AMENDMENT # 1 TO ORIGINAL CONTRACT # PB20240 (NEW CONTRACT # PB024AA)

THIS AMENDMENT # 1 (the "Amendment") is made to Original Contract # PB20240 (New Contract # PB024AA) (the "Contract") by and between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") with its principal place of business at 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 and InnoSoul, Inc. ("Contractor") with its principal place of business at 24 Fairfield Avenue, Albany, NY 12205. OGS and Contractor are collectively referred to as the "Parties."

W I T N E S S E T H:

WHEREAS, OGS and Contractor are Parties to Original Contract number PB20240 (New Contract number PB024AA) through which Contractor is authorized to provide for the acquisition of Project Based Information Technology Consulting Services to Authorized Users; and

WHEREAS, the Parties wish to amend the Contract to revise the Contractor's Contract number to facilitate conformity with new Statewide Financial System functionality; and

WHEREAS, the Parties wish to amend the Contract to delete Section 4.10.3 Subcontracting Between Lots as set forth below; and

WHEREAS, the Parties wish to amend the Contract to revise Section 4.16 Required Insurance pursuant to the terms set forth below.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties do hereby agree as follows:

1. Contract number PB20240 is hereby changed to PB024AA.

2. Section 4.10.3 Subcontracting Between Lots is hereby deleted in its entirety.

3. Section 4.16 Required Insurance is hereby deleted and replaced with the following Appendix H:

During the term of this Contract, the Contractor shall maintain in force, at its sole cost and expense, policies of insurance as required by this section. All insurance required by this section shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this section should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII", the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

The Contractor shall provide proof of compliance with the requirements set forth in this section for Contract renewal and upon request.

The Contractor shall deliver to OGS evidence of the insurance required by this Contract in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OGS does not, and shall not be construed to, relieve the Contractor of any obligations, responsibilities or liabilities under this Contract.

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

A. General Conditions Applicable to Insurance. All policies of insurance required by this section shall comply with the following requirements:

***1. Coverage Types and Policy Limits*.** The types of coverage and policy limits required from the Contractor are specified in Paragraph B *Insurance Requirements* below.

2. Policy Forms. Except as otherwise specifically provided herein, or agreed to in the Contract, all policies of insurance required by this section shall be written on an occurrence basis.

3. Certificates of Insurance/Notices. The Contractor shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below (e.g., an ACORD certificate), after renewal or upon request. Certificates shall reference the award number and shall name The New York State Office of General Services, Procurement Services, 38th Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Contract;
- Refer to this Contract by award number;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees are included as an additional insured on endorsement CG 20 10 11 85 (or endorsements that provide equivalent coverage, such as the combination of CG 20 10 04 13 (covering ongoing operations) and CG 20 37 04 13 (covering completed operations)), and General liability coverage is provided on the current edition of Commercial General Liability Coverage Form CG 00 01 (or a form that provides equivalent coverage). Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractors are requested to refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. Primary Coverage. All insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.

5. Breach for Lack of Proof of Coverage. The failure to comply with the requirements of this section at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.

6. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above $100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

7. Subcontractors. Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that Subcontractor.

8. Waiver of Subrogation. For the Commercial General Liability Insurance and Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

9. Additional Insured. For the Commercial General Liability Insurance and Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insureds: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS after renewal and/or upon request. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that Contractor would have been required to pursuant to this section had Contractor obtained such insurance policies.

As clarification, "The People of the State of New York" means the State of New York and its subsidiary governmental entities. This is the name in which the State, as a governmental entity, enters into contracts, takes title to property, and initiates legal actions. Using the term "People" does not mean that the insurer is insuring all residents of New York State; rather, it means that the State government is being insured.

10. Excess/Umbrella Liability Policies. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided after renewal and/or upon request.

11. Notice of Cancellation or Non-Renewal. Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Contract.

12. Policy Renewal/Expiration Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Contract shall be delivered to OGS. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.

13. Deadlines for Providing Insurance Documents after Renewal or Upon Request. As set forth herein, certain insurance documents must be provided to the OGS Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For other requested documentation evidencing coverage: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

B. Insurance Requirements

Throughout the term of this Contract, the Contractor shall obtain and maintain in full force and effect, at its own expense, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater:

Lot 1 and Lot 2		
Insurance Type		**Proof of Coverage is Due**
Commercial General Liability	Not less than $2,000,000 each occurrence	Updated in accordance with Contract
General Aggregate	$2,000,000	
Products – Completed Operations Aggregate	$2,000,000	
Personal and Advertising Injury	$1,000,000	
Business Automobile Liability Insurance	Not less than $2,000,000 each occurrence	
Workers' Compensation		
Disability Benefits		
Technology Errors and Omissions	Not less than $1,000,000 each claim Not less than $2,000,000 in aggregate	At the time of the first transaction with an Authorized User and updated in accordance with Contract
Crime Insurance	Not less than $50,000	

Lot 3		
Insurance Type		**Proof of Coverage is Due**
Commercial General Liability	Not less than $5,000,000 each occurrence	Updated in accordance with Contract
General Aggregate	$2,000,000	
Products – Completed Operations Aggregate	$2,000,000	
Personal and Advertising Injury	$1,000,000	
Business Automobile Liability Insurance	Not less than $5,000,000 each occurrence	
Workers' Compensation		
Disability Benefits		
Technology Errors and Omissions	Not less than $5,000,000 each claim, Not less than $10,000,000 in aggregate	

Lot 3		
Insurance Type		**Proof of Coverage is Due**
Crime Insurance	Not less than $500,000	

1. Commercial General Liability Insurance: Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this Contract;
- Cross liability for additional insureds;
- Products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by the Contract;
- Explosion, collapse and underground hazards; and
- Contractor means and methods.

2. Business Automobile Liability Insurance: Such insurance shall cover liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of the Contract.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor must: (i) obtain Business Automobile Liability Insurance as required by this Contract, except that such insurance may be limited to liability

arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of the Contract.

3. Technology Errors and Omissions:

The Contractor shall maintain during the term of the Contract Technology Errors and Omissions Insurance for claims for damages arising from computer related services including, but not limited to, the following: consulting, data processing, programming, system integration, software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold. If the policy is written on a claims made basis, Contractor must provide to OGS proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

4. Crime Insurance:

Contractor shall maintain during the term of the Contract Crime Insurance on a "loss sustained form" or "loss discovered form," and coverage must include the following:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Contractor's insurer as a result of this Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Contractor as a result of this Contract.
- The policy shall include coverage for third party fidelity and name "The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an Authorized User and their officers, agents, and employees" as "Loss Payees" for all third party coverage secured. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.
- The policy shall include coverage for computer crime/fraud.

5. Workers' Compensation Insurance and Disability Benefits Requirements

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of any contract renewal.** Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to OGS at the time of policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. **An ACORD form is not**

acceptable proof of New York State workers' compensation or disability benefits insurance coverage.

Proof of Compliance with Workers' Compensation Coverage Requirements:

a) Form CE-200*, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
b) Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
c) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
d) Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

a) Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
b) Form DB-120.1, Certificate of Disability Benefits Insurance, sent to OGS by the Contractor's insurance carrier upon request; or
c) Form DB-155, Certificate of Disability Benefits Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, http://www.wcb.ny.gov. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

4. The Contract, as amended, constitutes the entire agreement of the Parties with respect to the subject matter thereof, and any further amendment must also be in writing executed by authorized representatives of the Parties. Except as set forth in this Amendment, all terms and conditions of the Contract shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment # 1 as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Amendment being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications January 2015 22772 Project Based Information Technology Consulting (Statewide)), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

INNOSOUL, INC.

By: _____

Name: _____

Title: _____

Federal I.D. No.: _____

Vendor I.D. No.: _____

Date: _____

THE PEOPLE OF THE STATE OF NEW YORK

By: _____

Name: _____

Title: _____

Date: _____

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Vendor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

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

On the _____day of _____ in the year 20_____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he maintains an office at _____, and further that:

[Check One]

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

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

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

☐ **If a limited liability company):** __**he** is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

_____

Notary Public
Registration No.

State of New York Executive Department
Office of General Services Procurement Services
Corning Tower - 38th Floor
Empire State Plaza
Albany, NY 12242

THIS CONTRACT (hereinafter "Contract" or "Centralized Contract") for the acquisition of Project Based Information Technology Consulting Services is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163, and INNOSOUL, INC. (hereinafter "Contractor"), with its principal place of business at 24 Fairfield Ave Albany NY 12205. The foregoing are collectively referred to as the "Parties."

Whereas, OGS provided notification of availability of a non-competitive periodic recruitment solicitation ("Solicitation") for vendors that provide Project Based Information Technology Consulting Services by placing a notice in the September 30, 2014 edition of the New York State Contract Reporter;

Whereas, the Solicitation set forth the minimum administrative and technical requirements that a vendor must meet to be eligible for consideration to receive an award;

Whereas the Solicitation was structured with three separate lots, dependent upon the characteristics and experience of the vendor and the value of the project;

Whereas, the centralized contract sets forth a two-step process for each transaction. The first step is the establishment of the centralized contract, through a non-competitive periodic recruitment process. The second step is competitive, based on the development of a specific project by an Authorized User in accordance with the contractual terms. Information Technology project needs will be identified by an Authorized User, and documented in a Statement of Work (SOW). The project will then be distributed to Contractors based on specific Lot(s), via the Mini-Bid process. An award will be based on best-value. The Mini-Bid award will result in an Authorized User Agreement for Project Based Information Technology Consulting Services. Each Authorized User Agreement for Project Based Information Technology Consulting Services will be governed first by the terms and conditions specified in the OGS centralized contract and second by terms and conditions added to the Authorized User Mini-Bid;

Whereas, Contractor submitted documentation which met the Solicitation requirements and the requirements set forth in one or more of the specific lots of the periodic recruitment;

Whereas, the State evaluated Contractor's submission and determined that the Contractor met the minimum administrative and technical requirements;

Whereas, in accordance with State Finance Law Article 11, the State determined that the Contractor's not to exceed pricing is reasonable;

Whereas, Contractor agrees to the terms and conditions set forth in this Centralized Contract and the Contractor is willing to provide such services as set forth herein to Authorized Users; and

Whereas the State issued a tentative award notice to Contractor for Lot(s) set forth in Appendix G, Contractor and OGS Information.

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each party hereto from the other, the Parties hereby agree as follows:

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1 Introduction

1.1 Overview and Purpose of This Contract

This Contract is executed by the New York State Office of General Services (OGS), a New York State (NYS) agency authorized by law to issue Centralized Contracts for use by NYS Agencies and other Authorized Users.

