



# Office of General Services Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov) | 518-474-6717

## SIXTH AMENDMENT TO CONTRACT NUMBER PM70138

### NETAPP U S PUBLIC SECTOR INC

### GROUP 73600, AWARD 22802

#### INFORMATION TECHNOLOGY UMBRELLA CONTRACT MANUFACTURER BASED (Statewide)

**THIS SIXTH AMENDMENT**, (the "Sixth Amendment") is made between the People of the State of New York, acting by and through the Commissioner of General Services (hereinafter "State" or "OGS") whose principal place of business is the 36th 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 NetApp U S Public Sector Inc (hereinafter "Contractor"), with its principal place of business at 3060 Olsen Dr., San Jose, CA95128. The foregoing are collectively referred to as the "Parties."

#### WITNESSETH:

**WHEREAS**, OGS entered into a Centralized Contract for the acquisition of Information Technology, (hereinafter referred to as the "Contract" or "Contract No. PM70138") with NetApp U S Public Sector Inc; and

**WHEREAS**, the term of Contract No. PM70138 is set to expire on November 29, 2025, and an option for an extension of the term was provided in Section 2.7, *Contract Term*, as follows:

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.

**WHEREAS**, the Parties now wish to amend the Contract to extend the Contract term through and including November 29, 2030, pursuant to Contract Section 2.7 *Contract Term*, and to amend other terms of the Contract, as set forth below;

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

#### 1. TERM

Pursuant to Section 2.7 *Contract Term*, the term of the Contract is extended for five (5) years through and including November 29, 2030.

#### 2. NYS COMPTROLLER APPROVAL

The Contract is amended to add the following new Section, 2.7.1 *NYS Comptroller Approval*, to read as follows:

##### 2.7.1 NYS COMPTROLLER APPROVAL.

In accordance with Section 112 of the State Finance Law, this Contract shall not be valid, effective or binding upon the State until this Contract has been approved by the Office of the New York State Comptroller ("OSC"). Purchase orders or other procurement transactions issued under this Contract(s) may also be subject to OSC approval.

**3. CONTRACT DOCUMENTS AND CONFLICT OF TERMS**

Section 2.6 *Contract Documents and Conflict of Terms* of the Contract is deleted in its entirety and replaced with the following new 2.6 *Contract Documents and Conflict of Terms*, to read as follows:

**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 (June 2023)
2. The Sixth Amendment
3. The Fifth Amendment
4. The Fourth Amendment
5. The Third Amendment
6. The Second Amendment
7. The First Amendment
8. The original base Contract, Appendix J – Contractor's Insurance Requirements, and Appendix J.1 – Contractor-Specific Insurance Requirements (as applicable)
9. Appendix B – 22802 - Information Technology Umbrella Contract - Manufacturer Based (Statewide) General Specifications (September 2021)
10. Appendix C – Contract Modification Procedure
11. Appendix D – Contractor and Reseller Information
12. Appendix E – Pricing Pages
13. Appendix F – Primary Security and Privacy Mandates
14. Appendix G – How to Use the Manufacturer Umbrella Contract
  - G.1 Request for Quote
  - G.2 RFQ Financial Response
  - G.3 Request for Quote – Cloud Solution
  - G.4 Authorized User Specific Riders
    - G.4.1 Data Sharing and Confidentiality Agreement (Provided by BOCES)
    - G.4.2 Deferred Payment Plans
    - G.4.3 RFQ Deviation Template
    - G.4.4 Federal Funding Agency Mandatory Terms and Conditions
  - G.5 RFQ – Cloud Solution Checklist
  - G.6 Request for Information (RFI)
15. Appendix H – Maintenance and Warranty Service Report
16. Appendix I – Report of Contract Sales
17. Appendix K – Contractor How to Use

**4. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

Section 2.68 *Contractor Requirements and Procedures for Participation By New York State Certified Minority- And Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women*, of the Contract is deleted in its entirety and replaced with the following new section 2.68 *Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- And Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women*, to read as follows:

**2.68 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN.**

**I. New York State Law**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR"), the New York State Office of General Services ("OGS") is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OGS contracts.

**II. 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 and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for 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. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

**III. Equal Employment Opportunity (EEO)**

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.
  - 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. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
  - 2. By entering into this Contract, Contractor certifies 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. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 - Staffing Plan. To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 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. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)

The Contractor shall complete, and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January to report the actual workforce utilized during the previous quarter in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website:  
<https://ny.newnycontracts.com>

The Workforce Audits must be completed electronically in the NYS Contract System Workforce Audit Module. Separate audits shall be completed by Contractor and all subcontractors, and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed 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

#### IV. 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:

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 % (see note below)
4	Implementation Services	15 %	15 %	30 %

(based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and/or WBE participation for subcontracting and supplies acquired under the Contract.

**Note that with respect to Lot Number 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.

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs

found at the following internet address: <https://ny.newnycontracts.com>. [The MWBE Regulations are located at 5 NYCRR §§ 140 – 145.](#) Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Business Diversity. Additionally, following Contract execution, 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 clause VII below).

#### **V. MWBE Utilization Plan**

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges 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. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333-1. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder's Submission as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an MWBE Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/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.

**VI. Request for Waiver**

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333.1, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor 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.

**VII. Required Good Faith Efforts**

In accordance with 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:

- 1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
- 2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") 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.
- 3. 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.
- 4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
- 5. 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.
- 6. Other information deemed relevant to the request.

**VIII. 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, 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 email 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 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 – Vendor training"** 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/FrontEnd/TrainingList.asp>
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on **"Vendor 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 (i.e., 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 OBD Office, 29<sup>th</sup> 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 MWBE liquidated damages clause in clause IX below.

#### IX. Breach of Contract and Liquidated Damages

- A. Where OGS determines that the Contractor is not in compliance with the MWBE requirements of this Section, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- 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 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 they are



assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

**X. Fraud**

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

**ALL FORMS ARE AVAILABLE AT:** <https://ogs.ny.gov/MWBE>

Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

**5. ENVIRONMENTAL SUSTAINABILITY AND NYS EXECUTIVE ORDER NUMBER 22**

Section 2.45.4 *Environmental Attributes And NYS Executive Order Number 4* of the Contract is deleted in its entirety and replaced with the following new Section 2.45.4 *Environmental Sustainability and NYS Executive Order Number 22*, to read as follows:

**2.45.4 ENVIRONMENTAL SUSTAINABILITY AND NYS EXECUTIVE ORDER NUMBER 22.**

New York State is committed to environmental sustainability, and seeks to minimize the environmental impact of any Products that the State Procures. Executive Order No. 22 Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program ("EO 22"), requires State Agencies, authorities, and public benefit corporations ("Affected Entities") to follow GreenNY procurement specifications for commodities, services and technology. The GreenNY specifications consider a wide range of factors including avoidance of toxic substances, pollution reduction and prevention, sustainable manufacturing, reduction of greenhouse gas emissions, packaging, and water conservation. Resources are available on the OGS website at <https://ogs.ny.gov/greeny-purchasing-requirements-and-tools> for procurement managers and Contractors to learn about which Contracts provide environmentally preferable Products.

A list of currently approved specifications is located on the OGS website at <https://ogs.ny.gov/greeny/approved-greeny-specifications>.

**6. CONTRACT DOCUMENTS; ELECTRONIC FORMAT**

The Contract is amended to add the following new Section, 2.77 *Contract Documents; Electronic Format*, to read as follows:

**2.77 CONTRACT DOCUMENTS; ELECTRONIC FORMAT.**

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

**7. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

The Contract is amended to add the following new Section, 2.78 *Prohibition On Contracting for Certain Telecommunications and Video Surveillance or Equipment*, to read as follows:



**2.78 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

In accordance with Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019, under any Contract or subcontract resulting from this Solicitation, Bidder or resultant Contractor or Subcontractor shall not provide to the State or Authorized User any equipment, system, or service that uses covered telecommunications equipment or services, as defined by the NDAA, as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver, as set forth in the NDAA and the rules and regulations promulgated thereunder.

**8. N.Y. STATE LABOR LAW § 220-I**

The Contract is amended to add the following new Section, 2.79 *N.Y. State Labor Law § 220-I*, to read as follows:

**2.79 N.Y. STATE LABOR LAW § 220-I**

All contractors and subcontractors submitting bids or performing construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication work on public work projects or private projects covered by Article 8 of the Labor Law are required to register with the New York State Department of Labor under Labor Law Section 220-i.

Labor Law Section 220-i (6) prohibits contractors from bidding on public work and subcontractors from commencing work unless the contractor or subcontractor is registered with NYSDOL. This section requires contractors to submit their Certificate of Registration with their bid materials. Contractors are required to provide proof of registration as required by Labor Law Section 220-i as a minimum qualification and that failure to provide proof of registration will disqualify a bidder. Subcontractors must be registered as required by Labor Law Section 220-i before commencing work on a covered project.

Any Contractor offering services under their Contract that involve the performance of work that is covered by Article 8 of the Labor Law must obtain and maintain an active valid Certificate of Registration for the duration of the Contract Term. Any Contractor that must obtain and maintain a Certificate of Registration under this section that is using any subcontractors to provide a service covered by Article 8 of the Labor Law under this Contract must require all subcontractor(s) to register with NYSDOL and obtain a Certificate of Registration before commencing work on a covered project; and any such subcontractor must maintain their active valid contractor registration for the duration of the Contract Term.

Contractor must provide the unique registration number found on their Certificate of Registration, as well as any Subcontractor(s)' unique registration number(s) found on their Certificate of Registration to the Authorized User in accordance with the requirements of the Labor Law and the How to Use procedures of this Contract.

**9. END POINT DEVICE SECURITY**

The Contract is amended to add the following new Section, 2.80 *End Point Device Security*, to read as follows:

**2.80 END POINT DEVICE SECURITY**

Any State Agency as defined in Section 160 of the State Finance Law procuring End Point Devices as defined in State Finance Law 165(9) under this Contract must comply with the requirements of State Finance Law Section 165(9) at the time of purchase.

**10. N.Y. STATE TECHNOLOGY LAW ARTICLE 4**

The Contract is amended to add the following new Section, 2.81 *N.Y. STATE TECHNOLOGY LAW ARTICLE 4*, to read as follows:

**2.81 N.Y. STATE TECHNOLOGY LAW ARTICLE 4**

Any State Agency as defined in Section 401 of the State Technology Law that is utilizing an Automated Employment Decision-making Tool as defined in the same section must comply with the requirements of Article 4 of the State Technology Law.

**11. APPENDIX A**

The Contract is amended to replace Appendix A *Standard Clauses for New York State Contracts* dated October 2019 with Appendix A *Standard Clauses for New York State Contracts* dated June 2023, attached hereto, which is expressly made a part of this Contract Amendment as fully as if set forth at length herein.

**12. APPENDIX D**

Appendix D *Contractor and Reseller Information* included in the original Contract, is deleted in its entirety and replaced with the Appendix D attached hereto, which is expressly made a part of this Contract Amendment as fully as if set forth at length herein.

**13. APPENDIX E**

Appendix E *Pricing Pages* included in the original Contract, is deleted in its entirety and replaced with the Appendix E attached hereto, which is expressly made a part of this Contract Amendment as fully as if set forth at length herein.

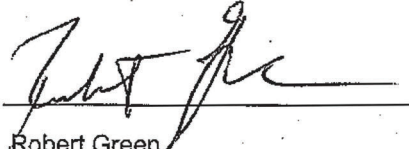
**14. SEVERABILITY**

In the event that any one or more of the provisions of this Sixth Amendment shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Sixth Amendment, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Sixth Amendment.

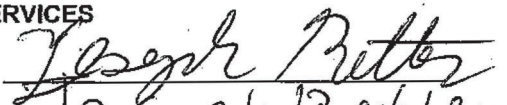
**15. Except as herein modified, all other terms of Contract PM70138 shall remain in full force and effect.**

IN WITNESS WHEREOF, the Parties have executed this Sixth Amendment 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 Sixth Amendment being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Sixth Amendment, Appendix A *Standard Clauses For New York State Contracts* (June 2023), Appendix B *General Specifications* (September 2021), 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).

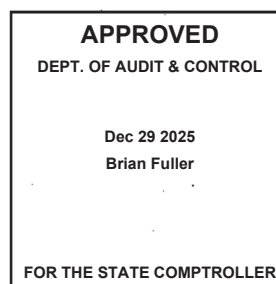
**CONTRACTOR**

Signature:   
Printed Name: Robert Green  
Title: President, NetApp U.S. Public Sector, Inc.  
Date: 8/6/2025  
Company Name: NetApp U S Public Sector Inc  
Contract Number: PM70138  
Federal ID: 77-0580519  
NYS Vendor ID: 1100010278

**THE PEOPLE OF THE STATE OF NEW YORK,  
ACTING BY AND THROUGH THE COMMISSIONER  
OF GENERAL SERVICES**

Signature:   
Printed Name: Joseph Butten  
Title: Assistant Director  
Date: 8/26/2025  
Office of General Services

**NEW YORK STATE OFFICE OF THE STATE  
COMPTROLLER**



**NOTICE:** This Sixth Amendment becomes effective upon OSC approval. OGS will then post a notification to its website in the form of a Contract Award Notification Update.

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF North Carolina }

: Sworn Statement:

COUNTY OF Wake }

On the 6th day of August in the year 2025, before me personally appeared  
Robert Green, known to me to be the person who executed the  
foregoing instrument, who, being duly sworn by me did depose and say that they maintain an office at

Town of McLean

County of Fairfax, State of VA; and further that:

**[Check One]**

☐ If an individual: they executed the foregoing instrument in their name and on their own behalf.

☒ If a corporation: they are the President of NetApp U.S. Public Sector Inc., the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, they are authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, Robert Green 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: they are the of the partnership described in said instrument; that, by the terms of said partnership, they are authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, they 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: they are a duly authorized member of LLC, the limited liability company described in said instrument; that, they are authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, they 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.

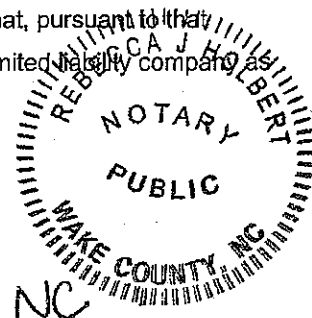
Signature of Notary Public

Rebecca J. Holbert  
expires: Sept 18 2027

Notary Public Registration No. 20172580012

State

NC



## **APPENDIX A**

# **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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

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

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



accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

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

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

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

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

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

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

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development  
Division for Small Business and Technology Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

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

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

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

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

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

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

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

**CONTRACT ASSIGNMENT AGREEMENT AND AMENDMENT**  
**STATE OF NEW YORK**  
**OFFICE OF GENERAL SERVICES**  
**ORIGINAL CONTRACT # PM20920**  
**POST ASSIGNMENT CONTRACT # PM70138**

**THIS CONTRACT ASSIGNMENT AGREEMENT AND AMENDMENT** (hereinafter referred to as the “Assignment”) is made by and among (i) **the State of New York**, acting by and through the Office of General Services with offices located at 36<sup>th</sup> Floor, Corning Tower, Empire State Plaza, Albany NY 12242 (hereinafter referred to as the “State”) and (ii) **NetApp, Inc.**, having its principal place of business at 495 East Java Drive, Sunnyvale, CA 94089, with Employer Identification Number 77-0307520 and NYS Vendor Number 10000009697, (hereinafter referred to as “Transferor”) and (iii) **NetApp U.S. Public Sector, Inc.**, having its principal place of business at 3060 Olsen Dr., San Jose, CA 95128, with Employer Identification Number 77-0580519 and NYS Vendor Number 1100010278 (hereinafter referred to as “Transferee”). The State, the Transferor, and the Transferee are hereinafter collectively referred to as the “Parties.” The Assignment is effective on 24 day of September 2025, and is subject to approval by the New York State Office of the State Comptroller (“OSC”) and the New York State Attorney General after execution by all Parties.

**WHEREAS**, the Transferor entered into a contract (hereinafter referred to as the “Contract”) with the State with a contract number of PM20920, for Information Technology Umbrella Contract Manufacturer Based (Statewide), for/to the State for specified consideration, all as fully described in the Contract. The Contract includes any amendments and purchase orders, including all modifications, made between the State and the Transferor before the effective date of this Assignment. The Contract also includes all amendments and purchase orders, including all modifications, made between the State and the Transferor on or after the effective date of this Assignment; and

**WHEREAS**, the Transferor desires to transfer all rights, titles, interests, duties, obligations, and liabilities under the Contract to the Transferee; and

**WHEREAS**, the Transferee desires to accept the transfer of all rights, titles, interests, duties, obligations, and liabilities of Transferor under the Contract; and

**WHEREAS**, the State has determined that the Transferee is a responsible vendor that has the capacity and capability to perform the Contract; and

**WHEREAS**, the assigned Contract Original Contract # PM20920 will hereafter be designated as Contract #PM70138.

In consideration of the foregoing facts, the Parties agree that by this Assignment:

1. The Transferor, for good and valuable consideration, does hereby assign, transfer and convey to the Transferee all rights, titles, interests, duties, obligations, and liabilities in the Contract.

2. The Transferee agrees to accept the transfer of all rights, titles, interests, duties, obligations, and liabilities of Transferor under the Contract, including but not limited to, and only where applicable, professional liability and the furnishing of valid certificates of insurance and bonds thereof to be effective as of the date this Assignment is approved as described below, or on some other date agreed to by the Parties, provided however, that there shall be no lapse or gaps in coverage afforded under such bonds and insurance to the State.
3. The Transferor warrants and represents there are no known liens, tax obligations, or other legal responsibilities relating to the Contract or against Transferor relating to the Contract at this time and Transferor has no reason to believe any such liens, tax obligations, or other legal responsibilities relating to the Contract will be filed in the future, which may result in a finding that this Assignment was made to avoid payment of such liens, tax obligations, or other legal responsibilities.
4. The State recognizes the assignment of the Contract to the Transferee. The Transferee, by this Assignment, becomes entitled to all rights, titles, and interests and is bound by all duties, obligations, and liabilities of the Transferor in and to the Contract, as if the Transferee were the original signatory party to the Contract. As of the effective date of this Assignment, the terms "Contractor" or "Vendor," as used in the Contract, shall refer to the Transferee.
5. Except as expressly provided in this Assignment, nothing in it shall be construed as a waiver of any rights of the State against the Transferor.
6. The Transferee shall defend, indemnify and save the State harmless from any losses, liabilities, claims, damages, or causes of actions that the Transferor heretofore had, has or hereafter may have against the State arising out of the Contract.
7. The State reserves any and all rights of any kind or nature whatsoever which it may have against the Transferor and the State's consent to the transfer of the Contract is expressly conditioned upon the understanding that the Assignment shall not operate to discharge any losses, liabilities, claims, demands, or causes of action the State heretofore had, now has, or hereafter may have against the Transferor for or by any reason or any matter or thing whatsoever.
8. All payments and reimbursements previously made by the State to the Transferor shall be considered to have discharged the State's obligations to make such payments and reimbursements under the Contract. All payments and reimbursements made by the State in relation to the Contract after the date of this Assignment shall be made in the name of or to the Transferee, and shall constitute a complete discharge of the State's obligations under the Contract, to the extent of the amounts paid or reimbursed.
9. The Transferee agrees that the State is not obligated to pay or reimburse Transferee, or otherwise give effect to, any costs, fees, taxes, or other expenses, or any related

increases, directly or indirectly arising out of or resulting from the transfer of the Transferor's rights and obligations under the Contract, other than those that the State in the absence of such transfer would have been obligated to pay or reimburse under the terms of the Contract.

10. The Contract shall remain in full force and effect pursuant to its terms, except as modified by this Assignment.
11. Pursuant to State Finance Law §§139-j and 139-k, an assignment is a "governmental procurement" and, therefore, there are certain restrictions on communications during the transfer process. Both Transferor and Transferee are restricted from making "contacts" from the earliest notice of intent to transfer the Contract through final approval of this Assignment by the State ("restricted period") to other than designated staff unless it is a contact that is included among the statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is/are identified in the OGS email notification and request for documents sent following the request for assignment. These provisions also require that State employees obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Transferee. Certain findings of non-responsibility may result in rejection of an assignment and, in the event of two findings of non-responsibility within a four-year period, the Contractor is debarred from obtaining any governmental procurement contracts. Further information about these requirements, including the certification that must be filed by the Transferee, in accordance with New York State Finance Law §139-k, can be found on the OGS website:  
[www.ogs.ny.gov/acpl](http://www.ogs.ny.gov/acpl)

The State reserves the right to terminate the Contract in the event it is found that the certification filed by the Transferee in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Transferee in accordance with the written notification terms of the Contract.

12. Transferee's contact information for notices given pursuant to the Contract shall be as follows, beginning on the effective date of this Assignment:

Name: Harry Franks  
Address: 8350 Broad St, 12th Floor, Tysons, VA 22102  
Phone: 703-918-7317  
Fax: N/A  
Email: [Harry.Franks@netapp.com](mailto:Harry.Franks@netapp.com)

13. This Assignment accomplishes a transfer pursuant to New York State Finance Law Section 138 and is therefore subject to approval by the Attorney General and the Comptroller of the State of New York.
14. This Assignment shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.



15. This Assignment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Assignment.
16. Appendix A *Standard Clauses for New York State Contracts*, included in the Original Contract, is deleted in its entirety and replaced with the Appendix A *Standard Clauses for New York State Contracts* (June 2023) attached hereto, and is expressly made a part of this Contract as if fully set forth at length herein. All references in the Contract to Appendix A shall be deemed to reference Appendix A *Standard Clauses for New York State Contracts* (June 2023).

[Signature Pages Follow]

Assignment

Original Contract # PM20920, Post Assignment Contract # PM70138

Page 5 of 7

IN WITNESS WHEREOF, the Parties hereto have caused the Assignment to be duly executed on the day and year first above written.

TRANSFEROR:

  
Signature

Riccardo Di Blasio, Sr. VP North America Sales  
Printed Name, Title

11/19/2025  
Date

**CORPORATE ACKNOWLEDGEMENT**

STATE OF Virginia )  
COUNTY OF Darlington ) SS.:  
)

On this 19 day of November, 2025, before me personally came Riccardo Di Blasio, to me known who being duly sworn, did depose and say that s/he resides in Florida; that s/he is the Sr. VP North America Sales of the NetApp, Inc., the firm/corporation described in and which executed the foregoing instrument; that s/he signed her/his name thereto as a signator thereof.

  
Notary Public

SEAN K SMITH  
Notary Public  
Commonwealth of Virginia  
Registration No. 8060439  
My Commission Expires Dec 31, 2027

Assignment  
Original Contract # PM20020, Post Assignment Contract # PM20138  
Page 1 of 2

TRANSFER:

  
Signature

Robert Green, President NetApp U.S. Public Sector, Inc.

Printed Name, Title

Robert Green, VP Federal Sales Date 11/14/25

### CORPORATE ACKNOWLEDGEMENT

STATE OF Virginia )  
COUNTY OF Fairfax ) SS )

On this 14 day of November, 2025, before me personally came Robert Green, to me known who being duly sworn, did depose and say that s/he resides in Virginia, that s/he is the President of the NetApp U.S. Public Sector Inc., the firm/corporation described in and which executed the foregoing instrument, that s/he signed her/his name thereto as a signator thereof.



