

**CENTRALIZED CONTRACT FOR THE ACQUISITION  
OF  
MICROSOFT PRODUCTS (STATEWIDE)**

**Custom Microsoft Business Agreement**

THIS CONTRACT (hereinafter “Contract,” ~~or~~ “Centralized Contract,” ~~or~~ “Agreement”) is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter “OGS”) whose principal place of business is the 41<sup>st</sup> Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 and Microsoft Corporation (hereinafter “Contractor” or “Microsoft”), with offices at One Microsoft Way, Redmond, WA 98052. The State of New York and Contractor are collectively referred to as the “Parties.”

**WHEREAS**, the State of New York and Contractor are parties to a certain Custom Business Agreement for State of New York (Contract No. PS66034) which establishes an overall licensing framework and applicable terms and conditions governing the acquisition of Microsoft Products by Authorized Users; and

**WHEREAS**, said Contract No. PS66034 will expire by its terms on           , July 31, 2018; and

**WHEREAS**, because Authorized Users continue to maintain a substantial install base of Microsoft Products, and may need additional such Products, it is in the best interest of the State of New York and Authorized Users to establish this new Centralized Contract (“Contract”) to succeed Contract No. PS66034; and

**WHEREAS**, Contractor does not sell directly to government customers under the Program Agreements hereunder, but rather sells exclusively through its authorized Reseller network, and therefore it does not set the actual price paid by governmental customers. In order to allow “comparison shopping” it provides a “reference price”; and

**WHEREAS**, OGS is the New York State agency authorized under Article 11 of the State Finance Law to establish centralized contracts to meet the requirements of Authorized Users; and

**WHEREAS**, it is the intention of OGS to issue a competitive solicitation to acquire the services of one or more authorized Microsoft Resellers to, among other things, fulfill orders for Microsoft Products pursuant to the overall licensing framework and applicable terms and conditions set forth in this Contract; and

**WHEREAS**, pursuant to this Contract the Contractor is willing to sell its Products to Authorized Users through its authorized Reseller network; and

**WHEREAS**, OGS provided notification of the State of New York's intention to enter into a single source contract with Contractor by placing a notice in the February 15, 2018 edition of the New York State Contract Reporter.

**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:

## **PART 1. SCOPE OF AGREEMENT**

**Effective Date.** The effective date of this Contract shall be \_\_\_\_\_, August 1, 2018.

The OGS contract number (unique identifier) is PS67984.

**1.1 Scope.** This Contract, which includes all of the attached Appendices, Program Agreements, Enrollments, Affiliate Registration Form and other documents, establishes the overall licensing framework and the applicable terms and conditions. Under the Program Agreements, Authorized Users may license Products by entering into Enrollments and/or Affiliate Registration Forms and placing orders with the Reseller. The Parties acknowledge the actual Products available for acquisition by an Authorized User will be set forth in the contract between the State of New York and a Reseller that results from a separate competitive procurement by OGS to establish one or more Resellers.

Contractor asserts, and the State of New York acknowledges that (1) no direct payment shall be made by an Authorized User directly to Contractor under this Contract, and (2) under this Contract, Contractor does not engage in direct sales of its Products with an Authorized User pursuant to this Contract.

**1.2 Acquiring Contractor Product and Payments/Pricing.** An Authorized User will acquire Contractor Product pursuant to the terms and conditions of this Contract through a separate contract that will be established via a separate competitive procurement by OGS to engage one or more qualified Microsoft Resellers. The Reseller(s) and the Enrolled Customer will determine the Enrolled Customer's actual price and payment terms.

The price levels which Contractor will use to invoice the Reseller(s) who directly sell Products pursuant to the terms of this Contract are as follows:

- For State and Local Government Enrolled Customers under the Enterprise Agreements Agreement and the Select Plus Program Agreements Agreement, price level will be Level D.
- For Education Enrolled Customers under the Select Plus Agreements Agreement, price level will be level A.
- For Education Enrolled Customers under the Campus and School Agreement, price levels will vary according to the number of Knowledge Worker and Student users. Education Enrolled Customers may purchase Education Platform Products and Additional Products.

There is no price level for Additional Products (i.e. there is only one price point for each Additional Product). The following are the Education price levels for Education Platform Products:

<b>Knowledge Worker Option</b>	
<b>Organization Wide Count</b>	<b>Price level (Only Applicable For Education Platform Products)</b>
250	A
3,000	B
10,000	C
25,000	D

<b>Student Option</b>	
<b>Student Count</b>	<b>Price level (Only Applicable For Education Platform Products)</b>
250	A
3,000	B
10,000	C
25,000	D

Pricing to the Reseller for Additional Products will be based on Contractor’s published price list.

**1.3 Placing Orders through Reseller.** Orders under an Enrollment or Affiliate Registration Form will be made to the Reseller. Microsoft will invoice the Reseller according to the terms in the applicable Enrollment or Affiliate Registration Form and pursuant to the applicable “Net Reseller Cost” for the SKUs on the invoice. The Reseller and the Enrolled Customer will determine the Enrolled Customer’s actual price and payment terms.

Price levels set forth in Section 1.2 shall not be increased during the term of the Contract, but Contractor may decrease Price Levels. The Parties acknowledge that Reference Prices may change on a monthly basis. Contractor will confirm to OGS, upon request, the percentage changes in Reference Prices. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, Contractor’s prices for Resellers

for each Product or Service ordered under an Enrollment (Enterprise Enrollment, Enterprise Subscription Enrollment, Enterprise Server and Cloud Enrollment or Enrollment for Education Solutions) will be fixed throughout the applicable initial or renewal Enrollment term. Contractor's prices to Resellers are reestablished at the beginning of the renewal Enrollment term.

#### **1.4 Change of Reseller.**

(1) Change of Reseller at Contract ~~Renewal~~renewal:

- Change in Reseller must be requested by OGS.
- OGS will notify Microsoft of new Reseller.
- Microsoft will work with new Reseller to ensure they receive all applicable Program Agreements, Enrollments and Affiliate Registration Forms.
- All billings under Contract renewal will be issued to and paid by the new Reseller.

(2) Change of Reseller During Contract Term:

- Change in Reseller must be requested by OGS.
- Requires adequate notice from OGS to the Contractor.
- Change in Reseller will be made effective 90 days from the OGS signature date on the Contractor's Change of Channel Partner (COCP) Form.
- Change in Reseller can be made effective in less than 90 days from the OGS signature date on the Contractor's Change of Channel Partner (COCP) Form, but requires both Resellers' signed agreement to waive 90-day timeframe.
- The COCP Form must be sent to Contractor no later than 10 calendar days effrom the OGS signature date.
- All billings due will be paid/issued to the previous Reseller if they are due prior to the effective date of the COCP Form.
- All billings will be paid/issued to the new Reseller if they are due on or after the effective date of the same COCP Form.

**1.5 Indefinite Delivery/Indefinite Quantity.** To the extent applicable to this Contract, Contractor acknowledges that the separate contract ("Reseller Contract") between the State of New York and a Microsoft Reseller authorized to accept orders pursuant to the Contractor's licensing framework and terms and conditions set forth therein, will be an indefinite delivery/indefinite quantity contract ("IDIQ"). For purposes of clarity, the IDIQ Reseller Contract, is expressly agreed and understood to be made for only the quantities, if any, actually ordered during the term thereof by Authorized Users. Contractor further acknowledges that OGS, in its sole discretion, has the right to determine which Contractor Products may or may not be purchased at any given time under the Reseller Contract, and that no guarantee to Contractor of any quantity of orders or sales of its Products is implied or given.

**1.6 Centralized Contract Amendment.** This Contract and any of its Appendices, Program Agreements, Enrollments, Affiliate Registration Forms and other attachments may be amended at the mutual agreement of the Parties to, among other things,

incorporate new and other offerings, make Price Level revisions, modify terms and conditions and delete items. If Contractor requests amendment of a Program Agreement, Enrollment or Affiliate Registration Form and the Parties do not reach mutual agreement, such amended Program Agreement, Enrollment or Affiliate Registration Form cannot be used under the Contract.

During the term of this Contract OGS reserves the right to consider amendments which are not specifically covered by the terms of the Contract, but are judged to be in the best interest of the State of New York. OGS, an Authorized User, or the Contractor may suggest amendments. The Parties agree to work cooperatively to discuss any amendments, which may include addressing changes in law, regulation, security policy or changes in Contractor's business model. OGS may request Contract amendments by notifying Contractor's Contract Administrator, and Contractor may request Contract amendments by contacting the OGS Contract Manager for this Contract. The Parties agree to confer no less frequently than every six months for the purposes of discussing this Contract, including the need for any amendments thereto.

Program Updates: Contractor may make material changes to a program that will make it necessary for Customer to enter into a new Program Agreement or for an Enrolled Customer to enter into a new Enrollment at the time of an Enrollment renewal. Any new Program Agreements or Enrollments to be used for this purpose shall be mutually agreed upon by Contractor and the State of New York and added to this Contract through an amendment before being presented to an Affiliate or Enrolled Customer.

**1.7 Out-of-Scope Work and Products.** The Parties agree that the following are expressly excluded from the scope of this Contract unless the Parties agree to amend the scope of this Contract:

- Hardware
- Consulting services, which includes deliverable and hourly-based
- Technical support services, other than technical support services included with the purchase of the Product
- Premier support services
- Supplies
- Development or customization work
- Systems or projects

The Parties also agree that no public works or building services work can be provided by the Contractor under this Contract. Further, the Parties agree that no remanufactured, recycled, recyclable or recovered materials can be provided by the Contractor under this Contract.

**1.8 Definitions.** The terms used in this Contract shall be defined in accordance with Appendix B (Section 2 Definitions). In addition, the following definitions shall apply. Additional definitions are set forth in the attached Program Agreements.

**“Affiliate”** (which for purposes of this Contract shall define the scope of Authorized Users purchasing hereunder) means

A. with regard to Customer

- i) any New York government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer;
- ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of New York and located within New York state jurisdiction and geographic boundaries; and
- iii) any other entity in New York expressly authorized by the laws of New York to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and

B. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft

C. For the purpose of Academic Program Agreements, Affiliate shall have the following definition:

- a) If Institution is a non-public entity, then, with regard to Institution, "Affiliate" means any Qualified Educational User (as defined in Appendix ~~FE~~, Qualified Educational User Definition) that controls, is controlled by, or is under common control with Institution.
- b) If Institution is a public entity, then, with regard to Institution, "Affiliate" means, any Qualified Educational User that is:
  - (i) within the administrative control or supervision of Institution, or
  - (ii) expressly authorized by Institution to purchase as its affiliate.
- c) with regard to Microsoft, any entity that controls, is controlled by, or is under common control with Microsoft.