This Contract establishes Centralized Contracts with Vendors to provide Project Based Information Technology Consulting Services to NYS Authorized Users on a statewide basis.

The Centralized Contract establishes a set of standardized terms and conditions, guidelines, processes, and templates for the development, distribution, and award of deliverable-based and fixed-price information technology projects, at the transactional level, through a Mini-Bid process. The Contractor agrees to the terms and conditions set forth in this Centralized Contract and the Contractor is willing to provide such services as set forth herein to Authorized Users

The Centralized Contract sets forth a two-step process for each transaction. The first step is the establishment of the centralized contract, through a non-competitive periodic recruitment process. The second step will be competitive, based on the development of a specific project by an Authorized User in accordance with the contractual terms. Information Technology Project needs will be identified by an Authorized User, and documented in a Statement of Work (SOW). The project will then be distributed to Contractors based on specific Lot(s), via the Mini-Bid process. An award shall be based on best-value.

The Mini-Bid award will result in an Authorized User Agreement for Project Based Information Technology Consulting Services. Each Authorized User Agreement for Project Based Information Technology Consulting Services will be governed first by the terms and conditions specified in the OGS Centralized Contract and second by terms and conditions added to the Authorized User Mini-Bid. See Appendix B, section 28 regarding modification of Contract terms.

Services available under the resultant Contracts will be separated into three (3) distinct Lots. The lot(s) Contractor was awarded are identified in Appendix G, Contractor and OGS Information.

1.2 In-Scope Projects

Project Based Information Technology (IT) Consulting Services required by an Authorized User must be obtained via a Mini-Bid process under this Contract. The Authorized User shall issue a Mini-Bid with a SOW for the required Project Based IT Consulting Services. A Mini-Bid may include, but will not be limited to, projects requiring: analysis, data classification, design, development, testing, quality assurance, security and associated customized training for IT based applications.

Additional examples of in-scope projects include, but are not limited to:

- Technical architecture advisory services;
- Business analysis for project development;
- Proprietary software application development/customization, programming and integration;
- Data information management (including data migration, data conversion, data manipulation, data integration);

- Project management project support services - including, but not limited to; project management, project quality assurance and control, and Independent Verification & Validation (IV&V);
- Disaster recovery/business continuity and testing;
- Quality assurance;
- Continuity of operations planning (COOP);
- Data categorization; and
- Open-source software implementation.

1.3 Out-of-Scope Work

There are service offerings expressly excluded from the scope of these contracts. In many instances, such services and/or offerings are (or will be) covered by another OGS Centralized Contract. Examples include:

- Staff augmentation services;
- Time and material services;
- Web hosting;
- Automated network monitoring or any other service provided principally through an automated process;
- Hardware maintenance and support;
- Software maintenance and support;
- Ongoing maintenance and support;
- Services priced on a per asset basis;
- Services priced on a contingency basis;
- Equipment maintenance;
- Prepackaged training courses;
- E-Learning;
- Managed services;
- Acquisition of equipment (hardware)
- Acquisition of software, either Commercial off-the-shelf (COTS) software or pre-existing software;
- Acquisition of non-consulting services, such as network provisioning, voice services (local, long-distance), or video bridging;
- Cloud based or “As a Service” offerings, including but not limited to SaaS, IaaS, PaaS, and XaaS;
- Any offering that is a combination of equipment, hardware, software, cloud or “as a service offerings”; and
- Consulting or other installation work which is considered Public Works is excluded from purchase under the scope of this Contract. Historically, the New York State Bureau of Public Works has maintained that installation, maintenance and repair of equipment attached to any wall, ceiling or floor or affixed by hard wiring or plumbing is public work. In contrast, installation of a piece of equipment which is portable or a “plug-in” free-standing unit would not be considered public work. Thus, this Contract does not authorize installation where the equipment becomes a permanent part of the building structure, or is otherwise incorporated into the fabric of the building (i.e. installation on a wall, ceiling or floor in a fixed location, or affixed by hard-wiring or plumbing). See Appendix A, Clause 6, Wage and Hours Provisions. For questions about whether a proposed work constitutes public work, please contact the New York State Department of Labor’s Bureau of Public Work District Office in a specific area. A listing of district

offices and contact information is available at http://www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm.

1.4 Definitions

Additional definitions applicable to this Contract can be found in Appendix B.

Term	Definition
Authorized User Agreement	The document resulting from the transactional Mini-Bid process, which sets forth the specifics regarding the services to be provided by the Contractor to the Authorized User, under the Project Based Information Technology Consulting Contract.
Best Value	The basis for awarding all service and technology contracts to the offerer that optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall be, wherever possible, quantifiable (State Finance Law §163 (1) (j)).
Billing Contact	The name, phone number, e-mail, and billing address a customer uses on a bill for contact information.
Consultant Disclosure Legislation	Chapter 10 of the Laws of 2006 amends State Finance Law § 8 and § 163 by requiring: that the Office of the State Comptroller (OSC) include in the Consulting Services Report it compiles annually on contracts issued by state agencies for consulting services during the previous fiscal year. http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm
Deliverables	All services or products created during the performance or provision of Services hereunder or identified as a "Deliverable" in an applicable Mini-Bid. A Deliverable is a building block of an overall project. For the purposes of this Solicitation and the resulting Contract, a deliverable shall not be set forth as a status report, meeting attendance, a block of staff hours, or an invoice submission.
Fixed Price Authorized User Agreement	An agreement pursuant to the Centralized Contract that provides for a fix cost for a defined project.
Government Contract	A contract let by a Federal, State, or Local governmental body within the continental United States.
Government Entity	An entity at the federal, state, county, city or provincial level.
Joint Venture	A contractual agreement joining together two or more business enterprises for the purpose of performing on a State Contract.
Knowledge Transfer	The transfer of knowledge from the Contractor to the Authorized User. Knowledge Transfer can include full written system documentation including all system changes, training classes, manuals and other items. Depending on the scope of the transaction, there may or may not be a deliverable cost associated. All materials will be the property of the Authorized User unless specifically negotiated during the award process.
May	Denotes the permissive in a contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should".
Mini-Bid	A type of Bid Document used by the Authorized User to obtain Services under the Project Based IT Consulting Services Contracts.
Not To Exceed Rates (NTE)	Refers to the New York State contract price set forth in Appendix D. Amounts proposed by the Contractor at the transactional level shall not exceed the hourly rates provided under this Contract (which will be defined values in US Dollars).
Prime Contractor	For the purposes of Technical qualifications, the business entity with whom a government entity directly has a contract.
Project Based IT Consulting Services	An OGS Centralized Contract which will provide a set of standardized terms and conditions, guidelines, processes, and templates for the development, distribution and award of specific deliverable-based and fixed-price Information Technology projects.
Project Plan	A formal, approved document used to guide both project execution and project control. The primary uses of the project plan are to document planning assumptions and decisions, facilitate communication among stakeholders, and document approved scope, cost, and schedule baselines.
Retainage	A portion of the Authorized User and Contractor fixed-price agreement amount that is held back by the Authorized User until the deliverable or project is satisfactorily finished.

Term	Definition
Should	Denotes the permissive in a contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May”.
Solicitation	A non-competitive periodic recruitment solicitation (“Solicitation”) for vendors that provide Project Based Information Technology Consulting Services.
Vendor	An enterprise that sells goods or services.
Vendor Submission	The complete response to this Solicitation submitted by a Vendor to provide, as applicable , the Product and services described in the Solicitation

2 Contract Information

2.1 OGS Contract Documents

This Centralized Contract is composed of the following documents:

- The Contract (that portion preceding the signatures)
- Appendix A - Standard Clauses for New York State Contracts (January 2014)
- Appendix B - General Specifications January 2015 22772 Project Based Information Technology Consulting (Statewide)
- Appendix C - Contract Modification Procedure
- Appendix D – Pricing Schedule
- Appendix E – Report of Contract Purchases
- Appendix F – Project Based Information Technology Consulting Services Processes and Forms
    - Attachment 1- Mini-Bid Template
    - Attachment 2- How to Use This Contract
    - Attachment 3- Enhancement Request Template
    - Attachment 4- No Cost Change Request Template
    - Attachment 5- Mini-Bid Participation Interest Template
- Appendix G – Contractor and OGS Information

2.2 Conflict of Terms

In the case of any conflict among these Contract documents, conflicts shall be resolved in the following order of precedence:

A. Appendix A, Standard Clauses for New York State Contracts;
B. The Contract;
C. Appendix B, General Specifications January 2015 22772 Project Based Information Technology Consulting (Statewide);
D. Appendix D – Pricing Schedule;
E. Appendix E – Report of Contract Purchases;
F. Appendix F – Project Based Information Technology Consulting Services Processes and Forms;
    a. Attachment 1- Mini-Bid Template
    b. Attachment 2- How to Use This Contract
    c. Attachment 3- Enhancement Request Template
    d. Attachment 4- No Cost Change Request Template
    e. Attachment 5- Mini-Bid Participation Interest Template
G. Appendix G – Contractor and OGS Information; and
H. Authorized User Agreements or purchases made between an Authorized User and the Contractor.

2.3 OGS Centralized Contract Start Date, Term and Extension

The Parties agree that this Contract term starts on September 9, 2015 through September 8, 2018.

A Contractor is eligible to participate in the Mini-bid process upon the OGS Commissioner's mailing or electronic communication to the address on the Bid/Contract of a fully executed Contract.

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent Periodic Recruitment. This OGS Centralized Contract shall be in effect for an initial term of up to three (3) years with two (2) optional (3) three year extensions. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a contract extension processed under this section.

2.4 OGS Contacts

The individual(s) at OGS responsible for contract administration are set forth in Appendix G, Contractor and OGS Information.

2.5 Summary of Policy and Prohibitions on Procurement Lobbying

Pursuant to State Finance Law §139-j and §139-k, this Contract includes and imposes certain restrictions on communications between OGS and a Vendor during the procurement process. A Vendor is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified in Appendix G, Contractor and OGS Information, or as otherwise indicated by OGS. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Vendor pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period; the Vendor is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

2.6 New York State Procurement Rights

New York State reserves the following rights. These reserved rights may also be applicable to an Authorized User's Mini-Bid. The Authorized User may reserve additional rights in the Mini-Bid.

