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Contract

THIS CONTRACT (hereinafter "Contract" or "Centralized Contract") for the acquisition of Information Technology Commodities and/or 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 **International Business Machines Corporation DBA IBM Corporation** (hereinafter "Contractor"), with its principal place of business at **1 New Orchard Road, Armonk, NY 10504.** The foregoing are collectively referred to as the "Parties."

Whereas, OGS provided notification of availability of a non-competitive periodic recruitment solicitation ("Solicitation") for manufacturers that provide Information Technology Commodities and Services by placing a notice in the **January 6, 2015** edition of the New York State Contract Reporter; and

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; and

Whereas the Solicitation was structured with four separate lots: Lot 1–Software, Lot 2–Hardware, Lot 3–Cloud and Lot 4–Implementation Services; and

Whereas, this Centralized Contract requires, for each transaction, that the Authorized User issue a competitive Request for Quote (RFQ) to be issued to eligible Contractors pursuant to a How to Use Process. Each Authorized User Agreement resulting from the competitive RFQ process will be governed first by the terms and conditions specified herein and second by terms and conditions added to the Authorized User Agreement by the Authorized User; and

Whereas, the State evaluated Contractor's submission and determined that the Contractor met the minimum administrative and technical requirements for those Lot(s) set forth in Appendix D; and

Whereas, in accordance with State Finance Law Article 11, the State has made a determination that the Contractor's not to exceed pricing is reasonable; and

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 D.

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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Section 1. Introduction

1.1 OVERVIEW AND PURPOSE OF THIS CONTRACT

The New York State Office of General Services (OGS), New York State Procurement is responsible for developing and managing centralized Contracts for all New York State Authorized Users. NYS Procurement has developed this new contracting model for Information Technology (IT) procurement which will enable an Authorized User to procure from specific Lots for Software, Hardware, Cloud, and Implementation services. The procurements shall be competitive at the transactional level via Request for Quotations (RFQ) and will allow an Authorized User the ability to procure within any of the Lots, or across Lots.

Section 2. Contract Scope

2.1 LOT OVERVIEW

This Contract encompasses the Lots listed in Appendix D – Contractor and Reseller Information. The following descriptions, as applicable, delineate the scope of the award Lots.

2.1.1 Lot 1 – Software

This Lot provides Authorized Users with a mechanism to purchase Products including software licenses (perpetual and term), Maintenance/Support for Contractor's Proprietary product line, training, and fleet management as set forth below. Competition is required at the Authorized User transactional level from Contractors and Resellers.

Products that are provided under other Lots shall not be purchased under this Lot.

Lot 1 – Software
Inclusions

• Software Licenses for Contractor's proprietary product line, including
  ○ Perpetual licenses
  ○ Term licenses
• Pre-packaged Software Maintenance/Support for Contractor's proprietary product line
• Pre-packaged Software Installation
• Configuration Services (Limited in amount to 10% of the net NYS Contract Price for the total Products being procured not to exceed $25,000 total.)
• Software Training Packages, Remote and On-Site that are standardized and prepackaged
• Fleet management (management of software license inventory)
• Software Bundles, including:
  ○ Software Third Party Products
  ○ Maintenance
• Enterprise Software Purchases

Restrictions
• On Premise Software Only • Manufacturers Only, as defined in the Glossary as Manufacturer – Software • Hardware Third Party Products are allowed as part of a Software Bundle only if they are required to facilitate the provision of the Software solution.
Exclusions
In addition to the items excluded under this section, Contractors cannot sell a Product that does not qualify as Software under the Contract. The following are examples of excluded Products: • Consulting Services • Cloud Products • Implementation • Customized Training • Stand-alone Professional Services • SKUs that equate to "blocks of hours"

Lot 1 – Software
• Stand-alone Third Party Products • Products that are provided under other Lots cannot be purchased under this Lot • Configuration Services other than as set forth in Inclusions.

2.1.2 Lot 2 – Hardware

This Lot provides Authorized Users with a mechanism to purchase Products including Hardware, pre-packaged installation, configuration, training, extended warranties, maintenance/support, and, ancillary equipment and accessories offered by the Contractor in its Published Price List may be included under this Lot. Related Software which is bundled with the Hardware and is required for installation, configuration and is integral to the operation of the Hardware is acceptable for purchase under this Lot. This Related Software must be acquired and delivered at the time of the Hardware purchase.

The Products must be commercially released Products and available for purchase through the Contractor's normal marketing channels. Alpha, beta, experimental or unannounced equipment is outside the scope of this Contract. Contractor shall not offer stand-alone third party Products through this Contract. No Products deemed end of Manufacturer production or within six months prior to end of life are to be sold, except with prior written approval by the Authorized User.

Products that are provided under other Lots shall not be purchased under this Lot.

Lot 2 – Hardware
Inclusions
• Appliances • Server & Mainframe Hardware • Storage • Microcomputer Systems, System Peripherals & Accessories • Telecommunications Hardware, System Peripherals & Accessories • Key Systems • Private Branch Exchange • Desktop / Notebooks / Laptop / Tablets / Workstations • Audio / Video Conferencing Hardware • Pre-packaged Hardware Maintenance/Support for Contractor's proprietary product line • Pre-packaged Hardware installation and configuration services • Configuration Services (Limited in amount to 10% of the net NYS Contract Price for the total Products being procured, not to exceed $25,000 total.) • Hardware Training Packages (Remote and On-Site) that are standardized and prepackaged • Fleet management (management of Hardware asset inventory) • Hardware Bundles, including Related Software • Imaging and/or Loading Services • Remote Hardware Administration/Maintenance/Support • Enterprise Hardware Purchases
Restrictions
• Manufacturers Only, as defined in the Glossary as Manufacturer – Hardware • Software/Hardware Third Party Products are allowed as part of a Hardware Bundle only if they are required to facilitate the provision of the Hardware solution
Exclusions
In addition to the items excluded under this section, Contractors cannot sell a Product that does not qualify as Hardware under the Contract. The following are examples of excluded Products: • Consulting Services • Cloud paired appliances • Cloud Products • Customized Training • Implementation Services • Configuration Services other than as set forth in Inclusions

Lot 2 – Hardware
• Printers, Peripherals, Accessories and Related Services within the scope of OGS Group 75525 until such time as those awards are no longer valid • Alpha, beta, experimental or unannounced equipment • Software not in compliance with Related Software, of this Lot • Stand-alone Third Party Products • Products that are provided under other Lots cannot be purchased under this Lot

2.1.3 Lot 3 – Cloud

This Lot provides Authorized Users with a mechanism to purchase Cloud Products.

Lot 3 - Cloud
Inclusions
• Software as a Service (SaaS) • Platform as a Service (PaaS) • Infrastructure as a Service (IaaS) • Anything as a Service (XaaS) • Cloud Bundled Products – including Lot 1 or Lot 2 Product with Cloud features • Integrated Bundle of Cloud Services • Pre-packaged Cloud Maintenance/Support for Contractor's proprietary product line • Pre-packaged Cloud Connectivity Bundle (For example, an existing Cloud Product bundled with a connectivity service to enable the use of the Cloud Product.) • Pre-packaged Cloud installation and configuration services • Cloud Training Packages (Remote and On-Site) that are standardized and prepackaged for Contractor's proprietary product line • Free-standing Cloud-Based training services that are standardized and prepackaged for Contractor's proprietary product line (e.g. on-line professional training services) • Apps for Mobile Devices • Managed Security Services, Including Internet Traffic Monitoring Services. • Fleet Management (management of Cloud asset inventory) • Enterprise Cloud Purchases
Restrictions
• Manufacturers Only, as defined in the Glossary as Manufacturer – Cloud • Third Party Products are allowed as part of a Cloud Bundle only if they are required to facilitate the provision of the Cloud solution
Exclusions
• Consulting Services • Customization Services • Customized Implementation Services • Customized Configuration Services • Customized Training • Stand-alone Professional Services • Stand-alone Third Party Products • Products that are provided under other Lots cannot be purchased under this Lot

2.1.4 Lot 4 – Implementation Services

Implementation Services are for the efficient deployment of Products and Services procured under Lots 1, 2 and/or 3 and any applicable future Lots awarded through Periodic Recruitment. Implementation Services are limited to services required to install or implement products from other Lots.

Implementation services are open to Manufacturers who are awarded a Contract(s) under Lots 1, 2 and/or 3 and any applicable future Lots.

Lot 4 – Implementation Services
Inclusions
Implementation services and initial configuration of Lots 1 through 3. Examples include, but are not limited to: • Business Process Analysis for new Products • Project Management Services • Data Conversion • Customized Training on Products included within Lots 1, 2 and 3 • Programming Services capped at no more than 20% of the total implementation cost of the Authorized User Agreement • Enterprise Implementation Services
Restrictions
• Restricted to Contractors with contracts for Lots 1, 2 or 3 (or any combination thereof) • Implementation services may be procured to implement a Product purchased from Lots 1, 2 or 3 above • Implementation services may be procured to implement a Product purchased prior to this Umbrella Contract if the Product is included within Lots 1, 2 or 3 • An Authorized User Agreement for Implementation shall be no longer than 36 months in duration including any time extensions
Exclusions
• Ongoing Services such as: – Staff Augmentation – Web Hosting – Automated Network Monitoring (or any other service provided principally through an automated process) – Equipment Maintenance/Support – Application Service Provisioning • Consulting Services not related to implementation of Products in all other Lots of the Contract • Programming Services requiring more than 20% of the total implementation costs of the Authorized User Agreement

2.2 PRODUCTS AND SERVICES EXCLUDED FROM THE SCOPE OF THIS CONTRACT

This Contract expressly excludes the following from its scope:

- Consulting services not related to implementation of Products in Lots 1, 2 and 3 of the Contract;
- Stand-alone Connectivity Services (e.g. connectivity services not bundled with any Product within the scope of this Contract)
- Staff Augmentation (standalone hourly based IT Services)
- Time and material billings;
- Large scale IT support infrastructure such as switch gear, generators, smoke detection, fire suppression and cooling systems; and
- Stand-alone Third Party Products.