For purposes of this definition, **except with regard to hospitals, healthcare systems, and research laboratories** (collectively, “Healthcare Institutions”), “control” means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity. For Healthcare Institutions, “control” means that Institution is the sole owner of the Healthcare Institution or the only entity with the power to direct the management and policies of the Healthcare Institution’s day-to-day operations.

**“Affiliate Registration Form (ARF)”** means the Select Plus Affiliate Registration Form incorporated in Appendix C which may be executed by a Registered Affiliate.

**“Available”** means Microsoft has made Licenses for that Product available in the Product Terms for ordering under a particular licensing program.

**“Consortium”** means an organization of qualified educational users that enrolls in a Campus & School Agreement on behalf of its individual members.

**“Customer”** (1) when used in this document, “the State of New York”; (2) when used in the Enterprise Agreement Program Agreement State and Local, the Select Plus License Program Agreement State and Local, and the Academic Select Plus Agreement, “the State of New York”; (3) when used in the Enterprise Enrollment, Enterprise Subscription Enrollment, Server and Cloud Enrollment, and the Select Plus Affiliate Registration Form, the “Enrolled Customer” as defined below; and (4) when used in the Product Terms and the Online Services Terms, the “Enrolled Customer” as defined below.

**“Customer Data”** means all data, including all text, sound, video, software, or image files that are provided to Microsoft by, or on behalf of, Enrolled Customer through Enrolled Customer’s use of the Online Services. Log files and telemetry and other information generated by Microsoft are not Customer Data. However, all data (including all text, sound, video, software, or image files that are provided to Microsoft by, or on behalf of, Enrolled Customer through Enrolled Customer’s use of the Online Services) that is within such log files or telemetry information will at all times be protected by Microsoft pursuant to the terms and conditions of this Contract and will not be shared with third parties without the express permission of the Enrolled Customer.

**“Enrolled Customer”** means an Affiliate that has entered into an Enrollment or Affiliate Registration Form. Please note that an Enrolled Customer could be referred to as an Enrolled Affiliate or Registered Affiliate in the Program Agreements, Enrollments and Affiliate Registration Forms, or as a Participant in the Consortia Amendment to the Campus and School Agreement.

**“Enterprise”** shall mean with respect to the Enterprise Agreement Program Agreement only, the Enrolled Affiliate and the Affiliates it chooses on its Enrollment to include in its enterprise.

**“Fixes”** means Product fixes, Error Corrections, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Enrolled Customer to address a specific issue.

**“Government Community Cloud Services”** means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

**“Hotfixes”** means a Fix that Contractor makes available to a specific Authorized User (pursuant to a professional services agreement) to address a specific problem that is unique to said Authorized User. Sometimes Contractor makes the hotfix available to other customers if they report the same problem. If a large number of customers report

the same problem, the hotfix can get elevated to a General Distribution Release (Service Pack).

**“Institution”** means the entity that is (1) a Qualified Educational User (as defined in Appendix ~~FE~~, Qualified Educational User Definition) as of the effective date of this ~~agreement~~Contract that has entered into ~~this agreement~~a Campus and School Agreement or Academic Select Plus Agreement with Microsoft or (2) an Affiliate of Institution that has entered into an Enrollment under ~~this agreement~~a Campus and School Agreement or an Affiliate Registration Form under an Academic Select Plus Agreement. If Institution is a school district, “Institution” includes all participating schools in the same district.

**“L&SA”** means a License and Software Assurance for any Product ordered.

**“Licensing Site”** means <http://www.microsoft.com/licensing/contracts> or a successor site.

**“May”** denotes the permissive in a contract clause or specification. Also see “Will.”

**“Must”** denotes the imperative in a contract clause or specification. Also see “Shall.”

**“NYS Holidays:** refers to the legal holidays for State Employees in the Classified Service of the Executive Branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day. A copy of the NYS Holidays for 2018 is available at [https://www.cs.ny.gov/attendance\\_leave/2018\\_legal\\_holidays.cfm](https://www.cs.ny.gov/attendance_leave/2018_legal_holidays.cfm)

**“Net Reseller Cost”** means the confidential price Contractor charges its Reseller(s) for a SKU.

**“New York State Procurement Services (Procurement Services)”** shall mean a division of the New York State Office of General Services which issues centralized, statewide contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such contracts.

**“Online Service”** means the Microsoft-hosted services identified in the Online Services section of the Product Terms, and for which certain applicable terms are included in the Online Services Terms.

**“Online Services Terms”** means the additional terms that apply to Enrolled Customer’s use of Online Services published on the Licensing Site and updated from time to time.

**“Personally Identifiable Information (PII)”** means any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of



birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

**"Product"** means all products identified in the Product Terms, such as all software and Online Services.

**"Product Terms"** means the document which describes the availability of Products through the Microsoft Volume Licensing Programs (previously conveyed through the Product List), as well as the use rights for software Products (previously conveyed through the Product Use Rights) published by Microsoft from time to time on the Licensing Site.

**"Program Agreements"** shall mean the documents attached as Appendix C, which contain terms and conditions that apply solely to Enrollments and Affiliate Registration forms made pursuant to the Contractor's License programs to which they apply. The Program Agreements that are included herewith, as of the effective date, are as follows:

- Enterprise Agreement Program Agreement
- Select Plus Agreement Program Agreement, (State and Local)
- Academic Select Plus Program Agreement}
- Campus and School Agreement Program Agreement

The Enrollments and Affiliate Registration Forms which apply to the Program Agreements are also attached as part of Appendix C.

**"Product Use Rights"** means the now-obsolete document which preceded both the Product Terms and Online Services Terms.

**"Reference Price"** shall mean the non-confidential price Microsoft uses to represent the relative prices of one SKU vs. another, or between a discounted vs. undiscounted SKU. For clarity:

- Reference Price is higher than Net Reseller Cost, by an amount which is confidential between Microsoft and its Resellers.
- Reference Price is proportionate to Net Reseller Cost. So, for example, subject to rounding error, an X% reduction in Reference Price shall correspond to an X% reduction in Net Reseller Cost.

Microsoft does not set an Authorized User's price or payment terms. All such prices and payment terms must be agreed separately between Reseller and the Authorized User (or the State or New York on behalf of Authorized Users).

**"Regional Information Centers or BOCES"** as used in the Consortia Amendment means Boards of Cooperative Educational Services (BOCES) which are established pursuant to New York State Education Law §1950. A BOCES may provide any educational service that is requested by two or more component districts and approved

by the commissioner of education according to need and practicality in a regional context. There are currently 37 BOCES in New York State.

Regional Information Centers (RICs) are organized under the Board of Cooperative Educational Services (BOCES) and serve several BOCES within their region. The RICs make a wider range of technology services available to school districts, no matter the size of the district. These relationships increase the buying power of a district and promote consistent technical standards. There are currently 12 RICs in New York State, as follows: Central New York (CNY) RIC; Eastern Suffolk (SUFF) RIC; EduTech RIC; Greater Southern Tier (GST) RIC; Lower Hudson (LH) RIC; Mid Hudson (MH) RIC; Mohawk (Mo) RIC; Monroe RIC; Nassau RIC; Northeastern (NE) RIC; South Central (SC) RIC; and Western New York (WNY) RIC.

**“Reseller”** means a large account reseller authorized by Microsoft to resell Product and Software Assurance under this Contract.

**“Service Level Agreement”** means the document specifying the standards Microsoft agrees to adhere to and by which it measures the level of service for an Online Service. The Service Level Agreement applicable to an Authorized User’s use of an Online Service is the one posted to the Licensing Site at the time such Authorized User initiates or renews its subscription License, in accordance with the terms and conditions therein.

**“Shall”** denotes the imperative in a contract clause or specification. Also see “Must.”

**“SKU”** (also known as Stock Keeping Unit) shall mean the part number that Contractor assigns to a Product. For clarity, a single Product may have more than one SKU associated with it, e.g., different SKUs for education vs. non-education pricing, or different SKUs for promotions, Software Assurance vs. License and Software and Assurance vs. License Only, etc.

**“Software Assurance”** means an annuity offering that provides new version rights and other benefits for Products as described in the Product Terms.

**“Subscription License”** means, for purposes of the Enrollment, a fixed term license that expires when the Enrollment expires or is terminated unless the buyout option is exercised. Any License ordered under the Enrollment is a Subscription License, even if it is otherwise designated on the purchase order.

**“use”** or **“run”** means to copy, install, use, access, display, run or otherwise interact with.

**“Use Rights”** means (1) in the case of Products other than Online Services, the use rights or terms of service identified in the Product Terms, and (2) in the case of Online Services, the Online Services Terms. The Use Rights supersede the terms of any end user license agreement that accompanies a Product.

**“Will”** denotes the permissive in a contract clause or specification. Also see “May.”

For clarity, the definitions of “OGS” and “State” in Appendix B shall apply only to the language in Appendix B, as amended.

## **PART 2. CONTRACT ADMINISTRATION**

**2.1 Contract Administrator.** Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Contract Administrator shall be set forth in **Appendix E, ~~Contractor~~D, Contract Administration**.

## **PART 3. RESPONSIBILITIES**

**3.1 Internet Access To Contract & Pricing Information.** Access by Authorized Users to Contract terms and pricing information shall be made available and posted on the ~~Internet~~internet by OGS. Contractor does not currently post the Contract on its ~~Internet~~internet site.

**3.2 Authorized User Determination Of Compliance With Statutory And Regulatory Requirements.** It is the responsibility of each Authorized User to evaluate the Contract offerings and determine if a Product complies with its statutory and regulatory requirements prior to acquisition. The Authorized User is responsible for determining and understanding all the terms and conditions that make up its agreement with Microsoft for the Products purchased pursuant to the terms of this Contract. The Authorized User's agreement with Microsoft will include the terms and conditions of this Contract, the applicable Program Agreement, Enrollment or Affiliate Registration Form, the Product Terms, the Online Services Terms, as applicable, any applicable Service Level Agreements (SLAs) and any additional Amendments, forms or schedules attached and made a part of the Program Agreement or Enrollment or Affiliate Registration Form. Authorized Users are advised to print off and maintain all applicable documents making up their agreements with Microsoft for future reference.

Contractor shall provide Contractor-specific available information, as appropriate, to the Authorized User in order to facilitate the Authorized User's determination as to whether a Product complies with the Authorized User's statutory and regulatory requirements, and to facilitate the Authorized User's understanding of the terms and conditions making up its agreement with Microsoft for the Product. This includes, but is not limited to, Microsoft's data protection and privacy protocols and the applicable Product Terms, Online Services Terms and SLAs.

