

**STATE OF NEW YORK  
OFFICE OF GENERAL SERVICES  
FIRST CONTRACT AMENDMENT TO CONTRACT # [REDACTED]  
FOR HOURLY-BASED INFORMATION TECHNOLOGY SERVICES  
WITH (COMPANY NAME)**

**THIS FIRST CONTRACT AMENDMENT** (“First Amendment”) is made to Contract No. [REDACTED] (“Contract”) by and between the People of the State of New York, acting by and through the Commissioner of General Services (“State” or “OGS”), with offices at 36<sup>th</sup> Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York, 12242 and [REDACTED] (“Contractor”), with offices at [REDACTED]. The State and the Contractor are collectively referred to as the “Parties.”

**WHEREAS**, the Parties entered into the Contract, effective July 1, 2019, for Hourly-Based Information Technology Services; and

**WHEREAS**, the State seeks to amend the Contract as set forth below; and

**WHEREAS**, the Contractor agrees to such amendments to the Contract.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions set forth in this First Amendment, the Parties hereby agree as follows:

1. Appendix A, Standard Clauses for New York State Contracts, dated January 2014, attached to the Contract, is hereby deleted in its entirety and replaced with the attached revised Appendix A, Standard Clauses for New York State Contracts, dated October 2019.
2. Attachment 7, HBITS Process, attached to the Contract, dated July 1, 2019 is hereby deleted in its entirety and replaced with the attached revised Attachment 7, HBITS Process, dated March 11, 2021.
3. Section 2.26, Contract Amendment Process, is hereby amended by adding a new closing paragraph with the following language from Section 4.5, NYS Reserved Rights, of Request for Proposals #23158 for Hourly-Based Information Technology Services:

“Notwithstanding the foregoing, New York State reserves the right, in its sole discretion, to unilaterally make revisions, changes and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to the Contract without processing a formal amendment and/or modification.”

4. In the event that any one or more of the provisions of this First Amendment shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this First Amendment, which shall then be construed as if such unenforceable provision had never been written or was never contained in this First Amendment.
5. Except as herein modified, all other terms and conditions of the Contract shall remain in full force and effect.

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

**CONTRACTOR NAME**

**THE STATE OF NEW YORK**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Federal ID: \_\_\_\_\_

Date: \_\_\_\_\_

NYS Vendor ID: \_\_\_\_\_

Date: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ }  
: SS.:  
COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_he maintains an office at \_\_\_\_\_, City/Town of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_; and further that:

**[Check One]**

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

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

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

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

\_\_\_\_\_  
**Signature of Notary Public**

**Registration No.** \_\_\_\_\_ **State:** \_\_\_\_\_

**AGREEMENT FOR  
HOURLY-BASED INFORMATION TECHNOLOGY SERVICES**

**BY AND BETWEEN**

**NEW YORK STATE  
OFFICE OF GENERAL SERVICES**

**AND**



**CONTRACT NUMBER PH** 



**Office of  
General Services**

**Procurement  
Services**

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Appendix A – *Standard Clauses for New York State Contracts (January 2014)*

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**ATTACHMENTS**

- Attachment 1 – *Pricing Schedules*
- Attachment 2 – *Contractor Information*
- Attachment 3 – *Insurance Requirements*
- Attachment 4 – *Job Titles, Skill Levels, Regions*
- Attachment 5 – *HBITS Contract (How to Use)*
- Attachment 6 – *HBITS Contract (Forms)*
- Attachment 7 – *HBITS Process*

**STATE OF NEW YORK  
OFFICE OF GENERAL SERVICES  
AGREEMENT # PH [REDACTED]  
CENTRALIZED CONTRACT FOR THE ACQUISITION OF  
HOURLY-BASED INFORMATION TECHNOLOGY SERVICES**

THIS AGREEMENT (hereinafter the "Contract" or the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the People of the State of New York, acting by and through the **Commissioner of the Office of General Services** (OGS), whose office is on the 36<sup>th</sup> Floor, Corning Tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the "State" or "OGS") and [REDACTED], having its principal place of business at [REDACTED] (hereinafter referred to as the "Contractor"). OGS and the Contractor are collectively referred to as the "Parties."

