all records and documents related to a State contract at any time. The Contractor shall make a good faith effort to cooperate with the request and upon receipt of the request, the Contractor shall promptly provide the requested records and documents free of charge in the time, place, and manner specified. Failure of the Contractor to comply with the request or the audit may be used by the Authority to establish contract non-compliance, to take any action, or seek any remedy available under the contract, at law, or in equity.

### **5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)**

The Contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the Contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to HESAA all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by HESAA pursuant to this contract.

In connection with this assignment, the following are the express obligations of the Contractor:

- A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
- B. It shall advise the Attorney General of New Jersey:
  - 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and

2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the Contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
- D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the Contractor, it shall promptly pay over to HESAA the allotted share thereof, if any, assigned to HESAA hereunder.

#### **5.17 NEWS RELEASES**

The Contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this contract without the prior written consent of HESAA.

#### **5.18 ADVERTISING**

The Contractor shall not use the HESAA or the State's name, seal, or logos as a part of any commercial advertising without first obtaining the prior written consent of HESAA and the New Jersey Secretary of State respectively.

#### **5.19 ORGAN DONATION**

As required by N.J.S.A. 52:32-33.1, the State encourages the Contractor to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.

#### **5.20 LICENSES AND PERMITS**

The Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this Contract. The Contractor shall supply HESAA with evidence of all such licenses, permits and authorizations required. All costs associated with any such licenses, permits, and authorizations are the responsibility of the Contractor.

#### **5.21 CLAIMS AND REMEDIES**

- A. All claims asserted against HESAA by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.
- B. Nothing in this Contract shall be construed to be a waiver by HESAA of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by HESAA.
- C. In the event that the Contractor fails to comply with any material Contract requirements, HESAA may take steps to terminate this Contract in accordance with the SSTC, authorize the delivery of Contract items by any available means, with the difference between the price paid and the defaulting Contractor's price either being deducted from any monies due the defaulting Contractor or being an obligation owed the Authority by the defaulting Contractor, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

#### **5.22 ACCESSIBILITY COMPLIANCE**

The Contractor acknowledges that the Authority may be required to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. The Contractor agrees that any information that it provides to HESAA in the form of a Voluntary Product Accessibility Template (VPAT) about the accessibility of the Software is accurate to a commercially reasonable standard. In the event that the Authority relied on any of Contractor's VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794, the Contractor agrees to provide the Authority, upon request, with technical information to support such VPAT. In addition, Contractor shall defend any claims against HESAA that the Software does not meet the accessibility standards set forth in the VPAT provided by Contractor in order to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794 and will indemnify the Authority with regard to any claim made against HESAA with regard to any judgment or settlement resulting from those claims to the extent the Contractor's Software provided under this Contract was not accessible in the same manner as or to the degree set forth in the Contractor's statements or information about accessibility as set forth in the then-current version of an applicable VPAT.

### **5.23 CONFIDENTIALITY**

- A. The obligations of HESAA under this provision are subject to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;
- B. By virtue of this Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this Contract. Contractor's Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure Contractor Intellectual Property ("Contractor Confidential Information"). Notwithstanding the previous sentence, the terms and pricing of this Contract are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;
- C. HESAA's Confidential Information shall consist of all information or data contained in documents supplied by HESAA, any information or data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not);
- D. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;
- E. HESAA and the Contractor agree to hold each other's Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;
- F. In the event that HESAA receives a request for Contractor Confidential Information related to this Contract pursuant to a court order, subpoena, or other operation of law, HESAA agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and HESAA's intended response to such order of law. Contractor shall take any action it deems appropriate to protect its documents and/or information;

- G. In addition, in the event Contractor receives a request for HESAA Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide HESAA with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such order of law. HESAA shall take any action it deems appropriate to protect its documents and/or information; and
- H. Notwithstanding the requirements of nondisclosure described in this Section, either party may release the other party's Confidential Information:
  - (i) if directed to do so by a court or arbitrator of competent jurisdiction; or
  - (ii) pursuant to a lawfully issued subpoena or other lawful document request:
    - (a) in the case of the Authority, if HESAA determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in Section 5.23(F), or if Contractor is unsuccessful in defending its rights as described in Section 5.23(F); or
    - (b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and HESAA does not exercise its rights described in Section 5.23(G), or if HESAA is unsuccessful in defending its rights as described in Section 5.23(G).