Contractor shall also assist the incumbent Reseller, OGS, Authorized Users and any successor Reseller(s) with the efficient and timely migration of any Enrollments or Affiliate Registration Forms to a new Reseller.

## **PART 4. TERMS AND CONDITIONS**

**4.1 Term.** Based on Customer's request, this Contract and the Program Agreements incorporated herein (Enterprise Agreement, Campus and School Agreement, SLG Select Plus Agreement or Academic Select Plus Agreement) will remain in effect for sixty (60) full calendar months, unless terminated by either party as described in Termination (Appendix B Section 43 as amended by Section 4.6, Appendix B Modifications, of this Contract). The term for an Enrollment or Affiliate Registration Form will be stated in the

applicable Enrollment or Affiliate Registration Form. The Parties acknowledge that upon the termination or expiration of this Contract, new Enrollments or Affiliate Registration Forms may no longer be signed, but that Enrollments or Affiliate Registration Forms signed prior to such termination or expiration will continue to incorporate the terms of this Contract through the Enrollment or Affiliate Registration Form's natural expiration. The Parties further acknowledge that due to limitations in Contractor's systems for tracking expiration dates of Master Business Agreements and Program Agreements, the expiration dates reflected in Contractor's systems may not reflect actual expiration dates.

**4.2 Short Term Extension.** This section shall apply in addition to any rights set forth in Section 23 of Appendix B (Contract Term – Extension). In the event a replacement Contract has not been issued:

- (a) The term of this Contract, Enterprise Agreement Program Agreement, and Campus and School Agreement Program Agreement hereunder may be extended unilaterally upon OGS' request (which shall not unreasonably be denied) for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. The Parties will execute a written Amendment, to be provided by Microsoft and subject to OGS approval, to memorialize such extension. For clarity, the term of each Enrollment is not extended automatically by such an extension, but during the applicable extension period: (i) new Enrollments (each with their own typically 3-year term) may be executed; and (ii) Enrollments which expire prior to the end of the extension period may be renewed for full renewal terms.
- (b) With the concurrence of the Contractor, the above-referenced extension(s) may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim. The Parties will execute a written Amendment, to be provided by Contractor and subject to OGS approval, to memorialize such extension.
- (c) The Parties acknowledge that the term of the Select Plus Program Agreement (including the education version thereof), including but not limited to Software Assurance coverage periods, may only be extended in Microsoft's systems by increments that are multiples of 12 months. Microsoft will agree upon OGS' request and provide an amendment (subject to OGS approval) for the purpose of memorializing a 12-month extension. For clarity, OGS may instruct the State of New York's Reseller to restrict acceptance of new Purchase Orders from Authorized Users to a shorter period (e.g. 30 days). Software Assurance (including all Software Assurance Benefits, such as new version rights) purchased during such shorter period shall be for a 12 month period and Contractor shall invoice Reseller for 12 months of Software Assurance.

**4.3 Contract Documents/Conflicts in Terms.** This Contract consists of: (1) this document with Appendices A (Standard Clauses For New York State Contracts - January 2014 version); B (Office of General Services General Specifications - April 2016 version), as modified by Section 4.6 of this document; C (Program Agreements, Enrollment Forms and Affiliate Registration Form), which is comprised of the Enterprise Agreement with the Enterprise Enrollment, Enterprise Subscription Enrollment, Server and Cloud Enrollment, the Select Plus Agreement State and Local with the Select Plus Affiliate Registration Form, the Academic Select Plus Agreement with the Select Plus Affiliate Registration

Form, the Campus and School Agreement with Enrollment for Education Solutions and FOR USE BY BOCES OF COOPERATIVE EDUCATIONAL SERVICES (“BOCES”) ONLY, a Consortia Amendment, Participation Agreement and Consortia Participation Form; D (~~CJIS Enrollment Amendment~~); ~~E (Contractor~~Contract Administration); ~~FE~~ (Qualified Educational User Definition); and the Microsoft Business Associate Agreement described in the Online Services Terms; (2) the Online Services Terms, subject to periodic change except as set forth in this Contract (including Program Agreements); (3) the Product Terms, subject to periodic change except as set forth in this Contract (including Program Agreements); (4) any Enrollment or Affiliate Registration Form entered under this Contract; and (5) any order submitted under this Contract. In the event of a conflict between the terms and conditions in any of the documents identified above, such conflict shall be resolved by giving precedence in the following order:

1. Appendix A – Standard Clauses For New York State Contracts (January 2014 version)
2. This document
3. Appendix B – Office of General Services General Specifications (April 2016 version)
4. Appendix ~~FE~~ – Qualified Educational User Definition
- ~~5. Appendix D – CJIS Enrollment Amendment~~
- ~~6. 5.~~ Appendix C – Program Agreements, Enrollment Forms, Affiliate Registration Forms and FOR USE BY BOCES ONLY, a Consortia Amendment, Participation Agreement, and Consortia Participation Form
- ~~6. 7.~~ Online Services Terms
- ~~8. 7.~~ Product Terms
- ~~9. the 8.~~ Microsoft Business Associate Agreement described in the Online Services Terms
- ~~9. 10.~~ Any orders
- ~~11. 10.~~ Appendix ~~E – Contractor~~D – Contract Administration

Collectively, the foregoing are referred to as the “~~Agreement~~” or “Contract”.

**4.4 APPENDIX A.** Appendix A, Standard Clauses For New York State Contracts, dated January 2014, is attached hereto and made a part of this Contract.

**4.5 APPENDIX B.** Appendix B, Office of General Services General Specifications, dated April 2016, is attached hereto and made a part of this Contract, subject to the amendments set forth in section 4.6, below.

**4.6 APPENDIX B MODIFICATIONS.** The following Appendix B clauses are hereby modified, as amended below, for the purposes of this Contract:

**A. The definition of “Contract” in subsection (f) of Section 2, Definitions** is hereby deleted.

**B. The definition of “Licensed Software” in subsection (o) of Section 2, Definitions** is amended and restated as follows:

“Licensed Software” shall mean software that is (a) procured by Authorized Users and (b) licensed to an Authorized User by Contractor under the Contract. Contractor may provide licenses on either perpetual and/or subscription licenses, at Contractor’s option, in accordance with the terms and conditions of the Contract.

Licensed Software:

- Shall include any Fixes, upgrades, enhancements or new releases an Authorized User is entitled to receive pursuant to the terms and conditions of the Contract.
- Shall not include Hotfixes, workarounds, patches, programs, code, data conversion, custom programming, or other service-related deliverables provided pursuant to a separate agreement for professional services.

**C. The definition of “Products” set forth in subsection (v) of Section 2, Definitions, is hereby deleted.**

**D. The definition of “Purchase Order” set forth in subsection (w) of Section 2, Definitions, is hereby amended and restated, as follows:**

**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). Each Authorized User’s form of Purchase Order will be issued to a Reseller by the Authorized User.

**E. The definition of “Virus” in subsection (ll) of Section 2, Definitions is hereby amended and restated, as follows:**

**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, that allows data or metrics to be copied, redirected, or modified without the express consent of the Authorized User. Collection and redirection of metadata or modification of metrics by Contractor related to contracted services shall not be considered a Virus.

**F. Sections 3 (International Bidding), 4 (Bid Opening) and 5 (Late Bids) are deleted.**

**G. Section 6 (Confidential/Trade Secrets) is deleted and replaced with the following language:**

**Confidential/Trade Secret Materials.** This provision is subject to NYS Freedom of Information Law (Public Officers Law Article 6), specifically §87 and §89, which authority would take precedence over this provision should there be any conflict.

a. As used in this Section, “Disclosing Party” means the State of New York or an Authorized User when disclosing its Confidential Information (defined below) to the Contractor, or the Contractor when disclosing its Confidential Information to the State of New York or an Authorized User, and “Receiving Party” means the State of New York or an Authorized User when receiving disclosure of Confidential Information from the Contractor, or the Contractor when receiving disclosure of Confidential Information from the State of New York or an Authorized User. “Confidential Information” means all confidential information disclosed by a party (the “Disclosing Party”) to the other party (the “Receiving Party”) either orally, visually, written or electronically after the effective date of this Contract including, without limitation, information relating to the Disclosing Party’s operations, processes, plans or intentions, know-how, design rights, trade secrets or business affairs. Information when disclosed to Receiving Party shall be considered Confidential Information only to the extent marked or otherwise identified by Disclosing Party as “confidential,” “proprietary,” “restricted” or similar designation at the time of original disclosure. Confidential Information shall be clearly marked as “confidential,” “proprietary,” “restricted” or some similar designation. Except as provided in this Contract and specifically in clause 6(d) hereunder, the Receiving Party further agrees that any Confidential Information obtained by the Receiving Party from the Disclosing Party, its agents, Subcontractors, officers, or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the Disclosing Party hereunder, will not be divulged to any third parties. The State of New York and the Authorized User acknowledge that the Source Code to the Licensed Software and the Documentation are Confidential Information of Contractor.

b. The Receiving Party:

- i. may not use any Confidential Information for any purpose other than in accordance with, and in the performance of, its obligations under this Contract;
- ii. may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with Clause 6(d); and
- iii. shall make every reasonable effort to prevent the use or disclosure, other than as expressly permitted herein, of Confidential Information.

The Receiving Party’s confidential obligation shall end five years after time of original disclosure, to the extent permitted by applicable law. Receiving Party shall comply with record retention requirements to the extent Confidential Information is subject to New York State audit requirements.

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

- i. it is required by law (such as the New York State Freedom of Information Law);
- ii. the information has come into the public domain, otherwise than through (a) a breach of this Clause by the Receiving Party, (b) a third party's breach of any duty of confidentiality owed to the Disclosing Party of which the Receiving Party was aware, or (c) a violation of law;
- iii. it was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party;
- iv. it is required by existing contractual obligations of which the Disclosing Party is aware;
- v. it is independently developed by the Receiving Party without reliance on the Confidential Information;
- vi. it is required by any securities exchange or regulatory or governmental body to which it is subject or by judicial process;
- vii. it is otherwise obtained under the Freedom of Information Law or other applicable New York State laws or regulations; or
- viii. the disclosure is to its professional advisers, auditors or banker; or to any of its directors, other officers, employees and sub-contractors (a "Recipient") to the extent that disclosure is reasonably necessary for the purposes of this Contract.

d. Suggestions and Feedback. Either party may provide suggestions, comments or other feedback to the other with respect to the other's products or services. Feedback is voluntary and the party receiving feedback may use it for any purpose without obligation of any kind except that the party receiving feedback will not disclose the source of feedback without the consent of the party providing it.

e. Knowledge Base. Contractor may use any technical information derived from providing services related to Contractor's products for problem resolution, troubleshooting, product functionality enhancements and fixes, for Contractor's knowledge base. Contractor agrees not to identify the Authorized User or disclose any of Authorized User's confidential information in any item in the knowledge base.