A. Reject any or all Vendor Submissions received in response to the Solicitation,
B. Withdraw the Solicitation at any time, in OGS's sole discretion,
C. Make an award under the Solicitation in whole or in part,
D. Disqualify any Vendor whose conduct and/or Vendor Submission fails to conform to the requirements of the Solicitation,
E. Seek clarifications and revisions of Vendor Submission(s),
F. Prior to the Submission opening, amend the Solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available,
G. Prior to the Submission opening, direct Vendor to submit Vendor Submission modifications addressing subsequent Solicitation amendments,
H. Change any of the schedule dates with notification through the Bidder Notification System and/or NYS Contract Reporter,

I. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Vendors,
J. Waive any requirements that are not material,
K. The Authorized User may utilize any and all ideas submitted in the Mini-Bids received,
L. Adopt all or any part of a Vendor's Submission in selecting the optimum solution,
M. Negotiate with the Vendor(s) responding to this Solicitation within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Vendors' Submissions,
N. All Vendor Submissions and accompanying documentation shall become the property of the State of New York and shall not be returned,
O. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Vendor's Submission and/or to determine a Vendor's compliance with the requirements of the Solicitation, and
P. OGS reserves the right to unilaterally make non-material revisions, changes and/or updates to the How to Use this Contract document, Mini-Bid template, Enhancement Request template, or any other templates and/or Attachments to the OGS Centralized Contract without processing a formal amendment and/or modification.

2.7 State Ethics Law Provision

The person signing the Contract for and on behalf of the Contractor, certifies that:

A. He/she is familiar with provisions applicable to post-employment restrictions affecting former State employees, available at http://public.leginfo.state.ny.us/menuf.cgi:
   1. Public Officers Law § 73(8)(a)(i), (the two-year bar),
   2. Public Officers Law § 73(8)(a)(ii), (the life-time bar).
B. Submission of this Vendor Submission does not violate either provision;
C. He/she is familiar with the Vendor's employees, and its agents;
D. He/she understands that the State intends to rely on this certification;
E. No violation shall occur by entering into a Contract or in performance of the contractual services; and
F. This certification is material to the Contract.

The Contractor shall fully disclose to OGS on a continuing basis, any circumstances that could affect its ability to comply with the cited laws. Contractor shall address any questions concerning these provisions to:

NYS Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207
Telephone #: (518) 408-3976

2.8 Downstream Prohibition

Any and all work from these Contracts that involves developing specifications, establishing a base for other applications or otherwise gaining information that would give a Contractor an unfair competitive advantage in a future procurement may result in the Contractor being precluded from further work (downstream prohibition) due to conflicts of interest. Authorized User shall provide notification of any downstream prohibitions known at the time the Mini-Bid is released. It is in the interest of the Authorized User and the Contractor to explore these issues during the pre-award negotiations and review as the project progresses. See State Finance Law section 163-a and section 163 (2) for

additional information on the statutory prohibitions. Non-State agency Authorized Users may have additional statutory prohibitions.

2.9 Joint Ventures

Joint ventures are not permitted under the Centralized Contract.

2.10 Terms and Conditions

The following terms and conditions apply:

- Responsive and responsible Vendors will be offered a contract with uniform Terms and Conditions;
- OGS reserves the right to start contracts on a rolling basis;
- All OGS Centralized Contracts will expire on the same date, regardless of start date; and
- All Authorized User Agreements shall be no longer than three (3) years in duration.

2.11 Periodic Recruitment

The State reserves the right to add new Contractors during the term of the Centralized Contract via periodic recruitment. OGS will formally announce when the periodic recruitment Solicitation is issued. It is at the discretion of OGS when a future periodic recruitment shall commence. A periodic recruitment will be publicly announced through all standard means including, but not limited to: the NYS Contract Reporter; and OGS website.

All OGS Centralized Contracts awarded under the Periodic Recruitment will commence upon OGS approval. All Contracts will co-terminate on the then current end date of the Centralized Contract or at the end of any approved extension or renewal period

3 Vendor Qualifications

3.1 Minimum Qualifications

Based on the Contractor's submission, OGS has determined that Contractor met the minimum qualifications for the lot(s) as identified in Appendix G, Contractor and OGS Information.

If Contractor is awarded Lot 1 as a New York State Certified Minority- or Women- Owned Business Enterprise or as a New York State Small Business, Contractor agrees that it must retain at least one of such statuses to retain its Lot 1 award. Should a Contractor no longer retain at least one of such statuses, OGS shall suspend its Lot 1 award and the Contractor shall not be able to respond to Authorized User's requests. If the Contractor fails to regain at least one of the statuses within 90 calendar days and provide OGS with documentation of such status, then its Lot 1 award shall be terminated. Any transaction awarded prior to Contractor's loss of such statuses may continue until completion, unless otherwise terminated in accordance with this Contract.

Minimum Qualifications

Lot 1– For projects up to $200,000 total

Eligibility for this Lot is limited to the following:

- **Contractor is a New York State Certified Minority- or Women-Owned Business Enterprise; or**
- **Contractor meets the definition of a New York State Small Business which is as follows:**
  - A business which is resident in New York State, independently owned and operated, not dominant in its field and employs one hundred or less persons (see State Finance Law section 160(8)).

Qualifications

1. At least 2 years of continuous operation for the 2 years prior to and including the Solicitation Release date
2. At least 2 years' experience delivering consultant services for IT projects which was obtained by delivering Information Technology Consulting Service Projects to Government Entities
3. Document 2 IT projects as a Prime Contractor
   a. After 01/01/2010 with Government Entities
   b. At least $25,000 per Project

Lot 2 – For projects between $200,001 and $7,500,000 total

Qualifications

1. At least 4 years of continuous operation for the 4 years prior to and including the Solicitation Release date
2. At least 4 years' experience delivering consultant services for IT projects which was obtained by delivering Information Technology Consulting Service Projects to Government Entities
3. Document 5 IT projects as a Prime Contractor
   a. After 01/01/2009 with Government Entities
   b. At least $125,000 per Project

Lot 3 – For projects between $7,500,001 and $25,000,000 total

Qualifications

1. At least 8 years of continuous operation for the 8 years prior to and including the Solicitation Release date
2. At least 8 years of experience delivering consultant services for IT projects which was obtained by delivering Information Technology Consulting Service Projects to Government Entities
3. Document 5 IT projects as a Prime Contractor
   a. After 01/01/2005 with Government Entities
   b. At least $5,000,000 per Project

For the purposes of qualification #1 and #2 in each of the lots listed above, experience in either a Prime Contractor or Subcontractor role may be used to demonstrate compliance with the qualification.

For the purposes of qualification #3 in each of the lots listed above, subcontracting experience and subcontracts are specifically prohibited from being used to demonstrate compliance with the qualifications. Indefinite delivery, indefinite quantity (IDIQ) contracts shall not be used to demonstrate compliance with this qualification.

For the purposes of all qualifications listed in this section, contracts billed on a Time and Materials Basis (T & M) and certain fixed price contracts may be used. Only fixed price contracts which include a backup matrix setting forth hourly rates to support the fixed price or a fixed price contract which includes additional time and material rates can be used as price justification of a Government Contract. A Government Contract that does not meet these requirements can be used to establish minimum qualification # 3 for the specific Lot.

3.2 Reasonableness of Price

The Contractor demonstrated that all the New York maximum not to exceed rates are reasonable. In accordance with Appendix B, section 17, Pricing, Contractor shall notify OGS when it provides pricing for its consulting services upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity.

3.3 New York State Vendor Responsibility

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or his or her designee to be non-responsible. In such event, the Commissioner of OGS or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

3.4 Tax Law Section 5-A

Section 5-a of the Tax Law, requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than $100,000 to certify to the NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State are in excess of $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Vendor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Vendor filed the ST-220-TD with the NYS Department of Taxation and Finance (DTF). Please note that the NYS Department of Taxation and Finance should receive the completed Form ST-220-TD, not

OGS. OGS should only receive the Form ST-220-CA. Proposed Contractors should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Vendor Submission). Failure to make either of these filings may render a Vendor non-responsive and non-responsible. Each Vendor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form No. ST-220-TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf.

Vendors may call DTF at 518-485-2889 for any and all questions relating to §5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: http://www.tax.ny.gov.

4 OGS Centralized Contract: Terms and Conditions

The terms and conditions set forth in this section are expressly incorporated in and applicable to the Contract. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

4.1 Appendix A

Appendix A, Standard Clauses for New York State Contracts, dated January 2014, attached hereto, is hereby incorporated in, and expressly made a part of, this Contract.

4.2 Appendix B

Appendix B, Office of General Services General Specifications, dated January 2015 22772 Project Based Information Technology Consulting (Statewide), attached hereto, is hereby incorporated in, and expressly made a part of, this Contract.

4.2.1 Appendix B Amendments

Appendix B is hereby amended as follows:

1. Section 64 (*Disputes*) is hereby deleted and replaced with the following:

I. Policy

It is the policy of OGS to provide Interested Parties, as that term is defined herein, with an opportunity to administratively resolve disputes related to OGS bid solicitations, contract awards or contract administration. Interested Parties are encouraged, but not required, to seek resolution of disputes through consultation with OGS staff through the Informal Dispute Resolution Process described herein, prior to filing a Formal Dispute. All Informal and Formal Disputes will be accorded full, impartial and timely consideration. OGS Dispute Resolution Procedures may be obtained by contacting the person identified in the Contract as a designated contact or through the OGS website (www.ogs.ny.gov).

II. Dispute Resolution Procedures

A. Informal Dispute Resolution Process

1. In the event there is a dispute under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

2. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result through negotiation.

3. If negotiation between the Contractor and Authorized User fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior executive officer representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

4. The Contractor shall extend the informal dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

B. Formal Dispute Process

1. Definitions
   a. Filed means the complete receipt of any document by OGS before its close of business.
   b. Interested Party for the purpose of filing a dispute relating to a solicitation, as used in this section, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a Contract or by the failure to award a Contract.
   c. Interested Party for the purpose of filing a dispute relating to a Contract award, as used in this section, means an actual bidder or offeror for the subject Contract.
   d. Interested Party for the purpose of filing a dispute relating to the administration of the Contract, as used in this section, means the awarded Contractor for the subject Contract.
   e. Issuance of award means the Date of Issue identified on the Contract Award Notification transmitted by OGS.

f. A Formal Dispute means a written objection by an Interested Party to any of the following:
   i. A solicitation or other request by OGS for offers for a contract for the procurement of commodities, services or technology.
   ii. The cancellation of the solicitation or other request by OGS.
   iii. An award or proposed award of the Contract by OGS.
   iv. A termination or cancellation of an award of the Contract by OGS.
   v. Changes in the scope of the Centralized Contract by the Commissioner.
   vi. Determination of "materiality" in an instance of nonperformance or contractual breach.
   vii. An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

2. Submission of Formal Disputes
   a. A Formal Dispute must be filed in writing with the Director of Procurement Services by mail or email, using the following contact information:

Director, Procurement Services
A Division of the Office of General Services
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Email: customer.services@ogs.ny.gov
Subject line: Formal Dispute – Attn: Director of Procurement Services

   b. The Formal Dispute must include:
      i. Name, address, e-mail address and telephone numbers of the filer.
      ii. Solicitation or Contract number.
      iii. Detailed statement of the legal and factual grounds for the Formal Dispute, including a description of resulting prejudice to the filer.
      iv. Copies of relevant documents.
      v. Request for a ruling by the agency.
      vi. Statement as to the form of relief requested.
      vii. All information establishing that the filer is an Interested Party for the purpose of filing a Formal Dispute.
      viii. All information establishing the timeliness of the Formal Dispute.