2.3 SUBSEQUENT PERIODIC RECRUITMENT

During the term of the Contract, the State reserves the right to conduct subsequent future Periodic Recruitments. The purpose of future Periodic Recruitments will be for:

- Add new Lots for additional and/or emerging technologies
- Add new Contractors to existing and new Lots
- Add additional Lots to existing Contracts

OGS will formally announce when a periodic recruitment Solicitation is issued. Periodic recruitments will be issued at the discretion of the OGS. A Contractor shall be required to submit such Submission documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the Periodic Recruitment. Should a Contractor Submission for a Lot be deemed non-responsive under any Periodic Recruitment, a Contractor cannot reapply for that Contract Lot until the next Periodic Recruitment is opened.

2.4 ESTIMATED SPEND AND QUANTITIES

This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. Numerous factors could cause the actual volume of Product purchased under this Contract to vary substantially from any estimates previously provided. Such factors include, but are not limited to, the following:

- The Contract is a nonexclusive Contract;
- There is no guarantee of volume to be purchased; and
- There is no guarantee that demand will continue in any manner consistent with previous purchases.

2.5 DEFINITIONS

In addition to the terms defined in Appendix B, Section 2, Definitions, the following definitions shall apply in this Contract.

Term	Definition
Analytic Derivatives	The outcome from data mining or other aggregated Data analysis techniques.
Anything as a Service (XaaS)	XaaS is a collective term said to stand for a number of things including "X as a service," "anything as a service" or "everything as a service." The acronym refers to an increasing number of services that are delivered over the Internet rather than provided locally or on-site.
Appliance	An Appliance is a device with integrated Software (firmware), specifically designed to provide a specific computing resource. The Hardware and Software are pre-integrated and pre-configured before delivery to customer, to provide a "turn-key" solution to a particular problem. Unlike general purpose computers, Appliances are generally not designed to allow the customers to change the Software (including the underlying operating system), or to flexibly reconfigure the Hardware. To be considered an Appliance, the (Hardware) device needs to be integrated with Software, and both are supplied as a package.
Authentication	The process of establishing confidence in the identity of users or information systems.
Authorized User Agreement	Authorized User Agreement shall mean the Purchase Order and/or such other documents memorializing the Contractor's obligations with respect to a given transaction resulting from an RFQ issued by an Authorized User.
Best Value	The basis for awarding all service and technology Contracts to the Bidder that optimizes quality, cost and efficiency, among responsive and responsible Bidders. (State Finance Law §163 (1) (j)).
Business Continuity and Disaster Recovery (BC/DR)	Business Continuity and Disaster Recovery (BCDR or BC/DR) are closely related practices that describe an organization's preparation for unforeseen risks to continued operations.
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State or Federal holidays.
Business Entity	Any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
Cloud	Cloud shall mean any Product or Service sold as an "as a service" offering or in which Authorized User Data is transmitted, acted upon, or stored on non-Authorized User equipment. This may include, but is not limited to, hosted applications, managed security services, and off-site Data storage. Cloud includes IaaS, PaaS, SaaS, and XaaS.
Cloud Provider	Person, organization or entity responsible for making a Cloud Service available to Authorized Users.
Commercial Off–The-Shelf (COTS)	A term for Products available in the commercial marketplace that can be purchased and used under government Contract.
Compliance	Conformity in fulfilling requirements.
Configuration	An arrangement of elements in a particular form, figure, or combination which includes minor physical or software setting changes that can be implemented without custom physical modifications or changes to the base code. Configuration may include Installation.

Term	Definition
Consensus Assessments Initiative Questionnaire (CAIQ)	As established by the Cloud Security Alliance (CSA). The Cloud Security Alliance Consensus Assessments Initiative (CAI) was launched to perform research, create tools and create industry partnerships to enable Cloud computing assessments.
Consulting	The providing of expert knowledge by a third party for a fee.
Continental United States (CONUS)	The 48 contiguous States, and the District of Columbia.
Contract Term	The initial term of the Contract and any renewals and/or extensions.
Copyright	Copyright is a legal concept, enacted by most governments, that grants the creator of an original work exclusive rights to its use and distribution, usually for a limited time, with the intention of enabling the creator of intellectual wealth (e.g. the photographer of a photograph or the author of a book) to receive compensation for their work and be able to financially support themselves.
Custom Software	Software that does not meet the definition of COTS Software.
Customization	Customization of Product is the modification of packaged Product to meet the individual requirements of an Authorized User.
Customized Training	Training that is designed to meet the special requirements of an Authorized User.
Data	Any information, Analytic Derivatives, formula, algorithms, or other content that the Authorized User may provide to the Contractor pursuant to this Contract. Data includes, but is not limited to, any of the foregoing that the Authorized User and/or Contractor (i) uploads to the Cloud Service, and/or (ii) creates and/or modifies using the Cloud Service. See also Analytic Derivatives.
Data Breach	Data Breach refers to unauthorized access by any person, including employees, officers, partners or subcontractors of Contractor, who have not been authorized to access such Data.
Data Center	The term "Data center" applies to all facilities which Authorized User Data is processed or stored.
Data Categorization	Data categorization is the process of risk assessment of Data. See also “High Risk Data”, “Moderate Risk Data” and “Low Risk Data”.
Data Conversion	The conversion of computer data from one format to another.
Data Mining	Data Mining is the computational process of discovering patterns in large data sets involving methods at the intersection of artificial intelligence, machine learning, statistics, and database systems. The overall goal of the data mining process is to extract information from a data set and transform it into an understandable structure for further use. Aside from the raw analysis step, it involves database and data management aspects, data pre-processing, model and inference considerations, interestingness metrics, complexity considerations, post-processing of discovered structures, visualization, and online updating.
Database	A single collection of Data stored in one place that can be used by personnel to make decisions and assist in analysis.
Deliverable	Products, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished within the provision of services.
Device	A piece of electronic equipment (such as a laptop, server, hard drive, USB drive) adapted for a particular purpose.
Discount	An allowance, reduction or deduction from a selling price or list price extended by a seller to a buyer in order for the net price to become more competitive. More common forms of discounts include trade discounts, quantity discounts, seasonal discounts and cash discounts.
Discount from List	Mathematical calculation to determine the buyer’s price from a manufacturer’s price list.
Encryption	A technique used to protect the confidentiality of information. The process transforms ("encrypts") readable information into unintelligible text through an algorithm and associated cryptographic key(s).
Equal Employment Opportunity (EEO)	Policies and procedures of the jurisdiction to ensure non-discrimination and equal opportunity to all employees, especially women, minorities, and persons with disabilities.
Equipment	An all-inclusive term which refers either to individual Machines or to a complete Data Processing System or Subsystem, including its Hardware and Operating Software (if any). See also “device, “appliance,” and “hardware,” “machine.”

Term	Definition
Federal Information Security Management Act (FISMA)	The Federal Information Security Management Act of 2002 ("FISMA", 44 U.S.C. § 3541, et seq.) is a United States federal law enacted in 2002 as Title III of the E-Government Act of 2002 (Pub.L. 107–347, 116 Stat. 2899). The act recognized the importance of information security to the economic and national security interests of the United States. The act requires each federal agency to develop, document, and implement an agency-wide program to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source.
Fleet Management	The development and management of inventory (e.g. Software inventory, Hardware inventory, Cloud inventory).
Follow the Sun	Follow-the-sun is a type of global workflow in which tasks are passed around daily between work sites that are many time zones apart.
General Services Administration (GSA)	The department within the U.S. government that is responsible for procurement of goods and services.
Government Entity	A federal, state or municipal entity located in the United States.
Hardware	Refers to IT Equipment and is contrasted with Software. See also Equipment.
High Risk Data	Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“High Impact Data”).
Implementation	Implementation refers to post sales process of guiding a client from purchase to use of the Product that was purchased. This may include but is not limited to post sales requirements analysis, scope analysis, limited customizations, systems integrations, data conversion/migration, business process analysis/improvement, user policy, customized user training, knowledge transfer, project management and system documentation.
Information Technology (IT)	Includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
Information Technology Services (ITS)	New York State Office of Information Technology Services (http://www.its.ny.gov/). It is the responsibility of ITS to provide centralized IT services to the State and its governmental entities with the awareness that our citizens are reliant on those services.
Infrastructure as a Service (IaaS)	The capability provided to the Authorized User is to provision processing, storage, networks, and other fundamental computing resources where the Authorized User is able to deploy and run arbitrary Software, which can include operating systems and applications. The Authorized User does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications; and possibly limited control of select networking components (e.g., host firewalls).
Installation	The act or process of making Products ready to be used. Installation does not include Configuration.
Installation Date	The date specified in the Authorized User Agreement by which the Contractor must have the ordered Equipment ready for use by the Authorized User.
Installation of Hardware	Involves physically installing various types of computer systems and/or adding new components to an already existing system. Installation set up of computer systems includes the initial installation of Hardware and other components that are or may be part of a larger system.
Intellectual Property (IP)	Includes inventions, patents, copyrights, trade secrets, trademarks, technical Data, industrial designs that are generally protected and proprietary.
Internet Access	Connection to the internet through an Internet Service Provider (ISP).
Internet Service Provider (ISP)	An ISP is an organization that provides services for accessing, using, or participating in the Internet.
Interoperability	The capability to communicate, to execute programs, or to transfer Data among various functional units under specified conditions