**H. Section 7 (Prevailing Wage Rates – Public Works and Building Services Contracts)** is deleted.

**I. Sections 9 (Expenses Prior to Contract Execution), 10 (Product References), 11 (Remanufactured, Recycled, Recyclable, or Recovered Materials), 12 (Products Manufactured in Public Institutions), 13 (Pricing), 14 (Site Inspection), 15 (Purchasing Card), 16 (Bid Evaluation), 17 (Tie Bids), 18 (Quantity Changes Prior to Award), 19 (Timeframe for Offers) and 20 (Debriefings)** are deleted.



J. **Section 22 (Contract Creation/Execution)** is deleted.

K. **Subsection (d)(iv) of Section 25 (Responsibility for Performance)** is deleted and replaced with the following language:

“(iv) each non-state agency Authorized User guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by their failure to comply in accordance with their obligations under the Contract.

L. **Subsection (e) of Section 25 (Contract Migration)** is deleted.

M. **Section 26 (Modification of Contract Terms)** is deleted and replaced with the following language:

**26. Modification of Terms.** The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor (working through its Resellers) may, however, offer Authorized User(s) more advantageous pricing, payment, or may offer an Authorized User an amendment with other terms and conditions than those set forth in the Contract, provided such terms and conditions are not less advantageous than those set forth in the Contract, including the Program Agreements. In such event, a copy of such executed terms shall be furnished via electronic mail to the Authorized User(s) by the Contractor at the time of execution. A copy of such terms shall be furnished via electronic mail to the OGS Contract Administrator within 45 calendar days of copy being provided to the Authorized User(s).

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, “shrink wrap”, “click wrap” or “browse wrap” terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment or signature, notwithstanding Authorized User’s subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment or signed such document. For clarity, the administrative portals used by an Authorized User’s administrative personnel to manage Online Services may present such personnel with website terms of service which must be accepted by clicking, but such website terms of service shall not modify the terms and conditions of the Contract including the Program Agreements, Enrollments or Affiliate Registration Form.

N. **Section 27 (Scope Changes)** is deleted.

O. **Section 30 (Purchase Orders)** is hereby amended and restated as follows:

Unless otherwise authorized in writing by the Commissioner, except for free trials or free proofs of concept, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User to its chosen Reseller.

P. **Section 31 (Product Delivery)** is deleted and replaced with the following language:

**31. Product Delivery.** The software downloads associated with product delivery for software ordered by Authorized Users will be made available in accordance with terms of the associated Program Agreement. Within 30 days after the effective date of the Enrollment or Affiliate Registration Form, the contact(s) identified for this purpose will be provided access to Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. Upon purchase and provisioning of Online Services, an Authorized User may access the Online Services by utilizing the Authorized User's assigned log-in credentials.

The software downloads and Product delivery for Student Media will be made available in accordance with terms of the associated Program Agreement.

Q. **Section 32 (Weekend and Holiday Deliveries)** is deleted.

R. **Section 33 (Shipping/Receipt of Product)** is deleted and replaced with the following language:

**33. Shipping/Receipt of Product.** Contractor does not set pricing for media shipping charges, and all shipping charges, if applicable, will be determined by your Reseller. Student Media with regards to packaging and receipts, if applicable, will be made available in accordance with the terms of the associated Program Agreement.

S. **Section 34 (Title and Risk of Loss for Products Other than Technology Products)** is deleted.

T. **Sections 35 (Product Substitution), 36 (Rejected Product), 37 (Installation) and 38 (Repaired or Replaced Products, Parts, or Components)** are deleted.

U. **Section 39 (Employees, Subcontractors and Agents)** is deleted and replaced with the following language:

**39. Employees, Subcontractors and Agents.** To the extent that Contractor employees, Subcontractors, or agents perform onsite work under the Contract, they must have the requisite qualifications for the onsite work to be performed and must comply with all facilities, physical security and administrative requirements of the Authorized User provided, however, that any such Contractor employees,

Subcontractors, and agents (1) are provided the opportunity to review any such requirements at least forty-eight (48) hours in advance of any onsite visit, and (2) may request a waiver from the Authorized User for those specific requirements with which any such Contractor employee, Subcontractor or agent is unable to comply. The Authorized User reserves the right to reject and/or bar from the facility for cause any employee, Subcontractor or agent of the Contractor performing on-site work for the Authorized User.

Contractor shall perform background checks on all Contractor employees, Subcontractors or agents, including those performing onsite work under the Contract and those who have actual or potential access to Customer Data or Support Data. Such background checks shall be performed in accordance with the Fair Credit Reporting Act and shall include at minimum: (1) Social Security Number trace, (2) seven (7) year felony and misdemeanor criminal records check of federal, state, or local records (as applicable) for job related crimes, (3) Office of Foreign Assets Control List (OFAC) check, (4) Bureau of Industry and Security List (BIS) check and (5) Office of Defense Trade Controls Debarred Persons List (DDTC) check. Only Contractor employees, Subcontractors or agents who have satisfactorily completed these background checks, and such other more stringent background checks as may be required by Contractor, shall have the ability to request and obtain time-limited logical access to the Customer Data or Support Data stored at rest as described in the Online Services Terms.

V. **Section 42 (Suspension of Work)** is deleted.

W. **Section 43 (Termination)** is deleted and replaced with the following language:

#### **43. TERMINATION**

- a. **Termination of this Contract.** Either Party may terminate this Contract without cause upon 60 days written notice, or for cause if the other party materially breaches its obligations hereunder. For termination for cause, except where the breach is by its nature not curable within 60 days, the terminating party must give the other party 60 days written notice and an opportunity to cure.

The termination of this Contract will terminate the ability of Affiliates to enter into new Enrollments or Affiliate Registration Forms under this Contract. However, the termination of this Contract will not affect any Enrollment, Affiliate Registration Form or order not otherwise expired or terminated on the Contract termination effective date, and any terms of this Contract applicable to any such Enrollment, Affiliate Registration Form or order will continue in effect.

The State of New York reserves the following termination rights in addition to any other termination rights specified in this Contract:

1. **For Violation of Sections 139-j and 139-k of the State Finance Law.** The State of New York reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally

incomplete. Upon such finding, the Commissioner of OGS may exercise this termination right by providing written notification to the Contractor in accordance with the written notification terms of this Contract.

2. **For Violation of Section 5-a of the New York State Tax Law.** The State of New York 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 of OGS may exercise this termination right by providing written notification to the Contractor in accordance with the written notification terms of this Contract.

3. **Upon Conviction of Certain Crimes.** The State of New York 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. Upon such finding, the Commissioner of OGS may exercise this termination right by providing written notification to the Contractor in accordance with the written notification terms of this Contract.

b. **Termination of a Program Agreement.** Either Party may terminate a Program Agreement incorporated in this Contract (a) without cause, upon 60 days written notice, or (b) for cause if the other party materially breaches its obligations under such Program Agreement. For termination for cause, except where the breach is by its nature not curable within 60 days, the terminating party must give the other party 60 days written notice and an opportunity to cure.

The termination of a Program Agreement without cause, or for cause, will terminate the ability of Affiliates to enter into new Enrollments or Affiliate Registration Forms under the terminated Program Agreement. However, the termination of the Program Agreement will not affect any Enrollment, Affiliate Registration Form or order not otherwise expired or terminated on the Program Agreement termination effective date, and any terms of this Contract and the terminated Program Agreement applicable to any such Enrollment, Affiliate Registration Form or order will continue in effect. The Contract, including any Program Agreements not terminated, will continue in effect in accordance with its terms.

c. **Additional Termination Rights for an Enrollment or Affiliate Registration Form.**

1. **Mid-term termination for non-appropriation of Funds.** Enrolled Customer may terminate an Enrollment or Affiliate Registration Form without liability, penalty or further obligation to make payments if funds to make payments

under the Program Agreement, Enrollment or Affiliate Registration Form are not appropriated or allocated by the Enrolled Customer for such purpose.

2. Additional terms and conditions relating to the expiration or termination of an Enrollment or Affiliate Registration Form, and Enrolled Customer rights upon expiration or termination, are set forth in the applicable Program Agreement, Enrollment or Affiliate Registration Form.

- d. **Modification or termination of an Online Service for regulatory reasons.** Contractor may modify or terminate an Online Service where there is any current or future government requirement or obligation that: (1) subjects Contractor to any regulation or requirement not generally applicable to businesses operating in the jurisdiction; (2) presents a hardship for Contractor to continue operating the Online Service without modification; and/or (3) causes Contractor to believe these terms or the Online Service may conflict with any such requirement or obligation. For Subscription Licenses, if Contractor terminates an Online Service for regulatory reasons, Contractor will issue Enrolled Customer's Reseller a credit for any amount paid in advance for the period after termination.

X. **Section 44 (Savings/Force Majeure)** is deleted and replaced with the following language:

**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 30 days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

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

- a. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the

Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State of New York, or

- b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the force majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the force majeure event.

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

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State of New York 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.

**Y. Sections 45 (CONTRACT INVOICING), 46 (DEFAULT – AUTHORIZED USER), 47 (PROMPT PAYMENTS) and 48 (REMEDIES FOR BREACH) are deleted.**

**Z. Section 50 (TOXIC SUBSTANCES) is deleted.**

**AA. Section 52 (SECURITY) is renamed, deleted and replaced with the following language:**

**Privacy and Security.**

- a. Generally. Contractor and Enrolled Customer will each comply with all applicable privacy and data protection laws and regulations (including applicable security breach notification laws). However, Contractor is not responsible for compliance with any laws applicable to Enrolled Customer Affiliate or Enrolled Customer's industry that are not also generally applicable to information technology service providers.

Personal information collected through Products will be transferred, stored and processed in the United States. For Online Services, additional privacy and security details are in the Use Rights.

- b. Personal information contained in Enrollments or Affiliate Registration Forms (ARFs). By entering into an Enrollment or ARF, Enrolled Customer consents to the processing of personal information contained in an Enrollment or ARF that is

provided to Contractor and its agents to facilitate the subject matter of this Contract. Enrolled Customer may choose to provide personal information to Contractor in an Enrollment or ARF on behalf of third parties (including Enrolled Customer's contacts, resellers, distributors, administrators, and employees) as part of this Contract. Enrolled Customer will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Contractor. Such personal information will be processed according to the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>, except that Product-specific privacy statements are in the Use Rights.

c. By using the Products, Enrolled Customer consents to the foregoing.

BB. **Section 54 (Warranties)** is deleted and replaced with the following language:

Warranties.