3. Formal Disputes concerning a solicitation shall be filed by an Interested Party (see II.B(1)(b)) with OGS no later than ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, Formal Disputes concerning the solicitation shall be filed with OGS at least twenty-four (24) hours before the time designated for receipt of bids.

4. Formal Disputes concerning a pending or awarded Contract must be filed within ten (10) business days by an Interested Party (see II.B(1)(c)) after the disputing party knew or should have known of the facts which form the basis of the Formal Dispute; however, a Formal Dispute may not be filed later than ten (10) business days after issuance of the Contract award.

5. Formal Disputes concerning the administration of the Contract after award (see II.B(1)(iv-vii)) must be filed within twenty (20) business days by an Interested Party (see II.B(1)(d)) after the disputing party knew or should have known of the facts which form the basis of the Dispute. However, if Contractor and Authorized User participate in the Informal Dispute Resolution

Process, Formal Disputes concerning the administration of the Contract after award must be filed by Contractor within twenty (20) business days after the Contractor and Authorized User failed to reach resolution through the Informal Dispute Resolution Process set forth in section II.A.

6. Agency Response

a. OGS will consider all information relevant to the Formal Dispute, and may, in its discretion, suspend, modify, or cancel the disputed procurement/Contract action prior to issuance of a Formal Dispute decision.

b. OGS reserves the right to require the filer to meet or participate in a conference call with OGS to discuss the Formal Dispute when, in its sole judgment, circumstances so warrant.

c. OGS reserves the right to waive or extend the time requirements for decisions and final determinations on appeals herein prescribed when, in its sole judgment, circumstances so warrant.

d. OGS reserves the right to consider or reject the merits of any Formal Dispute.

e. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the Formal Dispute.

7. Appeals

a. Should the filer be dissatisfied with the Formal Dispute determination, a written appeal may be filed with the Chief Procurement Officer, by mail or email, using the following contact information:

Chief Procurement Officer
Procurement Services
A Division of the Office of General Services
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Email: customer.services@ogs.ny.gov
Subject line: Appeal – Attn: Chief Procurement Officer

b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of Procurement Services shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.

c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.

d. An appeal of the decision of the Director of Procurement Services shall not include new facts and information unless requested in writing by the Chief Procurement Officer.

e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

8. Legal Appeals

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

4.3 Appendix C

Appendix C, Contract Modification Procedure, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

4.4 Appendix D

Appendix D, Pricing Schedules, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein. The Parties expressly agree that these prices are established as “maximum Not-To-Exceed prices”. The Contractor acknowledges that any mini-bid under this Centralized Contract which includes pricing in excess of the “maximum Not-To-Exceed price” shall be rejected by the Authorized User. Amendments to Appendix D, Pricing Schedules, shall be processed in accordance with Appendix C, Contract Modification Procedure, section 4.8, OGS Centralized Contract Modifications and section 4.23 Price Adjustments for OGS Centralized Contracts.

4.5 Appendix E

Appendix E, Report of Contract Purchases, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein. OGS reserves the right to make unilateral changes to this Report of Contract Purchases document.

4.6 Appendix F

Appendix F, Project Based Information Technology Consulting Services Processes and Forms, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein. OGS reserves the right to change the processes and forms set forth Appendix F in non-material and substantive ways without seeking a contract amendment. Appendix F is comprised of the following attachments:

a. Attachment 1- Mini-Bid Template
b. Attachment 2- How to Use This Contract
c. Attachment 3- Enhancement Request Template
d. Attachment 4- No Cost Change Request Template
e. Attachment 5- Mini-Bid Participation Interest Template

4.7 Appendix G

Appendix G, Contractor and OGS Information, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

The Parties agree that the elements identified in 4.7.1 below, OGS Designated Contact information, and information regarding Procurement Card acceptance as presented in Appendix G can be updated without the Parties engaging in a formal contract amendment. All other changes must be handled through the Contract Modification Process or a formal contract amendment.

4.7.1 Contractor Information

The Contractor will provide up to date information for each of the following in the form and manner specified by OGS:

1. A designated Account Manager for the OGS Centralized Contract. The Account Manager is responsible for the overall relationship with the State during the course of the Contract and shall act as the central point of contact.
2. A designated Billing Contact. The Billing Contact will become the single point of contact between the Contractor and the Authorized User for matters related to invoicing, billing and payment.

3. A designated Emergency Contact. The Emergency Contact will be available to OGS 24 hours a day, 365 days per year.

4. A designated Email Address for this Contract. This Email address will be published on the OGS website for this Contract for use by all Authorized Users when distributing Mini-Bid Participation Forms and Mini-Bids. This can be the email of a designated Account Manager or a dedicated generic email account that multiple employees can access.

4.8 OGS Centralized Contract Modifications

OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new products at the same or better price level is an example of an update. “Amendments” are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

A. Updates to the OGS Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
B. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
C. All modifications proposed by Contractor, shall be processed in accordance with Appendix C - Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure.
D. The form contained within Appendix C, Contract Modification Procedure is subject to change at the sole discretion of OGS.
E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, section 28, Modification of Contract Terms.
F. OGS reserves the right to change the processes and forms set forth in Appendix F, Project Based Information Technology Consulting Services Processes and Forms and the information in Appendix G, Contractor and OGS Information in non-material and substantive ways without seeking a Contract amendment.

4.9 Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the designated contract manager at the address specified in Appendix G, Contractor and OGS Information and (ii) if to Contractor, addressed to the Account Manager at the address identified in Appendix G, Contractor and OGS Information. The Parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract.

All notices sent shall be effective upon actual receipt by the receiving party. The Contractor will be required to forward a copy of the official notice to an Authorized User that is associated with the subject of the notice.

Written notice of any alleged breach by one party to the other shall provide specific facts, circumstances and grounds upon which the breach is being declared.

4.10 Performance of Services

4.10.1 Contractor Obligations

The Contractor is responsible for fully meeting all Contract obligations set forth in the OGS Centralized Contract and for providing services in accordance with the Contract and any Authorized User Agreement, Statement of Work or Purchase Order.

4.10.2 Subcontracting

The following requirements shall supplement the requirements of Appendix B, section 42 and 44:

1. The Contractor shall not in any way be relieved of any responsibility under the Contract by any subcontract. The Contractor shall be solely responsible to the State and Authorized User for the acts or defaults of its Subcontractor(s) and of such Subcontractors' officers, agents, and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. Any Deliverable provided or furnished by a Subcontractor shall be deemed for purposes of the Contract to be provided or furnished by the Contractor.
2. The Contractor shall inform each Subcontractor fully and completely of all provisions and requirements of the Contract, including (1) those relating either directly or indirectly to the Deliverables to be provided and the materials to be furnished or Services provided pursuant to its respective subcontract, (2) to maintain and protect against any unauthorized disclosure of records with respect to work performed under the subcontract in the same manner as required of the Contractor, (3) those relating to the State’s rights to audit records and (4) to cooperate with any investigation, audit, or other inquiry related to the Contract or any litigation relating thereto. Contractor agrees that every such subcontract shall expressly stipulate that all labor performed and materials furnished pursuant thereto shall strictly comply with the requirements of the Contract the Authorized User Agreement and that no subcontract shall impair the rights of the State or Authorized User or create any contractual relationship between the Subcontractor and the State or Authorized User.
3. The Contractor shall pay all Subcontractors for and on account of Services and/or Deliverables provided by such Subcontractors in accordance with the terms of their respective subcontracts.

If and when required by the State or Authorized User, the Contractor shall submit satisfactory evidence that it has made such payment.

4. The Contractor shall require that the Subcontractor must pass through all terms and conditions of the Contract, including but not limited to Appendix A, to any lower tier subcontractors.

4.10.3 Subcontracting Between Lots

A Contractor is precluded from subcontracting with Contractors within the same lot. Such subcontracting shall be deemed a material breach of the OGS Centralized Contract. Additionally, a Contractor is not limited to only subcontracting with those companies who receive contracts resulting from this Solicitation.

The following example depicts allowable scenarios for Subcontracting between lots. An "X" indicates the Vendor holds a Centralized Contract within a specific lot for Project Based Information Technology Consulting Services. Vendor E represents any entity that does not hold a centralized contract for Project Based Information Technology Consulting Services.

	Lot 1	**Lot 2**	**Lot 3**
Vendor A	X		
Vendor B	X	X	
Vendor C		X	X
Vendor D			X
Vendor E			

- Scenario 1 – Authorized User issues a Mini-Bid for Lot 1
  - **Vendor A** and **Vendor B** are precluded from subcontracting with one another because both vendors are in the same lot
  - **Vendor A** may subcontract with **Vendor C** and/or **Vendor D** and/or **Vendor E**
  - **Vendor B** may subcontract with **Vendor C** and/or **Vendor D** and/or **Vendor E**

- Scenario 2 – Authorized User issues a Mini-Bid for Lot 2
  - **Vendor B** and **Vendor C** are precluded from subcontracting with one another because both vendors are in the same lot
  - **Vendor B** may subcontract with **Vendor A** and/or **Vendor D** and/or **Vendor E**
  - **Vendor C** may subcontract with **Vendor A** and/or **Vendor D** and/or **Vendor E**

- Scenario 3 – Authorized User issues a Mini-Bid for Lot 3
  - **Vendor C** and **Vendor D** are precluded from subcontracting with one another because both vendors are in the same lot
  - **Vendor C** may subcontract with **Vendor A** and/or **Vendor B** and/or **Vendor E**
  - **Vendor D** may subcontract with **Vendor A** and/or **Vendor B** and/or **Vendor E**

4.10.4 Location of Services Performed

All services provided under this Contract and as requested in any Authorized User Agreement shall only be performed within the continental United States. Notwithstanding Appendix B, section 28 Modification of Contract Terms, there shall be no exceptions proposed by a Contractor or considered by an Authorized User under the resultant OGS Centralized Contract and Contract process. An Authorized User is expressly prohibited from granting any and all exceptions to this clause.