Term	Definition
Legacy Systems	Any outdated Hardware/Software system that remains in use despite the availability of more current technology. It usually is an archaic Data management platform that may contain proprietary custom designed Software (e.g. An old database management system running on mainframes).
Logical Partition (LPAR)	A logical partition is a subset of computer's Hardware resources, virtualized as a separate computer.
Low Risk Data	Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“Low Impact Data”).
Machine	An individual unit of a Data processing system or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
Maintenance	The upkeep of Product that keeps the Product operating in accordance with the Manufacturer’s specification.
Mandatory	Refers to items or information that the State has deemed that a Vendor must submit as compulsory, required and obligatory. These items or information are noted as such, or the requirements may be phrased in terms of “must” or “shall”. Mandatory requirements must be met by the Vendor for Vendor’s Submission to be considered responsive.
Manufacturer	A person or business entity that creates, makes, processes, or fabricates a Product or something of value, which changes a raw material or commodity from one form to another or creates a new Product or commodity.
Manufacturer - Software	An organization that creates, programs, or develops proprietary Software that are branded, warranted, supported, and maintained by the entity that creates it and holds all intellectual property rights of the assembled solution.
Manufacturer - Cloud	An organization that creates, programs, or develops a proprietary system that is delivered as a subscription service that is branded, warranted, supported, and maintained by the entity that creates it. It may or may not be hosted by the Manufacturer, but the Manufacturer will be held responsible for the performance of the service provided regardless of the owner of the support infrastructure.
Manufacturer - Hardware	An organization that creates or assembles Hardware components into an integrated proprietary system that is branded, warranted, supported, and maintained by the entity that creates it and holds all intellectual property rights of the assembled solution.
Manufacturer Part Number (SKU)	An identification number assigned to an individual part by the Manufacturer or distributor of that part; usually includes a combination of alpha and/or numeric characters.
Manufacturer’s Price List	A price list published in some form by the Manufacturer and available to and recognized by the trade.
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.
Mean	The arithmetic average. The average value of a set of numbers.
Minority and/or Woman-Owned Business (MWBE)	A business certified with Empire State Development (ESD) as a Minority and/or Woman-Owned Business.
Model Number	An identification number assigned to describe a style or class of item, such as a particular design, composition or function, by the Manufacturer or distributor of that item.
Moderate Risk Data	Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“Moderate Impact Data”).
Must	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative.
National Institute of Standards and Technology (NIST)	NIST is the federal technology agency that works with industry to develop and apply technology, measurements, and standards. http://www.nist.gov

Term	Definition
New York State Small Business Enterprise (NYS SBE)	A "New York State Small Business" is defined as a company that is a resident to New York State, independently owned and operated, with 100 or fewer employees, and not dominant in its field. See State Finance Law §160(8).
Non-State Agencies	Political subdivisions and other entities authorized by law to make purchases from OGS Centralized Contracts other than those entities that qualify as State Agencies. This includes all entities permitted to participate in centralized contracts per Appendix B, §39(b), Non-State Agency Authorized Users and §39(c), Voluntary Extension and State Finance Law Section 163(1)(k).
NYS Procurement	The New York State Office of General Services that is authorized by law to issue centralized, statewide contracts for use by New York State agencies, political subdivisions, schools, libraries and others authorized by law to participate in such contracts. http://nyspro.ogs.ny.gov
Office of the State Comptroller (OSC)	The New York State Office of the State Comptroller. http://www.osc.state.ny.us/
Operating System (OS)	Those routines, whether or not identified as program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
Personally Identifiable Information (PII)	As defined in NIST Special Publication 800-122 "Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)",
Platform as a Service (PaaS)	The capability provided to the Authorized User to deploy onto the Cloud, infrastructure Authorized User-created or acquired applications created using programming languages and tools supported by the Vendor. The Authorized User does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.
Preventive Maintenance	Maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
Processor	A microprocessor or other form of central processing unit that accesses shared resources. A dual-core or multicore processor (an integrated circuit with two or more microprocessors or central processing units plugged into the same socket) shall be considered a single Processor.
Procurement Card (P-Card)	A method of procuring and settling the purchase of goods and services.
Procurement Plan	The Product of the procurement planning process. A Procurement Plan may include, but is not limited to: the project requirements, the procurement team, the justification for the procurement, the procurement method, financial/technical weighting options and a procurement timeframe.
Product Bundle	Multiple Products combined for sale as a single Product offering. In the instance where a Product Bundle is comprised of Products by multiple Manufacturers, the Product Bundle can only be offered for sale under the Contract by the Manufacturer having the largest portion of the cost of the Product Bundle based on the Manufacturer's list price for the Product Bundle components.
Programming Services	Programming Services are modifications or additions to Source Code.
Project Manager (PM)	A project manager is a professional in the field of project management. Project managers can have the responsibility of the planning, execution and closing of any project, typically relating to construction industry, architecture, aerospace and defense, computer networking, telecommunications or Software development.
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.
Related Software	Software which is bundled with Hardware and is required for installation, configuration and is integral to the operation of the Hardware.
Reseller	A Reseller is a company or individual (merchant) that purchases goods or services with the intention of selling them rather than consuming or using them. Also known as Value Added Reseller (VAR) or channel partner. Resellers must be eligible to quote statewide, independently and lower than Manufacturer (Contract) pricing for procurements under resulting Contracts. Reseller must also be able to accept orders, invoice and receive payment for Products.

Term	Definition
Sales Agent	A Sales Agent may assist the Manufacturer with sales, but Sales Agents are not authorized to accept orders, invoice or receive payment.
Security Incident	A Security Incident is a violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices. A Security Incident is also defined as any event that adversely affects the confidentiality, integrity, or availability of system and its Data. See NYS ITS Policy NYS-S13-005 or its successor for additional information.
Service	The performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For the purposes of this article, technology shall be deemed a service.
Shall	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative.
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.
Small Business	Please refer to State Finance Law section 160(8) for the definition of “small business concern” or “small business.”
Software	An all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including operating Software, programming aids, application programs, and program Products.
Software as a Service (SaaS)	The capability provided to the Authorized User is to use the provider’s applications running on a Cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email), or a program interface. The Authorized User does not manage or control the underlying Cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
Statement of Work (SOW)	A SOW is a document that captures and defines the work activities, deliverables, and timeline an Authorized User seeks from a vendor. The SOW usually includes detailed requirements, with standard regulatory and governance terms and conditions.
Statewide Financial System (SFS)	The New York State Enterprise Resource Planning (ERP) system.
Storage	Specific to technology, a computer memory that retains data for some period of time. Storage can be categorized in many ways such as: primary or secondary; read-only, random access and magnetic storage.
System	The complete collection of Hardware, Software and services as described in the resulting Authorized User Agreements, integrated and functioning together, and performing in accordance with the Authorized User Agreement.
Third Party Products	Third Party Intellectual Property or Third Party Products means any intellectual property owned by parties other than Authorized User or Contractor and provided to Authorized Users for use in connection with the Services.
Trademark	A trademark, trade mark, or trade-mark is a recognizable sign, design or expression which identifies Products or services of a particular source from those of others.
Transaction	An agreement between an Authorized User and a Contractor to exchange a Product(s) or Service(s) for payment.
Usage	The quantity of an inventory item consumed over a period of time expressed in units of quantity or of value in dollars.
Vendor	An enterprise that sells goods or services.
Volume Software License Agreement	A Volume Software License Agreement can occur when there is a large quantity of Software purchased from a particular Software Manufacturer, for a specified time period, which results in additional discounting beyond the Contract discounts.
Will	Denotes the permissive in a contract clause or specification.
Written / Written Communication	Written Communication makes use of the written word. Examples of written communications include e-mail, Internet websites, letters, proposals, and contracts.

2.6 CONTRACT DOCUMENTS AND CONFLICT OF TERMS

This Centralized Contract is composed of the documents set forth below. In the case of any conflict among these documents, conflicts shall be resolved in the order of precedence indicated below.

1. Appendix A – Standard Clauses for New York State Contracts;
2. This Document, Appendix J – Contractor's Insurance Requirements, and Appendix J.1 – Contractor-Specific Insurance Requirements (as applicable)
3. Appendix B – General Specifications
4. Appendix C – Contract Modification Procedure
5. Appendix D – Contractor and Reseller Information
6. Appendix E – Pricing Pages
7. Appendix F – Primary Security and Privacy Mandates
8. Appendix G – Processes and Forms Templates
    a. Attachment 1 – How to Use the Manufacturer Umbrella Contract
    b. Attachment 2 – Statement of Work – Request for Quote
    c. Attachment 3 – Statement of Work – Request for Quote - Financial
9. Appendix H – Maintenance and Warranty Service Report
10. Appendix I – Report of Contract Sales

2.7 CONTRACT TERM

The term of this Contract shall commence upon execution of the Contract by OGS as evidenced by the date accompanying the OGS signature line, and shall end on November 29, 2020. The State reserves the right, at its sole discretion, to extend the term of this Contract by an additional five (5) years upon Contractor's agreement thereto.

Notwithstanding the commencement of the term of the Contract, Contractor shall not bid on an RFQ for a specific Lot until the OGS website identifies Contractor as eligible to participate in an RFQ for that specific Lot.

2.8 DOWNSTREAM PROHIBITION

Any and all work from this Contract that involves developing specifications, establishing a base for other applications or otherwise gaining information that would give 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 RFQ is released. 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 CONTRACTOR'S INSURANCE REQUIREMENTS

The insurance requirements of this Contract are set forth in Appendix J and, if applicable, Appendix J.1.

2.10 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 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 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 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 her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS 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.