WHEREAS, OGS is statutorily authorized to enter into centralized contracts for services for use by New York State agencies, departments, public authorities, political subdivisions and any other entities authorized by statute to utilize its centralized contracts (hereinafter "Authorized Users"); and

WHEREAS, OGS has identified a need by New York State agencies and other Authorized Users for Hourly-Based Information Technology Services ("HBITS"), to provide information technology staff necessary to support their ever-expanding information technology needs through staff augmentation, as further described herein; and

WHEREAS, OGS conducted a competitive procurement to identify the bidder(s) which could provide Hourly-Based Information Technology Services for the best value, referred to as RFP #23158 (hereinafter the "RFP" or the "Solicitation"), which was advertised on December 24, 2018 in the New York State Contract Reporter, as required by New York State Economic Development Law; and

WHEREAS, awards were to be made to responsible and responsive bidders that obtained the thirty highest best-value scores, in accordance with the method of award set forth in the RFP; and

WHEREAS, the centralized contracts awarded pursuant to the RFP shall replace the current centralized contracts under Award Number 22439; and

WHEREAS, the State has determined that the Contractor submitted a responsive proposal, received one of the thirty highest best-value scores, and is a responsible vendor, and, therefore, the Contractor has been awarded a contract to provide Hourly-Based Information Technology Services; and

WHEREAS, the Contractor is willing to provide the services set forth herein under the terms and conditions contained herein.

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:

# 1 INTRODUCTION

## 1.1 Overview

This Contract outlines the procedures and methods to be used by Authorized Users, OGS, and Contractor to provide Authorized Users with a method for procuring HBITS.

## 1.2 HBITS Process Overview

A breakdown of responsibilities between the Authorized User, the OGS HBITS Team and the Contractor is described in Attachment 7 – *HBITS Process*. The State awarded thirty (30) Contracts to responsive and responsible Contractors pursuant to the RFP. All 30 awarded Contractors, including Contractor, are designated as Active Contractors during year one (1) of the Contract. At the end of year one (1), and at the end of all Contract years, and any renewal years, the Contractors will be evaluated to determine their designation as either an Active or Inactive Contractor for the upcoming Contract year. The Annual Contractor Evaluation and the Active/Inactive concepts are further explained in Attachment 7 – *HBITS Process*. Forms for use in connection with this Contract are attached hereto as Attachment 6 – *HBITS Contract (Forms)*.

## 1.3 Scope

Hourly Based IT Services required by Authorized Users to support their ever-expanding information technology needs can be obtained through the procedures and methods outlined under this Contract and in Attachment 5 – *HBITS Contract (How to Use)*. Under this Contract, Authorized Users will perform a preliminary Candidate technical evaluation, interview, perform a post interview evaluation and hire IT staff based on their Position requirements.

The Contractor has been awarded a statewide centralized contract to provide Hourly Based IT Services across three (3) Regions in New York State. Region 1 includes all Counties in New York State that are not included in Region 2 or Region 3. Region 2 includes Dutchess, Orange and Putnam Counties. Region 3 includes Nassau, Rockland, Suffolk, Westchester, Bronx, Kings, New York, Queens and Richmond Counties.

The Contractor's rates are actual Wage Rates and include any actual Markup that Contractor may charge the State. This Contract includes fixed rates rather than not-to-exceed rates.