4.11 Removal of Records from Premises

Where performance of the Contract involves use by the Contractor (or the Contractor's subsidiaries, affiliates, partners, agents or subcontractors) of Authorized User owned or licensed papers, files, computer disks or other electronic storage devices, data or records at Authorized User facilities or offices, or via remote access, the Contractor (or the Contractor's subsidiaries, affiliates, partners, agents or subcontractors) shall not remotely access, modify, delete, copy or remove such Records without the prior written approval of the Authorized User. In no case, with or without the written approval of the Authorized User, can the Authorized User data be accessed, moved or sent outside the continental United States.

4.12 Contractor Staff

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

The following requirements shall apply in addition to the requirements of Appendix B, section 42, Employees, Subcontractors and Agents, unless otherwise agreed to by the Authorized User:

4.12.1 Staffing Changes

1. Any staffing represented as key personnel are anticipated to fulfill the entire duration of the assignment per the Authorized User Agreement. If staffing changes are required for any of the key personnel on the project prior to the completion of his or her assignment period, the Contractor shall first, before proceeding with such removal, consult with and seek the approval of the Authorized User. If, after said consultation, it is mutually agreed that such removal shall take place, the Contractor shall provide the resumes of two (2) or more potential replacements with similar or better qualifications for the Authorized User's review and approval within five (5) business days, or as otherwise agreed to by the Authorized User.

   The newly-assigned Contractor staff must have qualifications as good as or better than those of the replaced staff. At the commencement of the transition period, the departing staff and the new staff will work together to develop a written transition plan to transition the responsibilities. The Authorized User reserves the right to approve this transition plan.
2. The Authorized User shall also have the right in its reasonable discretion to request removal of a Contractor Staff member at any time, and the Contractor must provide the resumes of two (2) or more potential replacements with similar or better qualifications for the Authorized User's review and approval within five (5) business days, or as otherwise agreed to by the Authorized User.
3. Where Contractor Staff ceases work for reasons beyond the control of the Contractor, the Contractor must immediately notify the Authorized User and provide the resumes of two (2) or more potential replacements with similar or better qualifications for the Authorized User's review and approval within five (5) business days, or as otherwise agreed to by the Authorized User.
   a) Reasons beyond the control of the Contractor shall be defined as: (i) death of the Contractor Staff member; (ii) disability or illness; (iii) Contractor Staff member resigns his or her position; (iv)

termination for cause by the Contractor; (v) military service or (vi) any other reason deemed acceptable by the Authorized User.

b) The provisions of this section do not preclude any Contractor Staff member from reasonable sick leave or annual leave.

4. Upon the Authorized User's approval, replacement staff will become project staff and will be subject to the terms and conditions of the Contract and Authorized User Agreement.

If the Authorized User does not approve one of the proposed replacement candidates, the Contractor must provide additional candidates for the Authorized User's review within five (5) business days or as otherwise agreed to by the Authorized User. The Authorized User shall not unreasonably withhold approval of replacement candidates.

If the Authorized User still does not find a proposed replacement acceptable, the Authorized User reserves the right to suspend activities under the Authorized User Agreement.

4.12.2 Contractor Staff Conduct

1. For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its agents, employees, partners or Subcontractors shall not be permitted while performing any phase of the work herein specified.
2. The State and Authorized User shall not be liable for any expense incurred by the Contractor or its agents, employees, partners or Subcontractors for any parking or towing fees or as a consequence of any traffic infraction or parking violations attributable to Contractor or its agents, employees, partners or Subcontractors.

4.13 Employee Information Required to be Reported by Certain Consultant Contractors and Service Contractors

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning Contract Employees working under State Agency service and consulting Contracts. State Agency consultant Contracts are defined as "Contracts entered into by a state Agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*" ("covered consultant Contract" or "covered consultant services"). The amendments also require that certain Contract Employee information be provided to the state Agency awarding such Contracts, OSC, DOB and CS. The effective date of these amendments was June 19, 2006. The requirements will apply to the covered Contracts awarded on and after such date.

To meet these requirements, the Contractor agrees to complete:

A. Form A - Contractor's Planned Employment Form, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information.

B. Form B - Contractor's Annual Employment Report. Throughout the term of the Contract by May 15th of each year the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such Contract was in effect during such prior State fiscal year Contractor reports the:

1. Total number of Employees employed to provide the consultant services, by employment category.

2. Total number of hours worked by such Employees.
3. Total compensation paid to all Employees that performed consultant services under such Contract.*

***NOTE:** The information to be reported is applicable only to those Employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to Employees of Subcontractors who perform any part of the service Contract or any part of the covered consultant Contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an Employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to The Department of Civil Service (CS) and OSC as designated below:

Department of Civil Service
Alfred E. Smith State Office Building
Albany, NY 12239

Office of the State Comptroller
Bureau of Contracts
110 State St., 11th Floor
Albany, New York
Attn: Consultant Reporting
Fax: (518) 474-8030 or (518) 473-8808

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual Employee names or social security numbers are set forth on a document, the State Agency making such disclosure is obligated to redact both the name and social security number prior to disclosure. Further information is available in Section XI.18.C of the Office of the State Comptroller's Guide to Financial Operations (http://www.osc.state.ny.us/agencies/guide/MyWebHelp/), "Consultant Disclosure Legislation."

INSTRUCTIONS FOR COMPLETING FORM A AND B:

Form A and Form B should be completed for Contracts for consulting services in accordance with Section XI.18.C of the Office of the State Comptroller's Guide to Financial Operations (http://www.osc.state.ny.us/agencies/guide/MyWebHelp/), "Consultant Disclosure Legislation," and the following:

A. **Form A** - **Contractor's Planned Employment Form (**available from and submitted to the using Agency, if necessary.) (Form AC-3271-S: http://www.osc.state.ny.us/agencies/forms/index.htm)
B. **Form B** - **Contractor's Annual Employment Report** (to be completed by May 15th of each year for each consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the CS, OSC and procuring Agency.) (Form AC-3272-S: http://www.osc.state.ny.us/agencies/forms/index.htm)

   Scope of Contract: choose a general classification of the single category that best fits the predominate nature of the services provided under the Contract.

   Employment Category: enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describes the Employees providing services under the Contract.

   *(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)*

Number of Employees: enter the total number of Employees in the employment category employed to provide services under the Contract during the report period, including part time Employees and Employees of subcontractors.

Number of Hours: enter the total number of hours worked during the report period by the Employees in the employment category.

Amount Payable under the Contract: enter the total amount paid by the State to the State Contractor under the Contract, for work by the Employees in the employment category, for services provided during the report period.

4.14 Confidentiality and Privacy Policies and Laws

The Contractor shall comply to the extent applicable with all State and Authorized User policies regarding compliance with various confidentiality and privacy laws, rules and regulations, including but not limited to the IRS Publication 1075, Family Educational Rights and Privacy Act (FERPA), the Health Insurance and Portability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH).

Contractor shall cooperate in executing a written confidentiality agreement under FERPA and/or a Business Associate Agreement (HIPAA/HITECH) or other contractual provisions upon request by the State or any Authorized User.

4.15 Federal Funding

For an Authorized User using Federal funds, Contractor shall cooperate in adding to the Authorized User Agreement any Federal funding contract clauses necessary for the Authorized User's Project. An Authorized User shall identify to Contractor, as a condition of using this Contract and during the Mini-Bid process, whether Federal funds will be utilized for the Project.

4.16 Required Insurance

Contractor shall be required to procure, at its sole cost and expense, all insurance required by this Contract. In addition, Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this solicitation, policies of insurance required by this Contract. All insurance shall be written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and which have an A.M. Best Company rating of "A-" Class "VII" or better. If, during the term of a policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and which is rated at least "A-" Class "VII" or better in the most recently published Best's Insurance Report.

Vendor and Contractors shall deliver to OGS evidence of such policies in a form acceptable to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS does not, and shall not be construed to, relieve Vendor or Contractors of any obligations, responsibilities or liabilities under this solicitation or any Contract resulting from this solicitation.

4.16.1 General Conditions

A. Conditions Applicable to Insurance. All policies of insurance required by this solicitation or any Contract resulting from this solicitation must meet the following requirements:

1. Coverage Types and Policy Limits**.** The types of coverage and policy limits required from Vendor and Contractors are specified in Paragraph B *Insurance Requirements* below.

2. Policy Forms*.* Except as otherwise specifically provided herein, or agreed to in writing by OGS, policies must be written on an occurrence basis.

3. Certificates of Insurance/Notices. Vendor and Contractors shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below. Certificates shall reference the Solicitation or Contract Number. As applicable, the requested forms must name The New York State Office of General Services, New York State Procurement, 38th Floor, Corning Tower, Albany, New York 12242 as the Certificate Holder. Certificates shall be submitted to The New York State Office of General Services, New York State Procurement Services, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

Vendor policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without notice as required by law to OGS, Attention: Procurement Services, Corning Tower – 38th Floor, Empire State Plaza, Albany New York 12242. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than ten (10) days' after the expiration date or renewal date, the Contractor shall supply OGS updated evidence of coverage.

Certificates of Insurance shall:

- Be in the form acceptable to OGS (i.e. an Acord form);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this solicitation or any Contract resulting from this solicitation;
- Be accompanied by an Additional Insured and a Waiver of Subrogation Endorsement as required herein;
- Refer to this solicitation and any Contract resulting from this solicitation by number and any other attachments on the face of the certificate; and
- Be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance, endorsements & other attachments) or electronic forms, which can be directly traced back to the insurance carrier, agent or broker via e-mail distribution or similar means, will be accepted.

4. Primary Coverage. All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from a Contractor's work under any Contract awarded as a result of this solicitation, or as a result of a Vendor or Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Vendor/Contractor's insurance.

5. If, during the term of any Contract awarded as a result of this solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this solicitation or any Contract resulting from this solicitation, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume

work until authorized to do so by OGS. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by this solicitation or any Contract resulting from this solicitation or not providing proof of the same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should a Contractor fail to provide or maintain any insurance required by this solicitation or any Contract resulting from this solicitation, or proof thereof is not provided, OGS or an Authorized User may withhold further contract payments, treat such failure as a breach or default of the Contract.

6. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Deductibles or self-insured retentions above $100,000 are subject to approval from OGS, which shall not be unreasonably withheld, conditioned or delayed. Vendor and Contractors shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

7. Subcontractors. Should a Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of work by the Subcontractor, to secure and keep in force during the term of any Contract resulting from this solicitation, the insurance requirements of this document, as applicable. Proof thereof shall be supplied to OGS as required by this Contract.

As applicable, insurance required by this solicitation or any Contract resulting from this solicitation shall name The People of the State of New York, its officers, agents, and employees as additional insureds hereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or the equivalent). Specifically, the additional insured requirement does not apply to Workers' Compensation, Disability or Professional Liability coverage.

B. Insurance Requirements

Vendor and Contractors shall obtain and maintain in full force and effect, at their own expense, the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

Lot 1 and Lot 2		
Insurance Type		**Proof of Coverage is Due**
Commercial General Liability	Not less than $2,000,000 each occurrence	At time of Vendor Submission and updated in accordance with Contract
General Aggregate	$2,000,000	
Products – Completed Operations Aggregate	$2,000,000	
Personal and Advertising Injury	$1,000,000	
Business Automobile Liability Insurance	Not less than $2,000,000 each occurrence	
Workers' Compensation		
Disability Benefits		
Technology Errors and Omissions	Not less than $1,000,000 each claim Not less than $2,000,000 in aggregate	At the time of the first transaction with an Authorized User and updated

Lot 1 and Lot 2		
Insurance Type		**Proof of Coverage is Due**
Crime Insurance	Not less than $50,000	in accordance with Contract

Lot 3		
Insurance Type		**Proof of Coverage is Due**
Commercial General Liability	Not less than $5,000,000 each occurrence	At time of Vendor Submission and updated in accordance with Contract
General Aggregate	$2,000,000	
Products – Completed Operations Aggregate	$2,000,000	
Personal and Advertising Injury	$1,000,000	
Business Automobile Liability Insurance	Not less than $5,000,000 each occurrence	
Workers' Compensation		
Disability Benefits		
Technology Errors and Omissions	Not less than $5,000,000 each claim, Not less than $10,000,000 in aggregate	
Crime Insurance	Not less than $500,000	

1. **Commercial General Liability Insurance:** Such liability shall be written on the ISO occurrence form CG 00 01 01 96, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this contract;
- Cross liability for additional insureds;

- Products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by the contract;
- Explosion, collapse and underground hazards; and
- Contractor means and methods.

The following ISO forms must be endorsed to the policy:

a) CG 00 01 01 96 or an equivalent Commercial General Liability Coverage Form;
b) CG 20 10 11 85 or an equivalent- Additional Insured-Owner, Lessees or Contractors (Form B); and
c) Waiver of Subrogation Endorsement.

Limits may be provided through a combination of primary and umbrella/excess liability policies.

2. Business Automobile Liability Insurance: Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles. If Contractor does not own, lease or hire any vehicles which will be used to fulfill the contractual requirements, it may execute an attestation regarding such fact in the form and manner required by OGS. The Contractor commits to obtain the required Business Automobile Liability Insurance when it acquires, leases or hires a vehicle or vehicles that will be used to fulfill the contractual requirements in accordance with the terms of the attestation.

Waiver of Subrogation. Contractor shall cause to be included in each of the above referenced policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS. A Waiver of Subrogation Endorsement shall be provided with Vendor Submission or upon tentative award, and thereafter, within 15 days of request.

3. Technology Errors and Omissions:

The Professional and any professional sub-consultant retained by the Professional to work on the Contract shall procure and maintain during, and for a period of three (3) years after completion of the Contract, Technology Errors and Omissions Insurance in the amount of $2,000,000.00 for claims for damages arising from computer related services including the following: consulting, data processing, programming, system integration, software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer hardware or software developed, manufactured, distributed, licensed, marketed or sold. The Technology Errors and Omissions Insurance may be issued on a claims-made policy form, in which case the Professional shall purchase at its sole cost and expense, extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

4. Crime Insurance

Crime Insurance on a "loss sustained form" or "loss discovered form" in an amount not less than required in section 4.16.1.B. Insurance Requirements, including coverage for:

- Employee Theft;
- Forgery or Alteration;

- Inside the Premises-Theft of Money and Securities;
- Inside the Premises-Robbery or Safe Burglary of Other Property;
- Outside the Premises;
- Computer Fraud and Funds Transfer Coverage; and
- Money Orders and Counterfeit Paper Currency.

The limits may be provided through a combination of primary and umbrella liability policies.

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than three (3) years with respect to events which occurred but were not reported during the term of the policy.
- The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation as an Authorized User and their officers, agents, and employees, must be included as a "Loss Payees" as respects this specific amount as their interests appear.
- Any warranties required by the Vendor's and Contractor's insurer as a result of this Solicitation must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees of the Vendor and Contractor as a result of this Solicitation.
- The policy shall include coverage for third party fidelity and name "The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation as an Authorized User and their officers, agents, and employees" as "Loss Payees."
- The policy shall include coverage for extended theft and mysterious disappearance.
- The policy shall not contain a condition requiring an arrest and conviction.
- Policies shall be endorsed to provide coverage for computer crime/fraud.

C. Workers' Compensation Insurance and Disability Benefits Requirements

New York State Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts, document that they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of a Vendor Submission or renewal. **A Vendor may not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to OGS.**

1. **Proof of Compliance with Workers' Compensation Coverage Requirements: An ACORD form (certificate of insurance) is NOT acceptable proof of workers' compensation coverage.** In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a Vendor/Contractor shall:

a) Be legally exempt from obtaining Workers' Compensation insurance coverage; or
b) Obtain such coverage from an insurance carrier; or

c) Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Vendor seeking to enter into a Contract with the State of New York shall provide one of the following forms to OGS at the time of Vendor Submission, and thereafter, within three (3) days of request:

a) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov); (Reference applicable Solicitation and Group #s on the form.);
b) Certificate of Workers' Compensation Insurance:
   i) Form C-105.2 (9/07) if coverage is provided by the Vendor/Contractor's insurance carrier, the Vendor/Contractor must request that its insurance carrier send this form to OGS, or
   ii) Form U-26.3 if coverage is provided by the State Insurance Fund, the Vendor/Contractor must request that the State Insurance Fund send this form to OGS;
c) Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office; or
d) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the Vendor/Contractor's Group Self-Insurance Administrator.

2. Proof of Compliance with Disability Benefits Coverage Requirements: In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a Vendor/Contractor shall:

a) Be legally exempt from obtaining disability benefits coverage; or
b) Obtain such coverage from an insurance carrier; or
c) Be a Board-approved self-insured employer.

A Vendor seeking to enter into a Contract with the State of New York shall provide one of the following forms to OGS at the time of Vendor Submission and thereafter, within three (3) days of request:

a) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov); (Reference applicable Solicitation and Group #s on the form.);
b) Form DB-120.1, Certificate of Disability Benefits Insurance. The Vendor/Contractor must request that its insurance carrier send this form to OGS; or
c) Form DB-155, Certificate of Disability Benefits Self-Insurance. The Vendor/Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

Proof of coverage or an exemption shall be submitted to The New York State Office of General Services, New York State Procurement, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

4.17 Contractor Requirements And Procedures For Business Participation Opportunities For New York State Certified Minority- And Women-Owned

Business Enterprises And Equal Employment Opportunities For Minority Group Members And Women

NEW YORK STATE LAW

The New York State Office of General Services (OGS), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS Centralized Contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority- and Women-Owned Business Enterprises: Evidence from New York" (the “Disparity Study”). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women–owned business enterprises (“MWBEs”) and the employment of minority groups members and women in the performance of New York State contracts.

REQUIREMENTS FOR CONTRACTOR COMPLIANCE WITH AUTHORIZED USER MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION GOALS

New York State Executive Law Article 15-A requires that OGS provide opportunities for the maximum feasible participation of New York State certified minority- and women-owned business enterprises (MWBEs) in the performance of OGS Centralized Contracts. OGS has determined that the overall MWBE participation rate for MWBEs on the contracts resulting from this solicitation shall be 20% of the State Agency and Authority (as defined in New York State Executive Law §310 and hereinafter referred to as “State Agency”) spend. When a State Agency issues a competitive solicitation under the contracts resulting from this solicitation, the State Agency shall establish separate goals for participation of MWBEs, equal to or greater than 20%, and shall seek submittal of an MWBE utilization plan from contractors. As a condition of award of a contract resulting from this solicitation, the Contractor agrees to be bound by a State Agency’s implementation of the provisions of Article 15-A of the New York State Executive Law, including but not limited to, the submission of a utilization plan, in the acquisition. State Agencies will seek an overall 20% or greater MWBE participation rate based on all acquisitions made throughout the term of the contracts awarded hereunder.

Additionally, OGS strongly encourages all minority- and women-owned companies to submit a Vendor Submission in response to this solicitation. Also, OGS encourages those minority- and women-owned companies that are not certified by the Empire State Development Division of Minority and Women’s Business Development, to become certified at their earliest opportunity. Information regarding the certification process can be viewed at: http://esd.ny.gov/MWBE/Certification.html.

To locate MWBEs, the Directory of Certified Businesses can be viewed at: https://ny.newnycontracts.com/frontend/diversityusers.asp.

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

The Bidder further agrees to submit with the bid a staffing plan on Form EEO 100 identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will submit to OGS upon request, a workforce utilization report on form EEO 101, identifying the workforce actually utilized on the contract if known.

Further, pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

ALL FORMS ARE AVAILABLE AT: http://www.ogs.ny.gov/MWBE/Forms.asp

4.18 Administrative and Reporting Requirements

The Contractor shall provide the following reports to OGS at the e-mail address to be provided by OGS. Failure to submit reports on a timely basis may result in contract cancellation and designation of Contractor as non-responsible. OGS and the Contractor agree that OGS reserves the right to amend the data elements collected in these reports in its sole discretion. Such amendments shall not be substantive in nature and shall reflect information relevant to monitoring the expenditures under the Contract.

4.18.1 Report of Contract Purchases

Contractor shall furnish quarterly reports containing total sales for both State Agency and other Authorized User contract purchases no later than thirty (30) days after the close of each calendar quarter using the form set out in Appendix E, Report of Contract Purchases.

In addition to Contractor direct sales, Contractor shall submit sales information for all resellers, dealers, distributors or other authorized distribution channels, where such contract sales are provided by other

than the Contractor. A separate report shall be provided for each authorized distribution channel. Contractors shall verify if each alternate vendor is a NYS certified minority- or women- owned business (MBE or WBE, respectively). Contractors shall verify such status through the Empire State Development minority- and women-owned businesses database at: https://ny.newnycontracts.com/frontend/diversityusers.asp..