  
Notary Public

Kaylie Park  
#00361396  
12/31/29

THE PEOPLE OF THE STATE OF NEW YORK

Joseph Better  
Signature  
Joseph Better  
Printed Name, Title  
12/22/2025  
Date  
PM 70138  
NYS Contract #

APPROVED:

For the Attorney General

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

For the State Comptroller

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**APPROVED**  
DEPT. OF AUDIT & CONTROL

Dec 05 2025  
Elizabeth Gadomski

FOR THE STATE COMPTROLLER

## **APPENDIX A**

# **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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

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

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



accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

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

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

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

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

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

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

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development  
Division for Small Business and Technology Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

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

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

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

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

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

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

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.



## **FOURTH AMENDMENT TO CONTRACT NUMBER PM20920**

**NetApp Inc**

**GROUP 73600, AWARD 22802**

### **INFORMATION TECHNOLOGY UMBRELLA CONTRACT MANUFACTURER BASED (Statewide)**

**THIS FOURTH AMENDMENT**, (the "Fourth Amendment") is made between the People of the State of New York, acting by and through the Commissioner of General Services (hereinafter "State" or "OGS") whose principal place of business is the 36th 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 NetApp Inc (hereinafter "Contractor"), with its principal place of business at 495 East Java Drive Sunnyvale, CA 94089. The foregoing are collectively referred to as the "Parties."

#### **WITNESSETH:**

**WHEREAS**, OGS entered into a centralized contract for the acquisition of INFORMATION TECHNOLOGY UMBRELLA CONTRACT MANUFACTURER BASED (Statewide) (hereinafter referred to as the "Contract" or "Contract No. PM20920") with NetApp Inc on 11/30/2015; and

**WHEREAS**, the term of Contract No. PM20920 runs from 11/30/2015 to November 29, 2022; and

**WHEREAS**, the Parties wish to amend the Contract to extend the Contract term until November 29, 2025, pursuant to Contract Section 2.7 Contract Term, and to amend certain other terms of the Contract; and

**WHEREAS**, the Second Periodic Recruitment Solicitation, as the same was amended through the procurement process, contained terms and conditions which were updated and revised from those in the Initial Recruitment Solicitation and the First Periodic Recruitment; and

**WHEREAS**, to facilitate level terms and conditions across all Manufacturer Umbrella Contracts, the Parties desire to amend Contractor's Contract to reflect the updated and revised terms and conditions in the Second Periodic Recruitment Solicitation; and

**WHEREAS**, upon full execution of this document, this document, including Second Periodic Recruitment terms and conditions and all Attachments and Appendices thereto will constitute Contractor's Manufacturer Umbrella Contract

**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:

#### **SECTION 1:**

The entire contract and all appendices have been deleted in their entirety and replaced with the following:

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## Section 1. Introduction

### 1.1 OVERVIEW AND PURPOSE OF THIS CONTRACT

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

### 1.2 EXECUTIVE ORDER 117 AND STATE TECHNOLOGY LAW

As of January 28, 2002, Governor Pataki enacted Executive Order 117 establishing the position of Chief Information Officer of the State of New York, afterwards known as the CIO. State Technology Law (STL) 102 creates the Office of Information Technology Services (ITS) and STL 103.10 codifies the authority of ITS to establish statewide technology policies, including but not limited to preferred technology standards and security, including statewide policies, standards, programs, and services relating to the security of state government networks.

Any Authorized User defined as a “State Agency” in State Technology Law 101 or “State Government” under Executive Order 117 or any Authorized User that uses or accesses any information technology resource for which the State has administrative responsibility, including systems managed or hosted by third parties on behalf of the State, are subject to NYS policies and standards promulgated by the Office of Information Technology Services (ITS) - <https://its.ny.gov/ciso/policies/security>.

## Section 2. Contract Terms and Conditions

### 2.1 CONTRACT SCOPE AND 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 awarded Lots.

The Products must be commercially released Products and available for purchase through the Manufacturer's normal marketing channels. No Products at End of Life or within six months prior to End-of-Life are to be sold, except with prior written approval by the Authorized User.

#### 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.

Lot 1 – Software
Inclusions
Examples include but are not limited to: <ul style="list-style-type: none"><li>• Software Licenses for Contractor's Proprietary Product line, including<ul style="list-style-type: none"><li>○ Perpetual licenses</li><li>○ Term licenses</li></ul></li><li>• Pre-Packaged Software Maintenance/Support for Contractor's Proprietary Product line</li><li>• Pre-Packaged Software Installation for Contractor's Proprietary Product line</li><li>• Pre-Packaged Software Training Packages, Remote and On-Site that are standardized for Contractor's Proprietary Product line</li><li>• Fleet management (management of software license inventory)</li><li>• Software Bundles, including:<ul style="list-style-type: none"><li>○ Software Third Party Products</li><li>○ Maintenance</li><li>○ Related Hardware</li></ul></li></ul>

**Lot 1 – Software**

- Enterprise Software Purchases
- Legacy Software Maintenance
- Customer specific legacy Product SKUs

**Restrictions**

- On Premise Software Only

**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 Solutions
- Implementation
- Customized Training
- Stand-alone Professional Services
- SKUs that equate to “blocks of hours”
- Stand-alone Third Party Products, except as allowed in Section 2.1.6 Third Party Products
- Configuration Services other than pre-packaged
- Leasing, except as allowed in Section 2.1.5 Postage Meters
- Rentals
- Refinancing of Prior Balances
- Pooling of Copier Allowances
- Managed Print Services

**2.1.2 Lot 2 – Hardware**

This Lot provides Authorized Users with a mechanism to purchase Hardware Products, Pre-Packaged Installation, Configuration, training, extended warranties, Maintenance/support, and ancillary equipment and accessories offered by the Contractor in its Manufacturer's Price List.

**Lot 2 – Hardware****Inclusions**

Examples include but are not limited to:

- Drones
- 3D Printers
- Medical 3D Printers
- Augmented Reality (AR) Hardware
- Virtual Reality (VR) Hardware
- Technology Accessory Equipment
- UPS Systems including Generators and Switchgear
- Server & Mainframe Hardware & Server Racks
- Storage
- Microcomputer Systems, System Peripherals & Accessories
- Telecommunications Hardware, System Peripherals & Accessories
- Copper and Fiber Cabling for Telecommunications and Data Communications Systems
- Desktop / Notebooks / Laptop / Tablets / Workstations
- Printers (Personal and networked workgroup)
- Receipt and Access Card Printers (Smart Card or Magnetic Card)
- Multifunction Printers
- Production Printing Equipment
- Printer Consumables branded by the Contractor for use with Hardware manufactured by the Contractor
- Scanners: document / thermal / Lidar / 3D Laser / photogrammetry
- Audio Visual Equipment including Cameras, Production and Lighting, Signal Management, Routing and Switching, Mounts and Rigging, AV Furniture, Mobile Presentation Carts / Portable AV Systems

**Lot 2 – Hardware**

- Electronic Whiteboards / Interactive Display Panels / Other Display Panels
- Audio / Video Conferencing Hardware
- Mailing Machine Equipment including Scales, Folders, Inserters, Sorters, Address Printers, Bursters and Cutters, Pressure Sealing Mailing Systems, Tabbing and Labeling Systems, and Envelope Sealers
- Educational Technology and Occupational Training Equipment and Solutions for the following fields: Robotics and Automation, Computer Aided Drafting, Pneumatics, Hydraulics, Aerodynamics, Electronics, HVAC, Automotive Technology, and Communications
- Pre-Packaged Hardware Maintenance/Support for Contractor's Proprietary Product line
- Pre-Packaged Hardware installation services for Contractor's Proprietary Product line
- Pre-Packaged Hardware Training Packages (Remote and On-Site) that are standardized for Contractor's Proprietary Product line
- 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
- Legacy Hardware Maintenance

**Restrictions**

- Manufacturers Only, as defined in the Glossary as Manufacturer – Hardware

**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 Solutions
- Customized Training
- Implementation Services
- Configuration Services other than as set forth in Inclusions
- Software not in compliance with Related Software
- Stand-alone Third Party Products, except as allowed in Section 2.16 Third Party Products
- Leasing, except as allowed in Section 2.15 Postage Meters
- Rentals
- Refinancing of Prior Balances
- Pooling of Copier Allowances
- Refurbished or Remanufactured Equipment

For Printers:

- Remanufactured toner cartridges, except when remanufactured and sold as new by the Manufacturer of the printer;
- Paper/Film, except for the Contractor's-branded product that is intended for use in the Contractor's-branded printing and imaging Equipment;
- Managed Print Services

**2.1.3 Lot 3 – Cloud**

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

For the duration of an Authorized User Agreement, the Cloud Solution shall conform to the Cloud Solution Manufacturer's specifications, Documentation, performance standards (including applicable license duration, warranties, guarantees, Service Level Agreements, service commitments, and credits).

For Authorized Users subject to NYS security policies/standards (see Section 1.2, it is REQUIRED that prior to a Request for Quote, the Authorized User complete a Data categorization study, consistent with NIST FIPS Publication 199 - Standards

for Security Categorization (or successor standard), available at: <http://www.its.ny.gov/tables/technologypolicyindex.htm>, to determine the following:

- the level of Data risk;
- the required Breach Notification Procedures; and
- the required Cloud service security measures for incorporation.

As part of the RFQ process Authorized Users must make a business decision, based on their Data Categorization results, as to the appropriateness of a Cloud Solution. The Authorized User must include:

- the Data Categorization elements (not actual Data);
- the overall risk determination; and
- applicable statutory requirements (See Contract Appendix F – Primary Security and Privacy Mandates).

An Authorized User is strongly suggested to provide the identity assurance level required for their RFQ.

Lot 3 - Cloud	
Inclusions	
Examples include but are not limited to:	
<ul style="list-style-type: none"><li>• Cloud Solutions</li><li>• Drone Data collection analysis and storage</li><li>• Augmented Reality (AR) Solutions</li><li>• Virtual Reality (VR) Solutions</li><li>• Software as a Service (SaaS)</li><li>• Platform as a Service (PaaS)</li><li>• Infrastructure as a Service (IaaS)</li><li>• Mirrored Data Center</li><li>• Pre-Packaged Cloud-Based training services that are standardized</li><li>• Anything as a Service (XaaS)</li><li>• Pre-Packaged Cloud installation and Pre-Packaged configuration services for Contractor's offered Cloud Solution</li><li>• Pre-Packaged Cloud Training Packages (Remote and On-Site) that are standardized for Contractor's offered Cloud Solution</li><li>• Apps for Mobile Devices</li><li>• Managed Security Services, Including Internet Traffic Monitoring Services</li><li>• Managed Printer Services</li><li>• Fleet Management (management of Cloud Solution inventory)</li><li>• Enterprise Cloud Purchases</li><li>• Automated Network Monitoring (or any other service provided principally through an automated process)</li><li>• Pre-Packaged Maintenance and Support for Contractor's offered Cloud Solution</li><li>• Pre-Packaged Self-Service Portal for Contractor's offered Cloud Solution</li><li>• GPS Tracking Solutions</li><li>• Hardware – personal computers, laptops, tablets, equipped with connectivity meeting the Contract definition of cloud, outright purchase of Hardware including ongoing connectivity services</li><li>• Hardware-as-a-Service (HaaS) – Cloud Solution must include connectivity as well as the device</li><li>• Software – to enable / create a cloud connection</li></ul>	
Restrictions	
<ul style="list-style-type: none"><li>• Manufacturers Only, as defined in the Glossary as Manufacturer – Cloud Solution</li><li>• Hardware may only be sold if it is integral to the operation of the Cloud Solution</li></ul>	
Exclusions	
<ul style="list-style-type: none"><li>• Consulting Services</li><li>• Customization Services</li><li>• Customized Implementation Services</li><li>• Customized Configuration Services</li><li>• Customized Training</li><li>• Stand-alone Financial Transaction Processing</li></ul>	



**Lot 3 - Cloud**

- Stand-alone on-premise Hardware
- Stand-alone Professional Services

**2.1.4 Lot 4 – Implementation Services**

This Lot provides Authorized Users with a mechanism to purchase Implementation or Related Services for the deployment or continued maintenance of Products procured under Lots 1, 2, and/or 3 and any applicable future Contract Lots awarded through Periodic Recruitment. Services in this Lot should be in incremental units, where possible, in order to allow RFQ responders to submit a customized deliverable-based Service plan to suit the needs of the Authorized User. Examples of incremental units are:

- Hourly rates
- Half-day or full-day rates
- Pre-packaged implementation

Implementation Services are only for Products that are available in scope of a Contractor's Umbrella Manufacturer Price List.

**Lot 4 – Implementation Services****Inclusions**

Implementation services and configuration of Products within Lots 1, 2, and 3. Examples include, but are not limited to:

- Business Process Analysis for new Products
- Project Management Services
- Data Conversion
- Customized Training on Products
- Programming Services capped at no more than 20% of the total implementation cost of the Authorized User Agreement
- Consulting Services, if related to the post-sale implementation or service of Products

**Restrictions**

- Restricted to Manufacturers holding contracts for Lots 1, 2, or 3
- Services may only be procured to implement a Product(s) within scope of Lots 1, 2, or 3.
- An Authorized User Agreement for projects under this Lot shall be no longer than 60 months in duration including any time extensions
- All services covered under Lot 4 – Implementation Services must be performed within CONUS

**Exclusions**

- Ongoing services such as:
  - Staff augmentation
  - Application service provisioning
- Programming Services requiring more than 20% of the total implementation costs of the Authorized User Agreement

**2.1.5 Postage Meters**

Postage meters and related equipment are regulated under Federal law and are allowed to be leased only by the USPS-authorized providers or their legal successor. For the current list of USPS-authorized providers, please navigate to USPS website at: <https://pe.usps.com/text/qsg300/Q604c.htm>. All items in this category are subject to the approval of OGS.

**2.1.6 Third Party Products**

Third Party Products are allowed to be sold with a Contractor's solution if all of the following criteria are met:

- The Contractor is wholly and solely responsible for the performance during the life of the Product use,
- The Product is priced, maintained, and warranted by the Contractor; and
- The Product meets **one** of the following conditions:
  - A laptop / desktop / server / network configuration containing third party components essential to a functioning solution.



- A Proprietary solution (reflective of partnership) - software / hardware that is created for the Contractor's proprietary solution
- An Accessory equipment that is 20% or less of the configuration. Examples include keyboards, mice, laptop cases, and cords.

Third Party Products are allowed as part of a Software Bundle only if they are required to facilitate the provision of the Software solution or will only function with the Contractor's proprietary solution.

Third Party Products are allowed as part of a Hardware Bundle only if they are required to facilitate the provision of the Hardware solution or will only function with the Contractor's proprietary solution.

Since the Contractor is wholly and solely responsible for all Products on their pricelist, there will be no Contract privity between the Authorized User and the third party. A Contractor may absorb its Subcontractor's terms and conditions and then rebuild those terms and conditions into its own terms and conditions within the Authorized User Agreement. This does not allow for the attachment of third party terms and conditions within an Authorized User Agreement (i.e. no pass through terms and conditions are allowed on this Contract). Third party standard terms and conditions (commonly referred to as "vendor paper") shall not be attached, in any fashion, directly to a Contractor/Reseller response to an RFQ or to an Authorized User Agreement. Contractor or Reseller may propose third party terms and conditions in accordance with Section 28 of Appendix B.

#### 2.1.7 Customer Specific SKUs

Customer Specific SKUs are allowed if the following requirements are met:

- the Contractor must provide the full description of products, services, and any Statement of Work (SOW) to the Authorized User for insertion into the RFQ prior to the release of the RFQ
- the RFQ must be competitive amongst the authorized resellers. In the event there are not five or more authorized resellers, the Customer Specific SKUs are not allowed.
- SKU represents a bundling of maintenance / support services.
- If a Manufacturer develops a custom SOW with an Authorized User then both the Authorized User and the Manufacturer should be aware that SFL Section 163-A may apply.

#### 2.1.8 Credits

If Credits are offered as a form of Contractor currency, the Authorized User is required to specify the purchase detail in the RFQ on what Product(s) the credits will be used for.

## 2.2 PRODUCTS AND SERVICES EXCLUDED FROM THE SCOPE OF THIS CONTRACT

This Contract expressly excludes the following from its scope:

- Services not related to Products in Lots 1, 2, and 3 of the Contract;
- Stand-alone Connectivity Services (Traditional copper fiber or cellular connectivity services);
- Staff augmentation (stand-alone hourly based IT Services); and
- Services provided on a time and material billing basis

## 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 to:

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

OGS will formally announce when a Periodic Recruitment Solicitation is issued. Periodic Recruitments will be issued at the discretion of OGS. A Contractor shall be required to submit such documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the Periodic Recruitment.

## 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 GLOSSARY

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

Term	Definition
Administrative Fee	Administrative Fee shall mean the quarterly fee payable to the State in the amount of 0.75% for all sales under this Contract.
Agency or Agencies	As defined in Section 2 of Appendix B.
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. Examples include but are not limited to: Big Data/Data Mining as a Service; Business Continuity/Disaster Recovery as a Service (BC/DRaaS); Data Center as a Service (DCaaS); Hosted Call Center as a Service (HCCaaS); Managed Security Services as a Service (MSSaaS); Storage as a Service (STaaS). The designation of a product under this definition is subject to approval by OGS. Products identified as XaaS must still be within the scope of Lot 3 – Cloud.
Appliance	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. See also "Equipment".
Authentication	The process of establishing confidence in the identity of users or information systems.
Authorized User(s)	As defined in Section 2 of Appendix B.
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)).
Bid Specification	As defined in Section 2 of Appendix B.
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.
Centralized Contracts	As defined in Section 2 of Appendix B.
Cloud Paired Appliances	Hardware that requires a Cloud Solution to function as defined in "Cloud Solution".

Term	Definition
Cloud Solution	Cloud Solution shall mean any Product or Service sold as an “as a service” offering and has one or more of the following characteristics:  (a) Authorized User Data is transmitted, acted upon, or stored on equipment not owned by an Authorized User;  (b) Allows a Contractor access to Authorized User Data from a location other than the Authorized User’s premises;  (c) Allows an Authorized User access to data not owned by the Authorized User which access may or may not result in the collection of Authorized User Data.
Commercial Off-The-Shelf (COTS)	A term for Products available in the commercial marketplace that can be purchased and used under government Contract. Does not include Custom Software.
Commissioner	As defined in Section 2 of Appendix B.
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.
Consulting	The providing of expert knowledge by a third party for a fee.
Consumables	Refers to items and supplies such as ink and toner, staple cartridges, stitching wire, developer, and fuser oil that is utilized by printing and imaging equipment and needs to be replenished when it is depleted.
Continental United States (CONUS)	The 48 contiguous States, and the District of Columbia.
Contract	As defined in Section 2 of Appendix B.
Contract Award Notification	As defined in Section 2 of Appendix B.
Contract Term	The initial term of the Contract and any renewals and/or extensions.
Contractor	As defined in Section 2 of Appendix B.
Copyright	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.
Credits	A value owed to the Authorized User or a token in representation to fulfill an obligation of service or product at a later date. Authorized User must receive the value of the credits purchased, whether through lack of expiration or reimbursement of funds.
Custom Software	Software that does not meet the definition of COTS Software.
Customization	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 Solution. See also Analytic Derivatives.
Data Breach	Refers to unauthorized access to Data or equipment which is used to transmit, store, or act upon such Data by any person, including employees, officers, partners or subcontractors of Contractor, who have not been authorized to access such Data.
Data Center	All facilities in which Authorized User Data is processed or stored.
Data Categorization	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.

Term	Definition
Data Mining	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.
Deferred Payment Plan	Refers to a methodology where equipment is purchased on a deferred, extended payment basis with no buyout due after the last monthly payment is remitted. A Deferred Payment Plan is not a lease and the Contractor cannot assert a security interest in the Equipment.
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. See also "Equipment".
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.
Discount from List	Mathematical calculation to determine the buyer's price from a Manufacturer's Price List.
Documentation	As defined in Section 2 of Appendix B.
Emergency	As defined in Section 2 of Appendix B.
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).
End-of-Life	When a product is no longer being manufactured and/or is no longer being marketed or sold.
Enterprise	As defined in Section 2 of Appendix B.
Enterprise License	As defined in Section 2 of Appendix B.
Equal Employment Opportunity (EEO)	Policies and procedures of the jurisdiction to ensure non-discrimination against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status.
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."
Error Corrections	As defined in Section 2 of Appendix B.
Federal Information Security Management Act (FISMA)	The Federal Information Security Management Act of 2014 ("FISMA", 44 U.S.C. § 355441, et seq.). FISMA requires each federal agency to document and report major security incidents and data breaches to the data 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 Solution inventory).
Follow the Sun	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, US	A federal, state, municipal entity or tribal government located in the United States.
Government Entity, International	A federal or national government located in the United Kingdom, France, Lithuania, Estonia, Singapore, Spain, Malaysia, Canada, or Norway, as identified in the Global Cyber Security Index 2018 Top 10.
Group	As defined in Section 2 of Appendix B.

Term	Definition
Hardware	Refers to IT Equipment and is contrasted with Software. See also “Equipment.”
Hardware-as-a-Service (HaaS)	A fully developed turn-key solution including hardware, connectivity, and cloud applications. The entire solution must be supported, maintained, and branded by the Contractor.
Hardware Bundle	Any combination of Products or services that do not transmit, store, or act upon Authorized User Data in a non-premise based solution. The largest portion of the cost of the bundle must be made up of Lot 2 products in which the Contractor holds Intellectual Property rights.
High Risk Data	Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“High Impact Data”).
Implementation	The 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. User may start the Implementation process at any time in the lifecycle of a project.
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 ( <a href="http://www.its.ny.gov/">http://www.its.ny.gov/</a> ).
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 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.
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).
Licensed Software	As defined in Section 2 of Appendix B.
Licensee(s)	As defined in Section 2 of Appendix B.
License Effective Date	As defined in Section 2 of Appendix B.
Licensor	As defined in Section 2 of Appendix B.
Logical Partition (LPAR)	A subset of a computer's Hardware resources, virtualized as a separate computer.



Term	Definition
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. See also “Equipment”.
Maintenance	The upkeep of Product that keeps the Product operating in accordance with the Manufacturer’s specification.
Managed Print Services	A Cloud service that is designed to assist the business end user to streamline workload / capacity routing priorities, management, and minimize costs associated with printing and imaging. This recurring service may include hardware as part of the solution.
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	An organization 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 or Business Entity that creates, programs, or develops Proprietary Software that is branded, warranted, supported, and maintained by that organization or Business Entity and holds all IP rights of the assembled solution.
Manufacturer – Cloud Solution	A Cloud Solution Manufacturer is an organization or Business Entity that:  1. Sells its own Proprietary Cloud Solution; or  2. Assembles a package of Products or Services into its own Proprietary Product to create a Cloud Solution. This Product may include the services of one or more organizations or Business Entities that directly produce and/or provide components of the package.  The Cloud Solution, must be branded, supported, and maintained by the entity for the life of the transaction.
Manufacturer - Hardware	An organization or Business Entity that creates or assembles Hardware components into an integrated Proprietary system that is branded, warranted, supported, and maintained by that organization or Business Entity and holds all IP rights of the assembled solution.
Manufacturer Part Number (SKU)	A unique identifier assigned to an individual Product or part by the Manufacturer or distributor of that Product or part; usually includes a combination of alpha and/or numeric characters or may be a unique product name or unique product description. SKUs must be unique and cannot be the same as any other SKU on the price list.
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.
Minimum NYS Discount	The discount associated with a Product Category. Must be numeric to two decimal places (e.g. 20.00%). Discount range is not acceptable, nor is the use of “varies” or “custom.”
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.