#### **5.24 SUSPENSION AND DEBARMENT NOTICE**

The Contractor is advised that pursuant to Executive Order 34 (1976), the Department of the Treasury maintains a list of all individuals or entities that have been debarred or suspended from conducting business within the State of New Jersey. The Contractor understands that it may be excluded from any contract award consideration due to debarment, suspension, or disqualification and such exclusion shall apply universally across all State contracting and subcontracting activities under the jurisdiction of the department or agency imposing the exclusion.

#### **5.25 WORKPLACE ACCOUNTABILITY IN LABOR LIST**

The Contractor is further advised that pursuant to N.J.S.A. 34:1A-1.16 et seq., if any person, as defined by the Act, is found to be in violation of any State wage, benefit, or tax laws and against whom a final order has been issued by the commissioner or other appropriate agency officer for any violation of State wage, benefit and tax laws, such person shall be prohibited from contracting with any public body until the liability for violations of State wage, benefit, and tax laws have been resolved to the satisfaction of the Commissioner of the Department of Labor and Workforce Development or the Commissioner's duly authorized representative.

### **6.0 TERMS RELATING TO PRICE AND PAYMENT**

#### **6.1 PRICE FLUCTUATION DURING CONTRACT**

Unless otherwise agreed to in writing by the Authority, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract. In the event of a manufacturer's or Contractor's price decrease during the contract period, the Authority shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Authority must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1. In an exceptional situation the Authority may consider a price adjustment. Requests for price adjustments must include justification and documentation.

#### **6.2 TAX CHARGES**

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes.

### **6.3 PAYMENT TO CONTRACTORS**

- A. The Authority is authorized to order and the Contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the Authority reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Authority as a basis to terminate the contract and/or not award the Contractor a subsequent contract. The Authority may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the Contractor shall reimburse the Authority the full purchase price;
- B. The Contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the Bill of Lading, and/or other documentation to confirm shipment and receipt of contracted goods must be received by the using agency prior to payment. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work and must be in strict accordance with the firm, fixed prices submitted for each task or subtask. When applicable, invoices should reference the appropriate task or subtask or price line number from the Contractor's proposal. All invoices must be approved by the Authority before payment will be authorized;
- C. In all time and materials contracts, the Authority shall monitor and approve the hours of work and the work accomplished by Contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at:  
[www.nj.gov/treasury/purchase/forms/Contractor\\_Timesheet.xls](http://www.nj.gov/treasury/purchase/forms/Contractor_Timesheet.xls); and
- D. The Contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Office of Diversity and Inclusion.
- E. The Contractor shall have sole responsibility for all payments due any subcontractor.
- F. If the Contractor offers a cash discount based on expedited payment by HESAA, the Authority will make efforts to take advantage of discounts. Should the Contractor choose to offer cash discounts the following shall apply:
  - 1. Discount periods shall be calculated starting from the next business day after HESAA has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is the latest; and
  - 2. The date on the check issued by the Authority in payment of that invoice shall be deemed the date of the Authority's response to that invoice.

### **6.4 OPTIONAL PAYMENT METHOD: P-CARD**

HESAA offers Contractors the opportunity to be paid through the MasterCard procurement card (P-card). A Contractor's acceptance and HESAA's use of the P-card are optional. P-card transactions do not require the submission of a Contractor invoice; purchasing transactions using the P-card will usually result in payment to a Contractor in three (3) days. A Contractor should take note that there

will be a transaction-processing fee for each P-card transaction. To participate, a Contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

#### **6.5 NEW JERSEY PROMPT PAYMENT ACT**

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires State agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by HESAA prior to processing any payments for goods and services accepted HESAA. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice. Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

#### **6.6 AVAILABILITY OF FUNDS**

HESAA obligation to make payment under this contract is contingent upon the availability of appropriated funds.