AMENDMENT # 1 TO CONTRACT PB128AA

THIS AMENDMENT # 1 (the "Amendment") is made to Contract PB128AA (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 Telos Corporation D/B/A Telos ("Contractor") with its principal place of business at 145 Wyckoff Rd, Suite 301, Eatontown, NJ 07724. 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 Contract number PB128AA 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 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. Section 4.10.3 Subcontracting Between Lots is hereby deleted in its entirety.

2. 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	
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.

3. 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).

TELOS CORPORATION D/B/A TELOS

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 TELOS CORPOROATION (D/B/A TELOS) (hereinafter "Contractor"), with its principal place of business at 145 Wyckoff Road Suite 301 Eatontown, New Jersey 07724. 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.
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".

Term	Definition
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 commences upon execution of the Contract by OGS as evidenced by the date accompanying the OGS signature line 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 in the contract of the 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 as set forth above with two (2) optional three (3) 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 Service

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 Contractor's Insurance Requirements

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	
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.

4.17 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:	_____
Title:	_____	Title:	_____
Company Name:	TELOS	Date:	_____
Federal ID:	520880974		
NYS Vendor ID:	1100128061		
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.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE.

January 2014

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

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

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

the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

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

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

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

the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Omnibus Procurement Act of 1992 requires that by signing this bid Bid Solicitation or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined

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

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

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

26. **IRAN DIVESTMENT ACT**. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidder/Offerer pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

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

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

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

APPENDIX B

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GENERAL

1. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

2. DEFINITIONS Terms used herein shall have the following meanings:

a. AGENCY OR AGENCIES The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

b. AUTHORIZED USER(S) Authorized User shall have the meaning set forth in New York State Finance Law section 163(1)(k) and includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

c. COMMISSIONER Commissioner of OGS, or in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or his or her authorized representative.

d. CONTRACT The writing(s) which contain the agreement of the Commissioner and the bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

1. **Centralized Contracts** Single or multiple award Contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency or competitive basis. Once established, procurements may be made from the selected Contractor(s) without further competition or Mini-Bid unless otherwise required by the Bid Specifications or Contract Award Notification.

2. **Back-Drop Contracts** Multiple award Centralized Contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

3. **RESERVED**

e CONTRACT AWARD NOTIFICATION An announcement to Authorized Users that a Contract has been established.

f. CONTRACTOR Any successful Bidder(s) to whom a Contract has been awarded by the Commissioner.

g. DOCUMENTATION The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, which are necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product.

h. EMERGENCY An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

i. ENTERPRISE The total business operations in the United States of Authorized User(s) without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Authorized User(s).

j. ENTERPRISE LICENSE A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

k. ERROR CORRECTIONS Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

l. GROUP A classification of Product, services or technology which is designated by OGS.

m. RESERVED

n. LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

o. LICENSEE(S) One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee(s)" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

p. LICENSE EFFECTIVE DATE The date Product is delivered to an Authorized User. Where a License involves Licensee's right

to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

q. LICENSOR A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.

r. NEW PRODUCT RELEASES (Product Revisions) Any commercially released revisions to the licensed version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

s. OGS The New York State Office of General Services.

t. PRODUCT A Deliverable authorized under any Authorized User Agreement under this Contract. .

u. PROPRIETARY Protected by secrecy, patent, copyright or trademark against commercial competition.

v. PURCHASE ORDER The Authorized User's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, electronic Purchase Order, or other authorized instrument).

w. REQUEST FOR PROPOSALS (**RFP**)

x. REQUEST FOR QUOTATION (**Mini-Bid**) A type of Bid Document that will be used under this Contract where factors in addition to cost are considered and weighted in evaluating the mini-bid and the award is made based on "best value" as defined by the State Finance Law, to the responsive and responsible Bidder(s). .

y. RESPONSIBLE BIDDER A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

z. RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the OGS Commissioner.

aa. RESERVED

bb. SITE The location (street address) where Product will be executed or services delivered.

cc. RESERVED

dd. SOURCE CODE The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine Object Code.

ee. STATE State of New York.

ff. SUBCONTRACTOR Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

gg. TERMS OF LICENSE The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

hh. VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

BID SUBMISSION

3. INTERNATIONAL BIDDING All offers (tenders), and all information and Product required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars ($US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

4. RESERVED

5. RESERVED

6. RESERVED

7. BID CONTENTS Bids must be complete and legible. All Bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Commissioner or may be grounds for rejection of the Bid. Changes, corrections and/or use of white-out in the Bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by the Commissioner after the time specified for the Bid opening may not be considered.