There are IT Services expressly excluded from the scope of this Contract. In many instances, such services are available for purchase under other OGS Centralized Contracts. Examples include:

- Deliverable-based IT Services
- Project-based IT Services
- Web hosting
- Installation work which is considered Public Works is excluded from purchase under the scope of this Contract
  - Historically, the New York State Bureau of Public Works has maintained that installation, maintenance and repair of equipment attached to any wall, ceiling or floor or affixed by hard wiring or plumbing is public work. In contrast, installation of a piece of equipment which is portable, or a "plug-in" free-standing unit would not be considered public work. This Contract does not authorize installation where the equipment becomes a permanent part of the building structure or is otherwise incorporated into the fabric of the building (i.e. installation on a wall, ceiling or floor in a fixed location, or affixed by hard-wiring or plumbing). See Appendix B – *General Specifications (April 2016)*, *Clause 7 Prevailing Wage Rates - Public Works and Building Services Contracts*. For questions about whether a proposed work constitutes public work, please contact the New York State Department of Labor's Bureau of Public Work District Office in a specific area. A listing of district offices and contact information is available at <https://www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm>.
- Authorized Users may require Candidates to attend standard, statewide or agency-wide mandatory training as required by New York State or the Authorized User. In such cases, the Authorized User is responsible for payment of the Candidate's billable hours for the time spent attending such standard, statewide or agency-wide mandatory training. The Authorized User shall not be responsible for any billable hours or reimbursement for any



costs related to any other types of training, whether job-related or not. In no case shall the Authorized User pay for training to provide Candidates with the skills originally specified by the Authorized User in the Form 1.

## 1.4 Estimated Quantities

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

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

The Contractor must furnish all quantities of services ordered at the Contract rates.

The Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of this Contract could vary substantially from the estimates provided in the Solicitation.

## 1.5 Definitions

Capitalized terms used in this Contract shall be defined in accordance with Appendix B – *General Specifications (April 2016), Clause 2 Definitions*, or as defined below or otherwise herein:

**“Active Contractor”** shall mean a Contractor who is eligible to receive all new Form 1s posted by the OGS HBITS Team for a particular Contract year.

**“Administrative Fee”** shall mean the quarterly fee payable to the State in the amount of 0.75% for all sales (including sales to both Executive and Non-Executive Agencies) under this Contract. Costs associated with travel or any other authorized expenses that are billed to the State are excluded from the Administrative Fee.

**“Annual Contractor Evaluation”** or **“Annual Evaluation”** shall mean the evaluation of Contractors on the performance of their contractual duties done by the OGS HBITS Team on an annual basis.

**“Business Day”** shall mean Monday through Friday from 8:00 AM – 5:00 PM EST, excluding NYS Holidays and federal holidays.

**“Candidate”** shall mean a person proposed by a Contractor in response to a request from an Authorized User, prior to selection by an Authorized User.

**“Contractor”** shall mean the holder of the Contract and the entity that is wholly and solely responsible for the performance of the services provided under the Contract from both its own employees, subcontractors and independent contractors. Contractor may be referred to as “Bidder” for terms relating to time periods prior to contract award.

**“EEO”** shall mean Equal Employment Opportunity.

**“Engagement”** shall mean the period of time that a Selected Candidate works for an Authorized User.

**“EST”** shall mean prevailing Eastern Standard Time.

**“Executive Agency”** or **“Executive Agencies”** shall mean all state departments, offices or institutions but, for the purposes of this Contract, excludes the State University of New York, NYS Office of the State Comptroller, New York State Education Department, New York State Teachers Retirement System, New York State Office of the Attorney General, the City University of New York and the New York State Insurance Fund. Furthermore, such term shall not include the legislature and the judiciary. For the sake of clarity, the term “Executive Agency” does not include any public benefit corporation, public authority, school district, or local government entity.

**“Government”** or **“Governmental Entity”** shall mean an entity at the federal, state, county, city or provincial level.

**“HBITS”** shall mean Hourly-Based Information Technology Services.

**“Hourly Bill Rate”** shall mean the hourly rate that the Contractor will receive for services provided to the Authorized User by the Selected Candidate.

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**“Hourly Wage Rate”** shall mean the minimum hourly wage rate which must be paid to the Selected Candidate. For example, Hourly Wage Rate x Mark Up = Hourly Bill Rate.