Term	Definition
National Institute of Standards and Technology (NIST)	The federal technology agency that works with industry to develop and apply technology, measurements, and standards. <a href="http://www.nist.gov">http://www.nist.gov</a>
New Product Releases	As defined in Section 2 of Appendix B.
New York State Small Business Enterprise (NYS SBE) or Small Business	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).
Not-To-Exceed (NTE) Price	The price listed on the published Contract price list. Contractor and/or Reseller cannot quote or sell a Product for more than the NTE Price.
NYS Net Contract Price	This calculates the Net NYS Contract Price by applying the greater discount percentage of either the Minimum NYS Discount/Category Discount or the Actual NYS Discount to the List Price. All Net NYS Contract Prices are Not-to-Exceed prices in U.S. Dollars.
NYS Procurement Services	The division within OGS that establishes centralized, statewide contracts for use by NYS agencies, political subdivisions, schools, libraries, and others authorized by law to participate in such contracts. <a href="http://nyspro.ogs.ny.gov">http://nyspro.ogs.ny.gov</a>
Office of General Services (OGS)	As defined in Section 2 of Appendix B.
Office of the State Comptroller (OSC)	The New York State (NYS) Office of the State Comptroller. <a href="http://www.osc.state.ny.us/">http://www.osc.state.ny.us/</a>
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 Contractor. 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.
Pre-Packaged	A standard commercially available, non-customized offering related to a specific Product and having a unique SKU.
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
Product	As defined in Section 2 of Appendix B.
Product Bundle	Multiple Products combined for sale as a single Product offering with a single SKU number. 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 when the Contractor holds Intellectual Property rights on the largest portion of the Product Bundle based on the Manufacturer's list price. This term does not apply to Cloud Solutions.
Programming Services	Programming Services are modifications or additions to Source Code.

Term	Definition
Project Manager (PM)	A professional in the field of project management. A PM 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.
Proprietary	As defined in Section 2 of Appendix B.
Purchase Order	As defined in Section 2 of Appendix B.
Related Services	Customizable services relating to any point in a lifecycle of a Product in Lots 1, 2, or 3, such as maintenance, configuration, and support services normally offered on Products. Pre-packaged offerings as defined in this Glossary are excluded from these services.
Related Software	Software which is bundled with Hardware and is required for Installation, Configuration and is integral to the operation of the Hardware.
Related Hardware	Hardware which is bundled with Software and is required for installation, configuration, and is integral to the operation of the Software.
Remote Administration	Any method of controlling a Product from a remote location.
Request for Quotation (RFQ)	As defined in Section 2 of Appendix B.
Reseller	A Business Entity that is authorized by the Contractor to resell the Contractor's Products under the Contract. Resellers, also known as Value Added Reseller (VAR) or channel partner 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.
Responsible Bidder	As defined in Section 2 of Appendix B.
Responsive Bidder	As defined in Section 2 of Appendix B.
Sales Agent	A Business Entity or individual who may assist the Manufacturer with sales, but is not authorized to accept orders, invoice or receive payment.
Security Incident	A violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices. See NIST 800-61 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 Article 11 of the State Finance Law, technology shall be deemed a Service.
Service-Disabled Veteran-Owned Business	Please refer to New York Executive Law Article 17-B for the definition of Service-Disabled Veteran-Owned Business.
Shall	Denotes the imperative in a Contract clause or specification.
Should	Denotes the permissive in a Contract clause or specification.
Single Source	As defined in Section 2 of Appendix B.
Site	As defined in Section 2 of Appendix B.
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.



Term	Definition
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.
Software Bundle	Any combination of Products or Services that do not transmit, store, or act upon Authorized User Data in a non-premise based solution. The largest portion of the cost of the Bundle must be made up of Lot 1 Products in which the Contractor holds Intellectual Property rights.
Sole Source	As defined in Section 2 of Appendix B.
Solicitation	As defined in Section 2 of Appendix B.
Source Code	As defined in Section 2 of Appendix B.
State	As defined in Section 2 of Appendix B.
Statement of Work (SOW)	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 NYS 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, secondary, read-only, random access and/or magnetic storage.
Subcontractor	As defined in Section 2 of Appendix B.
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.
Terms of License	As defined in Section 2 of Appendix B.
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.
Third Party Software	As defined in Section 2 of Appendix B.
Trademark	A recognizable sign, design or expression which identifies Products or services of a particular source from those of others. Also written as trade mark, or trade-mark.
Transaction	An agreement between an Authorized User and a Contractor to exchange a Product or Service 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	A Business Entity that sells goods or services.
Virus	As defined in Section 2 of Appendix B.
Will	Denotes the permissive in a contract clause or specification.
Written / Written Communication	Any writing that makes use of words. 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 – 22802 - Information Technology Umbrella Contract - Manufacturer Based (Statewide) General Specifications (September 2021)
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 – How to Use the Manufacturer Umbrella Contract
  - G.1 Request for Quote
  - G.2 RFQ Financial Response
  - G.3 Request for Quote – Cloud Solution
  - G.4 Authorized User Specific Riders
    - G.4.1 Data Sharing and Confidentiality Agreement (Provided by BOCES)
    - G.4.2 Deferred Payment Plans
    - G.4.3 RFQ Deviation Template
    - G.4.4 Federal Funding Agency Mandatory Terms and Conditions
  - G.5 RFQ – Cloud Solution Checklist
  - G.6 Request for Information (RFI)
9. Appendix H – Maintenance and Warranty Service Report
10. Appendix I – Report of Contract Sales
11. Appendix K – Contractor How to Use

## 2.7 CONTRACT TERM

The term of this Contract shall commence upon the date of execution of the Contract by OGS, as evidenced by the date accompanying the OGS signature line, and shall end on November 29, 2025, or until Contractor executes an amendment incorporating the terms of the Third Periodic Recruitment, whichever occurs first.

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.

For the purposes of the City of New York only, the Contract term shall extend 6 months beyond its termination date upon the then-existing terms and conditions. During the 6month period, the definition of Authorized User shall be deemed to refer only to the City of New York. This extension is in addition to any other extensions available under the Contract.

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 sections 163(2) and section 163-a 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 their 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 their designee, in their sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when they discover 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 their 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 their designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or their designee to be non-responsible. In such event, the Commissioner of OGS or their designee may complete the Contractual requirements in any manner they 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](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](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 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. Information regarding the Designated Personnel is set forth in Appendix D – Contractor and Reseller Information.

Contractor must notify OGS within five (5) business days if any of the Designated Personnel change and provide an interim contact person until the position is filled. Contractor may submit a Designated Personnel change by submission electronically via COMeT. The Designated Personnel must have the authority to act on behalf of the Contractor. OGS requires a secondary contact for escalation purposes.

### 2.13.1 Account Manager

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 Contract Administrator

The Contract Administrator is responsible for the updating and management of the Contract on a timely basis.

### 2.13.3 Sales Manager

The Sales Manager is responsible for the overall relationship with the Authorized Users for matters relating to RFQs.

### 2.13.4 Billing Contact

The Billing Contact will become the single point of contact between the Contractor and the Authorized User for matters related to invoicing, billing, and payment.

### 2.13.5 RFQ Contact

The RFQ Contact(s) will be the contact(s) that receives RFQs. A generic or group e-mail is encouraged.

### 2.13.6 Emergency Contact

The Emergency Contact will be available 24 hours a day, 365 days per year for emergency procurements.

If a Contractor has not been established in COMeT or if access to COMeT is unavailable, they may submit a change via e-mail by attaching a revised Appendix D – Contractor and Reseller Information to [MfrUmbrella.Contractors@ogs.ny.gov](mailto:MfrUmbrella.Contractors@ogs.ny.gov).

## 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 OGS Reserved Rights

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. Exclude any price lists or individual Products and services that do not fall within the scope of this Contract, including any post-audit review.
- C. Post-audit existing approved price lists for items that fall outside the scope, to verify/reverify price reasonableness, or to ensure Products are within the appropriate Lot structure.
- D. Conduct a full review on a Contractor including all activities, transactions, and relationships with resellers, and will require the full cooperation of all Contractors and Subcontractors, agents, and Resellers in this review process.

E. Use on-line processes, such as a reverse auction, to make acquisitions under the resulting Contracts.

## 2.15.2 Authorized User Reserved Rights

Authorized User shall have the following reserved rights with respect to an RFQ:

The Authorized User reserves the right to:

- A. Add requirements to the RFQ and resulting Authorized User Agreement that are more advantageous to the Authorized User than the terms and conditions established with the Contract;
- B. Require the Contractor to identify any Subcontractors, and for those Subcontractors to be submitted for Vendor Responsibility approval if Authorized User policy requires. The Authorized User reserves the right to request the Contractor's insurance policy language for purposes of substantiating Vendor's compliance with Attachment 5 – Vendor Insurance Requirements, or such other Insurance Requirements as required by the Authorized User as part of a RFQ;
- C. Reject any or all Vendor Submissions received in response to the RFQ;
- D. Withdraw the RFQ at any time, in whole or in part, at the sole discretion of the Authorized User;
- E. Make an award under the RFQ in whole or in part;
- F. Disqualify any Vendor whose conduct and/or Vendor Submission fails to conform to the requirements of the RFQ;
- G. Seek clarifications and revisions of the RFQ response;
- H. Prior to the RFQ Responses opening, amend the RFQ to correct errors or oversights, or to supply additional information, as it becomes available;
- I. Prior to the RFQ Responses opening, direct Vendors to submit RFQ response modifications addressing subsequent amendments;
- J. Change any of the schedule dates with notification to entire bidder pool;
- K. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Vendors;
- L. Waive any requirements that are not material;
- M. Utilize any and all ideas submitted in a Vendor's response to the RFQ;
- N. Adopt all or any part of a Vendor's RFQ Responses;
- O. Negotiate with the Vendor responding to the RFQ within the RFQ requirements to serve the best interests of the State. This includes requesting clarifications of any or all Vendors' RFQ Responses;
- P. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Vendor's RFQ Responses and/or to determine a Vendor's compliance with the requirements of the RFQ;
- Q. Exclude any price lists or individual Products and Services that do not fall within the scope of the RFQ;
- R. Post-audit for items that fall outside the scope, to verify/reverify price reasonableness, or to ensure Products are within the appropriate Lot structure.
- S. Upon discovery of non-material completeness or conformance issues with a Vendor's RFQ, contact the Vendor to attempt to cure the issue prior to completion of the evaluation of the Vendor's Submission.

## 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 that the Contractor sought to be hired complies with such local law. If the pay rate for a job title as set forth in Appendix E – Pricing Pages, is less than the local law "living wage" then an Authorized User subject to such local law cannot use this Contract for such job title. 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:

<https://applications.labor.ny.gov/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 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 6 months in lieu of 3 months. However, this extension terminates should the replacement Contract be issued in the interim.

## 2.19 PROCUREMENT INSTRUCTIONS

Authorized Users should refer to the documents attached as Appendix G – Processes and Forms Templates for specific instructions on the usage of this Contract. OGS reserves the right to unilaterally make revisions, changes, additions and/or updates to the documents attached as Appendix G - Processes and Forms Templates without processing a formal amendment and/or modification.

## 2.20 SECURE SYSTEM DEVELOPMENT LIFECYCLE AND SPECIFICATIONS

Unless otherwise agreed to by the Authorized User in writing, the contractor's current version of the solution must function as specified in the associated SOW in an environment comprised solely of components including, but not limited to operating system and database platform versions which are in an active support phase (e.g., no requirement to run on End of Life software, such as Windows 7, etc.).

Unless otherwise agreed to by the Authorized User in writing, the Contractor shall represent the below practices by providing the documentation of Contractor's adherence to the below policies available in a public website or secure portal that shall be provided to Authorized Users upon request.

### 2.20.1 Secure System Development Lifecycle

- a. The Contractor shall provide policies that govern software development practices commensurate with the risk of the intended use of each software component.
  - i. Such policies shall define documented security roles for the software development team
  - ii. On no less than an annual basis, the Contractor shall conduct a comprehensive review of software development policies and make changes where indicated to adequately address new or changed risk
- b. At least annually, the Contractor shall provide training in secure software development practices to its developer workforce.
  - i. Such training shall be focused on the technologies in use within the software development environment
  - ii. Such training shall include a review of the contractor's chosen secure coding framework (see "" section 2.20.2 Vulnerability Management of this document) and related policies, procedures and standards
  - iii. Such training shall include a review of the security-related roles and responsibilities conferred on development personnel by organizational policy
- c. The Contractor shall, to the extent legally permissible, conduct criminal background checks, credit checks and reference checks for all personnel engaged in the software development process, and establish a set of criteria for when management must be engaged regarding the results of such checks
- d. The Contractor shall deliver remote and/or on-premise support only with approval of an Authorized User and with the option for the Authorized User to supervise /observe the support activity

- e. At no time during remote and /or on-premise support, or any other time, shall Contractor transfer an Authorized User's data from the Authorized User's on-premise installation to a remote location without the express written permission of the Authorized User
- f. The Contractor shall 1) utilize uniquely assigned credentials for each of its workforce members to be used in supporting an Authorized User's solution and 2) revoke those credentials within 24 hours of the departure of a Contractor's workforce member who had knowledge of credentials used to support the Authorized User's solution or notify the Authorized User within 24 hours if the credentials used exist on an Authorized User on premise system. Credential management must be in accordance with NIST 800-63-3, Digital Identity, or its successor.
- g. The Contractor shall, if requested by the Authorized User and with reasonable notice, provide an Authorized User with a list of its workforce members with knowledge of credentials used to access the Authorized User's solution.

#### 2.20.2 Vulnerability Management

- a. The Contractor shall make commercially reasonable efforts to ensure that components including but not limited to third party libraries, components and Application Program Interfaces (API)s are maintained at their most recent, stable version within the released application made available to the Authorized User.
- b. The Contractor shall follow a secure coding framework appropriate to the nature of its Software components. For example, web application development teams may follow the Open Web Application Security Project's Secure Coding Practices
- c. The Contractor shall document and execute a remediation plan for any vulnerability identified through dynamic or static analysis, vulnerability scans or penetration tests, where the vulnerability has a Common Vulnerability Scoring System (CVSS) severity of 7.0 or higher
- d. The Contractor shall establish processes for monitoring and acting upon vulnerability notices published regarding components of the software development environment as well as components used in the solution provided to the Authorizer User.
- e. The Contractor shall maintain publicly available mechanisms for receiving reports of vulnerabilities identified by its customers, security researchers and similar entities.

#### 2.20.3 Application Lifecycle Management

- a. The Contractor shall ensure that any open source licenses which apply to components used in the solution confer no obligations upon an Authorized User, or that in the event of such obligation, an Authorized User is aware of and agrees to same.
- b. All applications released by the Contractor to the Authorized User shall be signed by a publicly trusted code signing certificate so that the Authorized User may verify the authenticity and integrity of the release; this code signing certificate shall be rotated on at least an annual basis.
- c. The Contractor shall ensure that all implementation services and/or guides comprehensively address security hardening for the solution. Such hardening shall include, but not be limited to, the disabling of unnecessary features based on the SOW and the implementation of a "least privilege" access model for all users and service accounts.
- d. The Contractor shall implement processes to ensure that all changes to the solution:
  - i. Are made at the direction of its product managers or equivalent role
  - ii. Are documented in a work management or issue tracking application
  - iii. Maintain evidence of security checks and approvals
  - iv. Include documented functional requirements and non-functional security requirements
  - v. Include a plan for notifying customers, including the Authorized User, of any substantive changes upon release
- e. The Contractor shall provide ample notice, and in no case less than six months, should the solution version used by the Authorized User reach End of Life, such that it will no longer receive security updates to address vulnerabilities.

#### 2.20.4 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 its 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 on its approved price list for the Contract should an Authorized User need to 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 RESERVED**

## **2.23 SALES REPORTING REQUIREMENTS**

Contractor shall furnish OGS with 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 to 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.

In addition to any applicable Contractor sales, all Products sold through Reseller(s) must also be reported by the Contractor in the required Appendix I – Report of Contract Sales.

At the request of the Authorized User, the Contractor or Reseller(s) shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Contractor or Reseller(s).

OGS reserves the right to audit sales reports of any resulting Contract.

### **2.23.1 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 one (1) month after the closing quarter. Failure to submit accurate reports on a timely basis may result in placement of the Contractor's Manufacturer Umbrella Contract in inactive status, in whole or in part, or trigger a review process as specified in the Reserved Right Section 2.15.2.D.

## **2.24 SERVICE REPORTS FOR MAINTENANCE/SUPPORT AND WARRANTY WORK**

### **2.24.1 Service Reports for Authorized User**

If included in an Authorized User Agreement, an Authorized User 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 Authorized Users during the immediate prior calendar year. The Contractor shall use Appendix H – Maintenance and Warranty Service Reports. The report shall include the name of the Authorized User and all of the information in Section 2.23.1 and be submitted electronically in Microsoft Excel 2010 or newer 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 OGS CENTRALIZED CONTRACT MODIFICATIONS

- A. OGS may, propose amendments to the Contract terms and conditions, including any Attachments or Appendices, at any time to serve the best interests of Authorized Users.
- B. Notwithstanding the foregoing, OGS may unilaterally make revisions, changes and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to the Contract without processing a formal amendment and/or modification.

## 2.27 PAYMENTS

### 2.27.1 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 number of days for which the Prompt Payment Discount offer applies. Prompt Payment Discounts shall not be revoked or diminished.

If a Contractor accepts a Prompt Payment Discount, then all authorized Resellers shall also accept a Prompt Payment Discount.

### 2.27.2 P-Card Acceptance

If a Contractor accepts a NYS Procurement Card (P-Card), then all of its authorized Resellers shall also accept P-Card.

If the Contractor offers an additional discount for purchases made with the P-Card, the discount shall apply to all of its authorized Reseller P-Card purchases as well.

Acceptance of P-Card and additional discounts associated with P-Cards may not be revoked or diminished through the life of the Contract. No fees shall be charged for use of P-Card.

## 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 RFQ.

### 2.28.1 Conditions of Reseller Participation

Resellers must be confirmed by OGS and posted to the State website or COMeT before they may respond to an Authorized User's RFQ. OGS reserves the right to rescind any such participation at any time, including for Contractor's failure to keep Reseller contact information current. OGS also reserves the right to request that Contractor name additional Resellers, in the best interests of Authorized Users, at OGS's sole discretion. Contractor shall have the right to qualify Resellers and their participation under this Contract provided that:

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. Immediate notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term; and,
3. Resellers must be eligible to quote independently and lower than Contract pricing for procurements under this Contract.

#### 2.28.2 Designation of Resellers

When Resellers are submitted for approval, Contractor must provide OGS, in advance, with all necessary ordering information, billing addresses, Federal Identification numbers, and Vendor ID numbers in the format requested in COMeT.

#### 2.28.3 Responsibility for Reporting/Performance

A Reseller shall be deemed to be a Subcontractor of the Contractor, and Contractor shall be fully liable for Reseller's performance and compliance with all Contract terms and conditions. Products sold through Resellers must be reported by Contractor in the required quarterly sales reports to OGS as a condition of payment.

#### 2.28.4 Applicability of Contract Terms

Products or Services ordered directly through Resellers shall be limited to Products or Services currently on the Contractor's approved price list and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

Maintenance or support may be carried out by a Reseller, but the Contractor is fully responsible for the performance of the entire scope of Products and Services, conformity with this Centralized Contract, and conformity with any resulting Authorized User Agreement.

#### 2.28.5 Condition for Responding to Authorized User Request for Quote (RFQ)

The Authorized User transaction is required to be competitive (see Appendix G, How to Use the Manufacturer Umbrella Contract. Contractors are encouraged to identify multiple Resellers to participate in competitive transactions.

All quotes are binding for 120 days unless otherwise indicated by the Authorized User in the RFQ.

In order for an NYS Authorized User to solicit a single Contractor on an RFQ, that Contractor must have at least five (5) approved Resellers named on the Manufacturer's Contract for the applicable Lot.

The same company cannot be listed as both a Sales Agent and Reseller for the same Manufacturer for purposes of this Contract.

### 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;
- RFQ Product price(s) which may be better than the NYS Net Contract Price;
- Extended RFQ price; and
- Invoice Total.

## **2.30 PAYMENTS**

Payments cannot be processed by Authorized Users until Products 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 outlined in Section 2.29 Purchase Orders and 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 RESERVED**

## **2.32 GENERAL MAINTENANCE AND SUPPORT PROVISIONS**

### **2.32.1 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; and
- Reporting Requirements/Problem Escalation and Follow-up Procedures

### **2.32.2 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.

### **2.32.3 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.

### **2.32.4 Right to Refuse/Discontinue Maintenance/Support**

An Authorized User shall not be required to purchase Maintenance/support for use of Product unless such product is included on a Deferred Payment Plan.

For Lot 1 – Software and Lot 2 – Hardware there shall be no automatic renewal of Maintenance/support.

For Lot 3 – Cloud, Contractor may offer automatic renewal of Maintenance/support. An Authorized User may discontinue such Maintenance/support by providing Written notice no later than 30 calendar days prior to the anniversary date of the Authorized User Agreement.

### **2.32.5 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 60-month period past the expiration of the Contract.

**Example:** A Contractor offers a SKU for a 2-year Maintenance/support term, which is discounted 5% less than a SKU for 2 single year engagements. In addition, Contractor also offers a 5% discount for pre-payment on the 2-year Maintenance/support term. Should the Authorized User fully pre-pay the 2-year Maintenance/support period and this Maintenance/support period begins prior to the expiration of the Contract, the Maintenance/support term will survive the Contract.

#### 2.32.6 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 the Contract. 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.

#### 2.32.7 Maintenance/Support Responsibility

As a part of Maintenance/support responsibilities, the Contractor shall represent the Authorized User in regard 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 Section 57, Cooperation with Third Parties.

#### 2.32.8 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; and
- Name of person performing the service.

#### 2.32.9 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 or 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.

Any Remote Administration, Maintenance/support service that falls under the definition of Cloud Solution as stated in Section 2.5 - Glossary must be included in Lot 3 – Cloud.

For Authorized Users subject to NYS security policies/standards (see Section 1.1.1), remote access must be in accordance with NYS-S14-010 (or successor) Remote Access Standard and the Systems Security and Operations Security policies in NYS-P03-002 Information Security Policy (or successor).

#### 2.32.10 Pre-Installation Site Visits

In accordance with Appendix B, Section 19, Site Inspection, Authorized User can require a site visit at no charge as a mandatory part of the Authorized User's RFQ.