8. EXTRANEOUS TERMS Bids must conform to the terms set forth in the Solicitation, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms that met all the requirements of the Solicitation section 2.2 and Attachment 4 may be considered as having been submitted for consideration by OGS.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a Contract unless submitted in accordance with the above and the Commissioner or her designee expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

9. CONFIDENTIAL/TRADE SECRET MATERIALS

a. Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. An entity intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The State's receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

b. As used in this Section, "Disclosing Party" means the State or an Authorized User when disclosing its Confidential Information (defined below) to the Contractor, or the Contractor when disclosing its Confidential Information to the State or an Authorized User, and "Receiving Party" means the State or an Authorized User when receiving disclosure of Confidential Information from the Contractor, or the Contractor when receiving disclosure of Confidential Information from the State or an Authorized User. "Confidential Information" means all confidential information disclosed by a party (the "Disclosing Party") to the other party (the "Receiving Party") after the effective date of this Contract including, without limitation, information relating to the Disclosing Party's operations, processes, plans or intentions, know-how, design rights, trade secrets or business affairs. Confidential Information shall be clearly marked as "confidential," "proprietary," "restricted" or some similar designation. Except as provided in this Contract, the Receiving Party further agrees that any Confidential Information obtained by the Receiving Party from the Disclosing Party, its agents, affiliates, subcontractors, officers, or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the Disclosing Party hereunder, will not be divulged to any third parties.

c. The Receiving Party:

(i). may not use any Confidential Information for any purpose other than in accordance with, and in the performance of, its obligations under this Contract;

(ii). may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with this section ; and

(iii). shall make every reasonable effort to prevent the use or disclosure, other than as expressly permitted herein, of Confidential Information.

d. The Receiving Party may disclose information which would otherwise be Confidential Information if and to the extent that:

(i). it is required by law (such as the New York State Freedom of Information Law) or legal process;

(ii). the information has come into the public domain, otherwise than through (a) a breach of this Clause by the Receiving Party, (b) a third party's breach of any duty of confidentiality owed to the Disclosing Party of which the Receiving Party was aware, or (c) a violation of law;

(iii). it was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party;

(iv). it is required by existing contractual obligations of which the Disclosing Party is aware;

(v). it is independently developed by the Receiving Party without reliance on the Confidential Information;

(vi). it is required by any securities exchange or regulatory or governmental body to which it is subject or by judicial process;

(vii). it is otherwise obtained under the Freedom of Information Law or other applicable New York State laws or regulations; or

(viii). the disclosure is to its professional advisers, auditors or banker; or to any of its directors, other officers, employees and sub-contractors (a "Recipient") to the extent that disclosure is reasonably necessary for the purposes of this Contract.

e. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps as to its agents, affiliates, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

10. RESERVED

11. TAXES

a. Unless otherwise specified in the Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

b. Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise

taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. Non-State Authorized Users must offer their own proof of exemption upon request. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

c. Purchases by Authorized Users other than the State of New York may be subject to certain taxes which were not included in the Bid price, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such entity for payment.

12. EXPENSES PRIOR TO CONTRACT EXECUTION The Commissioner and any Authorized User(s) are not liable for any costs incurred by a Vendor, Bidder or Contractor in the preparation and production of a Bid, Mini-Bid, cost proposal revision, or for any work performed prior to Contract execution.

13. ADVERTISING RESULTS The prior written approval of the Commissioner is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of the Commissioner relative to the Bid or Contract for press or other media releases.

14. RESERVED

15. RESERVED

16. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS Bids offering Products that are provided, manufactured or produced in public institutions will be rejected.

17. PRICING

a. Unit Pricing If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item unless otherwise specified, in the Bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Commissioner, such unit pricing is obviously erroneous.

b. Net Pricing Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.

c. "No Charge" Bid When Bids are requested on a number of Products as a Group or Lot, a Bidder desiring to Bid "no charge" on a Product in the Group or Lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

d. Educational Pricing All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

e. Third Party Financing If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract Award to agree to the terms and conditions of a "Consent & Acknowledgment Agreement" in a form acceptable to the Commissioner.

f. Best Pricing Offer During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract 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, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

g. Specific price decreases:

(i) GSA Changes: Where NYS Net Prices are based on an approved GSA Schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) Commercial Price List Reductions: Where NYS Net Prices are based on a discount from Contractor's list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

(iii) Special Offers/Promotions Generally: Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or Net Price otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) Special Offers/Promotions to Authorized Users: Contractor may offer Authorized Users, under either this Contract or any other Contracting vehicle, competitive pricing which is lower than the NYS Net Price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Bid Specifications, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order(s) from any Authorized User without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

h. Cost Proposal Revisions A Contractor may be solicited prior to contract award to propose the best possible offer for the Product or service being bid on, in accordance with State Finance Law § 163(9)(c). A cost proposal revision must be a lower price than the initial price.