**a. Limited warranty.** Microsoft warrants that:

- (i) Online Services will perform in accordance with the applicable Service Level Agreement;
- (ii) Products other than Online Services will perform substantially as described in the applicable Product Terms; and
- (iii) The Products contain no known Viruses. Contractor is not responsible for Viruses introduced at Enrolled Customer's site.

**b. Limited warranty term.** The limited warranty for:

- (i) Online Services is for the duration of Enrolled Customer's use of the Online Service, subject to the notice requirements in the applicable Service Level Agreement;
- (ii) Products other than Online Services is one year from the date Enrolled Customer first uses the Product; and

**c. Limited warranty exclusions.** This limited warranty is subject to the following limitations:

- (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;
- (ii) the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this Contract or the Use Rights, or resulting from events beyond Contractor's reasonable control;
- (iii) the limited warranty does not apply to components of Products that Enrolled Customer is permitted to redistribute;
- (iv) the limited warranty does not apply to free, trial, pre-release, or beta products; and

(v) the limited warranty does not apply to problems caused by the failure to meet minimum system requirements for the Product as identified at <https://support.microsoft.com/en-us/lifecycle/selectindex> or at a successor site.

**d. Remedies for breach of limited warranty.** If Microsoft fails to meet any of the above limited warranties and Enrolled Customer notifies Microsoft within the warranty term, then Microsoft will:

- (i) for Online Services, provide the remedies identified in the Service Level Agreement for the affected Online Service;
- (ii) for Products other than Online Services, at its option either (1) return the price paid or (2) repair or replace the Product; and

These are Enrolled Customer's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.

**DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

**CC. Section 55 (Legal Compliance)** is deleted and replaced with the following language:

Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract generally applicable to information technology services providers. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the reasonable satisfaction of the Commissioner that it meets or exceeds all requirements of the 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 cancel 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.

**DD. Section 56 (INDEMNIFICATION)** is deleted.

**EE. Section 57 INDEMNIFICATION RELATING TO INFRINGEMENT** is renamed, deleted and replaced with the following language:

***Defense of infringement, misappropriation, and third party claims.***



- a. Microsoft's agreement to protect.** Microsoft will defend the State of New York and Enrolled Customer against any claims made by an unaffiliated third party that any Product or Fix that is made available by Microsoft for a fee infringes that party's patent, copyright, or trademark or makes unlawful use of its Trade Secret. Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). This section provides the State of New York and Enrolled Customer's exclusive remedy for these claims.
- b. Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or award is based on:
- (i) Customer Data, non-Microsoft software, modifications Enrolled Customer makes to a Product or Fix;
  - (ii) Enrolled Customer's combination of the Product or Fix with a non-Microsoft product, data or business process; or damages based on the use of a non-Microsoft product, data or business process;
  - (iii) Enrolled Customer's use of either Microsoft Trademarks or the use or redistribution of a Product or Fix in violation of this ~~Agreement~~Contract incorporating its terms or;
  - (iv) Enrolled Customer's use of a Product or Fix after Microsoft notifies Customer and Enrolled Customer to discontinue that use due to a third party claim.

To the extent permitted by applicable law, Enrolled Customer will be responsible to Microsoft for any reasonable costs or damages that result from any of the above actions.

- c. Enrolled Customer's agreement to protect.** To the extent authorized by applicable law and, to the extent applicable, subject to lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, Enrolled Customer will hold harmless and indemnify Microsoft and its Affiliates against any claims made by an unaffiliated third party that:
- (i) any Customer Data or non-Microsoft software Microsoft hosts on Enrolled Customer's behalf infringes the unaffiliated third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret; or
  - (ii) Arises from violation of the Acceptable Use Policy, which is described in the Online Services Terms.

Enrolled Customer will be responsible for the amount of any resulting adverse final judgment (or settlement to which the State of New York and Enrolled Customer consent). This Section provides Microsoft's exclusive remedy for these claims.

**d. Rights and remedies in case of possible infringement or misappropriation.**

- (i) **Microsoft's offerings.** If Microsoft reasonably believes that a Product or Fix may infringe or misappropriate an unaffiliated third-party's intellectual property rights, Microsoft will seek to: (1) procure for Enrolled Customer the right to

continue to use the Product or Fix; or (2) modify or replace it with a functional equivalent to make it non-infringing and notify the State of New York and Enrolled Customer to discontinue use of the prior version, which Enrolled Customer must do immediately. If the foregoing options are not commercially reasonable for Microsoft, or if required by a valid judicial or government order, Microsoft may terminate Enrolled Customer's license or access rights in the Product or Fix. In such a case, Microsoft will provide the State of New York and Enrolled Customer with notice and refund any amounts Enrolled Customer has paid for those rights to the Product or Fix (or for Online Services, any amount Enrolled Customer has paid in advance for unused Online Services).

**(ii) Customer Data or use of non-Microsoft software with Online Services.** If an unaffiliated third party asserts that Customer Data or non-Microsoft software or any other non-Microsoft technology used by Enrolled Customer with the Online Services violates their intellectual property rights, Microsoft may ask Enrolled Customer to remove the allegedly infringing item. If Enrolled Customer fails to do so within a reasonable period of time, Microsoft may suspend or terminate the Online Service to which the Customer Data or non-Microsoft software relates.

**e. Obligations of protected party.** Enrolled Customer must notify Microsoft promptly in writing of a claim subject to the Subsection titled "Microsoft's agreement to protect" and Microsoft must notify Enrolled Customer promptly in writing of a claim subject to the Subsection titled "Enrolled Customer's agreement to protect." The party invoking its right to protection must: (1) give the other party sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance. Notwithstanding the above, the State of New York and the Authorized User reserve the right to join an action, at its sole expense, when it ~~determined~~determines there is an issue involving a significant public interest.

**FF. Section 58 (Limitation of Liability)** is deleted and replaced with the following:

**a. Definitions.** The following terms shall be defined as follows for purposes of this section:

(1) "Online Services" as defined under Section 1.8, Definitions, above.

(2) "Core Online Services" means, collectively, each of the Microsoft Online Services identified as Core Online Services in the Online Services Terms.

(3) "Covered Data Loss" means loss of Customer Data that is not attributable to the instructions, acts or omissions of Enrolled Customer or its users.

(4) "Covered Disclosure" means disclosure of Customer Data as a result of a Security Incident.

(5) “Security Incident” means any unlawful access to or unlawful transmission or use of any Customer Data stored or transmitted on the equipment or facilities of Contractor, or unauthorized access to such equipment or facilities or transmissions resulting in loss, disclosure, or alteration of Customer Data. For purposes of this Section, “the equipment or facilities of Contractor” includes, without reservation, all Subcontractor equipment and facilities that are processing or storing Customer Data.

**b. Limitation of Liability.** To the extent permitted by applicable law, the liability of Contractor and Enrolled Customers, their respective Affiliates and Subcontractors arising under the Contract is limited to direct damages up to:

(1) For Products other than Online Services, two times (2x) the amount Enrolled Customer was required to pay for the Product giving rise to that liability; and

(2) For Online Services other than Core Online Services, the amount Enrolled Customer paid for the Online Service giving rise to that liability during the prior 12 months, or the cost of purchasing 12 months of the Online Service, whichever is greater; and

(3) Core Online Services:

(a) For Core Online Services other than the Office 365 Core Online Services (the “Non-Office 365 Core Online Services”), the amount Enrolled Customer paid for the Non-Office 365 Core Online Service giving rise to that liability during the prior 24 months, or the cost of purchasing 24 months of the Non-Office 365 Core Online Service, whichever is greater; and

(b) For the Office 365 Core Online Services only, the amount Enrolled Customer paid for the Office 365 Core Online Service giving rise to that liability during the prior 36 months, including damages described in 58(d) below, or the cost of purchasing 36 months of the Office 365 Core Online Service, whichever is greater, provided that the following shall be deemed to be “direct damages” not subject to the exclusion of indirect or consequential damages set forth in 58(d) below:

(1) The following costs related to affected individuals whose Personally Identifiable Information (PII) is disclosed pursuant to a Covered Disclosure:

a. Enrolled Customer’s reasonable costs in notifying affected individuals of Covered Disclosure in which the data subjects’ Personally Identifiable Information has been disclosed;

b. Credit monitoring for up to twelve (12) months for affected individuals;

c. Damages and fines assessed against Enrolled Customer by a court of competent jurisdiction and awarded to individuals whose Personally Identifiable Information is subject to a Covered Disclosure; and

d. Any additional reasonable and documented costs of any mitigation, remedies or plans to the extent that such mitigation, remedies or plans are customary, reasonable, and expected to be paid by Enrolled Customers, given the nature and scope of the Security Incident involving a Customer Data breach of Personally Identifiable Information, as validated by an independent accounting firm chosen by both entities.

(2) The following additional costs related to each applicable Enrolled Customer's obligations under any applicable open records laws due to Covered Data Loss:

a. Government fines and penalties assessed against an Enrolled Customer for failure to comply with such open records laws, where such failure is attributable solely to Covered Data Loss; and

b. Damages assessed against an Enrolled Customer by a court of competent jurisdiction and awarded to third parties based solely on the Enrolled Customer's failure to provide information to them under such open records acts, where such failure is attributable solely to a ~~Covered~~Covered Data Loss.

(c) The monetary limitation of liability for Core Online Services will apply to Contractor's liability arising out of or in relation to its breach of its obligations under this Contract related to Customer Data.

(4) For Products provided free of charge, or code that Enrolled Customer is authorized to redistribute to third parties without separate payment to Contractor, liability is limited to U.S. \$5,000.00; and

(5) For technical support as described in sections 4.12.4 and 4.12.~~76~~ of this Contract, the amount Enrolled Customer was required to pay for the technical support, or the limitation of liability for the Online Service for which the technical support was provided, whichever is greater.

These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

**c.** Notwithstanding the Limitations of Liability in subsection (b) above, and to the extent permitted by applicable law, Contractor and Enrolled Customer remain liable, without limitation, for the following:

(1) Contractor's and Enrolled Customer's obligations under the section titled "Defense of infringement, misappropriation, and third-party claims";

(2) Liability (including damage to real or personal tangible property) for damages caused by either party's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided

that, in jurisdictions that do not recognize a legal distinction between “gross negligence” and “negligence,” “gross negligence” as used in this subsection shall mean “recklessness”);

- (3) Liabilities arising out of any breach by either party of its obligations under section 4.6(G) of the Contract entitled “Appendix B § 6 Confidential/Trade Secret Materials”, except that Microsoft’s liability arising out of or in relation to Customer Data shall in all cases be limited to the limitation of liability for the Online Service giving rise to that liability, as set forth in subsection (b);
- (4) liability for personal injury or death caused by either party’s negligence, or that of its employees or agents, or for fraudulent misrepresentation; and
- (5) violation by either party of the other party’s intellectual property rights.