2.11 TAX LAW §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 Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor filed the ST-220-TD with DTF. Note: DTF receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed with the Proposal and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Proposal submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor 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 Section 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 website: http://www.tax.ny.gov.

2.12 TOLL FREE NUMBER

If Contractor provides a toll-free telephone number for Authorized User usage, Contractor should staff this toll-free number at a minimum from 9:00 AM to 5:00 PM Monday through Friday Eastern Time, excluding New York State or federal holidays. The toll-free number is set forth in Appendix D – Contractor and Reseller Information. This number is to be provided at no cost to the State.

2.13 DESIGNATED PERSONNEL

The Contractor will provide the Designated Personnel listed below for the duration of the Contract at no charge to the State.

Contractor must notify OGS within five (5) business days if any of the Designated Personnel changes, and provide an interim contact person until the position is filled. Contractor may submit a Designated Personnel change by submission electronically via e-mail of a revised Appendix D – Contractor and Reseller Information to the OGS Contract Administrator.

2.13.1 Account Manager

A designated Account Manager for the Centralized Contract shall be provided. 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.

2.13.2 Billing Contact

A designated Billing Contact for the Centralized Contract shall be provided. 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.

2.13.3 Emergency Contact
Not a complete sentence.
A designated Emergency Contact for the Centralized Contract shall be provided. The Emergency Contact will be available 24 hours a day, 365 days per year for emergency procurements.

2.13.4 Contractor Administrator

Contractor must provide a designated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Administrator is set forth in Appendix D – Contractor and Reseller Information. During the term of the Contract, Contractor must notify OGS within five (5) business days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Contractor may submit a Contract Administrator change by submission electronically via e-mail of a revised Appendix D – Contractor and Reseller Information to the OGS Contract Administrator.

2.14 E-RATE

Authorized users who receive E-rate funding are encouraged to review Universal Service Fund rules and regulations to verify the applicability of this Contract to the E-rate program.

2.15 NEW YORK STATE RIGHTS

2.15.1 New York State reserves the right to:

A. Unilaterally make revisions, changes and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to this Contract without processing a formal amendment and/or modification.
B. The State reserves the right to exclude any price lists or individual Products and services that do not fall within the scope of this Contract.
C. OGS reserves the right to use on-line processes, such as reverse auction, to make acquisitions under the resulting Contracts. Bidder agrees that if awarded a Contract, it will participate in these on-line processes established by OGS.
D. OGS reserves the right to incorporate an electronic workflow system that may include elements of the Authorized User RFQ process.
E. OGS reserves the right to post Authorized User Contract usage of Centralized Contracts.

2.15.2 Authorized User Reserved Rights

In addition to the above reserved rights, the Authorized User shall have the following additional reserved rights:

A. The Authorized User reserves the right to add requirements to the RFQ and resulting Authorized User Agreement that are more advantageous than the terms and conditions established with the Contract.
B. The Authorized User reserves the right to require the Contractor to identify any sub-contractors, and to approve such sub-contractors.
C. The Authorized User reserves the right to request the Contractor’s insurance policy language for purposes of substantiating Vendor's compliance with Contract Section 2.9 Contractor’s Insurance Requirements, or such other Insurance Requirements as required by the Authorized User as part of a RFQ.

2.16 LIVING WAGE

An Authorized User subject to a local law establishing a “living wage”, such as Section 6-109 of the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law. If the pay rate(s) for a job title(s) as set forth in Appendix E – Pricing Pages, are less than the local law “living wage” than Authorized User subject to such local law cannot use this Contract for such job title(s). Local laws, however, are not a term and condition of the OGS Contract.

2.17 PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS

Work being done under a resulting Authorized User Agreement may be subject to the prevailing wage rate provisions of the New York State Labor Law. Such work will be identified by the Authorized User within the RFQ. See "Prevailing Wage Rates – Public Works and Building Services Contracts' in Appendix B, Clause 10, OGS General Specifications. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility and rejection of proposal.

The Prevailing Wage Case Number for this Contract is PRC# 2014011745.

The Prevailing Wage Rates for various occupations and General Provisions of Laws Covering Workers on Article 8 Public Work Contract can be accessed at the following NYS Department of Labor website:

http://wpp.labor.state.ny.us/wpp/showFindProject.do?method=showIt

- Insert PRC# 2014011745 in the box provided and click Submit.
- Click Wage Schedule located underneath the main header of this page. The PDF file may be searched to obtain the Prevailing Wage Rate for a specific occupation.

2.18 SHORT TERM EXTENSION

In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to three (3) months upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, prices and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to six (6) months in lieu of three (3) months. However, this extension terminates should the replacement Contract be issued in the interim.

2.19 PROCUREMENT INSTRUCTIONS

Authorized Users should refer to Attachment 1 – How to Use the Manufacturer Umbrella Contract for specific instructions on the usage of this Contract. OGS reserves the right to unilaterally make revisions, changes and/or updates to Attachment 1 – How to Use the Manufacturer Umbrella Contract without processing a formal amendment and/or modification.

2.20 SPECIFICATIONS

During the term of the Contract, the Authorized User may request Product specifications for particular items that have been included by the Contractor in Appendix E – Pricing Pages. These specifications will be provided by the Contractor at no cost.

2.21 INSTRUCTION MANUALS AND ASSOCIATED DOCUMENTATION

Product shall be furnished, at no extra charge, with one complete set of standard operator instruction manuals and documentation (hard copy, CD/DVD or web link) as would normally accompany such Product(s). Contractor shall also ensure that the part numbers and net prices associated with the documentation are available to the Authorized User and included in Appendix E – Pricing Pages should an Authorized User purchase additional sets of technical manuals. Where documentation is provided in electronic format, an Authorized User shall be entitled to make copies to the extent necessary to fully enjoy the rights granted under this Contract provided that the Authorized User reproduces the copyright notice and any other legend of ownership on any copies made.

2.22 NYS OFFICE OF INFORMATION TECHNOLOGY SERVICES NOTIFICATION

All New York State Agencies must notify the Office of Information Technology Services of any purchases of technology that meet the stated thresholds and technology-related materials, services or otherwise, as stated in Technology Policy NYS–P08-001: http://www.its.ny.gov/policy/NYS-P08-001.pdf, as may be amended, modified or superseded.

2.23 SALES REPORTING REQUIREMENTS

Contractor shall furnish OGS quarterly sales reports utilizing Appendix I - Report of Contract Sales. Purchases by Non-State Agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. All fields of information shall be accurate and complete. OGS reserves the right to unilaterally make revisions, changes and/or updates Appendix I - Report of Contract Sales or to require sales to be reported in a different format without processing a formal amendment and/or modification. Further, additional related sales information and/or detailed Authorized User purchases may be required by OGS and must be supplied upon request.

2.23.1 Reseller Sales

Product purchased through Reseller(s) must be reported by Contractor in the required Appendix I – Report of Contract Sales.

2.23.2 Due Date

The Appendix I - Report of Contract Sales will be quarterly (January - March, April - June, July - September and October - December). Reports will be due 1 month after the closing quarter.

2.24 SERVICE REPORTS FOR MAINTENANCE/SUPPORT AND WARRANTY WORK

2.24.1 Service Reports for Authorized User

An Authorized User in an RFQ may require compliance with any or all of this section.

If requested by the Authorized User, the Contractor shall furnish the Authorized User with service reports for all maintenance/support and warranty work upon completion of the services. The service reports may include the following information in either electronic or hard copy form as designated by the Authorized User:

- Date and time Contractor was notified
- Date and time of Contractor's arrival
- Make and model of the Product
- Description of malfunction reported by Authorized User
- Diagnosis of failure and/or work performed by Contractor
- Date and time failure was corrected by Contractor
- Type of service – Maintenance/Support or warranty
- Charges, if any, for the service

2.24.2 Service Reports for OGS

For all Lots OGS reserves the right to request the Contractor provide OGS an annual report on the 1st day of March of each year of the Contract detailing all maintenance/support and warranty work conducted under the Contract for both State Agencies and Non-State Agencies during the immediate prior calendar year. The Contractor will use Appendix H – Maintenance and Warranty Service Report. The report shall include the name of the State or Non-State Agency and all of the information in Section 2.24.1 and be submitted electronically in Microsoft Excel 2010 or lower version unprotected, via e-mail to the attention of the OGS Contract Administrator.

2.25 DISTRIBUTION OF CONTRACTOR PRICE LIST AND CONTRACT APPENDICES

Contractor shall provide Authorized Users with electronic copies of the Contract, including Price Lists and Appendices, upon request.

2.26 CONTRACT MODIFICATIONS

Contractor may propose modifications to the Contract utilizing Appendix C - Contract Modification Procedures. Contract Modifications are changes that do not require a change to the established Contract terms and conditions.

2.27 PROMPT PAYMENT DISCOUNTS

If a Contractor offers a discount for prompt payment, the Contractor shall include the terms of the discount on all invoices, the amounts which are due if the Authorized User meets the terms, and the date for which the prompt payment discount(s) expire.

2.28 CONTRACTOR'S OBLIGATION FOR RESELLER PARTICIPATION

Contractor shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to participate or compete in an Authorized User SOW/RFQ.

2.28.1 Conditions of Reseller(s) Participation

Reseller(s) must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Reseller(s) and their participation under this Contract by Lot:

1. such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. those qualifying criteria met by the Reseller must be identified in Reseller designations at the time that Reseller approval is requested; and,
4. Immediate notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.

2.28.2 Designation of Reseller(s)

When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Appendix D – Contractor and Reseller Information.