## **2.33 RESERVED**

## **2.34 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 9.2. 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. Additional information may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

## **2.35 PARTICIPATION IN CENTRALIZED CONTRACTS**

This Contract is available for use by all Authorized Users (See Appendix B – Definitions) and may be extended with the joint approval of the Contractor and the Commissioner for joint purchasing by any department, agency or instrumentality of the United States government and/or any state including political subdivisions thereof (“other authorized entities”). 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.

## **2.36 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 Centralized Contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B 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), the terms of the *Price* clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<https://online.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services 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 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.

## **2.37 EXPIRATION OF CONTRACT; SURVIVAL OF AUTHORIZED USER AGREEMENTS**

Authorized User Agreements fully executed prior to the expiration of the OGS Centralized Contract may survive the expiration date of the OGS Centralized Contract, as provided below:

### **2.37.1 Lot 1 – Software and Lot 2 – Hardware**

- 2.37.1.1 Pre-paid Maintenance/Support services within an Authorized User Agreement that is fully executed prior to the expiration of the OGS Centralized Contract cannot survive more than 60 months beyond the expiration date of the OGS Centralized Contract, with pricing agreed upon and documented prior to expiration.

- 2.37.1.2 Consumption based Maintenance/Support services within an Authorized User Agreement that is fully executed prior to the expiration of the OGS Centralized Contract cannot survive more than 24 months beyond the expiration date of the OGS Centralized Contract, with pricing agreed upon and documented prior to expiration.

#### 2.37.2 Lot 3 – Cloud Solution

- 2.37.2.1 Pre-paid Maintenance/Support services within an Authorized User Agreement that is fully executed prior to the expiration of the OGS Centralized Contract cannot survive more than 60 months beyond the expiration date of the OGS Centralized Contract, with pricing agreed upon and documented prior to expiration.
- 2.37.2.2 Consumption based Maintenance/Support services within an Authorized User Agreement that is fully executed prior to the expiration of the OGS Centralized Contract cannot survive more than 24 months beyond the expiration date of the OGS Centralized Contract, with pricing agreed upon and documented prior to expiration.

#### 2.37.3 Lot 4 - Implementation

An Authorized User Agreement for projects under Lot 4, including any time extensions, shall be no longer than 60 months in duration.

### 2.38 PREFERRED SOURCE PRODUCTS

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in the resultant Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

### 2.39 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 in Products and must keep accurate records in the procurement record verifying the process. For State Agencies, such trade-ins must comply with State Finance Law § 167 and it may be necessary to provide supporting documentation to the Office of the State Comptroller.

### 2.40 RESERVED

### 2.41 RECALLS

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

### 2.42 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.



The federal ADA 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 Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Contractors to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

## 2.43 RESERVED

## 2.44 POOR PERFORMANCE

An Authorized User should notify OGS Customer Services promptly if a 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 Services  
38th Floor Corning Tower  
Empire State Plaza  
Albany, NY 12242  
Customer Services Coordination E-mail: [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov)  
Telephone: (518) 474-6717

## 2.45 ENVIRONMENTAL/RECYCLING PROVISIONS

### 2.45.1 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.

### 2.45.2 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.

### 2.45.3 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 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 must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment.

### 2.45.4 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/GreenNY>

### 2.45.5 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.

### 2.45.6 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. 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.

### 2.46 RESERVED

### 2.47 RESERVED

### 2.48 RESERVED

### 2.49 RESERVED

### 2.50 RESERVED

### 2.51 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.

### 2.52 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.



## 2.53 NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address:

22802 Contract Administrator  
Office of General Services  
New York State Procurement Services  
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. Either Party 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 the Contract.

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

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

## 2.54 ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY LANGUAGE

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the NYS Policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities.

For State Agency Authorized User Acquisitions: Any web-based information and applications development, or programming delivered pursuant to this 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. Quality assurance testing may be conducted by the State and the results of such testing, if performed, must be satisfactory to the State before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.*

## 2.55 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.

## 2.56 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.

## **2.57 PERFORMANCE OF SERVICES**

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

## **2.58 REMOVAL OF RECORDS FROM PREMISES**

Contractor shall not remove any documents, papers, files, or Data (records), whether in hard copy or electronic form, from the premises of an Authorized User or from electronic storage media used by the Authorized User without prior written approval of the Authorized User. In addition, Contractor shall not, remotely or otherwise, access, modify, copy, destroy, or delete such records without prior written approval of the Authorized User.

## **2.59 CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS**

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

1. The Contractor shall not in any way be relieved of any responsibility under the Contract by any subcontract.
2. The Contractor shall be solely responsible to the State and Authorized User for the acts or defaults of its Subcontractors 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.
3. Any Deliverable provided or furnished by a Subcontractor shall be deemed for purposes of the Contract to be provided or furnished by the Contractor.
4. The Contractor shall inform each Subcontractor fully and completely of all provisions and requirements of the Contract, including:
  - i) 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,
  - ii) 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,
  - iii) those relating to the State's rights to audit records and
  - iv) 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.
5. Failure to disclose the identity of any and all Subcontractors 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.
6. 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.
7. The Contractor shall, within 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.
8. 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.

## **2.60 CONTRACTOR STAFF WITHIN AUTHORIZED USER AGREEMENT**

The provisions of this section shall apply unless otherwise agreed to in the Authorized User Agreement.

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 Business 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.

#### 2.60.1 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 3 potential replacements with similar or better qualifications for the Authorized User's review and approval within 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 3 potential replacements with similar or better qualifications for the Authorized User's review and approval within 3 business days, or as otherwise agreed to by the Authorized User. 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.
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 3 potential replacements with similar or better qualifications for the Authorized User's review and approval within 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.

#### 2.61 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.

#### 2.62 EMPLOYEE INFORMATION REQUIRED TO BE REPORTED BY CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS

Civil Service Law § 97 and State Finance Law § 163 establish reporting requirements for 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 information must be provided to the state Agency awarding such Contracts, OSC, DOB and CS. 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 a 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., 11<sup>th</sup> 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."

#### 2.62.1 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](http://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.

## 2.63 SECURITY, CONFIDENTIALITY AND PRIVACY POLICIES AND LAWS

The Contractor shall comply with all applicable Federal, State, and Authorized User policies regarding compliance with various security, confidentiality and privacy laws, rules, regulations, and policies as set forth in the RFQ and agreed to by the Authorized User and Contractor within the Authorized User Agreement. For additional information see Appendix D – Primary Security and Privacy Mandates. At minimum, Contractor will comply with a NIST-aligned framework that will assure appropriate measures are in place to protect the confidentiality, integrity and availability of data.

As part of such compliance, Contractor shall execute written confidentiality or non-disclosure agreements as requested by the State or an Authorized User.

## 2.64 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.

## 2.65 ELECTRONIC WORKFLOW SYSTEM

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

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

## 2.66 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 charged that exceeds these rates. All travel will be paid only as specified within the Authorized User Agreement and must be billed with the associated services on the same 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 travel reimbursement.

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

## 2.67 PERFORMANCE AND BID BONDS

There are no bonds for this Contract. However, 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.



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

### **I. New York State Law**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OGS contracts.

### **II. 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 and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for 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. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

### **III. Equal Employment Opportunity (EEO)**

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
  - 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. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
  - 2. By entering into this Contract, Contractor certifies 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. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 - Staffing Plan. To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 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. NYS Contract System - Workforce Utilization Reporting Module (Commodities and Services)

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Workforce Audit to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Audits must be submitted electronically in the NYS Contract System through the Workforce Audit Module found at the following website: <https://ny.newnycontracts.com> and must be submitted on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
  2. Separate audits shall be completed by Contractor and all subcontractors.
  3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law and 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.

#### IV. Contract Goals

- A. For purposes of this procurement, 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:

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 % (see note below)
4	Implementation Services	15 %	15 %	30 %

**Note that with respect to Lot Number 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 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.

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

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-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>. The MWBE Regulations are located at 5 NYCRR §§ 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Business Diversity. Additionally, following Contract execution, 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 clause VII below).



## V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, and the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges 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. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within 7 business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within 5 business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333.1. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Vendor's Submission as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an MWBE Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/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.

## VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Business Diversity for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333.1, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation

included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.

- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor 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 7 business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

## **VII. Required Good Faith Efforts**

In accordance with 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:

- 1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
- 2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") 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.
- 3. 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.
- 4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
- 5. 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.
- 6. Other information deemed relevant to the request.

## **VIII. 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, 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 email 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 – Vendor training** 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 (i.e., 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 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 MWBE liquidated damages provisions in clause IX below.

#### **IX. Breach of Contract and Liquidated Damages**

- A. Where OGS determines that the Contractor is not in compliance with the MWBE requirements of this Section, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- 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 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 they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

#### **X. Fraud**

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD’s Division of Minority and Women’s Business Development at (855) 373-4692.

**ALL MWBE FORMS ARE AVAILABLE AT:** <https://ogs.ny.gov/mwbe>

## **2.69 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.

## **2.70 SEXUAL HARRASSMENT**

Pursuant to N.Y. State Finance Law § 139-l, every Bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the bidder has and has implemented a written policy addressing sexual

harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, OGS may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

## 2.71 BACKGROUND CHECKS

The Authorized User may require within the RFQ that the Contractor conduct background checks on Contractor staff with access to the data or premises, and/or on Contractor staff involved with the development of Authorized User's custom solution, at no charge to the Authorized User.

As required by the Authorized User, Contractors must comply with the security clearance and background check processes as set forth in the RFQ at no cost to the Authorized User. For Authorized Users with direct or indirect access to the State data center, this must be a requirement of the RFQ.

## 2.72 SECURITY

### 2.72.1 Security Incidents

The Authorized User and the Contractor must, in writing, determine a Security Incident notification policy prior to the finalization of the Authorized User Agreement. If no such agreement is in place, then the default agreement shall be notification of all Security Incidents that may have a direct impact on the Authorized User by phone immediately upon detection to the Authorized User's representative.

For Authorized Users defined as "State Agency" or "State Government" in Section 1.2 of this document, all notifications will be followed by a notification to the NYS Cyber Command Center by email to [cycom@its.ny.gov](mailto:cycom@its.ny.gov) and to the NYS Division of Homeland Security and Emergency Services (DHSES) Cyber Incident Response Team (CIRT) by email to [cirt@dhSES.ny.gov](mailto:cirt@dhSES.ny.gov).

If requested in the Authorized User Agreement and agreed to by the Contractor, a written preliminary incident analysis report must be provided to the Authorized User within 72 hours of discovery. The Contractor's representative must be available by phone and email for discussions with the NYS Cyber Command Center/DHSES CIRT and the Authorized User's representative throughout incident response activity and must provide status updates at mutually agreed upon cadences. A written final incident analysis report, including a detailed technical section including root cause of incident, timeline, scope, impact and corrective actions taken must be delivered to the Authorized User at the conclusion of the incident response.

### 2.72.2 Data Breach - Required Contractor Actions

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

- i. notify the NYS Cyber Command Center, DHSES CIRT, and any potentially affected Authorized Users' representatives, by telephone as soon as possible from the time the Contractor confirms Data Breach. An Authorized User may specify a maximum notification time in its RFQ.;

- ii. consult with and receive authorization from the Authorized User 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;
- iii. coordinate all communication regarding the Data Breach with the NYS Cyber Command Center, DHSES CIRT, and Authorized User (including possible communications with third parties);
- iv. cooperate with the Authorized User, NYS Cyber Command Center, DHSES CIRT, and any Contractor working on behalf of the Authorized User or the NYS Cyber Command Center in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and
- v. promptly take commercially reasonable steps to mitigate the effects and minimize any damage resulting from the Security Event. Contractor shall provide Written notice to the Authorized User as to all such corrective actions taken by the Contractor to remedy the Data Breach. Unless otherwise agreed to in the Authorized User Agreement, if Contractor is unable to complete the corrective action within the required timeframe, the remedies provided in Appendix B, Section 52, Remedies for Breach shall apply and (i) 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; (ii) and the Contractor will be responsible for the reasonable cost of these services during this period.

Nothing herein shall in any way (a) impair the authority of the Office of the Attorney General or other investigative or law enforcement entity 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.

#### 2.72.3 Location of Data; CONUS or OCONUS

- i. The RFQ must specify if the Authorized User will allow Data to be located outside of the Continental United States (OCONUS).
- ii. Unless otherwise authorized in the RFQ and agreed to in the Authorized User Agreement, when the Contractor is responsible for managing the Data, the Contractor shall meet the following requirements:
  - 1. All Data shall remain in the Continental United States (CONUS).
  - 2. Any Data stored, or acted upon, shall be solely located in Data Centers within CONUS.
  - 3. Any services which directly or indirectly access Data shall be performed only from locations within CONUS.
  - 4. All Data in transit shall remain in CONUS and shall be encrypted in accordance with Section 9.7, Encryption.
  - 5. All helpdesk, online and support services which may access Data shall be performed only from locations within CONUS.
  - 6. No Follow the Sun support shall be allowed to access Data directly or indirectly from locations OCONUS.
- iii. Unless otherwise authorized in the RFQ and agreed to in the Authorized User Agreement, when the Authorized User is responsible for managing the Data, the Contractor shall provide the Authorized User with the capability and the means or tools to meet the following requirements:
  - 1. All Data shall remain in the Continental United States (CONUS).
  - 2. Any Data stored, or acted upon, shall be solely located in Data Centers within CONUS.
  - 3. Any services which directly or indirectly access Data shall be performed only from locations within CONUS.
  - 4. All Data in transit shall remain in CONUS and shall be encrypted in accordance with Section 9.7, Encryption.
  - 5. All helpdesk, online and support services which may access Data shall be performed only from locations within CONUS.
  - 6. No Follow the Sun support shall be allowed to access Data directly or indirectly from locations OCONUS.
- iv. Unless otherwise authorized in the RFQ and agreed to in the Authorized User Agreement, Contractor may not store, act upon, or access Data outside of the Continental United States (OCONUS) and may not perform support services that may access Data from OCONUS.



Authorized Users defined as “State Agency” or “State Government” in Section 1.2 of this document, must receive prior written approval from the Office of the Chief Information Officer at the NYS Information Technology Services (ITS), before authorizing Data to be stored, acted upon, or accessed OCONUS, and before authorizing support services to be performed from OCONUS.

- v. Notwithstanding the foregoing, all services covered under Lot 4 – Implementation must be performed within CONUS and may not be authorized to be performed from OCONUS.

#### 2.72.4 Security Reports

Contractor must log in accordance with NIST 800-92, or its successor. Upon request, the Contractor must provide the Authorized User with security logs and reports (such as SOC2 Type 2, CAIQ, and ISO27001) to allow the Authorized User to make an informed decision about the Contractor's security controls and their effectiveness.

Contractor shall cooperate with all reasonable Authorized User requests for a Written description of Contractor's physical or 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.

#### 2.72.5 Support Services

All helpdesk, online, and support services which access any Data must be performed from within CONUS, unless expressly authorized by the Authorized User in writing. Unless such authorization is granted, at no time will any Follow the Sun support be allowed to access Data directly, or indirectly, from OCONUS. If an Authorized User agrees to OCONUS services that access Data, then the Authorized User must be provided any information requested such as security reports (e.g. SOC2 Type 2, CAIQ and ISO27001) to allow the Authorized User to make an informed decision about the security of the Data in that location.

#### 2.72.6 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.

#### 2.72.7 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.

#### 2.72.8 Security Policies

Contractor must maintain records documenting adherence to the following security policies and must provide such records to an Authorized User, or to OGS/ITS/DHSES, upon request, through a public website or secure portal.

Policies that govern software development practices commensurate with the risk of the intended use of each software application

- Such policies shall define documented security roles for the software development team
- On no less than an annual basis, the contractor shall conduct a comprehensive review of software development policies and make changes where indicated to adequately address new or changed risk

The Contractor shall deliver remote and /or on premises support only with approval of the Authorized User and with the option for the Authorize User to supervise or observe the support activity.

At no time during remote and /or on premises support, or any other time, shall Contractor transfer Authorized User's data from Authorized User's on premise installation of the software application to a remote location without the express written permission of the Authorized User.

The Contractor shall 1) utilize uniquely assigned credentials for each of its workforce members to be used in supporting the Authorized User's software application or 2) notify the Authorized User within 24 hours of the departure of a Contractor's workforce member who had knowledge of credentials used to support the Authorized User's software application.

Upon request and with reasonable notice, the Contractor shall provide the Authorized User with a list of its workforce members with knowledge of credentials used to access the Authorized User's Software application.

The Contractor shall make commercially reasonable efforts to ensure that components, including but not limited to third party libraries, components and APIs, are maintained at their most recent, stable version within the released application made available to the Authorized User.

The Contractor shall follow a secure coding framework appropriate to the nature of its software application. For example, web application development teams may follow the Open Web Application Security Project's Secure Coding Practices. The Contractor shall document and execute a remediation plan for any vulnerability identified through dynamic or static analysis, vulnerability scans or penetration tests, where the vulnerability has a CVSS severity of 4.0 or higher.

The Contractor shall establish processes for monitoring and acting upon vulnerability notices published regarding components of the software development environment as well as components used in the software application provided to the Authorized User.

The Contractor shall maintain publicly available mechanisms for receiving reports of vulnerabilities identified by its customers, security researchers and similar entities.

The Contractor shall ensure that any open source licenses which apply to components used in the software application confer no obligations upon the Authorized User, or that in the event of such obligation, the Authorized User is aware of and agrees to the same.

All applications released by the Contractor to the Authorized User shall be signed by a publicly trusted code signing certificate so that the Authorized User may verify the authenticity and integrity of the release. This code signing certificate shall be rotated on at least an annual basis.

The Contractor shall ensure that all implementation guides and training comprehensively address security hardening for the application. Such hardening shall include, but is not limited to, the disabling of unnecessary features based on the SOW and the implementation of a "least privilege" access model for all users and service accounts.

The Contractor shall implement processes to ensure that all changes to the software application:

- Are made at the direction of its product managers or equivalent role
- Are documented in a work management / issue tracking application
- Maintain evidence of security checks and approvals
- Include documented functional requirements and non-functional security requirements
- Include a plan for notifying customers, including the Authorized User, of any substantive changes upon release

In no case shall the Contractor knowingly release to the Authorized User an application which contains a vulnerability with a CVSS severity of 7.0 or higher, without the direct written permission of the Authorized User.

#### 2.72.9 Secure Data Disposal

After 60 calendar days from expiration or termination of an Authorized User Agreement, or at a time mutually agreed upon by the Authorized User and the Contractor, 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 to National Institute of Standards and Technology (NIST) 800-88, or its successor, as designated by the Authorized User, as applicable. If requested by the Authorized User, certificates of destruction, in a form acceptable to the Authorized User, shall be provided by the Contractor to the Authorized User.

#### 2.72.10 Authentication Tokens

If included in an RFQ, the Authorized User Agreement may require authentication tokens for all systems in accordance with NIST 800-63B Authentication and Lifecycle Management, or its successor.



#### 2.72.11 Contractor Portable Devices

Contractor shall not place Data on any portable Device unless expressly authorized by the Authorized User in writing.

For Authorized Users subject to NYS security policies/standards (**see Section 1.2**), the Data, and/or the portable device containing the Data, shall be destroyed in accordance with applicable destruction policies (NYS S13-003 Sanitization/Secure Disposal and NYS-S14-003 Information Security Controls, or successor) when the Contractor is no longer contractually required to store the Data. For all other users, NIST 800-88 Media Sanitization guidelines must be followed unless specifically modified within the Authorized User Agreement.

### 2.73 COMET SYSTEM

NYS Procurement Services has implemented a Centralized Online Management e-Procurement Tool, referred to as COMeT. This Microsoft Dynamics CRM Cloud solution provides an efficient and effective self-service portal for Manufacturers (Phase 1) and a Request for Quote (RFQ) system (Phase 2) allowing external users to release and the IT Umbrella Vendor community to respond to RFQs. OGS reserves the right to make participation in COMeT mandatory.

### 2.74 CONTRACTOR RESPONSIBILITY

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or their 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 their designee, in their sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when they discover 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 their designee issues a Written notice authorizing a resumption of performance under 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 their designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or their designee to be non-responsible. In such event, the Commissioner of OGS or their designee may complete the contractual requirements in any manner they 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.

### 2.75 CONTRACT UPDATES

Contract Updates will be handled as provided in Appendix C – Contract Modification Procedures.

### 2.76 CONTRACT ADMINISTRATIVE FEE

The awarded Contractor(s) are required to pay OGS, directly or through an agent, an Administrative Fee in the amount of point seven five percent (0.75%) for all sales generated from this Contract, or any resulting agreement. Payments will be due quarterly in arrears. The due date for each payment will be one (1) month following the end of the quarter. Payments will be due on all sales reported beginning January 1, 2023 and continuing thereafter. This makes the first payment due on or before May 1, 2023 for all sales generated from this Contract between January 1, 2023 and March 31, 2023. Submission details including address and format will be provided in Appendix K – Contractor How To Use document, no less than one (1) month prior to fee start date of January 1, 2023, and OGS reserves the right to partner with a third party to manage sales reports and fee collection and reconciliation.

## 2.76.1 FISCAL AUDITS

OGS reserves the right, directly or through a designated agent, to audit the accuracy of the sales reports and Administrative Fees. Audits shall be conducted during regular business hours, upon not less than fifteen (15) business days prior written notice. Administrative Fees will be due immediately for any errors or omissions disclosed by any such audit. If, as a result of any such audit, Administrative Fees are determined to have been underpaid by more than five percent (5%) for the period audited, Contractor shall pay the costs of such audit or three times the discrepancy, whichever is higher.

In addition, OGS reserves the right, directly or through an agent, to review sales reports and other such documentation for accuracy of all required reporting documents for both NYS Authorized Users and other parties using this Contract or resulting agreement. As a result of such review, if inaccuracies of more than 5% are found in any of the reporting documents, Contractors shall pay the cost of such audit or three times the discrepancy, whichever is higher.

Failure to make such payments or repeated errors on subsequent audits may result in the scheduling of a responsibility meeting in relation 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.

For the duration of an Authorized User Agreement, the Cloud Solution shall conform to the Cloud Solution Manufacturer's specifications, Documentation, performance standards (including applicable license duration, warranties, guarantees, Service Level Agreements, service commitments, and credits).

Since a Cloud Solution is branded, supported, and maintained by the Contractor placing the Product on their pricelist, the only terms and conditions presented to the Authorized User must be from that Contractor (i.e. no passthrough terms and conditions are allowed from Subcontractors or other entities).

### 3.1 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 without prior written agreement by the parties amending the Authorized User Agreement.

### 3.2 RESERVED

### 3.3 RESERVED

### 3.4 DATA OWNERSHIP, ACCESS AND LOCATION

#### 3.4.1 Data Ownership

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

#### 3.4.2 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 3.11 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 its discretion at no charge to the Authorized User. This includes the ability for the Authorized User to import or export Data to/from other Contractors. This can, if specified within the Authorized User Agreement, be carried out by providing application programmable interface or other such efficient electronic tools.