**d. EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, OR SUBCONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT CONTRACT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY’S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS, THE PARTIES’ RESPECTIVE OBLIGATIONS IN THE SECTION TITLED “DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS,” OR AS PROVIDED IN SUBSECTION (c) 2 AND (c) 4 ABOVE.**

**e. Affiliates and Subcontractors.** Neither Contractor nor Enrolled Customer shall bring any action against the other’s Affiliates or Subcontractors in respect of any matter disclaimed on their behalf in this Contract.

**GG. Section 59 (Dispute Resolution Procedures)** is deleted and replaced with the following:

#### Informal Dispute Resolution Process

1. In the event there is a dispute under this 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 Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this 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 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.

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

HH. **Section 60 (SOFTWARE LICENSE GRANT)** is deleted and replaced with the following:

- a. **License Scope.** Enrolled Customer's rights to run the current version of the ordered Product are temporary until it has paid the Reseller for that License in full. Thereafter, Enrolled Customer shall have a perpetual license to run the number of copies ordered in the version ordered and such other rights as may be specified in the applicable Program Agreement. Perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which Software Assurance coverage was ordered. Some Products may be licensed on a fixed term or subscription basis. The right to use products licensed on a Subscription basis terminates upon expiration if it is not renewed. Subscription Licenses are not perpetual under any circumstance. The use rights for Enrolled Customers on orders will be made available in accordance with terms of the associated Program Agreement.
- 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. **Licensed Documentation.** Enrolled Customer may acquire the quantity of media as necessary to distribute the Products for use in accordance with the Program Agreement. In certain cases, re-imaging is permitted using the Product media. Re-imaging is conditional upon compliance with applicable terms in the Program Agreement.
- d. **Product Technical Support & Maintenance.** Licensee shall have the option of electing Software Assurance as set forth in the applicable Program Agreement. Software Assurance coverage and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew. Software

Assurance shall include Fixes, new version rights, and may include other benefits including 24x7 Problem Resolution Support for Products as further described in the Product List. In the Select Plus Program Agreement, Enrolled Customer 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.

- e. **Permitted License Transfers.** License Transfer for fully-paid perpetual Licenses are sometimes permitted and are conditional upon compliance with applicable terms in the Program Agreement.
- 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: 1) Licensee gives notice to Contractor of such third party, Site of intended use of the Product, and means of access; and (ii) such third 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 third 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 of New York or Licensee.
- g. **Archival Back-Up and Disaster Recovery.** Please reference the Product Terms for terms relating to archival back-up and disaster recovery.
- h. **Confidentiality Restrictions.** The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.
- i. **Restricted Use by Licensee.** Enrolled Customer must not (and is not licensed to) (1) reverse engineer, decompile, or disassemble any Product or Fix; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Enrolled Customer must not (and is not licensed to) (i) separate and run parts of a Product or Fix on more than one device, upgrade or downgrade parts of a Product or Fix at different times, or transfer parts of a Product or Fix separately; or (ii) distribute, sublicense, rent, lease, lend any Products or Fixes, in whole or in part, or use them to offer hosting services to a third party.

II. **Section 61 (PRODUCT ACCEPTANCE)** is deleted and replaced with the following language:

An Authorized User shall have 30 calendar days from the date of delivery to accept Products under this Contract. The Authorized User's failure to provide notice of acceptance or rejection to the Contractor within 30 calendar days from the date of delivery shall constitute deemed acceptance by the Authorized User as of the expiration of that period.

JJ. **Section 62 (AUDIT OF LICENSED PRODUCT USAGE)** is deleted and replaced with the following language:

**Verifying compliance.**

- a. Right to verify compliance. Enrolled Customer must keep records relating to the Products it and its Affiliates use or distribute. Microsoft has the right, to the extent permitted by applicable law, to verify compliance with the license terms for Products, at Microsoft's expense.
- b. Verification process and limitations. Microsoft will provide Enrolled Customer at least 30 days' written notice of its intent to verify compliance. Microsoft will engage a nationally recognized independent auditor, which will be subject to a confidentiality obligation. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Enrolled Customer's operations. Enrolled Customer must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products Enrolled Customer hosts, sublicenses, or distributes to third parties. Microsoft shall permit the Enrolled Customer to have complete visibility into the independent auditor's access to Enrolled Customer's systems to validate the auditor's actions. As an alternative, Microsoft may require Enrolled Customer to complete Microsoft's self-audit process relating to the Products Enrolled Customer and any of its Affiliates use or distribute. Such information will be used solely for purposes of determining compliance.
- c. Remedies for non-compliance. If verification or self-audit reveals any unlicensed use, Enrolled Customer must within 30 days order sufficient licenses to cover its use. If there is no unlicensed use, Microsoft will not undertake another verification of the same Enrolled Customer for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this ~~Agreement~~Contract or to protect its intellectual property by any other means permitted by law. Once such additional licenses are purchased, Enrolled Customer shall be deemed to be in compliance with its obligations under ~~the Agreement~~this Contract and to be properly licensed, and Enrolled Customer shall have no further financial liability with respect to the unlicensed use, for the Product paid in full.
- d. Additional Terms and Conditions for Enrolled Customers compliance for Users is set forth in the applicable Program Agreement.

KK. **Section 63 (No Hardstop or Passive License Monitoring)** is deleted and replaced with the following language:



**Data Retention.** At all times during the term of Enrolled Customer's subscription, Enrolled Customer will have the ability to access and extract Customer Data stored in each Online Service. Except for free trials and LinkedIn services, Microsoft will retain Customer Data stored in the Online Service in a limited function account for 90 days (or such longer period as may be specified in the Online Services Terms) after expiration or termination of Enrolled Customer's subscription so that Enrolled Customer may extract the data. After any such retention period ends, Microsoft will disable Enrolled Customer's account and delete the Customer Data.

LL. **Section 64 (OWNERSHIP/TITLE TO PROJECT DELIVERABLES)** is deleted.

MM. **Section 65 (PROOF OF LICENSE)** is deleted and replaced with the following language:

**65.** This ~~Agreement~~Contract and applicable Program Agreement (soft copy or web link to location is acceptable), the applicable Enrollment or Affiliate Registration Form (soft copy is acceptable), the Enrolled Customer's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Customer's evidence of all Licenses obtained.

NN. **Section 66 (CHANGES TO PRODUCT OR SERVICE OFFERINGS)** is deleted and replaced with the following language:

**66. Supportability.** Contractor may add support for new Products or discontinue support for existing Products from time-to-time. If Contractor discontinues support for a Product, Contractor will inform Authorized User six months in advance of the discontinuation by posting the information at <http://support.microsoft.com> or any successor site. If Contractor sells a Product to another company, Contractor will give Authorized User notice of the sale and at the time of such notice will either (i) arrange for the other company to continue the support; or (ii) continue support itself for 90 days to give Authorized User time to make alternative arrangements.

Contractor shall offer a minimum of 10 years of support for Contractor Products. Mainstream Support for Contractor Products shall be provided for 5 years or for 2 years after the successor product (N+1) is released, whichever is longer. Pursuant to the terms of the Centralized Contract, Contractor shall also provide Extended Support for the 5 years following Mainstream support or for 2 years after the second successor product (N+2) is released, whichever is longer. Finally, qualifying Contractor products will receive at least 10 years of online self-help support (see <https://support.microsoft.com/en-us>).

**4.7 PROGRAM AGREEMENTS, ENROLLMENT FORMS AND AFFILIATE REGISTRATION FORMS.** The following Program Agreements, Enrollment Forms and Affiliate Registration Forms are attached hereto as **Appendix C** and hereby made a part of this Contract.

a. **Enterprise Agreement State and Local (EA2016Agr(US)SLG(ENG)(Nov2016)).**

For informational purposes, this document allows Affiliates as described in Subsection A of Section 1.8 definition of "Affiliate" to submit Enterprise Enrollments, Enterprise Subscription Enrollments, and Server and Cloud Enrollments (subject to the rules therein) to purchase Products.

**b. Enterprise Enrollment State and Local (EA2016EnrGov(US)SLG(ENG)(Nov2016)).**

For informational purposes, this document is used for a minimum of 250 Qualified Users or 250 Qualified Devices, subject to other purchasing requirements in the Enterprise Agreement Program Agreement (e.g. requirement to either (1) purchase of Enterprise Products for all Qualified Devices or Qualified Users; or (2) purchase at least 250 licenses for Enterprise Online Services, where applicable) and is to be executed by an Affiliate as described in Subsection A of Section 1.8 definition of "Affiliate" when purchasing Enterprise Products or Enterprise Online Services (and optional Additional Products, once the preceding requirement is fulfilled) from the Enrolled Customer's Microsoft Reseller.

**c. Enterprise Subscription Enrollment State and Local EAS2016EnrGov(US)SLG(ENG)(Nov2016)**

For informational purposes, this document is used for a minimum of 250 Qualified Users or 250 Qualified Devices, subject to other purchasing requirements in the Enterprise Agreement Program Agreement (e.g. requirement to either (1) purchase Enterprise Products for all Qualified Devices or Qualified Users; or (2) purchase at least 250 licenses for Enterprise Online Services, where applicable) and is to be executed by an Affiliate as described in Subsection A of Section 1.8 definition of "Affiliate" when purchasing Enterprise Products or Enterprise Online Services (and optional Additional Products, once the preceding requirement is fulfilled) where the Enrolled Customer wishes to purchase software Products that do not provide perpetual license rights upon expiration unless the Enrolled Customer submits a buy-out order.

**d. Server and Cloud Enrollments State and Local SCE2016EnrGov(US)SLG(ENG)(Nov2016)**

For informational purposes, this document has unique terms and conditions for the purchase of certain Microsoft server products and Microsoft Azure.

**e. Select Plus License Program Agreement State and Local (SelectPlus2013AgrGov(US)SLG(ENG)(Oct2013)).**

For informational purposes, this document allows Affiliates as described in Subsection A of Section 1.8 definition of "Affiliate" to submit Affiliate Registration Forms (subject to the rules therein) to purchase Products other than Online Services.

**f. Select Plus Affiliate Registration Form State and Local (SelectPlus2013ARFGov(US)SLG (ENG)(Oct2013)).**

For informational purposes, this document is used for any number of users or devices, and is executed by an Affiliate as described in Subsection A of Section 1.8 definition of "Affiliate" when purchasing Products other than Online Services from the Enrolled Customer's Microsoft Reseller.