2.28.3 Responsibility for Reporting/Performance

Contractor shall be fully liable for Reseller(s) performance and compliance with all Contract terms and conditions. Product purchased through Reseller(s) must be reported by Contractor in the required quarterly sales reports to the State as a condition of payment. In addition to inclusion of Reseller(s) volume in the Contractor's sales reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with reports of the individual Authorized User's Contract activity with Reseller.

2.28.4 Applicability of Contract Terms

Product or services ordered directly through Reseller(s) shall be limited to Products or services currently approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

2.28.5 Condition for Responding to Authorized User Request for Quote

The Authorized User transaction is required to be competitive (see Attachment 1 – How to Use the Manufacturer Umbrella Contract for examples of Procurement Scenarios). Contractors are encouraged to identify multiple Resellers to participate in competitive transactions.

In order for an Authorized User to solicit a single Contractor on an RFQ, that Contractor must have at least five (5) Resellers named on the Manufacturer's Contract, and those Resellers must be eligible to quote statewide, independently and lower than Contract pricing for procurements under this Contract which meet their qualifying criteria.

2.29 PURCHASE ORDERS AND INVOICING

All invoices shall at a minimum, include the items listed below and any additional information identified in the Authorized User RFQ and resulting Authorized User Agreement:

- Contract Number

- Contractor/Reseller Name
- NYS Vendor ID
- Manufacturer Part Number (SKU)
- Product Name
- Product Description
- Quantity
- NYS Net Price for each Product
- Specific designation of special price(s) which may be better than the NYS Net Contract Price
- Invoice Total

2.30 PAYMENTS

Payments cannot be processed by Authorized Users until Product(s) have been delivered and accepted in accordance with Appendix B §33 Product Delivery and Appendix B §66 Product Acceptance. Payment will be based on any invoice used in the Contractor's normal course of business. Invoices must contain all requirements in Invoicing.

Authorized Users are instructed not to process invoices that do not include the required information set forth above. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice all of the required items. Failure to comply may result in lengthy payment delays.

2.31 MAINTENANCE AND SUPPORT PROVISIONS

2.31.1 Maintenance/Support Agreement Provisions

Maintenance agreements may include the following:

- Scope of Services
- Delivery and Acceptance Timeframes and Procedures
- Time Commitments & Prioritization of Services
- Preventive and Corrective Maintenance/Support Activities
- Service Level Agreements
- Service Level Agreement Penalties/Rewards
- Reporting Requirements/Problem Escalation and Follow-up Procedures

2.31.2 Maintenance/Support of Product

Contractor shall fully disclose all terms and conditions of maintenance available to Licensee, including the extent to which updates, upgrades, revisions, and new releases are included in maintenance.

2.31.3 Obligations

The Contractor shall not be obligated to repair damage caused by fire or other casualty (except that caused by the Contractor or those under Contractor’s control), or willful or grossly negligent operation or handling of the Product by the Authorized User.

2.31.4 Right to Refuse/Discontinue Maintenance/Support

An Authorized User shall not be required to purchase Maintenance/support for use of Product. There shall be no automatic renewal of Maintenance/support.

2.31.5 Maintenance/Support Agreement Contract Price Survival

An Authorized User’s Maintenance/support agreement, entered into during the term of this Contract, may continue beyond the end of the Contract based on the following limitations:

- Maintenance/support period must start prior to the expiration of the Contract;
- Authorized User has pre-paid for the entire Maintenance/support term;
- Maintenance period cannot last longer than a 36 month period past the expiration of the Contract.

2.31.6 Legacy Maintenance/Support

Contractor may offer Legacy Maintenance/support services on End of Life, or obsoleted Product, that is not being offered under this Contract, provided that the equipment fits within the scope of this Contract as set forth in Section 2, Contract Scope. Legacy Maintenance/support options shall be included in Appendix E - Pricing Pages. A description of each type of Legacy Maintenance/support option shall be provided in Appendix E - Pricing Pages.

2.31.7 Maintenance/Support Responsibility

As a part of Maintenance/support responsibilities, the Contractor shall represent the Authorized User in regards to other involved equipment and service providers to identify and correct the malfunction. Malfunctions that cannot be immediately diagnosed and pinpointed to a certain piece of Product will require the participation of the Contractor until the responsibility for the problem has been established. See Appendix B. 57, Cooperation with Third Parties.

2.31.8 Maintenance/Support Service Sheets

Upon Authorized User's request, the Contractor shall furnish the Authorized User with a Maintenance/support Service Sheet for all Maintenance/support requests. At a minimum, the Maintenance/support Service Sheet should include the following data for each request for service:

- Date and time notified by Authorized User
- Date and time of arrival of Contractor
- Description of malfunction reported by Authorized User
- Diagnosis of failure and work performed by Contractor
- Date and time failure was corrected
- Charges for the service, if applicable
- Name of person performing the service

2.31.9 Remote Administration, Maintenance and Support

Appendix E – Pricing Pages must include a Product description of any remote administration and/or Maintenance/support service arrangements if offered/provided with the Product. The cost for any equipment required to perform this function and the cost of the service, must be borne by the Contractor, as part of the cost of Maintenance/support. Connections to the Authorized User's networks must be performed in a manner prescribed by an Authorized User to preserve the integrity of the Authorized User's network, confidentiality and integrity of information transmitted over that Authorized User's network, and the availability of the network.

Monitoring of network performance metrics, such as throughput, firmware levels and updates, or uptime, can be provided through Lot 1 – Software and Lot 2 - Hardware. All Contractors should review NYS ITS Technology Standard NYS-S14-010, Remote Access.

Any remote administration, maintenance/support service that transmits, stores, acts upon or could remotely access Authorized User's Data is considered a Cloud service and must be included in Lot 3 – Cloud.

2.32 PRE-INSTALLATION SITE VISITS

In accordance with Appendix B, Section 19, Site Inspection, Authorized User can require a site visit as part of the Authorized User's RFQ.

2.33 NEW YORK STATE STATEWIDE FINANCIAL SYSTEM

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.0 Bundle 18, operating on PeopleTools version 8.49.33. The State is planning to upgrade to PeopleSoft Financials version 9.2 sometime in 2015. SFS supports requisition-to-payment processing and financial management functions.
The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with centralized contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor's participation in the catalog site

development or management. Upon completion and activation of an on-line catalog, State agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly. The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: www.sfs.ny.gov and http://www.osc.state.ny.us/agencies/guide/MyWebHelp/.

2.34 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS AND EXTENSION OF USE

New York State political subdivisions and others authorized by New York State law may participate in this Contract. 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 Appendix B, Section 2 Definitions Authorized User and Section 27 Participation in Centralized Contracts. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), services to be provided may include locations adjacent to New York State.

Upon request, all eligible Non-State Agencies must furnish a Contractor 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 be directed to OGS New York State Procurement's Customer Services at 518-474-6717.

This Contract may be extended to additional States or Governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions. In the event that this Contract is so extended, such other authorized entities shall be solely responsible for liability and performance under the Contract and Contractor agrees to hold them solely responsible for such liability and performance.

2.35 EXPIRATION OF CONTRACT; SURVIVAL OF AUTHORIZED USER AGREEMENTS

Except as permitted below, Authorized User Agreements cannot extend 12 months past the Contract expiration.

2.35.1 Lot 4 - Implementation

Authorized User Agreements fully executed prior to the expiration of the Centralized Contract shall survive the expiration date of the Centralized Contract, if applicable, based on the term of the Authorized User Agreement. An Authorized User Agreement for Lot 4 – Implementation shall be no longer than 36 months in duration including any time extensions.

2.35.2 Maintenance/Support Agreement Contract Price Survival

An Authorized User's Maintenance/support agreement, entered into during the term of this Contract, may continue beyond the end of the Contract based on the following limitations:

- Maintenance/support period must start prior to the expiration of the Contract;
- Authorized User has pre-paid for the entire Maintenance/support term;
- Maintenance/support period cannot last longer than a 36 month period past the expiration of the Contract.

2.36 PREFERRED SOURCE PRODUCTS

State Finance Law §162 requires that governmental entities afford first priority to the products/services of Preferred Source suppliers such as Correctional Industries (Corcraft), New York State Preferred Source Program for People who are Blind, and NYS Industries for the Disabled (NYSID), when such products/services meet the form, function and utility of the Authorized User. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law §162(3) or (4)(b), respectively, before engaging the Contractor. Some products/services in the resultant Contract(s) may be available from one or more Preferred Sources.

Contractor will be required to prominently display the following language on all pricelists:

Authorized Users Note: Some products/services in this Contract may be available from one or more Preferred Sources. Authorized Users are reminded to comply with the statutory requirements under §162 of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to products/services available from Preferred Sources which meet your form, function and utility.

The complete, updated list of Preferred Source Offerings is available on the OGS website, at http://www.ogs.state.ny.us/procurecounc/pdfdoc/pslist.pdf.

2.37 TRADE-INS

An Authorized User may trade-in Products when making purchases from this Contract. Trade-ins must be negotiated between the Authorized User and the Contractor as there is no mandatory trade-in policy established in this Contract. Contractor is prohibited from imposing any mandatory requirements or restrictions on Product disposal (e.g., prohibiting cross-brand trade-ins), other than generic environmental safety concerns.

An Authorized User is obligated to actively seek current fair market value when trading Products and must keep accurate records in the file verifying the process. For State Agencies, such trade-ins must comply with State Finance Law section 167 and it may be necessary to provide supporting documentation to the Office of the State Comptroller.

2.38 NEW YORK STATE OFFICE OF INFORMATION TECHNOLOGY SERVICES POLICIES

Authorized Users may require, as part of an RFQ/SOW, Contractor compliance with applicable ITS policies found at: http://www.its.ny.gov/tables/technologypolicyindex.htm.