### 3.4.3 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 agreed to within the Authorized User Agreement. At time of RFQ response, a Contractor shall identify its monitoring practices for the Authorized User's written acceptance, which includes but is not limited to those that will monitor the Authorized User's usage to facilitate system maintenance, service, fixes, and other such solution functionality-based services. Unless otherwise agreed to in an 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-ups 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 RESERVED

## 3.6 TRANSFERRING OF DATA

### 3.6.1 General

Except as required for reliability, performance, security, or availability of the services, the Contractor will not transfer Data unless directed to do so in writing by the Authorized User, or by system selection. All Data shall remain in CONUS, unless expressly authorized by the Authorized User in writing or by system selection.

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.

### 3.6.2 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 facilitate transfer of Data to a new Contractor. This transfer must be carried out as specified by the Authorized User in the Authorized User Agreement.

### 3.6.3 Transfer of Data; Charges

Contractor cannot charge for the transfer of Data unless the charges are provided for in response to an Authorized User RFQ.

### 3.6.4 Transfer of Data; Contract Breach or Termination

Notwithstanding Section 3.6.3, 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.

### 3.6.5 Transfer Format

Transfers may include, but are not limited to, conversion of all Data into or from an industry standard format or providing application programmable interface.

### **3.7 ENCRYPTION**

Data must be encrypted at all times unless specifically outlined otherwise in the Authorized User Agreement. The RFQ must specify whether encryption is to be done by the Contractor or by the Authorized User. At a minimum, encryption must be carried out in accordance with the most current NIST FIPS-140 standard, with key access restricted to the Authorized User only, unless with the express written permission of the Authorized User.

For Authorized Users subject to NYS security policies/standards (see Section 1.2), encryption must be handled in accordance with NYS-S14-007 (or successor) Encryption Standard.

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

### **3.8 RESERVED**

### **3.9 RESERVED**

### **3.10 UPGRADES, SYSTEM CHANGES AND MAINTENANCE/SUPPORT**

The Contractor shall give a minimum of five (5) business days advance notice to the designated Authorized User contact of any upgrades, system changes and Maintenance/support actions that may impact availability or functionality of the services described in the Authorized User Agreement. This notice can be carried out through announcement on a website, provided the Authorized User is aware of and provided access to said website.

Upgrades, system changes, and Maintenance/support actions which are required by system vulnerabilities or emergency situations shall be carried out by the Contractor to protect the system. Authorized Users shall be notified by the Contractor as soon as possible after the change has taken place.

Contractor shall provide documentation of upgrades, system changes and Maintenance/support actions upon request from an Authorized User.

### **3.11 EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES**

#### **3.11.1 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. This can, if specified within the Authorized User Agreement, be carried out by providing an application programmable interface or other such efficient electronic tools. The Contractor must certify that 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.

#### **3.11.2 Suspension of Services**

During any period of suspension of service, the Authorized User shall have full access to all Data at no charge. This can, if specified within the Authorized User Agreement, be carried out by providing an application programmable interface or other such efficient electronic tools. The Contractor shall not take any action to erase and/or withhold any Authorized User Data, except as directed by the Authorized User.

#### **3.11.3 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. Unless noted in the original Authorized User Agreement, this period will be covered at no charge. This can, if specified within the Authorized User Agreement, be carried out by providing application programmable interface or other such efficient electronic tools. 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.

### **3.12 RESERVED**

### **3.13 RESERVED**

### **3.14 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 its Data Centers, at least annually, at the Contractor's expense. The Contractor will provide a data owner facing 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.

### **3.15 PERSONNEL**

#### **3.15.1 Separation of Duties**

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

### **3.16 BUSINESS CONTINUITY/DISASTER RECOVERY (BC/DR) OPERATIONS**

If required in the Authorized User Agreement, the Contractor shall provide a Business Continuity and Disaster Recovery plan specific to the entire Cloud Solution provided. The Contractor shall specify how the BC/DR plan will impact access to the required features and functionality of the Cloud Product associated with the Authorized User Agreement.

### **3.17 RESERVED**

### **3.18 RESERVED**

### **3.19 MODIFICATION TO CLOUD SERVICE DEPLOYMENT MODEL, SERVICE MODEL, AND/OR SUBSTANTIVE FUNCTIONALITY 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 deployment model, service model, functionality, or SKU. The State and Authorized Users require notification of any such changes to ensure security and business needs are met.

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.

### **3.20 APPLICATION PROGRAM INTERFACE (API) OR SELF-SERVICE ELECTRONIC PORTAL**

Except as otherwise provided for in this Section 3, Contractor may offer an API or self-service electronic portal for such purposes as allowing the Authorized User to access security logs, reports, and audit information, to import or export Data, and for such other purposes as agreed to in the Authorized User Agreement.

## **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.

All Services covered under Lot 4 – Implementation Services must be performed within CONUS.

#### 4.1 REQUEST FOR QUOTATION (RFQ) TRANSACTION PROCESS

An RFQ for this Lot will be awarded based on, and result in, a deliverable-based Statement of Work (SOW) which will be incorporated into an Authorized User Agreement. 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 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

##### I. Contract Goals

- A. OGS hereby establishes an overall goal of 6 % for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the OGS Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.

Lot No.	Lot Description	SDVOB Goal
1	Software	0 %
2	Hardware	0 %
3	Cloud	0 %
4	Implementation Services	6 %

- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

##### II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.



- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows 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. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.
- C. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. OGS may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the 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-responsibility.

### III. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at OGS for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form BDC 333.1S, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.



D. If OGS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) 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 business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to [OGS.sm.SSTTechnology@ogs.ny.gov](mailto:OGS.sm.SSTTechnology@ogs.ny.gov)

#### IV. Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

#### V. Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available at <https://ogs.ny.gov/veterans/> and should be completed by the Contractor and submitted to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [OGS.sm.PsMfrUmbrella.Contractors@ogs.ny.gov](mailto:OGS.sm.PsMfrUmbrella.Contractors@ogs.ny.gov)

#### VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/veterans/>

### 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, the Authorized User will indicate so in the RFQ.

## **4.4 PROJECT PLAN**

### **4.4.1 Development of Project Plan**

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

### **4.4.2 Project Plan Document**

The Contractor will provide to the Authorized User, a Project Plan that may contain the following items:

- Name of the Project Manager, Contact Phone Numbers and E-Mail Address;
- Names of the Project Team Members, Contact Phone 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; and
- 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 may request the items be added to its Contract if the items meet the scope of the Contract.

### **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. The Authorized User will provide the Contractor a minimum of five (5) 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 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 the right is reserved in the RFQ, unanticipated enhancements to the Services procured not exceeding a cumulative twenty (20) percent of the Implementation Service cost may be agreed to by the Authorized User. Such inclusion must be included in the total cost evaluation. Such unanticipated enhancements will require a written Authorized User Agreement revision, which for NYS Agency Authorized Users will include an amended Purchase Order. Any changes that will result in exceeding this twenty (20) percent will require a new competitive RFQ. Contractor shall notify the Authorized User in writing when a requested scope change will exceed the cumulative twenty (20) percent total value of the Implementation Services.

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## APPENDIX A

# STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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FOR FUTURE REFERENCE.

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the

agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The

contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

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

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

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

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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

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

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

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

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

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

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

## **APPENDIX B**

### **22802 - Information Technology Umbrella Contract - Manufacturer Based (Statewide)**

#### **GENERAL SPECIFICATIONS**

**September 2021**

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## **GENERAL**

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

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

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

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

**b1. SOLICITATION.** Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. The procurement may be undertaken on a competitive or non-competitive basis. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to, Appendix A (Standard Clauses for NYS Contracts), Appendix B, (General Specifications) and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term "Solicitation" shall be deemed to refer to the all the terms and conditions identified by the State.

**b2. BID SPECIFICATION.** A written description drafted by the Authorized User setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a commodity or construction item, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where these General Specifications are incorporated in negotiated Contracts that have not been competitively Bid, the term "Bid Specifications" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

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

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

**Centralized Contracts** Multiple award Contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Once established, procurements will be made from the selected Contractor(s) with required competition through a Request for Quote.

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

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

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

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

- i. ENTERPRISE.** The total business operations in the United States of Authorized User(s) without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Authorized User(s).
- j. ENTERPRISE LICENSE.** A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.
- k. ERROR CORRECTIONS.** Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.
- l. GROUP.** A classification of Product, services or technology which is designated by OGS.
- m. RESERVED.**
- n. LICENSED SOFTWARE.** Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).
- o. LICENSEE(S).** One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee(s)" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.
- p. LICENSE EFFECTIVE DATE.** The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.
- q. LICENSOR.** A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.
- r. NEW PRODUCT RELEASES.** (Product Revisions) Any commercially released revisions to the licensed version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.
- s. OGS.** The New York State Office of General Services.
- t. PRODUCT.** A deliverable under any Bid or Contract which may include commodities, services and/or technology. The term "Product" includes all offerings under this contract.
- u. PROPRIETARY.** Protected by secrecy, patent, copyright or trademark against commercial competition.
- v. PURCHASE ORDER.** The Authorized User's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, electronic Purchase Order, or other authorized instrument).
- w. RESERVED.**
- x. REQUEST FOR QUOTATION (RFQ).** A type of bid document used by an Authorized User to conduct a competitive procurement among Contractors.
- y. RESPONSIBLE BIDDER.** A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.
- z. RESPONSIVE BIDDER.** A Bidder meeting the specifications or requirements prescribed in the bid document or solicitation, as determined by the OGS Commissioner.

**aa. SINGLE SOURCE.** A procurement where two or more Bidders can supply the required Product, and the Commissioner may award the contract to one Bidder over the other.

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

**cc. SOLE SOURCE.** A procurement where only one Bidder is capable of supplying the required Product.

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

**ee. STATE.** State of New York.

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

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

**hh. THIRD PARTY SOFTWARE.** Any software which is developed independently of Contractor and may be governed by a separate license.

**ii. VIRUS.** Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer. Virus shall also include any malware, adware, or other computer code, whether or not written or conceived by Contractor, which allows data or metrics to be copied, redirected or modified without the express consent of the Authorized User.

### **BID SUBMISSION**

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

**4. RESERVED.**

**5. RESERVED.**

**6. RESERVED.**

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

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

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

Only those extraneous terms that meet all requirements of the Solicitation Section 4.6 and Attachment 6 may be considered as having been submitted for consideration by OGS.

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

## **9. CONFIDENTIAL/TRADE SECRET MATERIALS.**

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

**b. COMMISSIONER OR AUTHORIZED USER.** Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties without the written consent of the Commissioner or Authorized User. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps as to its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to insure such confidentiality.

**10. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS.** If any portion of work being solicited is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

**a. PREVAILING WAGE RATE APPLICABLE TO BIDS.** A copy of the applicable prevailing wage rate schedule is incorporated into the Solicitation and may also be obtained by visiting [www.labor.ny.gov](http://www.labor.ny.gov) and typing in the search box: Prevailing Wage Schedule Request. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (e.g., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rates for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

**b. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM.** The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term for its employees as required by law and is responsible for ensuring any subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.

**c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS.** In compliance with Article 8, Section 220 of the New York State Labor Law:

(i) Posting. The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

(ii) Payroll Records. Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

(iii) Submission of Certified Payroll Transcripts for Public Works Contracts Only. Contractors and Subcontractors on public works Contracts must submit monthly payroll transcripts to the Authorized User issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.

(iv) Day's Labor. No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract Site or for the protection of the life and limb of the persons using the Contract Site.

#### **d. ARTICLE 9 BUILDING SERVICES CONTRACTS.**

In compliance with Article 9, Section 230 of the New York State Labor Law:

(i) Payroll Records. Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work site while work is being performed.

(ii) Overtime. Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

#### **11. TAXES.**

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

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

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

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

**13. CONTRACT PUBLICITY.** Any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by the Commissioner prior to issuance. In addition, Contractor shall not use, for any purpose, the New York State of Opportunity registered trademark or the New York State coat of arms without prior written approval from the State.

#### 14. PRODUCT REFERENCES.

**a. “Or Equal.”** In all Bid Specifications the words “or equal” are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner’s decision as to acceptance of the Product as equal shall be final.

**b. Discrepancies in References.** In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

#### 15. RESERVED.

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

#### 17. PRICING.

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

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

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

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

**e. Financing.** If Contractor proposes or offers financing, the terms of the financing must be disclosed to the Authorized User in Contractor’s response to the RFQ. The terms of the financing must be mutually agreed upon by the Authorized User and the Contractor in the Authorized User Agreement.. Any financing shall be at no additional cost to the Authorized User.

#### f. RESERVED.

**g. Specific Price Decreases, Special Offers and/or Promotions.** Contractor may offer lower prices in response to any RFQ without having any obligation to apply said pricing on other transactions under the Contract. This includes but is not limited to when Contractor generally offers more advantageous special price promotions, special discount pricing and/or competitive pricing during the Contract Term and the maximum price or discount associated with such offer or promotion is better than the discount or Net Price otherwise available under this Contract. Contractor may offer better terms in response to any RFQ without having any obligation to apply said terms on other transactions under the Contract. See Section 28 Modification of Contract Terms / Additional or Alternative Terms and Conditions in an Authorized User Agreement.

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

#### 18. DRAWINGS.

**a. Drawings Submitted With Bid.** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Solicitation and shall, when approved by the Commissioner, be

considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

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

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

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

**20. PURCHASING CARD.** The State's Purchasing Card program is designed to be an efficient and cost effective way to expedite payment. Purchasing Cards are issued to selected employees who are authorized to make purchases for the Authorized User. Nothing herein shall be deemed to authorize a purchase from a Contractor without the issuance of an RFQ.

**21. RESERVED.**

### **BID EVALUATION**

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

**23. TIE BIDS.** In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

**24. RESERVED.**

**25. RESERVED.**

### **TERMS & CONDITIONS**

**26. CONTRACT CREATION / EXECUTION.** Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Bid Specifications, a Contract shall be deemed executed and created with the successful Bidder(s) upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

**26A. OFFICIAL USE ONLY/NO PERSONAL USE.** The Contract is only for official use by Authorized Users. Use of the Contract for personal or private purposes is strictly prohibited.



## 27. PARTICIPATION IN CENTRALIZED CONTRACTS.

- a. Agencies.** All State Agencies may utilize and purchase under any Centralized Contract let by the Commissioner, unless the Solicitation limits purchases to specific State Agencies.
- b. Non-State Agency Authorized Users.** Authorized Users other than State Agencies are permitted to make purchases through Centralized Contracts where permitted by law, the Contract or the Commissioner.
- c. Voluntary Extension.** Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the Bid Specifications shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163(3)(a)(iv) of the State Finance Law.
- d. Responsibility for Performance.** Participation in Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of performance of any contractual obligation, covenant, condition or term thereunder by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach of performance of any contractual obligation, covenant, condition or term thereunder by an Authorized User other than a State Agency, the State, its officers, agents and employees shall have no liability to the Contractor or any third party for any such breach; and (iv) the State, its officers, agents and employees shall have no liability to any non-State Agency Authorized User for Contractor's failure to perform any contractual obligation, covenant, condition or term thereunder.
- e. Contract Migration.** Authorized Users holding an executed Purchase Order under a governmental contract with a Contractor holding a Manufacturer Umbrella Contract for the same Product or service shall be permitted to migrate that Purchase Order to the Contractor's Manufacturer Umbrella Contract, for the balance of the term of the Purchase Order provided that the Purchase Order pricing is the same or lower than the Contractor's Manufacturer Umbrella NYS Net Contract Price for the Product or service. The Authorized User shall not be required to issue an RFQ to migrate such Products or services. Such migration shall not operate to diminish, alter or eliminate any right that the Authorized User otherwise had under the terms and conditions of their existing agreement under which the Purchase Order was executed. In the event of a conflict between the existing agreement and the Manufacturer Umbrella Contract, the terms and conditions more favorable to the Authorized User shall prevail. In no event shall Products or services outside the scope of the Manufacturer Umbrella Contract be migrated under this section.

## 28. MODIFICATION OF CONTRACT TERMS / ADDITIONAL OR ALTERNATIVE TERMS AND CONDITIONS IN AN AUTHORIZED USER AGREEMENT.

- a.** The terms and conditions set forth in the Contract shall govern all transactions by Authorized Users under this Contract. The Contract may be modified or amended only upon mutual written agreement of the Commissioner and Contractor.
- b.** Additional or Alternative Terms and Conditions in an Authorized User Agreement.

A Contractor can propose additional or alternative terms and conditions for a specific Authorized User transaction only in the response to an Authorized User RFQ. A Contractor cannot require an Authorized User to agree to additional or alternative terms and conditions as a condition to the Contractor submitting a response to an Authorized User RFQ.

Additional or alternative terms and conditions may, in the discretion of the Authorized User, be allowed as part of a Contractor's response to an Authorized User RFQ and incorporated into the Authorized User Agreement provided that all of the following conditions are met:

- (i) The Contractor identifies where such additional or alternative terms and conditions may be found in Contractor's response to the Authorized User RFQ; and
- (ii) The Authorized User determines that the inclusion of such additional or alternative terms and conditions results in a transaction which is, on an overall basis, more favorable to the Authorized User than if the transaction did not include such additional or alternative terms and conditions; and

(iii) The Authorized User accepts such additional or alternative terms and conditions.

**c.** Notwithstanding subparagraph b above, no additional or alternative term and condition shall be valid or binding on the Authorized User to the extent that such additional or alternative term and condition is less favorable to the Authorized User than, or conflicts with, any of the following provisions: All provisions of Appendix A (Standard Clauses for New York State Contracts); Appendix B sections 47 (Termination), 56 (Security), 61 (Indemnification), 62 (Indemnification Relating to Infringement), 63 (Limitation of Liability for Lot 1 - Software and Lot 2 - Hardware), 63A (Limitation of Liability for Lot 4 - Implementation) 63B (Limitation of Liability for Lot 3 - Cloud); the sections of the Contract entitled Contractor's Obligation for Reseller Participation, Performance of Services, Contractor Responsibility for Subcontractors, Lot 3 – Cloud Specific Terms and Conditions; Security; Contractor Portable Devices; the Contract insurance requirements; and the NYS Net Pricing on the Contract.

**d.** No additional or alternative terms and conditions may be incorporated by the Contractor into an Authorized User Agreement by unilaterally affixing them to the Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms and conditions onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

**e.** Nothing herein shall be deemed to prohibit a Contractor from offering an Authorized User better and more advantageous pricing and terms and conditions during the term of an Authorized User Agreement.

## **29. RESERVED.**

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

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

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

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

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

the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

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

For the purposes of Lot 1 - Software, Contractor shall make available to the Authorized User either delivery of a physical copy(s) of the Software and Documentation or electronic download of the Software and Documentation from the Contractor's electronic delivery web site. Authorized User can access and electronically download the Licensed Software and related Documentation for each Product offered under the Contract. The Authorized User acknowledges that Contractor's delivery obligation for electronic delivery under this Contract is met by the provision of the electronic delivery web site URL. Unless otherwise specified in the Authorized User Agreement, the Authorized User shall be responsible for installation of the Licensed Software.

Unless otherwise agreed in the Authorized User Agreement, for the purposes of Lot 3 - Cloud, delivery shall be deemed to have occurred when the Authorized User is granted access to the required features and functionality of the Cloud Product.

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

**35. SHIPPING/RECEIPT OF PHYSICAL PRODUCT.**

**a. Packaging.** Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

**b. Shipping Charges.** Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

**c. Receipt of Product.** The Contractor shall be solely responsible for assuring that deliveries are made to locations and/or personnel specified by the Authorized User in the Purchase Order. Any losses or delays resulting from the Contractor's failure to deliver Product to the specified locations or personnel shall be borne exclusively by the Contractor.

**36. RESERVED.**

**37. RESERVED.**

**38. RESERVED.**

**39. REJECTED PRODUCT.** When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection,

risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar-day period.

**40. INSTALLATION.** Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

**41. REPAIRED OR REPLACED PARTS / COMPONENTS.** Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties, as set forth in the Warranties Clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturers installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

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

**43. ASSIGNMENT.** In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. The Commissioner may waive the requirement that such consent be obtained in advance where the Contractor verifies that the assignment, transfer, conveyance, sublease, or other disposition is due to, but not necessarily limited to, a reorganization, merger, or consolidation of the Contractor's business entity or enterprise.

Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the State Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or subdivision of the State pursuant to a governmental

reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

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

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

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

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

#### **47. TERMINATION.**

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

**b. For Convenience:**

(1) By written notice, this Contract may be terminated at any time by the Commissioner for convenience upon sixty calendar days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. Contractor shall continue to fully perform any project or Purchase Order that has been issued under the Contract prior to the date of such termination.

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

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

his/her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

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

**e. For Non-Responsibility:** The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**f. Upon Conviction of Certain Crimes.** The Commissioner reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

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

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

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

The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or

The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the Force Majeure event occurred, unless otherwise agreed to by the Commissioner. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the Force Majeure event.

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

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

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

#### **49. CONTRACT INVOICING.**

**a. Invoicing.** Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer.

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

**b. Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment.** The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at [www.osc.state.ny.us](http://www.osc.state.ny.us), by e-mail at [HelpDesk@sfs.ny.gov](mailto:HelpDesk@sfs.ny.gov), or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

#### **50. DEFAULT – AUTHORIZED USER.**

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

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

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



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

## **51. PROMPT PAYMENTS.**

**a. State Agencies.** Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 30 calendar days (or 15 calendar days in the case of a qualifying small business), excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and, as applicable, 2 NYCRR Part 18. The payment of interest on certain payments due and owed by Agency may be made in accordance with State Finance Law §§179-d et. seq. and the implementing regulations (2 NYCRR §18.1 et. seq.).

**b. By Non-State Agencies.** Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 30 calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

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

## **52. REMEDIES FOR BREACH.**

Unless otherwise specified by the Authorized User in an RFQ or Purchase Order, in the event that Contractor fails to observe or perform any term or condition of the Contract and such failure remains uncured after 15 calendar days following written notice by the Commissioner or an Authorized User, the Commissioner or an Authorized User may exercise all rights and remedies available at law or in equity. Notwithstanding the foregoing, if such failure is of a nature that it cannot be cured completely within 15 calendar days and Contractor shall have commenced its cure of such failure within such period and shall thereafter diligently prosecute all steps necessary to cure such failure, such 15-day period may, in the sole discretion of the Commissioner or the Authorized User, be extended for a reasonable period in no event to exceed 60 calendar days. It is understood and agreed that the rights and remedies available to the Commissioner and Authorized Users in the event of breach shall include but not be limited to the following:

**a. Cover/Substitute Performance.** In the event of Contractor's material, uncured breach, the Commissioner or Authorized User may, with or without issuing a formal Solicitation: (i) purchase from other sources; or (ii) If the Commissioner or Authorized User is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement Product of equal or comparable quality, the Commissioner or Authorized User may acquire acceptable replacement Product of lesser or greater quality.

Such purchases may be deducted from the Contract quantity without penalty or liability to the State.

**b. Withhold Payment.** In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Authorized User. Should Contractor and the Authorized User fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be handled in accordance with Section 64. Disputes.

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

**d. Reimbursement of Costs Incurred.** The Contractor agrees to reimburse the Authorized User promptly for any and all direct damages, as finally assessed, and expenses incurred for acquiring acceptable replacement Product, subject to the limitations of liability set forth in Sections 63, 63A, and 63B. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully

prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees, shall be paid by the Contractor.