18. DRAWINGS

a. Drawings Submitted With Bid When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

b. Drawings Submitted During the Contract Term Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User's representative.

c. Accuracy of Drawings Submitted All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of Product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing Product, services or installation, or carrying out any other requirements of the intended scope of work.

19. SITE INSPECTION Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions for pre-existing deficiencies that may affect the installed Product, equipment, or environment or services to be provided and, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.

20. PROCUREMENT CARD The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing Purchase Orders or Purchase Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased Products have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty Product in accordance with other Contract requirements, the Contractor shall immediately credit a cardholder's account for Products returned as defective or faulty.

21. RESERVED

BID EVALUATION

22. BID EVALUATION The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his/her sole discretion, may accept or reject illegible, incomplete or vague Bids and his/her decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the Bid.

23. RESERVED

24. RESERVED

25. RESERVED

TERMS & CONDITIONS

26. RESERVED

27. PARTICIPATION IN CENTRALIZED CONTRACTS

a. Agencies All State Agencies may utilize and purchase under any Centralized Contract let by the Commissioner, unless the Bid Documents limit purchases to specific State Agencies.

b. Non-State Agency Authorized Users Authorized Users other than State Agencies are permitted to make purchases through Centralized Contracts where permitted by law, the Contract or the Commissioner.

c. Voluntary Extension Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the Bid Specifications shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163(3)(a)(iv) of the State Finance Law.

d. Responsibility for Performance Participation in Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-State Agency Authorized User and Contractor guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the non-State Agency Authorized User's

or Contractor's failure to perform in accordance with its obligations under the Contract.

e. Contract Migration Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products or services shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

28. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may be modified or amended only upon mutual written agreement of the Commissioner and Contractor.

Notwithstanding the foregoing, the Contractor may offer an Authorized User for a particular mini-bid procurement: (1) better and more advantageous pricing; (2) better and more advantageous payment terms; or (3) better and more advantageous delivery terms, and the Authorized User may accept such terms without OGS approval. If the Authorized User accepts such terms, the Authorized User shall furnish a copy of such terms to OGS for informational purposes at the time of issuance of the Authorized User's tentative award notification.

Other than where such terms related to pricing, payment or delivery are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s). No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

29. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within thirty days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a proposal. Failure to agree to any adjustment shall be a dispute under the Disputes clause, provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

30. ESTIMATED / SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts, also referred to as indefinite delivery / indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

With respect to any specific quantity stated in the contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

31. EMERGENCY CONTRACTS In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract(s), as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

32. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the Contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the

right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

33. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

34. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Bid Specifications or by an Authorized User, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Authorized User shall govern.

35. RESERVED

36. RESERVED

37. RESERVED

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41. RESERVED

42. EMPLOYEES, SUBCONTRACTORS & AGENTS All employees, Subcontractors or agents performing work under the Contract at the Authorized User's site must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Specifications or the Bid Documents, whichever is more restrictive, and must comply with all security and administrative requirements of the Authorized User. The Commissioner reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner reserves the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agents of the Contractor.

43. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, notwithstanding anything in Section 138 of the State Finance Law to the contrary, any approval required thereunder shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

44. SUBCONTRACTORS AND SUPPLIERS The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior OGS Centralized Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do business; the Commissioner's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

45. PERFORMANCE / BID BOND The Commissioner reserves the right to require a Bidder or Contractor to furnish, without additional cost, a performance, payment or Bid bond, negotiable irrevocable letter of credit, or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

46. SUSPENSION OF WORK The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues or other circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall

comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and the estimated duration of the suspension. A copy of the written notice shall be provided to the Commissioner. Activity may resume at such time as the Authorized User issues a formal written notice authorizing a resumption of performance under the Contract. Such written notice shall provide a minimum of ten (10) business days notification before resumption of performance.