2.39 RECALLS

Contractor shall immediately notify OGS of any recalls pertaining to any items awarded to the Contractor.

2.40 AMERICANS WITH DISABILITIES ACT (ADA)

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities. Contractors are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals. Although it is not mandatory for Contractors to have this equipment in order to receive an award, it is necessary to identify any such equipment they have which falls into the above category.

2.41 PUBLIC INFORMATION

Disclosure of items related to this Agreement shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Section 87 of the Public Officers Law. The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are otherwise exempt from disclosure under that statute. Information constituting trade secrets, for purposes of FOIL, must be clearly marked and identified as such upon submission. If the Contractor intends to seek an exemption from disclosure of these materials under FOIL, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor. Acceptance of the identified information by the State does not constitute a determination that the information is exempt from disclosure under FOIL Determinations as to the availability of the identified information will be made in accordance with FOIL at the time a request for such information is received by the State.

2.42 DIESEL EMISSION REDUCTION ACT

Pursuant to N.Y. Environmental Conservation Law §19 0323 of the (“the Law”) it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra-low sulfur diesel fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by Contractors "on behalf of" State agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by December 31, 2015 (unless further extended by Law). The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19 0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19 0323, and 6 NYCRR Parts 248 and 249.

2.43 POOR PERFORMANCE

An Authorized User should notify OGS Customer Services promptly if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services
New York State Procurement
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242
Customer Services Coordination E-mail: customer.services@ogs.ny.gov
Telephone: (518) 474-6717 / Fax: (518) 474-2437

2.44 MERCURY ADDED CONSUMER PRODUCTS

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

2.45 SURPLUS/TAKE-BACK/RECYCLING

A. A State agency is reminded of its obligation to comply with the NY State Finance Law §§ 167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.

B. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section C below for specific requirements governing electronic equipment recycling.

C. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: http://www.dec.ny.gov/chemical/65583.html.

D. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

2.46 USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See "Remanufactured, Recycled, Recyclable or Recovered Materials" in Appendix B, OGS General Specifications.

2.47 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER 4

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring commodities, services, and Hardware. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at http://www.ogs.ny.gov/EO/4/Default.asp.

2.48 BULK DELIVERY AND ALTERNATIVE PACKAGING MATERIALS

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

2.49 EPA ENERGY STAR PROGRAM

The Federal EPA, in cooperation with the Manufacturers, continues a program to foster the manufacture of energy efficient equipment. New York State fully supports this effort and requires all applicable Products offered to comply with EPA Energy Star guidelines for energy efficiency. The State may discontinue use of and/or delete from the Contract selected Products as mandated by any Federal, State or local energy legislation that is enacted during the term of this Contract. The Contractor shall have no recourse with the State for such discontinuance/deletion.

2.50 NO DRUGS OR ALCOHOL

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 personnel shall not be permitted while performing any phase of the work herein specified.

2.51 TRAFFIC INFRACTIONS

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

2.52 NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments (including updates to Appendix D – Contractor and Reseller Information) 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 State at its address:

22802 Contract Administrator
Office of General Services
New York State Procurement
38th Floor Corning Tower
Empire State Plaza

Albany, NY 12242

and (ii) if to Contractor, addressed to Contract Administrator at the address included in Appendix D – Contractor and Reseller Information. The Parties may from time to time, specify any address in the United States as its address for purpose of notices under this Agreement 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 Agreement.

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.

2.53 ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY LANGUAGE

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.

2.54 CAPTIONS

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

2.55 SEVERABILITY

If any provision of this Contract is deemed invalid or unenforceable by OGS, 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.

2.56 PERFORMANCE OF SERVICES

The Contractor is responsible for fully meeting all Contract obligations set forth in the Contract and for providing Product in accordance with the Contract or any Authorized User Agreement.

2.57 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.

2.58 CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS

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

- 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.
- The Contractor shall inform each Subcontractor fully and completely of all provisions and requirements of the Contract, including:
  a. 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,
  b. 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,
  c. those relating to the State's rights to audit records and
  d. 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 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.
- Failure to disclose the identity of any and all Subcontractor(s) used by the Contractor as required hereunder may, at the sole discretion of the Authorized User, result in a disqualification of the Subcontractor, if not immediately cured, or may result in termination of the Authorized User Agreement for cause.
- 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.
- The Contractor shall, within five (5) business days of the State or Authorized User written request, file promptly with the requestor a copy of any subcontract providing services for an Authorized User Agreement.
- 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.

2.59 CONTRACTOR STAFF WITHIN AUTHORIZED USER AGREEMENT

An Authorized User in an RFQ may require compliance with any or all of this section.

All employees of the Contractor, or of its subcontractors, who shall perform under an 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.

2.59.1 Staffing Changes within Authorized User Agreement

1. Any staffing represented as key personnel are anticipated to fulfill the entire life of the project. 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 up to three (3) potential replacements with similar or better qualifications for the Authorized User review and approval within three (3) business days, or as otherwise agreed to by the Authorized User.

2. 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.
3. 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 up to three (3) potential replacements with similar or better qualifications for the Authorized User's review and approval within three (3) business days, or as otherwise agreed to by the Authorized User.
4. 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 up to three (3) potential replacements with similar or better qualifications for the Authorized User's review and approval within three (3) 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.

5. 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 three (3) business days. If the Authorized User still does not find a proposed replacement acceptable, the Authorized User reserves the right to either suspend activities under the Authorized User Agreement or terminate the Authorized User Agreement for cause pursuant to Appendix B paragraph 47, Termination.

2.60 ADDITIONAL CONTRACTOR TERMS AND CONDITIONS WITHIN AN AUTHORIZED USER AGREEMENT

Additional Contractor Terms and Conditions may become part of an Authorized User Agreement in accordance with Section 28 of Appendix B.

2.61 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 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."

2.61.1.1 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.

2.62 CONFIDENTIALITY AND PRIVACY POLICIES AND LAWS

The Contractor shall comply with all State and Authorized User policies regarding compliance with various confidentiality and privacy laws, rules and regulations, including but not limited to the 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). As part of such compliance, Contractor shall execute written confidentiality/non-disclosure agreements as requested by the State or an Authorized User.

2.63 FEDERAL FUNDING

For an Authorized User using Federal funds, Contractor shall cooperate in adding to the Authorized User's 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 RFQ process, whether Federal funds will be utilized for the Project.

2.64 ELECTRONIC WORKFLOW SYSTEM

OGS reserves the right to incorporate an electronic workflow system that may include elements of the Authorized User RFQ/SOW process.

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

2.65 TRAVEL, MEALS AND LODGING - LOT 4 – IMPLEMENTATION ONLY

For Lot 4 only, when provided for in the RFQ and resultant Authorized User Agreement, the Authorized Users 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 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 shall 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 is responsible for keeping adequate records to substantiate any claims for reimbursement, by personnel for travel in performance of the services.

All services provided under the resultant Authorized User Agreement must be performed within CONUS.

2.66 PERFORMANCE AND BID BONDS

There are no BONDS for this Contract. In accordance with Appendix B (General Specifications), Clause 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 this Contract. An Authorized User may require in an RFQ a performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance for the resultant Authorized User Agreement

2.67 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES

2.67.1 General Provisions

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State Certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.

C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to clause VII (Breach of Contract and Liquidated Damages) of this section or enforcement proceedings as allowed by the Contract.

2.67.2 Equal Employment Opportunity (EEO)

A. Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and Subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor certifies by entering into this Contract that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof is Contractor's equal employment opportunity policy.

B. Form EEO 100 - Staffing Plan

To ensure compliance with this section, the Contractor submitted a staffing plan to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories.

C. Form EEO 101 - Workforce Employment Utilization Report ("Workforce Report")

If Contractor's Form EEO 100- Staffing Plan provided that Contractor is able to report the actual workforce utilized in the performance of this Contract, the following clause shall apply: Contractor agrees it will, upon request, submit to OGS a Workforce Utilization report on Form EE101 identifying the workforce actually utilized on the contract if known.

If Contractor's EEO Form 100 - Staffing Plan provided that Contractor is unable to separate out the actual workforce utilized in the performance of the Contract from its total workforce, the following clause shall apply: Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

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

2.67.3 Contract Goals

A. OGS hereby establishes the following goals for Minority-owned Business Enterprises (MBE) participation, Women-owned Business Enterprises (WBE) participation, and total Minority- and Women-Owned Business Enterprises (collectively referred to as MWBE) participation, based on the current availability of qualified MBEs and WBEs:

Lot No.	Lot Description	MBE Goal	WBE Goal	Total MWBE Goal
1	Software	10 %	10 %	20 %
2	Hardware	10 %	10 %	20 %
3	Cloud	0 %	0 %	0 %

Lot No.	Lot Description	MBE Goal	WBE Goal	Total MWBE Goal
				(see subsection D)
4	Implementation Services	15 %	15 %	30 %

The total Contract goal can be obtained by utilizing any combination of MBE and/or WBE participation for subcontracting and supplies acquired under this Contract.

B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in clause III-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528. Questions regarding compliance with MWBE participation goals should be directed to the OGS Office for Minority and Women Owned Businesses and Community Relations. . Additionally, Contractor is encouraged to contact the Division of Minority and Women's Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

C. Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see "Required Good Faith Efforts" below),

(1)

D. Note that with respect to Lot 3 Cloud only, OGS has conducted a comprehensive search and has determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to the awarded Contractors. Contractors are, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs for Lot 3 Cloud, who perform commercially useful functions on this Contract for the provision of services and materials.

2.67.4 MWBE Utilization Plan

A. Contractor certifies that it has submitted, in accordance with 5 NYCRR § 142.4, a completed MWBE Utilization Plan on Form MWBE 100 and will follow such Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause III-A of this Section.