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

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

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

**54. TOXIC SUBSTANCES.** Each Contractor furnishing a toxic substance, as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than two copies of a Safety Data Sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Safety Data Sheet must be provided to and approved by the Authorized User.

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

**56. SECURITY.** Authorized User shall indicate if there are any applicable security procedures, including but not limited to physical, facility, documentary, information security and cyber security rules, procedures and protocols ("Procedures") as part of the RFQ required under this Contract. The Authorized User shall make available the relevant Procedures and Contractor shall be responsible for distributing to its representatives and assessing and ensuring compliance. Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) that have been disclosed by the Authorized User in the RFQ and incorporated in the Authorized User Agreement.

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

**58. CONTRACT TERM – EXTENSION.** In addition to any stated extension periods in the Contract, any Contract or portion thereof awarded by the Commissioner may be extended by mutual agreement of the Commissioner and the Contractor for an additional period of up to one year. Such extension for up to an additional one-year period may be exercised on a month-to-month basis or in other stated periods of time.

#### **59. WARRANTIES – (Lot 1 – Software, Lot 2 – Hardware and Lot 4 – Implementation)**

**a. Product Performance.** Contractor hereby warrants and represents that the Products or services acquired by the Authorized User pursuant to an Authorized User Agreement under this Contract conform to the applicable manufacturer's specifications, performance standards and Documentation, as applicable, and that the Documentation fully describes the proper procedure for using the Products or services.

**b. Warranty Period.** The warranty period shall be the manufacturer's standard warranty period or sixty (60) calendar days, whichever is longer ("Warranty Period"), and shall commence upon acceptance of the Product or services by the Authorized User.

**c. NonInfringement/Title and Ownership** Contractor warrants that the Products, in the form provided to the Authorized User, do not infringe any copyright, trademark, trade secret or other right of any third party. Contractor further warrants and

represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated with such specified license rights.

**d. Warranty Minimum Requirements.** Contractor warrants and represents that:

(i) Defects shall be corrected promptly by Contractor at no cost or expense to the Authorized User. The Warranty Period shall be tolled and then extended for the cumulative period during which the Product or system requires correction;

(ii) Where Products, components or deliverables are furnished as a system, they shall be substantially free from defects in material and workmanship for the Warranty Period;

(iii) Any Product acquired by the Authorized User shall not contain any known viruses. Contractor is not responsible for viruses introduced by the Authorized User or third parties at the Authorized User's site;

(iv) Product furnished pursuant to this Contract shall be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations; and

(v) Services acquired under this Contract, including but not limited to maintenance/support, implementation, installation and configuration, will be provided in a professional and workmanlike manner in accordance with any applicable industry standards.

Contractor is not responsible for any modification of the Product made by an Authorized User without Contractor's approval.

**e. Replacement Parts Warranty.** For –all Products, Contractor shall promptly repair or, upon demand, replace any defective parts or components at no cost (e.g., labor, materials and transportation) to the Authorized User. Replacement parts or components shall be covered for the Product warranty period unless a longer period is offered by the Contractor for the individual part or component.

**f. Notice of Breach of Warranty.** The Authorized User shall promptly notify the Contractor in writing of any claim of breach of any warranty provided herein.

**g. No Limitation of Rights.** The rights and remedies of the State and the Authorized Users provided in this section 59 are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

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

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

**j. Printing and Imaging Equipment.** Use of recycled paper and compatible non-OEM toner shall not void warranty coverage.

**k. Product Warranty for Deliverables.** During the project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. In the alternative, if the Authorized User determines that the Contractor cannot correct such defects within reasonable time or in a reasonable manner, the Authorized User may, in its sole discretion, end its license or return the product and recover the fees paid to the Contractor for the license or Product. Contractor shall extend the project warranty period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the system requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

**60. LEGAL COMPLIANCE.** Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any extensions thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Solicitation and Contract

and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

#### **61. INDEMNIFICATION.**

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

For all other claims, losses or liabilities which shall arise or result from this Contract where liability is not otherwise set forth in this Contract as being without limitation, the Contractor shall fully defend, indemnify and hold harmless the Authorized Users against any such claims, losses, or liabilities arising from any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors; provided, however, that the Contractor's indemnity liability shall be subject to the applicable limitation of liability in clauses 63, 63A and 63B; and provided further that the Contractor shall not be obligated to indemnify an Authorized User to the extent any claim, loss or damage arising hereunder is due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

The Contractor's obligation to indemnify as set forth herein shall arise upon the final assessment of any claims, judgments, liabilities, or costs against the Authorized User except to the extent such claims, judgments, liabilities, or costs arise due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

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

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

**d.** Indemnification of the Contractor by Authorized Users is prohibited under the Contract.

#### **62. INDEMNIFICATION RELATING TO INFRINGEMENT.**

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

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

c. The Contractor's obligation to indemnify as set forth herein shall arise upon the final assessment of any claims, damages, judgments, liabilities or costs against the Authorized User in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, damages, judgments, liabilities or costs arise due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

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

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

f. Indemnification of the Contractor by Authorized Users is prohibited under the Contract.

**63. LIMITATION OF LIABILITY FOR LOT 1 - SOFTWARE and LOT 2 - HARDWARE.** Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Infringement clause, the limit of liability for claims arising from Purchase Orders involving Lots 1 and 2 shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages, as finally assessed, in: (i) an amount equal to two (2) times the amount paid or required to be paid for the Products and services, or parts thereof forming the basis of the Authorized User's claim during the prior 12-month period or (ii) one million dollars (\$1,000,000), whichever is greater.

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

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

**63A. LIMITATION OF LIABILITY FOR LOT 4 - IMPLEMENTATION.** Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Infringement clause, the limit of liability for claims arising from Purchase Orders involving Lot 4 shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages, as finally assessed, in: (i) an amount equal to two (2) times the amount paid or required to be paid for the Products and services, or parts thereof forming the basis of the Authorized User's claim during the prior 12-month period, or (ii) two million dollars (\$2,000,000), whichever is greater.

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

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

#### **63B. LIMITATION OF LIABILITY FOR LOT 3 - CLOUD.**

Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Infringement clause, the limit of liability for claims arising from Purchase Orders involving Lot 3 shall be as follows:

**a.** Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall be limited to direct damages, as finally assessed, in an amount as set forth in the chart below. For the purposes of this section, the term "Charges" shall mean the amount paid or required to be paid for the Products and services, or parts thereof forming the basis of the Authorized User's claim during the prior 12-month period, or estimated initial 12-month period.

	The limitation of liability shall be the greater of:
Purchase Order involving Data Classified as Low Risk only	2 times the Charges or \$2,000,000
Purchase Order involving Data Classified as Moderate Risk but not High Risk	3 times the Charges or \$5,000,000
Purchase Order involving Data Classified as High Risk	5 times the Charges or \$10,000,000

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

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

#### **64. DISPUTES.**

##### **I. Policy**

It is the policy of OGS to provide Interested Parties, as that term is defined herein, with an opportunity to administratively resolve disputes related to OGS bid solicitations, contract awards or contract administration. Interested Parties are encouraged, but not required, to seek resolution of disputes through consultation with OGS staff through the Informal Dispute Resolution Process described herein, prior to filing a Formal Dispute. All Informal and Formal Disputes will be accorded full, impartial and timely consideration.

##### **II. Dispute Resolution Procedures**

###### **A. Informal Dispute Resolution Process**

1. In the event there is a dispute under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall,

without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

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

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

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

The Formal Dispute Process set forth in section II(B) below does not apply to formal disputes arising out of an Authorized User RFQ or Authorized User Agreement. Formal disputes between the Contractor and the Authorized User arising out of an Authorized User RFQ or Authorized User Agreement are to be handled in accordance with the process specified by the Authorized User for disputes. See the "Bid Protests and Disputes under an Authorized User Agreement" section of the How to Use document incorporated in the Manufacturer Umbrella Contract.

## B. Formal Dispute Process

### 1. Definitions

a. Filed means the complete receipt of any document by OGS before its close of business.

b. Interested Party for the purpose of filing a dispute relating to a solicitation, as used in this section, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a Contract or by the failure to award a Contract.

c. Interested Party for the purpose of filing a dispute relating to a Contract award, as used in this section, means an actual bidder or offeror for the subject Contract.

d. Interested Party for the purpose of filing a dispute relating to the administration of the Contract, as used in this section, means the awarded Contractor for the subject Contract.

e. Issuance of award means the Date of Issue identified on the Contract Award Notification transmitted by OGS.

f. A Formal Dispute means a written objection by an Interested Party to any of the following:

i. A solicitation or other request by OGS for offers for a contract for the procurement of commodities, services or technology.

ii. The cancellation of the solicitation or other request by OGS.

iii. An award or proposed award of the Contract by OGS.

iv. A termination or cancellation of an award of the Contract by OGS.

v. Changes in the scope of the Centralized Contract by the Commissioner.

vi. Determination of "materiality" in an instance of nonperformance or contractual breach.

vii. An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

### 2. Submission of Formal Disputes

a. A Formal Dispute must be filed in writing with the Director of Procurement Services by mail using the following contact information:

Director, New York State Procurement Services  
A Division of the Office of General Services  
38th Floor, Corning Tower Empire State Plaza  
Albany, NY 12242

b. The Formal Dispute must include:

i. Name, address, e-mail address and telephone numbers of the filer.



- ii. Solicitation or Contract number.
  - iii. Detailed statement of the legal and factual grounds for the Formal Dispute, including a description of resulting prejudice to the filer.
  - iv. Copies of relevant documents.
  - v. Request for a ruling by the agency.
  - vi. Statement as to the form of relief requested.
  - vii. All information establishing that the filer is an Interested Party for the purpose of filing a Formal Dispute.
  - viii. All information establishing the timeliness of the Formal Dispute.
3. Formal Disputes concerning a solicitation shall be filed by an Interested Party (see II.B(1)(b)) with OGS no later than ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, Formal Disputes concerning the solicitation shall be filed with OGS at least twenty-four (24) hours before the time designated for receipt of bids.
4. Formal Disputes concerning a pending or awarded Contract must be filed within ten (10) business days by an Interested Party (see II.B(1)(c)) after the disputing party knew or should have known of the facts which form the basis of the Formal Dispute; however, a Formal Dispute may not be filed later than ten (10) business days after issuance of the Contract award.
5. Formal Disputes concerning the administration of the Contract after award (see II.B(1)(iv-vii)) must be filed within twenty (20) business days by an Interested Party (see II.B(1)(d)) after the disputing party knew or should have known of the facts which form the basis of the Dispute. However, if Contractor and Authorized User participate in the Informal Dispute Resolution Process, Formal Disputes concerning the administration of the Contract after award must be filed by Contractor within twenty (20) business days after the Contractor and Authorized User failed to reach resolution through the Informal Dispute Resolution Process set forth in Section II.A.
6. Agency Response
- a. OGS will consider all information relevant to the Formal Dispute, and may, in its discretion, suspend, modify, or cancel the disputed procurement/Contract action prior to issuance of a Formal Dispute decision.
  - b. OGS reserves the right to require the filer to meet or participate in a conference call with OGS to discuss the Formal Dispute when, in its sole judgment, circumstances so warrant.
  - c. OGS reserves the right to waive or extend the time requirements for decisions and final determinations on appeals herein prescribed when, in its sole judgment, circumstances so warrant.
  - d. OGS reserves the right to consider or reject the merits of any Formal Dispute.
  - e. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the Formal Dispute.
7. Appeals
- a. Should the filer be dissatisfied with the Formal Dispute determination, a written appeal may be filed with the Chief Procurement Officer, by mail using the following contact information:

Chief Procurement Officer  
New York State Procurement Services  
A Division of the Office of General Services  
38th Floor, Corning Tower  
Empire State Plaza  
Albany, NY 12242
  - b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of Procurement Services shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.
  - c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.
  - d. An appeal of the decision of the Director of Procurement Services shall not include new facts and information unless requested in writing by the Chief Procurement Officer.
  - e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.
8. Legal Appeals
- a. Nothing contained in these provisions is intended to limit or impair the rights of any vendor or Contractor to seek and pursue remedies of law through the judicial process.

**65. SOFTWARE LICENSE GRANT.** This section is not applicable to Lot 3 – Cloud and Cloud Solutions. Where Product is acquired on a licensed basis the following shall constitute the license grant:

**a. License Scope.** Licensee is granted a non-exclusive on-prem license (or, at the option of the Authorized User, term license) to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation, virtual partition). Licensee shall have the right to use those modifications or customizations of the Product that have been purchased by Licensee and to distribute such modifications or customizations for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications or customizations, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

**b. License Term.** The License Term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the License Term shall be extended by the time period for testing, acceptance or trial.

**c. Product Documentation.** Contractor shall provide Product Documentation electronically to Licensee at no charge. If Product Documentation is made available to customers in hard copy, Contractor shall provide at no charge one hard copy. Contractor hereby grants to Licensee a non-exclusive, fully paid-up, royalty-free perpetual license in the Product Documentation to make, reproduce and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the Contract.

**d. Product Technical Support & Maintenance.** Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. 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. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and shall not automatically renew.

Unless otherwise provided by written agreement between the Contractor and Licensee, maintenance offered shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, Patches, and upgrades to Licensee, and (ii) Help Desk assistance at no additional cost, either by toll-free, telephone, or on-line functionality. Contractor shall maintain the Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Licensee shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Licensee does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates. Contractor shall submit written notification to Licensees of the upcoming maintenance end date no later than 60 calendar days prior to such maintenance end date.

**e. Permitted License Transfers.** As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers within Agencies, between Agencies, and pursuant to a governmental restructuring or reorganization ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give 30 calendar days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior Site. There shall be no additional license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred Site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

**f. Restricted Use By Third Parties.** Third parties retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) Licensee gives notice to Contractor of such third party, Site of intended use of the Product, and means of access; and (ii) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and (iii) such party maintains a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

**g. Archival Back-Up and Disaster Recovery.** Licensee may use and copy the Product and related Documentation in connection with: (i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage; (iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. The phrase "cold site storage" means a restorable back-up copy of the Product not to be installed until the need for disaster recovery arises. The phrase, "disaster recovery" means the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development. Contractor shall fully disclose all archival back-up and disaster recovery options available to Licensee (e.g., cold, warm, and hot back-up), including all terms and conditions, additional charges, or use authorizations associated with such options.

**h. Confidentiality Restrictions.** If any portion of the Product or Product Documentation contains confidential, proprietary, or trade secret information, the Contractor shall identify such information in writing to the Licensee. The terms of Licensee's use and disclosure of such information shall be governed by a written agreement between the Contractor and the Licensee, which, in the case of Licensees that are State or local governmental entities, recognizes that they are subject to the New York Freedom of Information Law.

**i. Restricted Use by Licensee.** Except as expressly authorized by the Terms of License, Licensee shall not:

- (i) copy the Product;
- (ii) cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
- (iii) export the Licensed Software in violation of the Export Administration Regulations (EAR) or the Internal Traffic in Arms Regulations (ITAR).

**66. PRODUCT ACCEPTANCE.** Unless otherwise provided by mutual agreement of the Authorized User and the Contractor in the Authorized User Agreement, Product Acceptance shall be as follows:

Lot 1 – Software – Authorized User shall have 60 calendar days from the date of delivery to accept Products. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes deemed acceptance by the Authorized User as of the expiration of that period. The license term shall be extended by the time periods allowed for trial use, testing and acceptance

Lot 2 - Hardware - Authorized User shall have 30 calendar days from the date of delivery to accept Products. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes deemed acceptance by the Authorized User as of the expiration of that period.

Lot 3 – Cloud – Acceptance will be deemed to have occurred upon first activation of the Product under a valid Purchase Order.

Lot 4 – Implementation - Authorized User shall have 60 calendar days from the date of delivery to accept Products. Unless otherwise provided by mutual agreement of the Authorized User and the Contractor in the Authorized User Agreement, there shall be no deemed acceptance

Where the Contractor is responsible for installation, the acceptance period shall commence at the completion of installation.

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

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

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, if the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have 30 calendar days to correct the deficiency, and the Authorized User shall have an additional 60 calendar days to evaluate the Product as provided herein.

If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within the reasonable time period specified by the Authorized User of notification of rejection by the Authorized User. Rejected items not removed by the Contractor within the reasonable time period specified by the Authorized User shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the reasonable time period specified by the Authorized User.

**67. AUDIT OF LICENSED PRODUCT USAGE.** Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any site where a copy of the Product resides provided that: (i) Contractor gives Licensee(s) at least thirty (30) calendar days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the NYS Net Price in effect at time of audit, or if none, then at the Contractor's U.S. Commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

**68. OWNERSHIP/TITLE TO PROJECT DELIVERABLES.** This clause shall apply where Contractor is commissioned by the Authorized User to furnish project deliverables as detailed in the Purchase Order.

**a. Definitions.**

(i) For purposes of this clause, "Products" Means deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on electronic media c) Third Party Software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, e) any properties embodied therein, whether in tangible or

intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code), and f) Cloud Solutions.

(ii) For purposes of this clause, “Existing Products” Means tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the project.

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

**b. Title to Project Deliverables.** Unless otherwise specified in writing in the Authorized User Agreement, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

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

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

**c. Transfers or Assignments to a Third Party Financing Agent.** It is understood and agreed by the parties that a condition precedent to the consummation of the purchases under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee (“Trustee”) as collateral where required by the terms of the financing agreement. Trustee’s sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee’s rights

under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

**d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS).**

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

**e. Contractor's Obligation with Regard to Third Party Software.** Where Contractor furnishes Existing Licensed Products as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or Third Party Software vendor's standard license agreement, Contractor shall be responsible for obtaining from the Third Party Software proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

**69. PROOF OF LICENSE.** The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified license confirmation certificates in the name of such Licensee; (ii) a written confirmation from the proprietary owner accepting Product invoice as proof of license; or (iii) other similar proof of license. All proofs of license must be in a form acceptable to the Licensee.

**70. PRODUCT VERSION.** Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by Authorized User and Contractor is willing to provide such version.

**71. CHANGES TO PRODUCT OR SERVICE OFFERINGS.**

This section is not applicable to Lot 3 – Cloud and Cloud Solutions.

**a. Product or Service Discontinuance.** Where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner and each Licensee then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: a) the best terms offered by Contractor to any other similarly situated, supported customer, or b) not less than six months from the date of notice; and (iii) at Licensee's option, and in order to enable Licensee to continue the use and maintenance of the Product, provide Licensee with a Product replacement or migration path with at least equivalent functionality at no additional charge, provided that Licensee is under contract for maintenance on the date of notice and Contractor is offering such replacement or migration path to all of its similarly situated, supported customers without additional charge.

In the event that the Contractor is not the Product manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five business days of Contractor receiving notice from the Product manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to State approval, to an alternate Subcontractor.

**b. Product or Service Re-Bundling.** In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being configured in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the Commissioner and each Licensee in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than six months from the date of notice; and (iii) shall submit the proposed re-bundling change to the Commissioner for approval

prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

## **72. NO HARDSTOP/PASSIVE LICENSE MONITORING.**

This section is not applicable to Lot 3 – Cloud and Cloud Solutions

Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

## **73. RESERVED.**



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## **Appendix C – Contract Modification Procedure**

This document provides Contractors with instructions on how to submit Contract Modifications under the Manufacturer Umbrella Contract.

The Office of General Services (OGS) has implemented COMeT (Centralized Online Management e-Procurement Tool). This tool allows Contractors to manage their pricelist, contact information, and authorization of Reseller(s) / Sales Agent(s) through an online portal, which shall replace the Appendix C form previously submitted in the manual process.

These Contract Modification Procedures, which incorporate the Appendix C.1 - Contract Pricing Modifications form and COMeT, are subject to change at the discretion of OGS.

### **Section 1. TYPES OF CONTRACT MODIFICATIONS**

There are four types of Contract Modifications: Pricelist, Contractor Information, Request to Add a Lot to an Existing Umbrella Contract, and Change to Lot 3 - Cloud Risk Level. Only one Contract Modification request per type can be in process at a time. This will help to ensure there will not be an overlap or discrepancy with the Appendix C.1 or Appendix D.

In order to expedite processing of an urgent Contract Modification, submission should be restricted to only the urgent changes.

Contractor shall not quote or offer Products that are the subject of a Contract Modification until receipt of approval from OGS.

#### **1.1 SUBMISSION OF MODIFICATION REQUESTS**

All Contract Modification requests must be submitted in the COMeT portal. Contractors will receive log-in information for the portal after Contract Award.

### **Section 2. CONTRACTOR INFORMATION UPDATES**

Contractor Information updates include:

- Changes to Contractor contact information.
- Changes to Resellers / Sales Agents including additions, deletions, or changes to contact information.

#### **2.1 NYS Vendor ID**

All Resellers on the Contract must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC) and have a New York State ten-digit vendor identification number (Vendor ID). A Vendor ID is not the same as a TIN/FEIN. To receive a Vendor ID, the Reseller is to complete the OSC Substitute W-9 Form (<https://www.osc.state.ny.us/files/vendors/2017-11/vendor-form-ac3237s-fe.pdf>) and submit the form to [MfrUmbrella.Contractors@ogs.ny.gov](mailto:MfrUmbrella.Contractors@ogs.ny.gov). OGS will initiate the vendor registration process for all authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

### **Section 3. PRICELIST UPDATES**

Appendix C.1 – Contract Pricing Modifications must be submitted for all Pricelist Contract Modifications. Contractor is required to submit the most recent Appendix C.1, with only the changes to the Pricelist, to the COMeT portal.

If a Contractor needs to add/update items on their price list in order to respond to an RFQ, the Contractor should submit a Contract Modification request, noting that it is for an RFQ. OGS reserves the right to request a copy of the RFQ.

If a sku needs to be created, only a unique Product name or unique Product description may be used as a SKU on Umbrella Price Pages. Duplicate SKUs within a Lot are not allowed.

There are two types of Pricelist Updates: Simple and Complex.

### 3.1 Simple Updates

Simple Updates are changes that do not impact the pricing methodology established within the Contract terms and conditions for an awarded Lot. Simple Updates may include:

- Lowering pricing of Products.
- Adding new Products using the existing discount or discount rates in the Lot (“Established Category Method”).
- **Single Discount per Lot:** Contractors with existing approved Umbrella pricelists containing one discount per Lot, previously demonstrated with Reasonableness of Price (ROP), may add products within established categories using the established single discount by providing their Nationally Published List Price or MSRP. This provision excludes Categories containing a 0% discount.
- **Multiple Discounts per Lot:** Contractors with existing approved Umbrella pricelists containing multiple discounts per Lot, must demonstrate, to the satisfaction of OGS, that the category discounts are standardized discounts in relation to their products across government contracts. This burden of proof is solely on the Contractor.

### 3.2 Complex Updates

Complex Updates are changes that impact the pricing methodology and/or require additional documentation. Complex Updates may include:

- Adding new Products at a new price/discount structure
- Adding new Product Categories at a new price/discount structure
- Addition of Product Bundles (see below Section 6.8 Bundle Pricing for additional information)
- Deleting Products
- Annual price increases
- Adding Products with a 0% Discount

Product additions or increases in price must be accompanied by a justification of reasonableness of price in accordance with Section 3.4, Reasonableness of Pricing for Complex Updates, below. Annual price increases will require submission of documentation to support the increase to the Manufacturer’s Commercial price list.