**“Job Title”** shall mean the Job Titles set forth in this Contract. A listing of each Job Title and corresponding description is included in Attachment 4 - *Job Titles, Skill Levels, Regions*.

**“Mandatory Qualifications”** shall mean the Job Title and corresponding description along with the Skill Level and corresponding number of months’ required experience that the Authorized User selects for their requested Position(s).

**“Markup”** shall mean all costs Contractor will incur beyond the Hourly Wage Rate paid to a Candidate. This may include, but is not limited, to statutory requirements (i.e.: FICA, FUTA, SUTA, Worker’s Comp, Living Wage, etc.), overhead, recruiting costs, training, visa sponsorship, and profit.

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

**“Monthly Sales Report”** shall mean a Report that shall be submitted on a monthly basis that includes sales to both Executive and Non-Executive Authorized Users only.

**“MWBE”** shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.

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

**“Non-Executive Agency”** shall mean, for the purposes of this Contract, the State University of New York, NYS Office of the State Comptroller, New York State Education Department, New York State Teachers Retirement System, New York State Office of the Attorney General, the City University of New York and the New York State Insurance Fund. Furthermore, such term shall include the legislature, the judiciary and any public benefit corporation, public authority, school districts or local Governmental Entity.

**“NYS Holidays”** shall mean 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 at [https://www.cs.ny.gov/attendance\\_leave/2018\\_legal\\_holidays.cfm](https://www.cs.ny.gov/attendance_leave/2018_legal_holidays.cfm).

**“NYS Vendor ID”** shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

**“OGS HBITS Team”** shall mean Office of General Services Hourly Based Information Technology Services Team.

**“OGS Procurement Services”** shall mean a business unit of OGS responsible for establishing Centralized Contracts.

**“Quarterly Sales Report”** shall mean a Report that shall be submitted on a quarterly basis that includes sales to both Executive and Non-Executive Authorized Users as well as SBE, MWBE & SDVOB subcontracting usage.

**“Requested Qualifications”** shall mean the additional qualifications the Authorized User defines for their requested Position(s).

**“SBE”** shall mean a Small Business Enterprise. A “New York State Small Business” is defined as a company that is a resident to New York State, independently owned and operated, with one-hundred (100) or fewer employees, and not dominant in its field. See State Finance Law § 160(8) “small business concern” or “small business”.

**“SDVOB”** shall mean a NYS-certified Service-Disabled Veteran-Owned Business.

**“Selected Candidate”** shall mean the Candidate that has been selected by an Authorized User to perform work.

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

**“Skill Level”** shall mean the Skill Levels set forth in this Contract. A listing of each Skill Level and corresponding number of months’ required experience is included in Attachment 4 - *Job Titles, Skill Levels, Regions*.

**“Subcontractor”** shall mean any entity providing services to the Contractor under a Contract.

**“Training”** shall mean in-person, on-line or other educational tools

**“Inactive Contractor”** shall mean a Contractor who is not eligible to receive any new Form 1s posted by the OGS HBITS Team for a particular Contract year.

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

## 1.6 Appendices and Attachments

The following Appendices and Attachments, attached hereto, are hereby expressly made a part of this Contract as fully as if set forth at length herein.

Appendix A – *Standard Clauses for New York State Contracts (January 2014)*

Appendix B – *General Specifications (April 2016)*

Attachment 1 – *Pricing Schedules*

Attachment 2 – *Contractor Information*

Attachment 3 – *Insurance Requirements*

Attachment 4 – *Job Titles, Skill Levels, Regions*

Attachment 5 – *HBITS Contract (How to Use)*

Attachment 6 – *HBITS Contract (Forms)*

Attachment 7 – *HBITS Process*

## 1.7 Conflict of Terms

Conflicts among the documents shall be resolved in the following order of precedence:

1. Appendix A - *Standard Clauses for New York State Contracts (January 2014)*;
2. This Contract;
3. Appendix B – *General Specifications (April 2016)*;
4. Attachment 7 – *HBITS Process*.
5. Attachment 1 – *Pricing Schedules*.
6. Attachment 3 – *Insurance Requirements*.
7. Attachment 4 – *Job Titles, Skill Levels, Regions*.
8. Attachment 6 – *HBITS Contract (Forms)*.
9. Attachment 5 – *HBITS Contract (How to Use)*.
10. Attachment 2 – *Contractor Information*.