B. Contractor further understands that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments.

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

2.67.5 Request for Waiver

A. If the Contractor, after making good faith efforts, as set forth in "Required Good Faith Efforts" below, is unable to comply with MWBE goals, the Contractor may submit in accordance with 5 NYCRR § 142.7, a Request for Waiver form (BDC 333) documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

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

C. **Prior to submission of a request for a partial or total waiver, Contractor shall contact the OGS Office for Minority and Women Owned Businesses and Community Relations for guidance**

2.67.6 Required Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

A. A list of the general circulation, trade and MWBE-oriented publications and dates of publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
B. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
C. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
D. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
E. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
F. Other information deemed relevant to the request.

2.67.7 Monthly MWBE Contractor Compliance Report

A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at https://ny.newnycontracts.com/. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
B. When a Contractor receives a payment from a State Agency Authorized User following a purchase from an OGS Procurement Services contract, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an e-mail or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "Introduction to the System for Vendors" and "Contract Compliance Reporting - Vendor Training" to become familiar with the NYSCS. To view the training schedule and to register visit: https://ny.newnycontracts.com/events.asp
D. As soon as possible after the Contract is approved, Contractor should visit https://ny.newnycontracts.com and click on "Account Lookup" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "Change Info." It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "Request New User." When identifying the person responsible, please add "- MWBE Contact" after his or her last name (e.g. John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "Contact Us & Support" then "Technical Support" on the NYSCS website.
E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the Breach of Contract and Liquidated Damages clause below.

2.67.8 Breach of Contract and Liquidated Damages

A. In accordance with Executive Law Section 316-a and 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.
B. Such liquidated damages shall be calculated as an amount equaling the difference between:
   1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
   2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
C. If, after Contractor has been afforded due process to respond to the allegation that it willfully or intentionally failed to comply with the MWBE participation goals, OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if the Director renders a decision in favor of OGS.

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

2.68 EMERGING TECHNOLOGIES

The State reserves the right to modify the terms of this Contract or any future periodic recruitments, to allow for emerging technologies. OGS reserves the right to include such technology(ies) hereunder or to issue a formal modification or amendment to this Contract.

Section 3. LOT 3 – CLOUD SPECIFIC TERMS AND CONDITIONS

To the extent that Contractor has received an award for Lot 3, Cloud, the following terms and conditions apply to Lot 3, Cloud.

3.1 BUNDLED OFFERINGS

This Lot may contain Bundles which include Hardware and/or Software in combination with Cloud Services. All components of the Bundle must be within the overall scope of this Contract. The Hardware or Software Products included in the Bundle cannot be listed as stand-alone items for this Lot. Third Party Products are allowed as part of a Bundle only if they are required to facilitate the provision of the Cloud solution.

3.2 PROTECTION OF DATA, INFRASTRUCTURE AND SOFTWARE

Contractor is responsible for providing physical and logical security for all Data, infrastructure (e.g. hardware, networking components, physical devices), and software related to the services the Contractor is providing under the Authorized User Agreement.

All Data security provisions agreed to by the Authorized User and Contractor within the Authorized User Agreement may not be diminished for the duration of the Authorized User Agreement. No reduction in these conditions in any fashion may occur at any time without prior written agreement by the parties amending the Authorized User Agreement.

3.3 SECURITY POLICIES AND NOTIFICATIONS

3.3.1 State Security Policies and Procedures

The Contractor and its personnel shall review and be familiar with all State security policies, procedures and directives currently existing or implemented during the term of the Contract, including ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)).

3.3.2 Security Incidents

Contractor shall address any Security Incidents in the manner prescribed in ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)), including the New York State Cyber Incident Reporting Procedures incorporated therein or in such successor policy(ies).

3.4 DATA BREACH - REQUIRED CONTRACTOR ACTIONS

Unless otherwise provided by law, in the event of a Data Breach, the Contractor shall:

1. notify the ITS EISO and any potentially affected Authorized User(s), or their designated contact person(s), by telephone as soon as possible, but in no event more than four (4) hours from the time the Contractor either has knowledge of a Data Breach;

2. consult with and receive authorization from the Authorized User(s) as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by the Authorized User;

3. coordinate all communication regarding the Data Breach with the ITS EISO and Authorized User(s);

4. cooperate with the Authorized User and ITS EISO in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and

5. take corrective action in the timeframe required by the Authorized User. If Contractor is unable complete the corrective action within the required timeframe, in addition to the remedies provided in Appendix B, Section 52, Remedies for Breach, the Authorized User may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the Authorized User, or until the Authorized User has completed a new procurement for a replacement service system. The Contractor will be responsible for the cost of these services during this period.

Nothing herein shall in any way (a) impair the authority of the OAG to bring an action against Contractor to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Contractor's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

3.5 DATA OWNERSHIP, ACCESS AND LOCATION

3.5.1 Data Ownership

The Authorized User shall own all right, title and interest in Data.

3.5.2 Authorized User Access to Data

The Authorized User shall have access to its Data at all times, through the term of the Authorized User Agreement, plus the applicable period as specified in Section 3.12 Expiration, Termination or Suspension of Services.

The Authorized User shall have the ability to import or export Data in piecemeal or in its entirety at the Authorized User's discretion, without interference from the Contractor. This includes the ability for the Authorized User to import or export Data to/from other Contractors.

3.5.3 Contractor Access to Data

The Contractor shall not copy or transfer Data unless authorized by the Authorized User. In such an event the Data shall be copied and/or transferred in accordance with the provisions of this Section. Contractor shall not access any Data for any purpose other than fulfilling the service. Contractor is prohibited from Data Mining, cross tabulating, monitoring Authorized User's Data usage and/or access, or performing any other Data Analytics other than those required within the Authorized User Agreement. At no time shall any Data or processes (e.g. workflow, applications, etc.), which either are owned or used by the Authorized User be copied, disclosed, or retained by the Contractor or any party related to the Contractor. Contractors are allowed to perform industry standard back-ups of Data. Documentation of back-up must be provided to the Authorized User upon request. Contractor must comply with any and all security requirements within the Authorized User Agreement.

3.5.4 Data Location and Related Restrictions

All Data shall remain in CONUS. Any Data stored, or acted upon, must be located solely in Data Centers in CONUS. Services which directly or indirectly access Data may only be performed from locations within the Continental United States (CONUS). All Data in transit must be handled in accordance with FIPS-140-2 or TLS1, or TLS2 (or successor).

3.5.5 Support Services

All helpdesk, online, and support services which access any Data must be performed from within CONUS. At no time will any Follow the Sun support be allowed to access Data directly, or indirectly, from outside CONUS.

3.5.6 Infrastructure Support Services

Infrastructure support services that do not directly or indirectly access Data may be provided in a Follow the Sun format, if expressly outlined within the Authorized User Agreement.

3.6 CONTRACTOR PORTABLE DEVICES

Contractor shall not place Data on any portable Device unless Device is located and remains within Contractor's CONUS Data Center.

The Data, and/or the storage medium containing the Data, shall be destroyed in accordance with applicable ITS destruction policies (ITS Policy S13-003 Sanitization/Secure Disposal and S14-003 Information Security Controls or successor) when the Contractor is no longer contractually required to store the Data.

3.7 TRANSFERRING OF DATA

3.7.1 General

The Contractor will not transfer Data unless directed to do so in writing by the Authorized User.

At the request of the Authorized User, the Contractor will provide the services required to transfer Data from existing Databases to physical storage devices, to facilitate movement of large volumes of Data.

The Authorized User may require several Cloud providers to share or transfer Data for a period of time. This will be provided for in the Authorized User Agreement or shall be assumed to be limited to a six month duration.

3.7.2 Transfer of Data at end of Contract and/or Authorized User Agreement Term

At the end of the Contract and/or Authorized User Agreement term, Contractor may be required to transfer Data to a new Contractor. This transfer must be carried out as specified by the Authorized User in the Authorized User Agreement. This transfer may include, but is not limited to, conversion of all Data into or from an industry standard format(s) including comma/delimited files, txt files, or Microsoft standard file formats.

3.7.3 Transfer of Data; Charges

Charges for the transfer of Data are to be defined in the Authorized User Agreement or in the Price List if not included in the Authorized User Agreement. In the absence of a definition of such expenses in the Authorized User Agreement or Price List, this shall be done at no charge to the Authorized User.

3.7.4 Transfer of Data; Contract Breach or Termination

In the case of Contract breach or termination for cause of the Contract, all expenses for the transfer of Data shall be the responsibility of the Contractor.

3.8 ENCRYPTION

All Data must be encrypted at all times unless specifically outlined otherwise in the Authorized User Agreement. At a minimum, encryption must be carried out at the most current NYS Encryption Standard (NYS-S14-007), (or successor policy(ies) with key access restricted to the Authorized User only, unless with the express written permission of the

Authorized User. The Authorized User Agreement shall specify the respective responsibilities of the Authorized User and the Contractor for the encryption of Data.

3.9 REQUESTS FOR DATA BY THIRD PARTIES

Unless prohibited by law, Contractor shall notify the Authorized User in Writing within 24 hours of any request for Data (including requestor, nature of Data requested and timeframe of response) by a person or entity other than the Authorized User, and the Contractor shall secure Written acknowledgement of such notification from the Authorized User before responding to the request for Data.

Unless compelled by law, the Contractor shall not release Data without the Authorized User's prior Written approval.

3.10 SECURITY PROCESSES

If requested by an Authorized User as part the Request for Quote process, Contractor shall complete a Consensus Assessment Initiative Questionnaire (CAIQ) including on an annual basis thereafter. The form is available at Cloud Security Alliance (https://cloudsecurityalliance.org/). The CAIQ may be used to assist the Authorized User in building the necessary assessment processes when engaging with Cloud providers.