Requests to delete products will require submission of End of Life (EOL) documentation as justification for removal of products. Deleted products will not be allowed to be placed back onto the contract.

#### 3.2.1 Acceptable End of Life Documentation

**Public Notices:** Examples include a press release or customer notification. In cases where the notice is general enough not to incorporate detail to the SKU level, a crosswalk indicating exactly which SKUs are affected and related to the end of life product model is required.

**Internal Notices:** Roadmaps or other independent reports showing the end of life of products are allowed. In cases where the notice is general enough not to incorporate detail to the SKU level, a crosswalk indicating exactly which SKUs are affected and related to the end of life product model is required.

**MSRP:** Lack of a SKU on an MSRP/other Nationally Published Pricelist illustrates the SKU is no longer for sale. Contract pricelists are not all inclusive and do not qualify.

### 3.3 PRICING

In no event shall NYS Net Price in Appendix C.1 - Contract Pricing Modifications exceed the Contractor's list price on their Published Price List.

### 3.4 REASONABLENESS OF PRICING FOR COMPLEX UPDATES

NYS Net Pricing offered in Appendix C.1 - Contract Pricing Modifications will be reviewed by OGS to assess reasonableness of price. Contractors are encouraged to offer their best possible pricing. The Contract Price Lists referenced in Section 6.1.1 below will be accepted as documentation of reasonableness of price. Contractors should carefully read the instructions to Appendix C.1 - Contract Pricing Modifications to be sure that all information requested therein is provided and proposed pricing is equal to or better than the applicable price list referenced in Section 6.1.1 below.

If reasonableness of pricing is not demonstrated to OGS's satisfaction, the Contractor's Contract Modification may be non-approved.

#### 3.4.1 Acceptable Documentation of Reasonableness of Price

Acceptable documentation of reasonableness of price, in order of priority, is set forth below. Contractor must submit the documentation highest in the following order of precedence:

1. NYS Centralized Contract Price List
  - NYS Centralized contract must have been approved by NYS
  - Contract Price List shall be the most currently approved or the Price List in effect at Contract expiration
  - If Contract has expired, the expiration date of the Contract shall be no more than one (1) year prior to the submission date of the requested Contract Modification.
  - Contract and Contract Price List shall be included with modification request
2. Federal Contract Price List (may be submitted only if the Products are not available/offered on 1 above)
  - Federal contract must have been approved by the Government Entity
  - Contract Price List shall be the most currently approved or the Price List in effect at Contract expiration
  - If Contract has expired, the expiration date of the Contract shall be no more than one (1) year prior to the submission date of the requested Contract Modification.
  - Contract and Contract Price List shall be included with modification request
3. Other NYS or Government Entity Contract Price List (may be submitted only if the Products are not available/offered on 1 or 2 above)
  - Other NYS or Government Entity contract must have been approved by NYS or the Government Entity
  - Contract Price List shall be the most currently approved or the Price List in effect at Contract expiration
  - If Contract has expired, the expiration date of the Contract shall be no more than one (1) year prior to the submission date of the requested Contract Modification.
  - Contract and Contract Price List shall be included with modification request
4. Paid Invoices from Government Entities (may be submitted only if the Products are not available/offered on 1, 2 or 3 above)
  - Paid invoices (amounts have been paid and funds have been collected) of Products from the same Lots that the contract modification pertains to.
  - Sufficient information to be included on the invoice to identify the qualifying Lot Products including the following:
    - Government Entity
    - Description of Qualifying Lot Products
    - Manufacturer Part Number (SKU)
    - Net price of each qualifying item
  - Invoice date must be no more than one 1 year prior to the submission date of the Contract Modification request or the most current Periodic Recruitment
  - All paid invoices will be included with the Contract Modification request

If a Contractor has no direct government Contract for a specific Lot of Products, but sells its Products through a Reseller or other provider (e.g. Contract Management Provider) to Government Entities, then that Contractor can establish Reasonableness of Price pursuant to this Section through the Government Entity Contract Price Lists and/or invoices of the Reseller/other provider. On Appendix C.1 - Contract Pricing Modifications the Contractor will identify which Products this relationship applies to in the Reasonableness of Price Validation section, columns U-AA. The Contractor will provide the Reseller/other provider's Contract price list.

### 3.5 **MONETARY VALUES**

All monetary values shall not exceed five decimal places.

### 3.6 **DISCOUNT PERCENTAGE**

All discount percentage values shall not exceed two decimal places (e.g. 20.25222% shall be rounded to nearest one hundredth 20.25%).

### 3.7 **Where the NYS Net Price is based upon an approved GSA Supply Schedule then:**

#### 3.7.1 Associated Discounts

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

#### 3.7.2 Industrial Funding Fee

GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee (IFF)". Contract prices should be reduced by an amount equivalent to the IFF.

### 3.8 **VOLUME DISCOUNTS**

A Contractor is encouraged to offer volume discounts.

### 3.9 **TRAVEL, MEALS AND LODGING**

For Lots 1, 2, and 3, NYS Net Price for Products is inclusive of all travel, meals, and lodging. For Lot 4, Net Price is exclusive of travel. When travel, meals, and lodging are authorized as an allowable expense in the Authorized User's RFQ, reimbursement shall be made in accordance with Section 8.31 and the State's Travel Reimbursement Manual (<http://www.osc.state.ny.us/agencies/travel/manual.pdf>) published by OSC.

The travel amount quoted by Contractors in OGS's Financial Templates is a not to exceed amount.

### 3.10 **MAINTENANCE/SUPPORT OPTIONS**

Maintenance/Support options, including a detailed description of each type of maintenance/support offering, (e.g. response time, 24 x 7 coverage, etc.) must be provided in Appendix C.1 - Contract Pricing Modifications. The description shall also include the Product for which the maintenance/support is being offered.

### 3.11 **BUNDLE PRICING**

Each main bundle SKU should be represented in the regular applicable lot tab on the Appendix C.1 Contract Pricing Modifications spreadsheet, then broken out on the Bundle Worksheet tab for the applicable Lot. The regular applicable Lot tab should contain each main bundle SKU, all normal SKU line requirements, and a summary of the components contained listed within the description. A Reasonableness of Price review will be performed on the product bundle.

The Bundle worksheet breakout is to include, at minimum: 1) Component Manufacturer, 2) Product Name, 3) Product Description, 4) Manufacturer SKU, and 5) component price for each component of the Product Bundle. If approved, each main bundle SKU will stay in the applicable Lot tab. Bundle worksheets are used for review only and will not be made available with the pricelist online.

### **3.12 PROPRIETARY MAINTENANCE/SUPPORT AND PRE-PACKAGED TRAINING PRODUCTS**

For Lots 1-3, Contractor may include for its Proprietary product line, Maintenance/support, and pre-packaged training.

### **3.13 PERCENTAGE DISCOUNTS**

All percentage discounts shall remain firm (unchanged) or may be increased by the Contractor for the duration of the resulting Contract. It is not acceptable to request SKUs be moved from a Product Category with a higher discount to a Product Category with a lower discount.

### **3.14 PRICE INCREASES**

Pricing submitted with the Solicitation response shall remain in effect for a minimum of one year from the Vendor Submission due date. Thereafter, Contractor may request annual price increases to reflect Manufacturer's price changes. Price increases may be requested for entire Lots or per Product Category. Price increases are subject to all Contract update provisions included herein, including documentation of reasonableness of price.

### **3.15 LOT SPECIFIC PRICING REQUIREMENTS**

#### **3.15.1 LOT 1 - SOFTWARE**

##### **3.15.1.1 Pricing Calculations**

A Contractor must provide a detailed line item breakout in Appendix C.1 - Contract Pricing Modifications of Software options including, but not limited to licensing metrics, total annual cost including all support, Maintenance/support, Fleet Management, and technical offerings.

Calculations of Software pricing shall be based on per user, per device, per seat, per site, per enterprise license, the size of the industry standard logical partition, virtual partition or, in the absence of industry standard logical or virtual partitions, pricing shall be based on the machine capacity on which the Software is installed and running, rather than the size of the entire machine on which the partition is resident. OGS reserves the right to evaluate any alternative pricing structure that is or becomes commercially available throughout the term of the Contract.

#### **3.15.2 LOT 2 – HARDWARE**

##### **3.15.2.1 Imaging and/or Loading Services**

Upon request from Authorized User, image creation and/or image loading onto Authorized User Equipment (e.g. desktops, laptops, tablets, and servers) may be provided by the Contractor. If the Contractor charges a fee, Appendix C.1 - Contract Pricing Modifications must include SKUs for imaging and/or loading services. Contractor may require Authorized User to show proof of license for image creation and/or image loading.

##### **3.15.2.2 Refurbished or Remanufactured Parts**

Refurbished or remanufactured parts will be allowed on Appendix C.1 - Contract Pricing Modifications. In order to maintain End Of Life/obsolete existing Equipment, refurbished or remanufactured parts may be offered when new parts are not in production. Refurbished or remanufactured parts must be clearly labeled as "Refurbished Parts" or "Remanufactured Parts," respectively.

##### **3.15.2.3 Related Software**

Software which is bundled with Hardware and is required for installation, configuration, and is integral to the operation of the Hardware. This Related Software must be acquired and delivered at the time of the Hardware purchase.

### 3.15.3 LOT 3 – CLOUD

#### 3.15.3.1 Data Transfer Upon Transition Costs

Appendix C.1 - Contract Pricing Modifications shall include a SKU for Data transfer costs (at the end of the Contract and/or Authorized User Agreement term). Appendix C.1 - Contract Pricing Modifications shall include a SKU for:

- per unit (e.g. megabyte (MB), gigabyte (GB), terabyte (TB), petabyte (PB)) stored data transfer; and
- per unit (e.g. MB, GB, TB, PB) for real-time data transfer.

### 3.15.4 LOT 4 – IMPLEMENTATION SERVICES

#### 3.15.4.1 Titles Associated with Implementation Services

Contractors shall submit all titles and not to exceed hourly rates associated with Implementation. These rates must be as provided in the Appendix C.1 - Contract Pricing Modifications. The price information shall exclude all travel/lodging/and per diem costs.

## Section 4. CHANGE TO LOT 3 – CLOUD RISK LEVEL

When a Contractor wants to increase their Lot 3 – Cloud Risk Level it also requires an increase in minimum Insurance coverage, Contractor is required to submit the following electronically via e-mail and in hard copy to OGS:

- Proof of Insurance Coverage for the applicable Level of Risk
- Contractor Insurance Certification

LEVEL OF RISK	MINIMUM INSURANCE COVERAGE BY TYPE OF INSURANCE		
	Data Breach and Privacy/Cyber Liability	Technology Errors and Omissions	Crime
Low	\$2,000,000	\$2,000,000	\$2,000,000
Moderate	\$5,000,000	\$5,000,000	\$5,000,000
High	\$10,000,000	\$10,000,000	\$10,000,000

If a Contractor needs to increase its risk level in order to respond to an RFQ, the Contractor should submit a Contract Modification request, noting that it is for an RFQ. OGS reserves the right to request a copy of the RFQ. Contractors are encouraged to submit the request for an increased risk level as soon as possible to ensure an adequate time for review and approval by OGS before the quote due date.

Please note OGS does not need to approve additional insurance requirements set by Authorized Users if additional requirements do not involve an increase in the Level of Risk.

## Section 5. REQUEST TO ADD A LOT TO AN EXISTING UMBRELLA CONTRACT

Requests to Add a Lot may only be made by Contractors who have accepted the Umbrella Contract terms and conditions from 2018 or later. Contractors who are still utilizing the Umbrella Contract Terms and Conditions from 2016 are not eligible to Add a Lot.

Contractors wishing to add a Lot (Lot 1 -Software; Lot 2 - Hardware; Lot 3 - Cloud; or Lot 4 – Implementation Services) to their existing Umbrella Contract shall request a copy of the most recent Periodic Solicitation submission requirements from OGS.

A Request to Add a Lot to an Existing Umbrella Contract must be submitted on Appendix C to OGS for review and approval. A Request to Add a Lot must be accompanied by all information required in the most recent Periodic Solicitation sections entitled Verifiable Sales, Manufacturer's Price List, Reasonableness of Pricing, Appendix C Contract Pricing Modifications Lot Specific Requirements (as applicable), and Contractor's Insurance



Requirements (as applicable to the additional lot). Contractor shall not quote or offer Product that is the subject of a Request to Add a Lot to an Existing Umbrella Contract until receipt of approval from OGS.

Please note – the timeframe for proof of Verifiable Sales shall be shifted accordingly. Contractors must demonstrate the minimum of Verifiable Sales during the 25-month period preceding the date the modification request was submitted.

Document Checklist to Add a Lot:

- ☐ Appendix C
  - Signed
  - Indicating the desire to add a Lot
- ☐ Appendix C.1 – Pricelist Update Sheet (Attachment 1 is PR2 requirement)
  - Vendor Information tab
  - Category Discount tab
  - Lots to be added tab, plus bundle tab if applicable
  - ROP benchmark documents
- ☐ Attachment 4 – Verifiable Sales
  - Vendor Certification tab, completed and signed
  - Lots to be added tab
  - Invoices / Sales Reports
- ☐ Insurance if adding Lot 3
- ☐ MWBE if adding Lots 1, 2, or 4
- ☐ SDVOB if adding Lot 4
- ☐ Worker's Comp confirmation, if applicable

## **Section 6. OGS RESERVED RIGHTS**

In addition to OGS's reserved rights in the Contract, OGS also reserves the right to:

- Request additional information;
- Reject Contract Modifications;
- Remove Products from Contract Modification requests;
- Request additional discounts for new or existing Products;
- Conduct additional research and request additional information to assess the reasonableness of pricing; and
- Require the Contractor to lower its offered pricing to that which OGS has determined to be reasonable and to remove items from Contractor's pricelist which are out of scope or for which pricing is determined not to be reasonable.
- Perform a review, at any time, to confirm existing pricing pages adhere to contract terms and conditions.

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## Contract Modification Form

Contract No. <b>PM</b>	Contract Description <b>Information Technology Umbrella Contract – Manufacturer Based (Statewide)</b>		
Contractor Name		Contract Period From To	Date of Submission
Contract Contact Name	Contractor Phone Number	Contractor E-Mail	

**NOTE:** Submission of this form does not constitute acceptance by the State of New York until approved by OGS.

### INSTRUCTIONS:

1. This form is to be used for Add a Lot Contract Modifications. For price list and contact information modifications, Contractor shall utilize the COMeT system.
2. This form is to be completed in full, signed, and submitted electronically in PDF format (and in hardcopy if requested by OGS) to OGS for approval. Send all required Contract Modification documents to following e-mail address:  
[MfrUmbrella.Contractors@ogs.ny.gov](mailto:MfrUmbrella.Contractors@ogs.ny.gov)
3. Upon request, OGS will return a copy of this form to the Contractor with the results of the OGS Review.
4. Modification requests must be submitted in accordance with the terms and conditions herein.

Indicate Which Lot(s) Modification Request is For			
<input type="checkbox"/> Lot 1 Software	<input type="checkbox"/> Lot 2 Hardware	<input type="checkbox"/> Lot 3 Cloud	<input type="checkbox"/> Lot 4 Implementation

Request Type	Description of Request
<input type="checkbox"/> Adding New Lot	Which Lot? <input type="checkbox"/> Lot 1 Software <input type="checkbox"/> Lot 2 Hardware <input type="checkbox"/> Lot 3 Cloud* <input type="checkbox"/> Lot 4 Implementation *If adding Lot 3, which Minimum Insurance Risk Coverage: <input type="checkbox"/> Low <input type="checkbox"/> Moderate <input type="checkbox"/> High <input type="checkbox"/> Required Verifiable Sales information is attached <input type="checkbox"/> Required Price Pages are completed and submitted via COMeT <input type="checkbox"/> Required Reasonableness of Price (ROP) information is submitted via COMeT <input type="checkbox"/> Required Lot Specific Requirements have been met <input type="checkbox"/> Proof of Required Insurance (if adding Lot 3) is attached <input type="checkbox"/> Required Contact Information Update is submitted via COMeT <input type="checkbox"/> MWBE information, if adding Lots 1, 2, or 4 <input type="checkbox"/> Worker's Compensation form, if applicable

Attached Documentation Includes
<input type="checkbox"/> NYS Centralized Price List (indicate Contract # )
<input type="checkbox"/> Federal Contract Price List (indicate Federal Contract # )
<input type="checkbox"/> Other NYS or Governmental Entity Contract (indicate Entity and Contract # )
<input type="checkbox"/> Paid Invoices from Governmental Entity (Identify Customer Name )
<input type="checkbox"/> Governmental Entity Contract Price List and/or Invoices of Reseller (where Products are sold by Reseller) (Indicate Contract # , Customer Name and Reseller Name )
<input type="checkbox"/> Manufacturer's Commercial Price List
<input type="checkbox"/> Manufacturer's Suggested Price List
<input type="checkbox"/> Manufacturer's Suggested Retail Price List
<input type="checkbox"/> Other - Please Explain:

## Contractor Certification and Affirmation

Contractor certifies and affirms the information contained in this Contract Modification Request is complete, true, and accurate.

The signer **also** affirms under penalties of perjury that he or she is duly authorized to legally bind the Contractor referenced above and that he or she signed this Contractor Certification as the legally binding act of the Contractor.

\_\_\_\_\_  
Print Full Contractor Entity Name

By:

\_\_\_\_\_  
Signature of Person Authorized to  
Legally Bind the Contractor

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Print Title of Signatory

\_\_\_\_\_  
Date

### OGS REVIEW

#### ADDITION OF NEW LOT

- ☐ Approved  
☐ Approved as Amended  
☐ Disapproved (see OGS Comments)

OGS Comments:

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

Title: \_\_\_\_\_ Date \_\_\_\_\_



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**Appendix D – Contractor and Reseller Information  
Group 73600 – Award 22802  
Information Technology Umbrella Contract – Manufacturer Based (Statewide)**

**INDIVIDUAL CONTRACTOR AND RESELLER INFORMATION FOR THIS CONTRACT  
CAN BE FOUND BY VISITING:**

**<https://online.ogs.ny.gov/purchase/snt/awardnotes/7360022802ContractorPage.pdf>**

**and clicking on the “Contact Information” Link for the referenced Contractor.**



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**Appendix E – Contractor Price List  
Group 73600 – Award 22802  
Information Technology Umbrella Contract – Manufacturer Based (Statewide)**

**INDIVIDUAL CONTRACTOR PRICE LISTS CAN BE FOUND BY VISITING:**

<https://comet.ogs.ny.gov/PortalVendorDocuments/>

## APPENDIX F - PRIMARY SECURITY AND PRIVACY MANDATES

New York State considers the protection of sensitive and confidential information and business systems to be of the upmost importance. The information collected and maintained by state and local government agencies is protected by a myriad of Federal and State laws and regulations. Access to and use of sensitive and confidential information is limited to authorized government employees and legally designated agents, for authorized purposes only.

The following chart reflects several significant federal and state laws, rules and regulations, policies, standards and guidelines that providers doing business with the State must be aware of. Links to further guidance are included. The list is intentionally US-centric, and is not intended to be all-inclusive. Further, since laws, regulations, requirements and industry guidelines change, consulting definitive sources to assure a clear understanding of compliance requirements is critical. Many agencies have additional program compliance requirements that must be considered in addressing compliance. (e.g., DMV Privacy Act, Public Service Law, etc.). Details should be outlined in the Statement of Work prior to engagement of services.

### Significant federal and state laws, regulations, policies, standards, and guidelines

- Criminal Justice Information Services (CJIS) Security Policy
- Federal Educational Rights and Privacy Act (FERPA)
- Federal Information Security Management Act (FISMA)
  - National Institute of Technology Standards
- Gramm-Leach-Bliley Act (GLB) Act
- Health Insurance Portability and Accountability Act (HIPAA)
- Health Information Technology for Economic and Clinical Health Act (HITECH)
- IRS Publication 1075
- Payment Card Industry Data Security Standard (PCI DSS)
- Sarbanes-Oxley Act (SOX)
- Electronic Communications Privacy Act, Stored Communications Act and the PATRIOT Act
- New York State Breach Notification Act <http://www.dhss.ny.gov/ocs/breach-notification/>
- NYS Cyber Security Policy and related Standards <http://www.its.ny.gov/eiso/policies/security>
- NYS Cyber Incident Reporting <http://www.its.ny.gov/incident-reporting>

#### 1.1 Criminal Justice Information Services (CJIS) Security Policy

The CJIS Security Policy represents a shared responsibility between the Federal Bureau of Investigations (FBI) and CJIS System Agencies (CSA) and State Identification Bureau (SIB). For the state of New York, the NY State Police is the CSA, and the Department of criminal justice is the SIB. The policy covers the roles and responsibilities for the FBI and the CSA and service providers covered under a CJIS security addendums and CJSI management control agreements.

CJIS requirements guidance:

- <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center/view>

#### 1.2 Family Educational Rights and Privacy Act (FERPA) - State Ed, Higher Ed

Protects the privacy of student education records. "Education records" are "those records, files documents, and other materials which 1) contain information directly related to a student; and 2) are maintained by an educational institution. Examples: Grades, courses taken, schedule, test scores, advising records, educational services received, disciplinary actions, student identification number, Social Security number, student private email. FERPA applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA requirements guidance:

- <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- Electronic Code of Federal Regulations, Title 34, Part 99



### 1.3 Federal Information Security Modernization Act (FISMA)

FISMA requires each federal agency to develop, document, and implement an effective 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. It is Title III of the E-Government Act of 2002. It affects Federal agencies, and other agencies they share data with.

Key requirements/provisions include:

- Periodic risk assessments.
- Policies and procedures based on these assessments that cost-effectively reduce information security risk and ensure security is addressed throughout the life cycle of each information system.
- Subordinate plans for information security for networks, facilities, etc.
- Security awareness training for personnel.
- Periodic testing and evaluation of the effectiveness of information security policies, procedures, practices and controls, at least on an annual basis.
- A process to address deficiencies in information security policies.
- Procedures for detecting, reporting and responding to security incidents.
- Procedures and plans to ensure continuity of operations for information systems that support the organization's operations and assets.

FISMA requirements guidance:

- <http://csrc.nist.gov/drivers/documents/FISMA-final.pdf>
- <http://www.dhs.gov/federal-information-security-management-act-fisma>
- <http://csrc.nist.gov/groups/SMA/fisma/overview.html>
- <http://csrc.nist.gov/groups/SMA/fisma/>

FISMA requires that federal agencies comply Federal Information Processing Standards (FIPS) developed by the National Institute of Standards and Technology (NIST). Guidance documents and recommendations are issued in the NIST Special Publication (SP) 800-series. Office of Management and Budget (OMB) policy OMB Memorandum M-10-15, directs agencies to follow NIST guidance.

NIST Special Publications <http://csrc.nist.gov/publications/PubsSPs.html>

### 1.4 Gramm-Leach-Bliley Act (GLB) Act of 1999

The GLB Act (also known as the Financial Modernization Act of 1999), includes provisions to protect consumers' personal financial information held by financial institutions. There are three principal parts to the privacy requirements: the Financial Privacy Rule, the Safeguards Rule and pretexting provisions.