47. **TERMINATION**

a. For Cause: For a material breach that remains uncured for more than thirty calendar days or other specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively, at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience: By written notice, this Contract may be terminated at any time by the Commissioner for convenience upon sixty calendar days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

By written notice, an Authorized User may terminate an Authorized User Agreement at any time for convenience upon sixty (60) calendar days written notice or other specified time period of at least sixty calendar days without penalty or other early termination charges due. Such termination of the Authorized User Agreement shall not affect the Contract or any other project or Purchase Order that has been issued under the Contract. If the Authorized User Agreement is terminated pursuant to this subdivision, the Authorized User shall remain liable for all completed and accepted deliverables but unpaid through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables for which payment is made.

c. For Violation of Sections 139-j and 139-k of the State Finance Law: The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

d. For Violation of Section 5-a of the New York State Tax Law: The Commissioner reserves the right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

e. For Non-Responsibility: The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility 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 or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner 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.

f. For refusal to testify, sign a waiver of immunity or answer questions

The Commissioner reserves the right in accordance with State Finance Law §139-a, to terminate the contract in the event it is found that a member, partner, director or officer of Contractor refused, when called before a grand jury, head of a State department, temporary state commission or other State agency, or the organized crime task force in the department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor.

48. SAVINGS/FORCE MAJEURE A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any Force Majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the Force Majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the Force Majeure condition continues beyond thirty (30) days, the Parties shall jointly decide on an appropriate course of action that will permit fulfillment of the Parties' objectives hereunder.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor, under the Contract due to a Force Majeure occurrence:

a. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or
b. The Contractor will make commercially reasonable efforts to provide Authorized Users with access to Products first in order to fulfill orders placed before the Force Majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the Force Majeure event.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss. Failure of the Contractor to agree to any adjustment shall be a dispute under the Disputes clause; provided however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

49. CONTRACT INVOICING

a. Invoicing. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in a commercially reasonable manner as requested by the Commissioner. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at **www.osc.state.ny.us**, by e-mail at **epunit@osc.state.ny.us**, or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. Payment of Contract Purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

50. DEFAULT – AUTHORIZED USER

a. Breach by Authorized User. An Authorized User's breach shall not be deemed a breach of the Centralized Contract; rather, it shall be deemed a breach of the Authorized User's performance under the terms and conditions of the Centralized Contract.

b. Failure to Make Payment. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within thirty calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. Notice of Breach. Notwithstanding the foregoing, the Contractor shall, at least ten business days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

d. Insufficient basis. If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

51.PROMPT PAYMENTS

a. State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by Agency may be made in accordance with State Finance Law §§179-d et. seq. and the implementing regulations (2 NYCRR §18.1 et seq.).

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

c. By Contractor Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

52. REMEDIES FOR BREACH It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

a. Cover/Substitute Performance In the event of Contractor's material breach that has not been cured within thirty (30) days following Contractor's receipt of written notice of the material breach, the Commissioner may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable service or acquire replacement Product of equal or comparable quality, the Commissioner may acquire acceptable replacement service or Product of lesser or greater quality.

Such purchases may be deducted from the Contract quantity without penalty or liability to the State. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during a period where Contractor is making good faith efforts to cure a material breach.

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should Contractor and the Commissioner fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be a dispute under the Disputes clause.

c. Bankruptcy In the event that the Contractor files, or there is filed against Contractor, a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, be credited the amounts owed by the Contractor arising out of the same transactions.

d. Reimbursement of Costs Incurred The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees awarded by a court of competent jurisdiction, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may obtain substitute Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

e. Deduction/Credit Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, damages, etc., that arise from the administration of the Contract.

53. ASSIGNMENT OF CLAIM Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 USC Section 1, et. seq. and the antitrust laws of the State of New York, General Business Law Section 340, et. seq.

54. RESERVED

55. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment.

56. SECURITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) in performance of the Contract including but not limited to physical, facility, documentary, information security and cyber security rules, procedures and protocols ("Procedures"). .Authorized User shall indicate if there are any applicable Procedures as part of the mini-bid required under this Contract. The Authorized User shall make available the relevant Procedures and Contractor shall be responsible for distributing to its representatives and assessing and ensuring compliance. The Authorized User, Contractor and the State agree that the Procedures do not modify or amend the other terms and conditions of the Contract.

57. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery or performance of Product .

58. CONTRACT TERM - RENEWAL In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by the Commissioner may be extended by the Commissioner for an additional period(s) of up to one year with the written concurrence of the Contractor and Comptroller. Such extension may be exercised on a month-to-month basis or in other stated periods of time during the one year extension.

59. WARRANTIES

a. Product Performance

Contractor hereby warrants and represents that the Products acquired by the Authorized User under the terms and conditions of this Contract conform to the specifications, performance standards and documentation in the Authorized User Agreement., and the documentation fully describes the proper procedure for using the Products.