## 2 TERMS AND CONDITIONS

### 2.1 Contract Term and Extensions

1. Base Term. The Contract shall be in effect for a term of five (5) years. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B – *General Specifications (April 2016)*, *Clause 22 Contract Creation/Execution*). The Contract is expected to begin on or about July 1, 2019 and run until June 30, 2024. All Contracts resulting from the Solicitation regardless of start date shall have a co-terminus end date, including any subsequent extensions.
2. Extensions. At the State’s option, a Contract may be extended with mutual consent of the parties for up to a five (5) year period. Whether the optional extension is exercised is at the sole discretion of the State. Contractor reserves the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B – *General Specifications (April 2016)*, *Clause 23 Contract Term – Extension*.
3. City of New York only. The Contract term provided for in this section shall extend 6 months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined

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in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

## 2.2 Short Term Extension

This section shall apply in addition to any rights set forth in Appendix B – *General Specifications (April 2016), Clause 23 Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to three (3) months upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to six (6) months in lieu of three (3) months. However, this extension automatically terminates should a replacement Contract be issued in the interim.

## 2.3 Contract Survival

Engagements (Form 1 Task Orders) that are sent to Contractor for response prior to the expiration of this Contract shall survive the expiration date based upon the Engagement length stated on the Form 1 only if the Selected Candidate's actual start date occurs no later than 60 calendar days beyond the Contract expiration date. All Engagements without a start date within this parameter noted above shall be null and void.

## 2.4 Pricing

Pricing was collected pursuant to the Solicitation. For each Region, an Hourly Bill Rate was calculated by multiplying the Hourly Wage Rate bid by Contractor for each Job Title and Skill Level by the Markup percentage bid by Contractor. This resulted in pricing schedules that will be posted to the OGS HBITS Website and are attached hereto as Attachment 1 – *Pricing Schedules*.

OGS Procurement Services reserves the right to conduct an optional rate decrease exercise during the term of this Contract to increase the potential cost savings to New York State and to be more competitive within the HBITS market if it is deemed to be in the best interest of the State.

## 2.5 CPI Rate Adjustments

At the start of Contract years 2 and each successive Contract year thereafter, and any renewal year(s), the Contractor's Hourly Wage Rates in Attachment 1 – *Pricing Schedules* may be subject to an increase or decrease, equal to the percentage, in the Consumer Price Index (CPI) for all urban consumers (CPI-U) as published ninety (90) days prior to the anniversary date for the preceding 12-month period by the U.S. Department of Labor, Bureau of Labor Statistics, Washington D.C. 20212, but not to exceed 3%. The index is currently available through the Internet at the Bureau of Labor Statistics web site at <https://stats.bls.gov/>. Please be advised that the following path/process on the U.S. Department of Labor is subject to change as the website may be updated from time to time.

- Select "Subjects"
- Under Inflation & Prices section, select "Consumer Price Index (CPI)"
- Select "CPI Data", then select "Tables"
- Under Supplemental Files, select "Archived CPI Supplemental Files"
- Under the appropriate Month and Year select "CPI-U" (Consumer Price Index for All Urban Consumers) or successor report
  - Indent Level 0 – All Items

### 2.5.1 Calculation of CPI Adjustment

Rate adjustments using the CPI involve changing the Hourly Wage Rate by the percent change in the level of the CPI between the reference period and a subsequent time period. This is calculated by first determining the index point change between the two (2) periods and then the percent change. The rate adjustment must be calculated as follows. Take the CPI for the 3rd month prior to the month of the start date of the Contract and subtract this figure from the CPI value for the 3rd month prior to the anniversary date of the Contract. For example, if the start date begins in December, use the September CPI. That sum is then divided by the CPI value for the original 3rd month prior to start date and this result is then multiplied by 100 to equal the percent change that is the rate adjustment value. This percentage of increase or decrease must be applied to the Contract year, effective on the latter of the anniversary date or upon notification by the OGS HBITS Team.