GLB affects financial institutions (banks, securities firms, insurance companies), as well as companies providing financial products and services to consumers (including lending, brokering or servicing any type of consumer loan; transferring or safeguarding money; preparing individual tax returns; providing financial advice or credit counseling; providing residential real estate settlement services; collecting consumer debts).

Key requirements/provisions: The privacy requirements of GLB include three principal parts:

- The Financial Privacy Rule: Requires financial institutions to give customers privacy notices that explain its information collection and sharing practices. In turn, customers have the right to limit some sharing of their information. Financial institutions and other companies that receive personal financial information from a financial institution may be limited in their ability to use that information.
- The Safeguards Rule: Requires all financial institutions to design, implement and maintain safeguards to protect the confidentiality and integrity of personal consumer information.
- Pretexting provisions: Protect consumers from individuals and companies that obtain their personal financial information under false pretenses, including fraudulent statements and impersonation.

GLB requirements guidance:- <https://www.ftc.gov/tips-advice/business-center/privacy-and-security/gramm-leach-bliley-act>

## 1.5 Health Information Portability Accountability Act (HIPAA)

HIPAA has two major arms: Privacy and Security. Privacy tends to be a business (non-IT) focus, involving the program, HIPAA Privacy Officer and legal. Security tends to be more IT-focused (though it does cover handling of paper records as well).

Many health agencies have compliance requirements that are more stringent than HIPAA - HIPAA is the baseline. For example, NYS Public Health law has tight requirements regarding AIDS information. The Federal 42 CFR Part 2 guides privacy requirements of substance abuse information. NYS Mental Hygiene law extends HIPAA consent requirements. Accordingly, meeting baseline HIPAA requirements may not be sufficient in all cases.

HHS (Federal Health and Human Services) HIPAA resources and requirements:

- Privacy rule: <https://www.hhs.gov/hipaa/for-professionals/privacy/index.html>
- Security rule: <https://www.hhs.gov/hipaa/for-professionals/security/index.html>

Summarized versions:

- <https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/>

HHS Educational Series bulletins:

- <https://www.hhs.gov/hipaa/for-professionals/security/guidance/guidance-risk-analysis/index.html>
- <https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/administrative/securityrule/security101.pdf> highlights what is required and what is addressable.

AMA summary of violation (HHS Office of Civil Rights (OCR) audits can result in significant fines for not following the rules regardless of the scope of impact from a breach).

- <https://www.ama-assn.org/practice-management/hipaa-violations-enforcement>

## 1.6 Health Information Technology for Economic and Clinical Health (HITECH) Act

The Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted in 2009, promotes the adoption and meaningful use of health information technology. Subtitle D of the HITECH Act addresses the privacy and security concerns associated with the electronic transmission of health information, in part, through several provisions that strengthen the civil and criminal enforcement of the HIPAA rules.

HITECH requirements guidance:

- <http://www.hhs.gov/ocr/privacy/hipaa/administrative/enforcementrule/hitechenforcementiftr.html>

## 1.7 IRS Safeguard Program, Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies and Entities Pub1075 contains specific requirements for safeguarding federal tax information (current revision effective on Jan. 1, 2014).

- <https://www.irs.gov/uac/Safeguards-Program>
- <https://www.irs.gov/pub/irs-pdf/p1075.pdf>
- <https://www.irs.gov/uac/Additional-Requirements-for-Publication-1075>

## 1.8 Payment Card Industry Data Security Standard (PCI DSS)

The PCI DSS is a set of requirements for enhancing security of payment customer account data, developed by the founders of the PCI Security Standards Council, including American Express, Discover Financial Services, JCB International, MasterCard Worldwide and Visa to help facilitate global adoption of consistent data security measures. PCI DSS includes requirements for security management, policies, procedures, network architecture, software design and other critical protective measures. The Council also issued requirements called the Payment Application Data Security Standard (PA DSS) and PCI Pin Transaction Security (PCI PTS). PCI affects retailers, credit card companies, anyone handling credit card data. Currently, PCI DSS specifies 12 requirements, organized in six basic objectives:

Objective 1: Build and Maintain a Secure Retail Point of Sale System.

- Requirement 1: Install and maintain a firewall configuration to protect cardholder data
- Requirement 2: Do not use vendor-supplied defaults for system passwords and other security parameters

Objective 2: Protect Cardholder Data

- Requirement 3: Protect stored cardholder data
- Requirement 4: Encrypt transmission of cardholder data across open, public networks

Objective 3: Maintain a Vulnerability Management Program

- Requirement 5: Use and regularly update anti-virus software
- Requirement 6: Develop and maintain secure systems and applications

Objective 4: Implement Strong Access Control Measures

- Requirement 7: Restrict access to cardholder data by business need-to-know
- Requirement 8: Assign a unique ID to each person with computer access
- Requirement 9: Restrict physical access to cardholder data

Objective 5: Regularly Monitor and Test Networks

- Requirement 10: Track and monitor all access to network resources and cardholder data
- Requirement 11: Regularly test security systems and processes

Objective 6: Maintain an Information Security Policy

- Requirement 12: Maintain a policy that addresses information security

PCI compliance requirements:

- PCI DSS [https://www.pcisecuritystandards.org/security\\_standards/documents.php](https://www.pcisecuritystandards.org/security_standards/documents.php)
- PA DSS [https://www.pcisecuritystandards.org/security\\_standards/documents.php?agreements=pcidss&association=pcidss](https://www.pcisecuritystandards.org/security_standards/documents.php?agreements=pcidss&association=pcidss)
- PCI PTS [https://www.pcisecuritystandards.org/security\\_standards/documents.php](https://www.pcisecuritystandards.org/security_standards/documents.php)

## 1.9 Sarbanes-Oxley Act of 2002 (SOX)

The Sarbanes-Oxley Act is designed to protect investors and the public by increasing the accuracy and reliability of corporate disclosures. It was enacted after the high-profile Enron and WorldCom financial scandals of the early 2000s. It is administered by the Securities and Exchange Commission, which publishes SOX rules and requirements defining audit requirements and the records businesses should store and for how long. It affects U.S. public company boards, management and public accounting firms.

The Act is organized into 11 titles:

1. Public Company Accounting Oversight
2. Auditor Independence
3. Corporate Responsibility
4. Enhanced Financial Disclosures
5. Analyst Conflicts of Interest
6. Commission Resources and Authority
7. Studies and Reports
8. Corporate and Criminal Fraud Accountability
9. White-Collar Crime Penalty Enhancements
10. Corporate Tax Returns
11. Corporate Fraud Accountability

SOX requirement guidance:

- <https://www.sec.gov/about/laws/soa2002.pdf>
- <http://www.soxlaw.com/>
- <https://www.gpo.gov/fdsys/pkg/PLAW-107publ204/content-detail.html>

1.10 The U.S. Electronic Communications Privacy Act,  
The U.S. Stored Communications Act  
The U.S. PATRIOT Act

The Electronic Communications Privacy Act (ECPA) and the Stored Communications Act (SCA) create statutory privacy rights for people's electronic communications stored by a third-party service provider in "electronic," "computer," "temporary" or "intermediate" storage. Certain types of electronic communications (unread mail that is newer than 180 days) may only be obtained by law enforcement from a service provider via a search warrant. Other electronic communications and user information may be more easily obtained by law enforcement from a third party provider by a court order or subpoena. Any communications may be obtained by law enforcement from a third party provider if the end user has provided consent. End users should be careful not to give such consent by clicking through a Terms of Use and/or Privacy Policy or by signing a contract. The PATRIOT Act allows law enforcement to obtain or intercept electronic communications and other end user data from third-party service providers for terrorism investigations using protocols that are less stringent than those that would normally apply.

- U.S. Electronic Communications Privacy Act <https://it.ojp.gov/PrivacyLiberty/authorities/statutes/1285>
- U.S. Stored Communications Act  
<https://www.gpo.gov/fdsys/pkg/USCODE-2010-title18/html/USCODE-2010-title18-partI-chap121.htm>
- U.S. PATRIOT Act  
<https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act>



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### **Appendix G – How To Use the Manufacturer Umbrella Contract - AUTHORIZED USERS Group 73600 – Award 22802 Information Technology Umbrella Contract – Manufacturer Based (Statewide)**

Authorized Users must follow these How to Use the Manufacturer Umbrella Contract procedures, and must adhere to the terms and conditions of the Manufacturer Umbrella Contract (“Contract”) when procuring Products from Award 22802.

This document provides Authorized Users with instructions on how to use the Manufacturer Umbrella Contract. These instructions assume Authorized Users have a working knowledge of procurement methodology.

#### **APPENDIX G, AND ALL SUB-APPENDIXES CAN BE FOUND BY VISITING:**

<https://online.ogs.ny.gov/purchase/snt/awardnotes/7360022802TemplatePageCombo.pdf>



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**Appendix H – MAINTENANCE WARRANTY SERVICE REPORTS**  
**Group 73600 – Award 22802**  
**Information Technology Umbrella Contract – Manufacturer Based (Statewide)**

**PROVIDED UNDER SEPARATE COVER**



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**Appendix I – SALES REPORTS**  
**Group 73600 – Award 22802**  
**Information Technology Umbrella Contract – Manufacturer Based (Statewide)**

**PROVIDED UNDER SEPARATE COVER**

## **Appendix J – Contractor's Insurance Requirements**

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

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

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

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

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Section B-*Insurance Requirements* below.
2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in the Contract, all policies of insurance required by this section shall be written on an occurrence basis.
3. **Certificates of Insurance/Notices.** The Contractor shall provide OGS with a Certificate or Certificates of Insurance, in the form satisfactory to OGS (e.g., an ACORD certificate), after renewal or upon request. Certificates shall reference the Contract number and shall name "The New York State Office of General Services, Procurement Services, Empire State Plaza, Corning Tower, 38th Floor, Albany New York, 12242" as the certificate holder.

Certificates of Insurance shall:

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

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



Except for (i) Data Breach and Privacy/Cyber Liability coverage, (ii) Technology Errors and Omissions, and (iii) Crime insurance coverages, OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractors are requested to refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. **Forms and Endorsements.** For Data Breach and Privacy/Cyber Liability, Technology Errors and Omissions, and certain Crime Insurance coverages (those containing Cyber theft coverage), Contractor shall provide OGS, after renewal or upon request, a Schedule of Forms and Endorsements and, upon request, all Forms and Endorsements, unless otherwise agreed to in the Contract. The Forms and Endorsements shall provide evidence of compliance with the requirements of this Contract. Only original documents or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.
5. **Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.
6. **Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this section at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.
7. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments with the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
8. **Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that Subcontractor.
9. **Waiver of Subrogation.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or subrogation against the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to OGS upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
10. **Additional Insured.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insured: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Additional Insured Endorsements shall be provided with Solicitation response and upon request to:

The New York State Office of General Services  
Procurement Services - 22802  
38th Floor, Corning Tower  
Empire State Plaza

Albany, New York 12242

A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, Contractor shall be obligated to defend and indemnify the above-named additional insured with respect to Commercial General Liability and Comprehensive Business Automobile Liability, in the same manner that Contractor would have been required to pursuant to this section had Contractor obtained such insurance policies.

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

- 11. *Excess/Umbrella Liability Policies.*** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided with Solicitation response and upon request.
- 12. *Notice of Cancellation or Non-Renewal.*** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Contract.
- 13. *Policy Renewal/Expiration.*** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Contract shall be delivered to OGS. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.
- 14. *Deadlines for Providing Insurance Documents after Renewal or Upon Request.*** As set forth herein, certain insurance documents must be provided to the OGS Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:
  - For certificates of insurance: 5 business days
  - For information on self-insurance or self-retention programs: 15 calendar days
  - For additional insured and waiver of subrogation endorsements: 30 calendar days
  - For schedules of forms and endorsements and all forms and endorsements: 60 calendar days

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

- B. Insurance Requirements:** Throughout the term of this Contract, the Contractor shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater.

**PLEASE NOTE – FOR LOT 3 CLOUD AND LOT 4 IMPLEMENTATION ONLY**

Depending upon the risk, Authorized User(s) may require the Contractor to provide additional insurance and/or increased insurance coverages. Authorized User(s) must define these requirements in the Authorized User(s) RFQ. Contractors shall not exceed Contract pricing in response to an Authorized User(s) RFQ.

- 1. Commercial General Liability Insurance:** Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from bodily injury, premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a Contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

Minimum Insurance Coverage	
General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$2,000,000
Damage to Rented Premises	\$50,000
Medical Expenses	\$5,000

Aggregate limits shall apply on a per location basis, or as otherwise agreed to in the Contract. This aggregate limit applies separately to each location at which the insured works.

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

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in any Contract resulting from this Solicitation;
- Defense and/or indemnification obligations, including obligations assumed under any Contract resulting from this Solicitation;
- Cross liability for additional insureds; and
- Explosion, collapse and underground hazards.

- 2. Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies.

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

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

used in connection with performance under the Contract, on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of the Contract.

3. **Data Breach and Privacy/Cyber Liability:** Contractors are required to maintain during the term of this Contract and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the Authorized Users' systems due to the actions of the Contractor which results in unauthorized access to the Authorized User(s) or their data. Said insurance shall be maintained in the following limits:

Data Breach and Privacy/Cyber Liability		
Lot		Minimum Insurance Coverage
Lot 1 – Software		\$1,000,000
Lot 2 – Hardware		\$1,000,000
Lot 3 – Cloud *	Low Risk	\$2,000,000
	Moderate Risk	\$5,000,000
	High Risk	\$10,000,000
Lot 4 - Implementation		\$1,000,000
<p>* See NYS-S14-002 Information Classification Standard or successor available at <a href="https://its.ny.gov/document/information-classification-standard">https://its.ny.gov/document/information-classification-standard</a> for additional information relating to risk categories.</p> <p>Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.</p>		

Said insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property, including but not limited to money and securities.

If the policy is written on a claims made basis, Contractor must submit to OGS an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

4. **Technology Errors and Omissions:** Contractors are required to maintain during the term of the Contract and as otherwise required herein, Technology Errors and Omissions Insurance. Said insurance shall be maintained in the following limits:

Technology Errors and Omissions		
Lot		Minimum Insurance Coverage
Lot 1 – Software		\$1,000,000
Lot 2 – Hardware		\$1,000,000
Lot 3 – Cloud *	Low Risk	\$2,000,000
	Moderate Risk	\$5,000,000
	High Risk	\$10,000,000
Lot 4 – Implementation		\$1,000,000
*See NYS-S14-002 Information Classification Standard or successor available at <a href="https://its.ny.gov/document/information-classification-standard">https://its.ny.gov/document/information-classification-standard</a> for additional information relating to risk categories. Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.		

Said insurance shall provide coverage for damages arising from computer related services including but not limited to the following:

1. Consulting;
2. Data processing;
3. Programming;
4. System integration;
5. Hardware or software development;
6. Installation;
7. Distribution or maintenance;
8. Systems analysis or design;
9. Training;
10. Staffing or other support services; and
11. Manufactured, distributed, licensed, marketed or sold cloud computing services.

The policy shall include coverage for third party fidelity including cyber theft.

If the policy is written on a claims made basis, Contractor must submit to OGS an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

5. **Crime Insurance:** Contractors are required to maintain during the term of the Contract and as otherwise required herein, Crime Insurance. Said insurance shall be maintained in the following limits:

Crime Insurance		
Lot		Minimum Insurance Coverage
Lot 1 – Software		\$2,000,000
Lot 2 – Hardware		\$2,000,000
Lot 3 – Cloud *	Low Risk	\$2,000,000
	Moderate Risk	\$5,000,000
	High Risk	\$10,000,000
Lot 4 - Implementation		\$2,000,000

\*See NYS-S14-002 Information Classification Standard or successor available at <https://its.ny.gov/document/information-classification-standard> for additional information relating to risk categories.  
Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.

Crime Insurance on a “loss sustained form” or “loss discovered form” providing coverage for Third Party Fidelity.

In addition to the coverage above:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Contractor's insurer as a result of this Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Contractor as a result of this Contract.
- The policy shall include coverage for third party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an Authorized User and their officers, agents, and employees as “Loss Payees” for all Third Party coverage secured. An Endorsement naming as Loss Payees “The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an Authorized User and their officers, agents and employees” shall be provided upon request. A blanket Loss Payee Endorsement evidencing such coverage is also acceptable. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

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

Proof of Compliance with the Workers' Compensation Coverage Requirements:

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

Proof of Compliance with the Disability Benefits Coverage Requirements:

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

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

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## Appendix K – Contractor How to Use

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Contractors should follow these Contractor How to Use procedures and must adhere to the terms and conditions of the Manufacturer Umbrella Contract (“Contract”) when selling Products under Award 22802.

This document provides Contractors with instructions on how to use the Manufacturer Umbrella Contract.

For any questions or concerns regarding the Contract, Contractors can contact the following mailbox:

[MfrUmbrella.Contractors@ogs.ny.gov](mailto:MfrUmbrella.Contractors@ogs.ny.gov)

**The Office of the State Comptroller retains the right to post-audit any procurement, including those executed from this Contract.**

### Section 1. COMeT PORTAL

#### 1.1 GENERAL INFORMATION

In 2021 the Office of General Services (OGS) implemented COMeT (Centralized Online Management for e-Procurement Tool). This tool allows Contractors to manage their pricelist, contact information, and authorization of Reseller(s) / Sales Agent(s), as well as respond to RFQs, through an online portal. Contractors receive log-in information for the portal after Contract Award. Upon execution of the Contract, an e-mail will be sent to the contacts listed on the Contractor’s Appendix D – Contractor and Reseller Information.

The COMeT portal can be found here: <https://ogs.ny.gov/comet>

#### 1.2 ACCOUNT ASSISTANCE

Contractors needing assistance with their COMeT accounts can contact the following mailbox:

[MfrUmbrella.Contractors@ogs.ny.gov](mailto:MfrUmbrella.Contractors@ogs.ny.gov). Please include “COMeT Assistance Needed” in the subject line.

### Section 2. CONTRACT MODIFICATIONS

#### 2.1 GENERAL INFORMATION

Contractors may submit requests to update their pricelists, contact information, and Reseller/Sales Agent information. Requests may also be submitted to add a Lot or increase the Contractor’s Lot 3 – Cloud risk level. Please see Appendix C – Contract Modification Procedure for more detailed information on these requests.

#### 2.2 COMPLETING MODIFICATIONS IN COMeT

Updates to pricelists, contact information and Reseller/Sales Agent information must be submitted in the COMeT portal, unless OGS expressly allows an alternative. Instructions on how to submit a contract modification request through COMeT are available here: <https://comet.ogs.ny.gov/SignIn>. To access the instructions:

1. Select the drop-down arrow next to “Resources”
2. Select “Templates and Guides”
3. Instructions for using COMeT, as well as the necessary templates, can be found here.



## **Section 3. RESPONDING TO REQUEST FOR QUOTES (RFQs) AND REQUESTS FOR INFORMATION (RFIs)**

### **3.1 GENERAL INFORMATION**

Authorized Users may distribute Requests for Quotes (RFQs) and Requests for Information (RFIs) either via e-mail or through the COMeT portal. Every individual needing to access the portal to view or respond to RFQs and RFIs must request access from OGS when first visiting the portal. This applies both to brand new users of the portal as well as to contractors that currently have portal access for contract modification submissions.

Instructions on how to request access to the RFQ portal, as well as how to respond to an RFQ or RFI distributed through COMeT, are available here: <https://comet.ogs.ny.gov/SignIn>. To access the instructions:

1. Select the drop-down arrow next to “Resources”
2. Select “Templates and Guides”
3. The RFQ instructions can be found here.

## **Section 4. REQUESTS FOR CONTRACTOR NAME CHANGES AND ASSIGNMENTS**

### **4.1 GENERAL INFORMATION**

OGS must be notified before any of the below changes occur:

- Contractor changes its name
- Contractor wishes to assign its contract to a different vendor
- Contractor wishes to assign contract to different vendor who already holds a contract with OGS in the same suite of contracts
- Contractor changes its legal entity type (e.g. Corporation to LLC)

When informing OGS of any of the above changes, the Contractor must indicate if the Contractor’s FEIN is staying the same or if it is changing.

### **4.2 REQUIRED DOCUMENTS**

Once OGS receives notification from a Contractor that any of the changes described in Section 4.1 above have occurred, OGS will review and determine if additional information is needed. To expedite the name change/contract assignment process, Contractors must submit a letter of explanation. It is requested that this letter be sent in with Contractor’s initial request.

When applicable, the letter of explanation must be on the Contractor’s company letterhead describing the transaction necessitating the requested assignment (e.g., asset sale, acquisition, merger or other reorganization) and all documentation relating to the transaction (e.g. filings with state entities; asset sale, acquisition, Certificate of Conversion, merger or other reorganization agreements). The Contractor may identify any confidential, trade secret, or proprietary information in the documents in accordance with Appendix B, Confidential/Trade Secret Materials.

Based on the information provided by the Contractor, OGS will determine if a name change or contract assignment is appropriate. Additional documentation may be requested from the Contractor.

#### **4.2.1 INSURANCE**

Insurance documentation in accordance with Appendix J – Contractor’s Insurance Requirements must be provided in the new name/Assignee’s name.

#### **4.3 FINALIZING AND APPROVING THE NAME CHANGE OR CONTRACT ASSIGNMENT**

Once all required documentation has been submitted, the name change or contract assignment can be finalized. In the case of a contract assignment, OGS will send the Contractor a Consent to Assignment form to be executed.

Note: OGS has its own Consent to Assignment forms. OGS will not sign forms provided by the Contractors.

Once the name change or contract assignment has been finalized, OGS will post an announcement to the contract website.

### **Section 5. ADMINISTRATIVE FEE**

As indicated in Contract Section 2.76 - CONTRACT ADMINISTRATIVE FEE, awarded Contractor(s) are required to pay an Administrative Fee in the amount of point seven five percent (0.75%) for all sales generated from this Contract, or any resulting agreement. Submission details including address and format will be provided in this section, no less than 1 month prior to fee start date of January 1, 2023.

IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment 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 Fourth Amendment being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Fourth Amendment, Appendix A *Standard Clauses For New York State Contracts*, (October 2019) (Appendix B *General Specifications* (September 2021) 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

Signature: M Lang  
Printed Name: MAX LONG  
Title: SVP NORTH AMERICA.  
Date: 11.18.2022  
Company Name: NETAPP INC.  
Federal ID: 77-0307520  
NYS Vendor ID: 1000009697

THE PEOPLE OF THE STATE OF NEW YORK,  
ACTING BY AND THROUGH THE COMMISSIONER  
OF GENERAL SERVICES

Signature: [Signature]  
Printed Name: Daniel DeBerardinis  
Title: Team Leader  
Date: 11/29/2022  
Office of General Services

**NOTICE:** This Fourth Amendment becomes effective once OGS approves. OGS will then post a notification to its website in the form of a Contract Award Notification Update.

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF Washington }

: ss:

COUNTY OF King }

On the 18th day of November in the year 2022, before me personally appeared Maxwell Long, 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

3060 Olsen Pk. ; San Jose, CA 95128

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 SVP of North America, 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.

[Signature]

Signature of Notary Public

Notary Public Registration No. 22027667



State WA