Contractor further warrants and represents that if the Products acquired by the Authorized User pursuant to an Authorized User Agreement under this Contract include software application development, software application customization, software programming, software integration or similar items ("Software Deliverables") then such Software Deliverables shall be free from defects in material and workmanship and conform with all requirements of the Contract and Authorized User Agreement for the warranty period of one (1) year from the date of acceptance of the completed project ("Project warranty period").

Contractor also warrants that the Products, in the form provided to the Authorized User, do not infringe any copyright, trademark, trade secret or other right of any third party.

b. Title and Ownership Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify Authorized Users and hold Authorized Users harmless from any damages and liabilities (including reasonable attorneys' fees and costs) awarded by a court of competent jurisdiction arising from any breach of Contractor's warranties as set forth herein.

c. Product Warranty for Software Deliverables During the Project warranty period, defects in the materials or workmanship of the Software Deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period by the cumulative period(s) of time, after notification, during which the Software Deliverables require servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees .

The Commissioner agrees that Contractor is not responsible for any modification of the Software Deliverables made by an Authorized User without Contractor's approval.

d. Replacement Parts Warranty

e. Virus Warranty The Contractor represents and warrants that any Software Deliverables provided under an Authorized User Agreement to the Authorized User does not contain any known viruses. Contractor shall take reasonable actions and precautions not to introduce any known viruses in any Software Deliverable. Contractor is not responsible for viruses introduced at Licensee's site.

f. Date/Time Warranty Contractor warrants that Software Deliverables furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract as long as the Product is used by the governmental entity, or its successor, for whom the Product was originally purchased." Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

g. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards. The Authorized User must notify Contractor of any services warranty deficiencies within ninety calendar days from performance of the services that gave rise to the warranty claim.

h. Miscellaneous The Authorized User shall promptly notify the Contactor and the Commissioner in writing of any claim of breach of any warranty provided herein.

The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

i. Survival of Warranties All warranties contained in this Contract, which have not expired by their terms, shall survive the termination of this Contract.

j. No Implied Warranties
To the extent permitted by law, these warranties are exclusive and there are no other express or implied warranties or conditions, including warranties or conditions of merchantability and fitness for a particular purpose.

60. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

61. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise or result from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder is solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

62. INDEMNIFICATION RELATING TO INFRINGEMENT The Contractor will also defend, indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, or by reason of an off-the-shelf component; and b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

The Authorized User shall give Contractor the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

Such indemnity shall only be applicable in the event of claims, judgments, liabilities and/or costs that may be finally assessed against Authorized User in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, judgments, liabilities and/or costs arise solely from the Authorized Users negligent act, failure to act, gross negligence or willful misconduct.

If usage of a Product shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue usage (ii) to modify the service or Product so that usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace such Product or parts thereof, as applicable, with non-infringing Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in

part as necessary and applicable, provided that the Authorized User is given a refund for any amounts paid for the period during which usage was not feasible.

In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and seek to secure a continuance to permit the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

63. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Third Party Rights clause, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) five hundred thousand dollars ($500,000), whichever is greater.

b. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

64. RESERVED

65. RESERVED

66. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor in the Authorized User Agreement, Authorized User(s) shall have sixty (60) days from the date of delivery to accept all Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

If the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

67. RESERVED

68. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

(i) For purposes of this clause, "Products." Deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

(ii) For purposes of this clause, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Existing Products includes any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or provided pursuant to this Contract that existed prior to or was developed or discovered independently from the activities directly related to this Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

(iii) For purposes of this clause, "Custom Products." Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for an Authorized User pursuant to an Authorized User Agreement under the Contract.

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Authorized User Agreement or Purchase Order. Unless otherwise specified in writing in the mini-bid and the Authorized User Agreement or Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products: Except as set forth below, Contractor shall retain all rights, title and interest in Existing Products.

1. RESERVED

2. Software - Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), embedded in the Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

Open source software is developed independently of Contractor and may be governed by a separate license ("open source software"). If the open source software is governed by a separate License and provided under this Contract, Contractor shall provide a copy of that license in the applicable Documentation and the Authorized User's license rights and obligations with respect to that open source software shall be defined by those separate license terms and subject to the conditions, if any, therein. Nothing in this Contract shall restrict, limit, or otherwise affect any rights or obligations the Authorized User may have, or conditions to which the Authorized User may be subject, under such separate open source license terms.

3. Other - Contractor grants to the Authorized User a worldwide, non-exclusive, royalty-free, perpetual license to use, reproduce, display, distribute copies of, and prepare derivative works of any Contractor "Existing Product"" embodied in the Deliverables which is not covered in 1 or 2 above.

(**ii) Custom Products**: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchase(s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such

financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS) The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this clause.

e. Contractor's Obligation with Regard to ISV (Third Party) Product

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