The required reporting elements will be provided by OGS. Reports will consist of an itemized report of all services provided and invoiced, shall be forwarded electronically in Excel (.xls or .xlsx) Format to the OGS Centralized Contract Administrator containing the information requested within the attachment workbook.

If appropriate means are integrated into the NYS Statewide Financial System (SFS) Portal to allow direct input of the required reporting information, submission of the Report of Contract Purchases will migrate to that venue and the Contractor will follow the reporting format established within the SFS Vendor Portal. Announcement of any such new capability and reporting requirement will be made via a purchasing memorandum which will be forwarded to Contractor.

4.18.2 Updated Certification of Required Insurances

As insurance coverage is traditionally of a term nature, it is the Contractor's responsibility to maintain not just the appropriate insurance coverages, but also their filed certifications with OGS. The Contractor shall furnish to the State up to date certifications of coverages for all insurance requirements per section 4.16 - Insurance Requirements.

4.19 New York State Statewide Financial System

New York State Statewide Financial System (SFS) went live for NYS agencies in April 2012. Future SFS procurement functionality envisions the ability to fully host Contract catalogs, to integrate Contractor-hosted punch-out catalogs, and/or to submit and process invoices electronically. OGS reserves the right to integrate any or all of these future catalog functions with a Contractor during the contract period, and by submittal of a Vendor Submission, a Vendor agrees to coordinate with SFS, OGS and/or a third party host, for integration, if OGS exercises its right to do so. No costs or expenses associated with providing information and integration shall be charged to NYS. Technical Requirements for the data elements, such as data types, maximum field lengths, and cXML element names shall be provided by SFS, OGS and/or a third party host during integration. For more information on SFS, its use, and its capabilities please visit the SFS website here: http://www.sfs.ny.gov/.

4.20 Electronic Workflow System

OGS reserves the right to incorporate an electronic workflow system that may include, but is not limited to: elements of the Authorized User Mini-Bid process, contract price lists, and sales reporting.

OGS reserves the right to post information about Authorized User Contract usage of Centralized Contracts.

4.21 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit

organizations. See "Participation in Centralized Contracts" in Appendix B, General Specifications January 2015 22772 Project Based Information Technology Consulting (Statewide).

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Customer Services at 518-474-6717.

4.22 Accessibility of Web-Based Information and Applications

For State Agency Authorized User Acquisitions: Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as follows:

> Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by the State Agency Authorized User and the results of such testing must be satisfactory to the Authorized User before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

4.23 Price Adjustments for OGS Centralized Contracts

Periodic price adjustments will occur no more than twice per year on a schedule to be established solely by OGS. Pricing offered shall be fixed for the first twelve (12) months of the Contract term. Such price increases will only apply to the OGS Centralized Contracts and shall not be applied retroactively to Authorized User Agreements or any Mini-bids already submitted to an Authorized User.

4.23.1 Price Decreases

Price decreases may be made at any time. Additionally, some price decreases shall be calculated in accordance with Appendix B, section 17, Pricing.

4.23.2 Price Increases

This section applies to pricing not Benchmarked to GSA Supply Schedule. Additionally, where pricing submitted for Services is not benchmarked to an approved GSA Supply Schedule:

> **a. Price Increase Requests:** Subsequent to the first twelve (12) months of the Contract term and in accordance with the schedule for price adjustments established by OGS, Contractor may request an increase in the pricing contained in Appendix D, Pricing Schedule by submitting an update request based on change in pricing level as contained in Appendix C, Contract Modification Procedure to the OGS Contract Administrator. With any price increase request, in addition to the requirements contained in Appendix C, the Contractor must certify in writing that the price change for the Product(s) is the same as or better than the pricing in its U.S. Commercial Price List, and that Contractor documents the request to the satisfaction of the State. Should the Contractor not have a U.S. Commercial Price List, it must include a copy of

the government contract containing the job titles and rates that are to be adjusted. In no case may the pricing adjustment conflict with the Escalation Cap in section 4.23.2.b.

b. Escalation Cap: Such adjustment shall in no event exceed the lesser of two (2%) percent of the Contractor's current NYS pricing as found in the OGS Centralized Contract or the percent increase in the latest copy of the "National Consumer Price Index for All Urban Consumers (CPI-U)," as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. In no event can prices exceed the Contractor's published U.S. Commercial List price.
c. Effective Date of Increase: Price increases shall be effective upon final approval by the State, and may not be posted on the pricelist prior to receipt of final approval.

4.23.3 GSA Benchmarked Pricing

Additionally, where the NYS Net Price is based upon an approved GSA Supply Schedule:

a. Associated Discounts: The State is entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to, discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in this NYS Contract or GSA schedule, when calculating the NYS Net Price.

b. Industrial Funding Fee: GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee" (IFF). The NYS Net Price shall be calculated by reducing the published GSA price, after the discounts, if any, set forth in paragraph (1) above, downward by the amount of the Industrial Funding Fee, currently set at 0.75%. Therefore, as an example, the NYS Net Price shall be calculated by multiplying 0.9925 times the GSA price.

c. Pricing Increase Requests: Subsequent to the first twelve (12) months of the Contract term and in accordance with the schedule for price adjustments established by OGS, Contractor may request an increase in the pricing contained in the Centralized Contract by submitting an update request based on change in pricing level as contained in Appendix C, Contract Modification Procedure to the OGS Contract Administrator. With any price increase request, in addition to the requirements contained in Appendix C, the Contractor must certify in writing that the price change for the Services is the same as its pricing in its GSA Supply Schedule, and that Contractor documents the request to the satisfaction of the State.

d. **Effective Date of Increase:** Price increases shall be effective upon final approval by the State, and may not be posted by Contractor prior to receipt of final approval.

4.24 Performance/Bid Bond and Letter Of Credit

There are no bonds required for the Contract resulting from this Solicitation. In accordance with Appendix B, section 45, Performance/Bid Bond, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the initial term, or any renewal term, for the resulting Contract and Authorized User Agreements.

4.25 Severability

If any provision of this Contract is deemed invalid or unenforceable, such determination shall have no effect on the balance of the Contract, which shall be enforced and interpreted as if such provision was never included in the Contract.

4.26 Entire Agreement

This Contract and the referenced appendices and attachments constitute the entire agreement between the Parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both Parties hereto, except as otherwise provided herein. Authorized Users shall not have the authority to modify the terms of the Contract, except as expressly set forth herein.

5 Authorized User Overview and Mini-Bid Process

Project Based IT Consulting Services Contracts enable Authorized Users to use a competitive Mini-bid Process to acquire Services on an as-needed basis, for qualified IT Projects.

Project Based IT Consulting Services may include, but will not be limited to projects requiring: analysis, data classification, design, development, testing, quality assurance, security and associated training for Information Technology based applications. See section 1.3 Out of Scope Work for a listing of projects expressly excluded from the scope of this Contract.

An Authorized User Agreement for Project Based IT Consulting Services will be governed first by the terms and conditions specified in the OGS Centralized Contract and second by terms and conditions added to the Authorized User Statement of Work. Additional terms and conditions shall not conflict with or modify the terms and conditions of the OGS Centralized Contract.

NYS Executive Agencies must adhere to all internal processes and approvals including, as required, approval from NYS Office of Information Technology Services. Other Authorized Users must adhere to their own internal processes and approvals.

In accordance with Appendix B, section 28, Modification of Contract Terms, an Authorized User may add additional required terms and conditions to this Mini-Bid and resultant Authorized User Agreement only if such terms and conditions (1) are more favorable to the Authorized User and (2) do not conflict with or supersede the OGS Centralized Contract terms and conditions. Examples of additional terms and conditions include:

- Expedited delivery timeframe;
- Additional incentives, such as discount for expedited payment/Procurement Card use; and
- Any additional requirements imposed by the funding source or Federal law.

5.1 Authorized User’s Statement of Work

A competitive Mini-Bid is required for every transaction under this Centralized Contract. An Authorized User must prepare a detailed Statement of Work using Appendix F, Attachment 1, Mini-Bid Template. The Authorized User must distribute the Mini-Bid to all qualified Vendors per Lot(s) (unless a Vendor has removed itself from consideration via the Appendix F, Attachment 5, Mini-Bid Participation Interest Template). Contact information, organized by Lot, will be available on the OGS website for this Contract. An Authorized User shall conduct its Mini-Bid in accordance with the requirements set forth in Appendix F, Attachment 2, How to Use this Contract.

The following terms and conditions shall apply to each Mini-Bid issued by an Authorized User:

- An Authorized User may require the execution of unique forms, such as Confidentiality Non-Disclosure agreements; and

- An Authorized User is required to make tentative award and non-award notifications to each Contractor who submitted a response to the Mini-Bid.

Additionally, the minimum time, excluding the date of release, between issuance of the Mini-Bid by the Authorized User to the Mini-Bid Opening is as follows:

- Lot 1 Mini-Bids: Five (5) Business Days
- Lot 2 Mini-Bids: Ten (10) Business Days
- Lot 3 Mini-Bids: Fifteen (15) Business Days

When applicable, the Statement of Work document should include the following information in sufficient detail:

1. Project objectives
2. Project plans and timelines
3. Project Deliverables and their acceptance criteria
4. Project approach and methodology
5. Project resource requirements (key personnel)
6. Anticipated project duration (projected start and end dates and overall duration)
7. Expectations for delivery of work products (Deliverables)
8. Expectations for documentation, reports, invoicing, and Knowledge Transfer, etc.
9. Requirements for status reporting and meetings (form, content and frequency)
10. Performance specifications (vendor and system)
11. Work-site/location and provisions
12. Any Downstream Prohibition(s) – whether the engagement may result in the contractor gaining information which may raise level playing field issues in a future procurement and result in the inability of such contractor to participate in a future procurement

5.1.1 Fixed-Price

An Authorized User Agreement shall be awarded on a fixed-price basis only. As such, the Contractor shall complete all project Deliverables indicated in the final negotiated Authorized User Agreement, without any increase in cost to the Authorized User. If the Contractor resources required to complete such work are more than the Contractor agreed to in the Mini-Bid, these additional resources must be provided to the Authorized User at no additional cost.

6 Authorized User Terms and Conditions

As noted above, the terms and conditions set forth in this section are expressly incorporated in, and applicable to, the Authorized User Agreement resulting from this Contract. The following sections are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

6.1 Mini-Bid Transactional Order of Precedence

Conflicts of terms and conditions shall be resolved in the order of precedence set forth in section 2.2 Conflict of Terms.