**g. Academic Select Plus Agreement AcSelectPlus2013Agr(NA)US(ENG)(Oct2013)).**

For informational purposes, this document allows Affiliates as described in Subsection C

of Section 1.8 definition of “Affiliate” (which must be Qualified Education Users, as defined in Appendix ~~FE~~) to submit Affiliate Registration Forms (subject to the rules therein) to purchase Products other than Online Services.

**h. Campus and School Agreement (CASA2017Agr(NA)US(ENG)(Oct2017)**

For informational purposes, this document allows Affiliates as described in Subsection C of Section 1.8 definition of “Affiliate” (which must be Qualified Education Users, as defined in Appendix ~~FE~~) to submit Enrollments for Education Solutions (subject to the rules therein) to purchase Products.

**i. Consortia Amendment, Participation Agreement, and Consortia Participation Form (FOR USE BY BOCES ONLY)**

For informational purposes, the Consortia Amendment modifies the Campus and School Agreement to set up a Consortium. The Participation Agreement sets forth the terms that the Participants, as defined therein, must adhere to. The Consortia Participation Form includes Participant information and is used to set up the Enrollments under the Campus and School Agreement as modified by the Consortia Amendment.

**j. Enrollment for Education Solutions EES2017Enr(NA)(ENG)(Oct2017)**

For informational purposes, this document is used for a minimum of 250 Qualified Users and is to be executed by an Affiliate as described in Subsection C of Section 1.8 definition of “Affiliate” and (which must be Qualified Education Users, as defined in Appendix ~~FE~~) when purchasing Online Services and Products other than Online Services from the Enrolled Customer’s Microsoft Reseller.

The documents attached as Appendix C are to be used for sales of Products by the Enrolled Customer’s Reseller pursuant to this Contract.

~~4.8 APPENDIX D. Appendix D, CJIS Enrollment Amendment, is attached hereto and made a part of this Contract. A CJIS Enrollment Amendment shall be offered by the Contractor to any Enrolled Affiliate that requests it, provided that such Enrolled Affiliate uses Covered Services as defined therein to process and/or store Criminal Justice Information.~~

~~4.9 APPENDIX E. Appendix E, Contractor~~ **4.8 RESERVED.**

**4.9 APPENDIX D.** Appendix D, Contract Administration, is attached hereto and made a part of this Contract.

**4.10 APPENDIX ~~FE~~.** Appendix ~~FE~~, Qualified Educational User Definition, is attached hereto and made a part of this Contract.

**4.11 SERVICE CREDITS FOR ONLINE SERVICES.** In order for Contractor to consider a claim for service credit, the Authorized User must submit the claim to its Reseller and the Reseller will file the claim with Contractor’s customer support on the Authorized User’s behalf. The claim must include all information necessary for Contractor to validate the claim, including but not limited to: (i) a detailed description of the Incident; (ii) information regarding the time and duration of the Downtime; (iii) the number and location(s) of affected users (if applicable); and (iv) descriptions of your attempts to resolve the Incident

at the time of occurrence. In the event Contractor grants a claim for service credit, the Authorized User will receive that service credit directly from its Reseller.

**4.12 ADDITIONAL CLAUSES SPECIFIC TO PROVIDING CLARIFICATION TO SECTIONS IN THE ONLINE SERVICES TERMS.** For the avoidance of doubt, and solely as it pertains to Online Services contained in the Online Services Terms, the following clarifications are applicable:

**4.12.1** The term, Customer Data, shall have the meaning set forth in Section 1.8 Definitions above.

**4.12.2** The language in the section titled “Processing of Customer Data; Ownership” is clarified as follows: Customer Data will be used or otherwise processed only to provide Enrolled Customer the Online Services, including purposes compatible with providing those services. Microsoft will not use or otherwise process Customer Data or derive information from it for any advertising or similar commercial purposes. As between the parties, Enrolled Customer retains all right, title and interest in and to Customer Data. Microsoft acquires no rights in Customer Data, other than the rights Enrolled Customer grants to Microsoft to provide the Online Services to Enrolled Customer. This paragraph does not affect Microsoft’s rights in software or services Microsoft licenses to Enrolled Customer.

**4.12.3** The section titled “Disclosure of Customer Data” is clarified as follows: Microsoft will not disclose Customer Data outside of Microsoft or its controlled subsidiaries and affiliates except (1) as Enrolled Customer directs, or (2) as required by law.

Microsoft will not disclose Customer Data to law enforcement unless required by law. If law enforcement contacts Microsoft with a demand for Customer Data, Microsoft will attempt to redirect the law enforcement agency to request that data directly from Enrolled Customer. If compelled to disclose Customer Data to law enforcement, Microsoft will promptly notify Enrolled Customer and provide a copy of the demand unless legally prohibited from doing so.

Upon receipt of any other third-party request for Customer Data, Microsoft will promptly notify Enrolled Customer unless prohibited by law. Microsoft will reject the request unless required by law to comply. If the request is valid, Microsoft will attempt to redirect the third party to request the data directly from Enrolled Customer.

Microsoft will not provide any third party: (a) direct, indirect, blanket or unfettered access to Customer Data; (b) platform encryption keys used to secure Customer Data or the ability to break such encryption; or (c) access to Customer Data if Microsoft is aware that the data is to be used for purposes other than those stated in the third party’s request.

In support of the above, Microsoft may provide Enrolled Customer’s basic contact information to the third party.

To the extent applicable to Online Services, the language in this section does not constitute consent for the release of Customer Data, as that phrase is used in the Federal Electronic Communications Privacy Act or the Stored Communications Act.

**4.12.4** The Parties agree that the provision of technical support pursuant to this Contract constitutes an engagement with Microsoft for Professional Services within the meaning of the Online Services Terms, and that the Support Data provisions of the Online Services Terms apply to Support Data created as a result of any such provision of technical support.

**4.12.5** The language in the section titled “Acceptable Use Policy” is clarified as follows: For purposes of the Acceptable Use Policy set forth in the Online Services Terms, examples of an “application or situation where failure of the Online Service could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage” include, but are not limited to: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, or weaponry systems.

Violation of the Acceptable Use Policy in the Online Services Terms may result in suspension of the Online Service. Microsoft will suspend the Online Service only to the extent reasonably necessary. Unless Microsoft believes an immediate suspension is required, Microsoft will provide reasonable notice before suspending an Online Service. Microsoft will provide at least 30 days’ notice and an opportunity to cure before suspending an Online Service for non-payment.

~~**4.12.6 — Inapplicability of European terms. In the Online Services Terms, neither the Additional European Terms nor the Standard Contractual Clause shall apply.**~~

~~**4.12.7**~~**4.12.6** The only Professional Services within the scope of this Contract are technical support services included with the purchase of Online Services. For purposes of clarity, consulting services are out of scope. The Limitation of Liability for such technical support services is set forth in Section 4.6(FF) above. The Limitation of Liability pertaining to Professional Services in the Online Services Terms is not applicable to this Contract.

OGS reserves the right to request additional clarifications with respect to the Online Services Terms.

#### **4.13 Government Community Cloud Services**

Office 365 US Government Community Cloud (GCC) services are provided only from data centers physically located within the United States. The following Customer Data is stored at rest in data centers physically located within the United States:

- Exchange Online mailbox content (email bodies, calendar entries, and the content of e-mail attachments);
- SharePoint Online site content and the files stored within that site; and
- Skype for Business archived conversations, uploaded documents, and whiteboarding session.

References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States. Customer Data will be logically segregated from customer content in Microsoft's commercial Office 365 Services. Additional European Terms, as set forth in the Use Rights, will not apply to GCC Services.

Access to Customer Data in the GCC by Microsoft personnel is restricted to personnel who are US citizens. These personnel undergo the following background investigations in accordance with relevant government standards.

<b>Background Screening</b>	<b>GCC</b>	<b>GCC High and DoD</b>
Verification of US Citizenship	Yes	Yes
Employment History Check	Yes	Yes
Education Verification	Yes	Yes
Social Security Number (SSN) Search	Yes	Yes
Criminal History Check (7 year)	Yes	Yes
Office of Foreign Assets Control List (OFAC)	Yes	Yes
Bureau of industry and security List (BIS)	Yes	Yes
Fingerprint-based check of FBI criminal databases	Yes	Yes
CJIS Criminal Background Check	Yes	No
DOD IT-2 based on OPM Tier 3 Investigation	No	DOD SRG L5 Tenants Only

NIST 800-53 and FedRAMP. Government Community Cloud Services are operated in accordance with a written data security policy and control framework that are consistent with the requirements of NIST 800-53, or successor standards and guidelines (if any), established to support Federal Risk and Authorization Management Program (FedRAMP) accreditation at a Moderate Impact level (except that Azure Government supports accreditation at a High Impact Level). Microsoft intends for Government Community Cloud Services to support FedRAMP ATO's and Microsoft will use commercially reasonable efforts to obtain an Authority to Operate (ATO) from a Federal agency, and to maintain such an ATO by conducting regular FedRAMP audits and through continuous monitoring processes.

**4.14 HIPAA Business Associate Agreement.** The then-current provisions of the Microsoft Business Associate Agreement (“BAA”) described in the Online Services Terms will constitute the HIPAA BAA between Contractor and Authorized Users. Certain Authorized Users may be subject to New York State or Federal laws regarding patient information that require protections in addition to those included in the BAA. An Authorized User may request that Contractor enter into amendments to the BAA in order to facilitate the Authorized User’s compliance with such laws, provided that Contractor shall not be required to comply with any such law or portion thereof that is not applicable to IT Information Technology service providers.

**4.15 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS.** New York State political subdivisions and other entities described in State Finance Law section 163(1)(k) 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 New York State contracts. A list of categories of eligible entities is available on the OGS web site (<http://www.ogs.state.ny.us/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.

**4.16 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, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

### III. Equal Employment Opportunity (EEO)

- 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.
  - 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.
  - 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.
- 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.
- Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)



- The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS 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 Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
  - Separate forms shall be completed by Contractor and all 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 submit the Form EEO-101-Commodities and Services 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 Form EEO-101-Commodities and Services 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.
- 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 and conviction and prior arrest.

#### IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. 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.
- B. Good Faith Efforts  
Pursuant to 5 NYCRR § 142.8, evidence of 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.

#### **V. 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:** <http://www.ogs.ny.gov/MWBE/Forms.asp>

**4.17 INSURANCE.** Contractor shall be required to procure, at its sole cost and expense, all insurance required herein. For all required insurance, evidence of insurance must be provided in the form acceptable to OGS as specified herein.

Contractor shall provide proof of all insurance after renewal or upon request, according to the timelines set forth in Section A.14 below.

Contractor is required to procure, at its sole cost and expense, and shall maintain in force at all times during the term of any Contract, policies of insurance as required herein. All insurance required herein 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 herein 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.