In addition to a request for a CAIQ, Contractor shall cooperate with all reasonable Authorized User requests for a Written description of Contractor's physical/virtual security and/or internal control processes. The Authorized User shall have the right to reject any Contractor's RFQ response or terminate an Authorized User Agreement when such a request has been denied.

3.11 UPGRADES, SYSTEM CHANGES AND MAINTENANCE/SUPPORT

The Contractor shall give a minimum of five (5) business days advance Written notice to the designated Authorized User(s) contact of any upgrades or system changes that will impact services as provided in the Authorized User Agreement.

3.12 EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES

3.12.1 Return of Data

The Contractor shall return Data in a format agreed upon within the Authorized User Agreement or as agreed to with the Authorized User. The Contractor must certify all Data has been removed from its system and removed from backups within timeframes established in the Authorized User Agreement or as agreed to with the Authorized User.

3.12.2 Suspension of Services

During any period of suspension of service, the Authorized User shall have full access to all Data at no charge. The Contractor shall not take any action to erase and/or withhold any Authorized User Data, except as directed by the Authorized User.

3.12.3 Expiration or Termination of Services

Upon expiration or termination of an Authorized User Agreement, the Authorized User shall have full access to all Data for a period of 60 calendar days at no charge. During this period, the Contractor shall not take any action to erase and/or withhold any Data, except as directed by the Authorized User. An Authorized User shall have the right to specify a period in excess of 60 calendar days in its RFQ.

3.13 SECURE DATA DISPOSAL

When requested by the Authorized User, the Contractor shall destroy Data in all of its forms, including all back-ups. Data shall be permanently deleted and shall not be recoverable, according ITS Policy S13-003 Sanitization/Secure Disposal or successor and S14-003 Information Security Controls or successor. Certificates of destruction, in a form acceptable to the Authorized User, shall be provided by the Contractor to the Authorized User.

3.14 ACCESS TO SECURITY LOGS AND REPORTS

Upon request, the Contractor shall provide reports to the State or Authorized User in a format as specified in the Authorized User Agreement.

3.15 CONTRACTOR PERFORMANCE AUDIT

The Contractor shall allow the Authorized User to assess Contractor's performance by providing any materials requested in the Authorized User Agreement (e.g., page load times, response times, uptime, and fail over time). The Authorized User may perform this Contractor performance audit with a third party at its discretion, at the Authorized User's expense.

The Contractor shall perform an independent audit of their Data Centers, at least annually, at Contractor expense. The Contractor will provide a full version of the audit report upon request by the Authorized User. The Contractor shall identify any confidential, trade secret, or proprietary information in accordance with Appendix B, Section 9(a), Confidential/Trade Secret Materials.

3.16 PERSONNEL

3.16.1 Background Checks

The Authorized User Agreement may require the Contractor to conduct background checks on certain Contractor staff at no charge to the Authorized User.

3.16.2 Separation of Duties

The Authorized User Agreement may require the separation of job duties, and limit staff knowledge of Data to that which is absolutely needed to perform job duties.

3.17 BUSINESS CONTINUITY/DISASTER RECOVERY (BC/DR) OPERATIONS

The Contractor shall provide a business continuity and disaster recovery plan if required in the Authorized User Agreement. The Contractor shall specify how the BC/DR plan will impact the uptime associated with the Authorized User Agreement.

3.18 COMPLIANCE WITH FEDERAL, STATE AND LOCAL REGULATIONS

If required within the Authorized User Agreement, Contractor will provide verification of compliance with specific Federal, State and local regulations, laws and IT standards that the Authorized User is required to comply with. See Appendix F – Primary Security and Privacy Mandates.

3.19 AUTHENTICATION TOKENS

The Authorized User Agreement may require authentication tokens for all systems. For more details, please see NYS ITS Policy S14-006 Authentication Tokens Standard or successor.

3.20 MODIFICATION TO CLOUD SERVICE DELIVERY TYPE AND DESCRIPTION WITHIN AN AUTHORIZED USER AGREEMENT

As Cloud services can be flexible and dynamic, delivery mechanisms may be subject to change. This may result in changes to the service type, description, or SKU. The State and Authorized Users require notification of any such changes to ensure security and business needs are met.

Any changes to the description, type of service(s), or SKU (e.g., PaaS to IaaS) must be provided to OGS via Appendix C - Contract Modification Procedure.

In addition, notification must be provided to the Authorized User for review and acceptance, prior to implementation. Any changes to the Authorized User Agreement will require the Authorized User to re-assess the risk mitigation methodologies and strategies and revise the Authorized User Agreement as needed.

Section 4. LOT 4 – IMPLEMENTATION SPECIFIC TERMS AND CONDITIONS

To the extent that Contractor has received an award for Lot 4, Implementation Services, the following terms and conditions apply to Lot 4, Implementation Services.

4.1 REQUEST FOR QUOTATION (RFQ) TRANSACTION PROCESS

All RFQs must be submitted on the RFQ template. The RFQ for this Lot will also contain a deliverable-based Statement of Work (SOW). The RFQ will include, but is not limited to: Authorized User timeframes; system integration requirements; and other risks that may affect the cost to the Authorized User.

All responses to RFQs must include detailed price information, including but not limited to: hours required per title, cost per hour etc. Travel, lodging and per diem costs must be itemized in the total quote and may not exceed the rates in the NYS OSC Travel Policy. More information can be found at http://www.osc.state.ny.us/agencies/travel/travel.htm.

All costs must be itemized and included in the Contractor's quote.

4.2 BACKGROUND CHECKS

The Authorized User Agreement may require the Contractor to conduct background checks on certain Contractor staff at no charge to the Authorized User.

4.3 FOREIGN EMPLOYEES

H-1B VISA costs shall not be passed through to the Authorized User under this Contract. Although Authorized Users will not affirm employment for immigration purposes, an Authorized User may be asked to confirm Contractor's statement of the individual's employment for immigration purposes. Based on RFQ security requirements the Authorized User may require that all staff must be citizens of the United States, and if so, Authorized User will indicate in the RFQ.

4.4 PROJECT PLAN

4.4.1 Development of Project Plan

Upon the Authorized User request, the Contractor must develop a Project Plan. This Project Plan may include implementation personnel, installation timeframes, escalation procedures and acceptance plan as appropriate for the services requested. Specific requirements of the plan will be defined in the RFQ document. In response to the RFQ, the Contractor must agree to furnish all labor and supervision necessary to successfully implement services procured from this Lot.

4.4.2 Project Plan Document

The Contractor will provide to the Authorized User, a Project Plan that contains, at a minimum, the following items:

- Name of the Project Manager, Contact Numbers and E-Mail Address
- Names of the Project Team Members, Contact Numbers and E-Mail Address
- A list of implementation milestones based on the Authorized User's desired installation date
- A list of responsibilities of the Authorized User during system implementation
- A list of designated Contractor Authorized Personnel
- Escalation procedures including management personnel contact numbers
- Full and complete documentation of all implementation work
- Samples of knowledge transfer documentation
- When applicable, a list of all materials and supplies required to complete the implementation described in the RFQ

4.4.3 Materials and Supplies Required to Complete Implementation

In the event that there are items required to complete an Implementation, the Contractor must provide a full-itemized list including Manufacturer name and part number. These items will be priced and purchased separately by the Authorized User. The cost of these items will be added to the Contractor's final quote to determine best value and/or lowest cost.

4.4.4 Negotiation of Final Project Plan

If the Authorized User chooses to require a full Project Plan, the State further reserves the right for Authorized Users to negotiate the final Project Plan with the apparent RFQ awardee. Such negotiation must not substantively change the scope of the RFQ plan, but can alter timeframes or other incidental factors of the final Project Plan. Authorized User will provide the Contractor a minimum five business days' notice of the final negotiation date. The Authorized User reserves the right to move to the next responsible and responsive bidder if Contractor negotiations are unsuccessful.

4.5 SINGLE POINT OF CONTACT

The Contractor must provide, at the request of the Authorized User, a Single Point of Contact (SPOC) regardless of the breadth of the services being provided. The Contractor is required to provide the name and contact telephone numbers (desk, cell phone etc.) of the SPOC.

4.6 RETAINAGE

The Authorized User may retain a percentage of each deliverable payment of no more than twenty-five (25) percent until the acceptance of the complete Implementation. This retainage may be reduced up to five (5) percent as described in the SOW, when the Contractor substantially reduces the time required from the timeframes negotiated between the Authorized User and the Contractor.

4.7 ENHANCEMENTS TO SERVICES

When agreed to by the Authorized User, unanticipated enhancements to the services procured must not exceed a cumulative twenty (20) percent of the total negotiated quoted project cost. Any changes that will result in exceeding this twenty (20) percent will require that a new RFQ be issued. As project management is included within this Lot, it is incumbent upon the Contractor to notify the Authorized User in writing when a requested scope change will exceed the cumulative twenty (20) percent total value of the project. Contractor's failure to do so may be deemed a failure to manage the project and may result in administrative action against the Contractor.

4.8 REMOVAL OR REPLACEMENT OF STAFF

With documented justification, the Authorized User may request the removal or replacement of any staff. The Contractor must do so in the most expeditious manner possible. Any associated cost will be borne by the Contractor. As documentation to facilitate knowledge transfer is the sole responsibility of the Contractor, the replacement staff will be provided at no cost during the knowledge transfer period.

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, 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:	**International Business Machines Corporation, DBA IBM Corporation**	Date:	
Federal ID:	**13-0871985**		
NYS Vendor ID:	**1000001053**		

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.