6.2 Contract Survival

The starting date for each Authorized User Agreement will vary but shall not exceed three (3) years in duration. Authorized User Agreements fully executed prior to the expiration of the OGS Centralized Contract shall survive the expiration date of the OGS Centralized Contract, if applicable, based on the term of the Authorized User Agreement.

6.3 No Cost Change Request

The Authorized User reserves the right to reasonably amend a Fixed-Price Deliverable, provided the amendment does not materially change the Scope of the Deliverable, without a cost increase. Although the Authorized User has endeavored to identify many tasks associated with a Fixed-Price Deliverable (Tasks), additional Tasks which can reasonably be anticipated to carry out the Deliverable shall be within the scope of the Deliverable, and shall not result in a cost increase. An Authorized User shall use Appendix F, Attachment 4, No Cost Change Request Template to reflect such modifications.

Written approval of the No-Cost Change Request is required from both the Authorized User and the Contractor.

6.4 Enhancement Budget

Enhancements refer to additional functionality and deliverables unknown to the Authorized User at the time of Mini-Bid release. An Authorized User is permitted to include an enhancement budget, as included in the Mini-Bid (up to 10%). The total cost of the project including the enhancement budget shall not exceed the Lot threshold from which the award was made. An Authorized User shall use Appendix F, Attachment 3, Enhancement Request Template to reflect such modifications.

Mini-Bid/Statement of Work documents will define specific criteria and method of reimbursement for the enhancement budget.

Written approval of the Enhancement Budget Request is required from both the Authorized User and the Contractor.

6.5 Contractor Responsibilities

6.5.1 Project Organization Chart

As part of the Mini-Bid, the Authorized User may require the Contractor to develop and submit a proposed project organization chart. The project organization chart should identify all the proposed key personnel of each team component and how the team will be managed. If required, the project organization chart must include both Contractor and State staff roles as identified in the Mini-Bid.

6.5.2 Eligibility to Work

The Contractor must ascertain and validate that all proposed staff resources, including all employees, subcontractors and agents, (hereinafter “Contractor Staff Member”), are either U.S. citizens or non-U.S. citizens.

1. Where the Contractor Staff Member is a U.S. citizen, the Contractor must identify the proposed individual Contractor Staff with, at a minimum, the first and last name of the individual Contractor Staff Member as it appears on his/her Driver’s License, Non-Driver’s Identification Card, or other accepted forms of government identification.
2. Where the Contractor Staff Member is not a U.S. citizen, the Contractor shall identify such to the Authorized User. The Contractor must identify if the proposed individual Contractor Staff Member will be working under a H1-B or other Visa during the time of the placement. The Contractor must identify the proposed individual Contractor Staff Member with, at a minimum, the first and last name of the individual Contractor Staff Member as it appears on his/her Visa and/or Passport. No other names or derivations may be used.

3. The Contractor must retain all necessary paperwork throughout the length of each individual Contractor Staff Member's engagement with an Authorized User.
4. The Contractor is responsible for ensuring that all Contractor Staff Members retain the authorization to legally work in the United States throughout the term of the engagement.
5. H-1B costs are not allowed under this Contract and Authorized Users will not affirm employment for immigration purposes. Any foreign employees retained through this Contract shall be the employee of the Contractor and not the Authorized User. Based on the scope of the Project, the Authorized User may require that all staff must be citizens of the United States, and if so, Authorized User must indicate in the Mini-Bid.

6.5.3 Additional Requirements from Authorized Users

An Authorized User may have distinct requirements that must be met by all individuals employed by or working for the Authorized User. The Contractor's Staff Members will be expected to comply with these requirements as a condition of the placement.

1. An Authorized User may at its discretion request additional background checks to be conducted, including, but not limited to, finger-printing and the signing of a confidentiality and/or non-disclosure agreements.
2. An Authorized User may conduct its own background checks at its expense.
3. An Authorized User may require individual Contractor Staff Members to provide photo identification such as a NYS Driver's License, Non-Driver's Identification Card, Passport, etc. in order to receive a State Identification card used for entrance into the Authorized User's building and/or facilities.

6.6 Authorized User Engagement Requirements

1. All Authorized User Agreements shall be no longer than three (3) years in duration.
2. Contractor Staff Members must adhere to workplace rules of the Authorized User. This includes, but is not limited to, the following: building access procedures, computer/phone usage guidelines, and other agency policies (such as Drug-free Workplace Policy Statement, Workplace Violence Policy, and smoking policy).
3. The Authorized User shall define the manner in which it requests Knowledge Transfer to occur from the Contractor's Project team to the Authorized User's staff.
4. The Authorized User shall indicate a change in working hours at the Authorized User building and/or facilities where appropriate and not previously specified during the requisition process.
5. Contractor and any subcontractors must work cooperatively with Authorized User staff and with other vendors working at Authorized User sites.
6. Professional workplace conduct and attire will be expected at all times.
7. All services performed for an Authorized User shall only be performed within the continental United States. An Authorized User is expressly prohibited from granting any and all exceptions to this clause.

6.7 Deliverables for an Authorized User Agreement (Transaction)

Deliverables must be identified, as a measure of progress in the Authorized User Agreement. A Deliverable as a bulk number of hours is not permissible under the OGS Centralized Contract.

6.8 Retainage

As part of the Mini-Bid, the Authorized User may elect to retain a percentage of each individual Deliverable payment of no more than 20% until the acceptance of the complete Deliverable or project.

This retainage may be reduced as described in the Mini-Bid, when the Contractor substantially reduces the time required from the timeframes negotiated between the Authorized User and the Contractor for the completion and acceptance of a Deliverable.

6.9 Reasonableness of Price

An Authorized User will be required to demonstrate reasonableness of price for each project as part of the evaluation prior to the execution of an Authorized User Agreement. The OGS Centralized Contract includes a NYS Contract pricelist, which was assessed to determine that the “Not-to-Exceed” hourly rates offered to New York State are at or below the Not-To-Exceed hourly rates offered to other Government customers. The Contractor acknowledges that any mini-bid under this Centralized Contract which includes pricing in excess of the maximum Not-To-Exceed hourly rate shall be rejected by the Authorized User.

In accordance with Appendix B, section 32, Purchase Orders, OGS encourages an Authorized User to negotiate for better pricing than is listed on the Price list, as the total hourly rates established by OGS Centralized Contracts are Not-to-Exceed total hourly rates. An Authorized User must follow the internal procurement guidelines of their organization and obtain all required control agency approvals when purchasing from OGS Centralized Contracts.

6.10 Travel, Meals and Lodging

When provided for in the Mini-Bid and resultant Authorized User Agreement, an Authorized User may reimburse travel expenses. All rules and regulations associated with this travel can be found at http://osc.state.ny.us/agencies/travel/travel.htm. In no case will any travel reimbursement be paid that exceeds these rates. All travel will be paid only as part of a deliverable specified within the Authorized User Agreement and must be billed with that associated Invoice with receipts attached.

The Contractor shall receive prior approval from the Authorized User for any travel that occurs during the term of an Authorized User Agreement. Parking fees and/or parking tickets may not be paid by an Authorized User.

Unless otherwise specified in writing by the Authorized User, a vehicle will not be provided by Authorized User to the Contractor for travel. Therefore, the Contractor will be responsible for ensuring that the Contractor has access to an appropriate vehicle (e.g., personal vehicle or rental vehicle) or common carrier with which to carry out any necessary travel.

For the Contractor to obtain reimbursement for the use of a rental vehicle, such use must be justified as the most cost-effective mode of transportation under the circumstances (including consideration of the most effective use of time).

The Contractor shall provide evidence of three (3) written or telephone price quotes, and the paid invoice must detail the type of vehicle rented, miles traveled, license plate number, and time of pickup and return. The Contractor is responsible for keeping adequate records to substantiate any claims for reimbursement, by personnel for travel in performance of the services.

6.11 Payment Schedule

Except as provided in section 6.10 Travel, Meals and Lodging, payments will only be made based on Deliverables outlined within the Authorized User Agreement. Any invoice not related directly to a completed deliverable will be rejected. Any charge included on the invoice without backup documentation as specified in the Authorized User Agreement (travel receipts, etc.) may be removed.

Any outstanding charges un-invoiced or removed from the invoice must be submitted/resubmitted within 120 Calendar days or may not be reimbursed.

Each Deliverable may contain a retainage allotment as specified within the Authorized User Agreement. Each invoice is to include a detailed and itemized list of all retainage withholds that are in place since the activation of the Authorized User Agreement.

Payment schedule shall be based on the final Authorized User Agreement as negotiated by the Authorized User and Contractor. Payment is only to be made after the deliverable within the Authorized User Agreement is accepted by the Authorized User. A Contractor is encouraged to submit no more than one invoice per month. Invoices must include cumulative retainage holdback. Invoices submitted to an Authorized User must include backup documentation as defined in the negotiated Authorized User Agreement.

6.12 Mini-Bid Dispute Resolution Process

If the Authorized User does not have a dispute resolution policy, please refer to OSC or OGS dispute resolution policy for guidance in creating a policy.

In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result through negotiation.

In the event that the Contractor and the Authorized User are unable to resolve a conflict through negotiation, then both parties will comply with the Authorized User's stated dispute resolution policy which must be included as part of the Authorized User Agreement.

If the conflict is still unresolved, please refer to section 4.2.1.II.A.3 for guidance.

6.13 Mini-Bid Proposal Validity

All Contractor responses to Authorized User Mini-Bids must remain open and valid for at least 60 days from the Mini-Bid opening date, unless the time for awarding the Authorized User Agreement is extended by mutual consent of the Authorized User and the Contractor. A Contractor's Mini-Bid response shall continue to remain an effective offer, firm and irrevocable, subsequent to such 60 day period until either tentative award of the Authorized User Agreement by the Authorized User is made or withdrawal of the Contractor response in writing by the Contractor. Tentative award of the Authorized User Agreement shall consist of written notice to that effect by an Authorized User to a successful Contractor, who shall thereupon be obligated to execute a formal Authorized User Agreement.

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SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Contract being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications January 2015 22772 Project Based Information Technology Consulting (Statewide)), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

CONTRACTOR		**THE PEOPLE OF THE STATE OF NEW YORK**	
Signature:		Signature:	
Printed Name:		Printed Name:	Kathleen McAuley
Title:		Title:	Director
Company Name:	INNOSOUL, INC.		
Federal ID:	200098882	Date:	
NYS Vendor ID:	1000052679		
Date:			

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

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

On the _____day of _____ in the year 20_____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he maintains an office at _____, and further that:

[Check One]

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

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

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

☐ **If a limited liability company):** __**he** is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

_____

Notary Public
Registration No.