Contractor shall deliver to OGS evidence of the insurance required herein 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 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 Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

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

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

**3. Certificates of Insurance/Notices.** Contractor shall provide OGS with a Certificate or Certificates of Insurance, in the form satisfactory to OGS (e.g., an ACORD certificate), upon request. Certificates shall reference the award 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 award number;
- Be signed by an authorized representative of the referenced insurance carriers; and contain the following language in the Description of Operations / Locations / Vehicles section: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees are included as an additional insured on endorsement CG 20 10 11 85 (or endorsements that provide equivalent coverage, such as the combination of CG 20 10 04 13 (covering ongoing operations) and CG 20 37 04 13 (covering completed operations)), and General liability coverage is provided on the current edition of Commercial General Liability Coverage Form CG 00 01 (or a form that provides equivalent coverage). Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional 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. Contractor is 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 Contractor 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 a Schedule of Forms and Endorsements and, upon request, all Forms and Endorsements, unless otherwise agreed to in writing by OGS. The Forms and Endorsements shall provide evidence of compliance with the requirements herein. 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 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 herein 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 herein 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 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 Attachment 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 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 the 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 the Contract shall be delivered to OGS. If, at any time during the term of the Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the 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.** During the term of the Contract, 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:** Contractor shall obtain and maintain in full force and effect, throughout the term of the Contract, at its own expense, the following insurance with limits not less than those described below and as required by the Contract, or as required by law, whichever is greater.

<b>PLEASE NOTE</b>
Depending upon the risk, Authorized Users may require the Contractor to provide additional insurance and/or increased insurance coverages.

**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.

<b>Minimum Insurance Coverage</b>	
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 writing by OGS. 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 the Contract;
- Defense and/or indemnification obligations, including obligations assumed under the Contract;
- 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 herein 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 Solicitation or the 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 herein and provide proof of such coverage to OGS in accordance with the insurance requirements of the Contract.

**3. Data Breach and Privacy/Cyber Liability:** Contractor is required to maintain during the term of the 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:

Minimum Insurance Coverage	
Data Breach and Privacy/Cyber Liability	\$10,000,000

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 provide upon request 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:** Contractor is 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:

Minimum Insurance Coverage	
Technology Errors and Omissions	\$10,000,000

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 include upon request 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:** Contractor is 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:

Minimum Insurance Coverage	
Crime Insurance	\$10,000,000

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 the 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 a 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 Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- 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 Contractor'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 Contractor'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.

**4.18 NYS VENDOR RESPONSIBILITY.** The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, 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, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State of New York that 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 at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS 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 of New York be deemed a breach thereof, nor shall the State of New York be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**4.19 NYS TAX LAW SECTION 5-A.** Tax Law § 5-a requires certain Contractors awarded New York State Contracts for commodities, services and technology valued at more than \$100,000 to certify to 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 is 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 the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA 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). The ST-220-TD 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). Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid 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. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Contractor may call DTF at 518-485-2889 with questions or visit the DTF web site at <http://www.tax.ny.gov/> for additional information.

## **MISCELLANEOUS**

**4.20 Subcontractors.** Contractor may use Subcontractors to perform and support Online Services. Contractor will be responsible for their Subcontractors' compliance with the terms of this Contract. For clarity, the definition of Subcontractor for purposes of this Contract shall include Subprocessors used by Contractor.

**4.21 Resellers and other third parties cannot bind Microsoft.** Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.

**4.22 Free Products.** It is Microsoft's intent that the terms of this Contract and the Product Terms and Online Services Terms be in compliance with all applicable federal law and regulations. Any free Product provided to Enrolled Customer is for the sole use and benefit of the Enrolled Customer, and is not provided for use by or personal benefit of any specific government employee.

**4.23 No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product.

**4.24 Voluntary Product Accessibility Templates.** Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates ("VPATs") for the Microsoft technologies used in providing the online services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at <http://www.microsoft.com/enable>.

**4.25 Natural disaster.** In the event of a "natural disaster," Microsoft may provide additional assistance or rights by posting them on <http://www.microsoft.com> at such time.

**4.26 Copyright violation.** Except as set forth in the applicable Program Agreement entitled "Transferring and reassigning Licenses", the Enrolled Customer agrees to pay for, and comply with the terms of this Contract and the Use Rights, for the Products it uses. Except to the extent Enrolled Customer is licensed under this Contract, it will be responsible for its breach of this Contract and violation of Microsoft's copyright in the Products, including payment of License fees specified in this Contract for unlicensed use.

**4.27 U.S. export jurisdiction.** Products and Fixes are subject to U.S. export jurisdiction. Enrolled Customer will comply with all U.S. Export Administration Regulations and International Traffic in Arms Regulation requirements as well as all end-user, end-use, and destination restrictions issued by the U.S. and other governments

applicable to this Contract. For additional information, see <http://www.microsoft.com/exporting>.

**4.28 Survival.** Provisions regarding ownership and license rights, fees, Use Rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, defense of infringement and misappropriation claims, Microsoft's and Enrolled Customer's obligations to protect each other, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this Contract and of any agreement in which they are incorporated.

**4.29 This Contract is not exclusive.** Customer and Enrolled Customer are free to enter into agreements to license, use or promote non-Microsoft software.

**4.30 Waiver.** No waiver of any breach of this Centralized Contract shall be deemed a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

**4.31 Applicable Use Rights.**

(a) Products (other than Online Services). The Use Rights in effect on the effective date of the applicable Enrollment term will apply to Enrolled Customer's use of the version of each Product that is current at the time. For future versions and new Products, the Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless the Enrolled Customer chooses to have those changes apply. The Use Rights applicable to perpetual Licenses that were acquired under a previous agreement or Enrollment are determined by the Agreement or Enrollment under which they were acquired. Renewal of Software Assurance does not change which Use Rights apply to those Licenses.

(b) Online Services. For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product Terms.

(c) Reservation of Rights. Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this Contract. No rights will be granted or implied by waiver or estoppel. Rights to access or use software on a device do not give Enrolled Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

**4.32 Downgrade Rights.** Enrolled Customer may use an earlier version of a Product other than Online Services than the version that is current on the effective date of the Enrollment. For Licenses acquired in the current Enrollment term, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.

**4.33 Non-Microsoft Software or Technology.**

Enrolled Customer is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes.

- a. Enrolled Customer is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes. Microsoft is not a party to and is not bound by any terms governing Enrolled Customer's use of non-Microsoft software or technology. Without limiting the foregoing, non-Microsoft software or scripts linked to or referenced from any Product website, are licensed to Enrolled Customer under the open source licenses used by the third parties that own such code, not by Microsoft.
- b. If Enrolled Customer chooses to install or use any non-Microsoft software or technology with the Products or Fixes, it is solely responsible for directing and controlling the installation in and use of such non-Microsoft software or technology in the Products or Fixes (e.g., through Enrolled Customer's use of application programming interfaces and other technical means that are part of the Online Services). Microsoft will not run or make any copies of such non-Microsoft software or technology outside of its relationship with Enrolled Customer.
- c. If Enrolled Customer installs or uses any non-Microsoft software or technology with the Products or Fix, it may not do so in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this Contract.

**4.34 Management and Reporting.** Customer, ~~Registered Affiliate~~ and/or Enrolled ~~Affiliate~~Customer may manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. Upon the effective date of this Contract and any Affiliate Registration Forms or Enrollments, the contact(s) identified for this purpose will be provided access to this site and may authorize additional users and contacts.

**4.35 Notices.**

Notices to the State of New York: 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, to the State of New York, addressed to OGS on behalf of the State of New York at its address set forth below. The Parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. The New York State Contract Administrator for this Contract is:

OFFICE OF GENERAL SERVICES  
 \_\_\_\_\_, ~~Jordan Flores~~, Contract Administrator  
 38th Floor, Corning Tower  
 Empire State Plaza  
 Albany, NY 12242  
 Email: \_\_\_\_\_ ~~Jordan.Flores@ogs.ny.gov~~  
 Phone: (518) ~~402-9400~~ Fax: (518) ~~486-6867474-3166~~

Supplemental Contact Form: This form provides the primary notice contact to Microsoft for administering this Contract and the Program Agreements.

Notices to the Enrolled Customers: All notices, authorizations, and requests given or made in connection with this Centralized Contract must be sent by post, express courier, facsimile or email to the addresses indicated on the Enrollment or Affiliate Registration Form from the applicable Program Agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, or facsimile or email confirmation of delivery.

Notices to the Contractor: If to Contractor, notices should be addressed to Contract Administrator at the address set forth in Appendix ~~ED~~ (Contract Administration). Appendix ~~ED~~ provides Contractor contact information to support the updating and management of the Centralized Contract on a timely basis. The Parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract.

Notices, authorizations, and requests in connection with this Contract must be sent by regular or overnight mail, express courier, or fax to the addresses and numbers listed on the signature form and in this Contract. Notices will be treated as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery.

Copies should be sent to:
Microsoft Corporation Legal and Corporate Affairs Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA  Via Facsimile:(425) 936-7329

Microsoft may provide information about upcoming Enrollment deadlines and Online Services in electronic form. Such information may be provided by email to contacts provided by Enrolled Customer under an Enrollment or Affiliate Registration form, or through a web site Microsoft identifies. Notice by email is given as of the transmission date

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

**4.37 Severability.** If a court holds any provision of this Contract to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this Contract will be amended to give effect to the eliminated provision to the maximum extent possible.

**4.37A Data Mining.** Online Services shall not, for any non-authorized activity or non-government purpose, use any data-mining technology, capture, maintain, scan, index, share or use Customer Data or Support Data stored or transmitted by the Online Service, ~~or otherwise use any data-mining technology.~~

For all Online Services, Customer Data, shall be logically separated from other customers' Customer Data. For Office 365 Government Community Cloud, Customer Data shall not be co-mingled with other customers' Customer Data, other customers' Support Data, data in Microsoft's commercial Online Services, and/or data created by or resulting from Microsoft's scanning, indexing, or data-mining activities, shall not be commingled unless expressly approved by Enrolled Customer in advance.

**4.38 Entire Agreement.** This Centralized Contract and the referenced appendices, Program Agreements, Enrollments and Affiliate Registration Forms referenced in section 4.3 above constitute the entire agreement between the Parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Centralized Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the Parties hereto, except as otherwise provided herein. Authorized Users shall not have the authority to modify the terms of the Centralized Contract, except as to better terms and pricing for a particular procurement than those set forth herein. No preprinted terms or conditions on a Purchase Order issued by an Authorized User, which seek to vary the terms of this Centralized Contract or impose new duties or obligations on the Contractor, shall have any force or effect.