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The following example illustrates the computation of percent change:

CPI for current period	136.0
Less CPI for previous period	- 129.9
Equals index point change	= 6.1
Divided by previous period CPI	/ 129.9
Equals	= 0.047
Result multiplied by 100	0.047 x 100
Equals percent change	= 4.7%

### 2.5.2 Agreement of CPI Adjustment

The Contractor is solely responsible for notifying the OGS HBITS Team via email to the OGS HBITS Contractors mailbox of a CPI rate change and to submit this notification no earlier than 90 calendar days and no later than the first day of the month prior to the start date of the Contract year. The Contractor shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease to the OGS HBITS Team. The subject line of the email request must contain "Request for CPI Adjustment".

In the event of a CPI rate increase, should the Contractor fail to make a request and submit supporting documentation to the OGS HBITS Team within the timeframe noted above, the Contractor shall be deemed to have waived its right to any increase in rate for that year. However, the State shall not be barred from making the appropriate adjustment in the case of a decrease in rate as determined in accordance with the above methodology.

### 2.5.3 CPI Adjustment for Selected Candidate Placements Already in Effect

Under no circumstance will a CPI adjustment be granted to an existing placement. CPI adjustments shall only apply to Hourly Wage Rates for new Engagements posted to the Contractors after the effective date of the change which occurs upon OGS Procurement Services approval.

### 2.5.4 CPI Adjustment to Markup

Under no circumstance will a CPI adjustment be applied to the Markup Percentage submitted in Attachment 1 – *Pricing Schedules*.

### 2.5.5 Government Mandated Program Rate Adjustments

The State may, at its sole discretion, address the issue of Government mandated program rate adjustments on a case by case basis if and when such a Governmental Mandate comes to pass.

## 2.6 Invoicing and Payment

### 2.6.1 Method of Payment for Executive Agency Authorized Users

This section only applies to Executive Agency Authorized Users as defined herein.

The Contractor shall submit a complete and accurate invoice to OGS, not the Executive Agency Authorized User, for consulting services provided to Executive Agency Authorized Users. Such invoice shall be submitted monthly, in arrears. OGS may require only one (1) invoice to be submitted each month, or one invoice per Executive Authorized User each month, and shall be exclusive of expenses. Invoices must be electronically submitted directly to OGS by the 15th of the following month for the prior months' services. Payment of consulting services provided to Executive Agency Authorized Users under this Contract shall be the sole responsibility of OGS.

Each invoice shall include but is not limited to the following information. The form and manner of submission is at the sole discretion of OGS and is subject to change during the term of this Contract

- Contractor Name

## Contract #PH (Vendor Name)

- Contractor Billing Address
- NYS Vendor ID Number
- NYS Contract Number
- NYS OGS Unit ID
- Invoice Date
- Invoice Number
- Dates of Service
- Task Order Number
- Candidate Name
- Number of Hours Worked
- Hourly Bill Rate
- Total Amount per Task Order (# of Hours \* Hourly Bill Rate)
- Agency Sub-Total Amount (if applicable)\*
- Total Invoice Amount

\*If applicable, the invoice must include a sub-total of all active Task Orders for each separate and distinct Executive Agency Authorized User. For example, the NYS Department of Health may have three (3) active Task Orders, and the NYS Department of Transportation may have two (2) active Task Orders. The invoice must contain a sub-total included under the NYS Department of Health for their three (3) Task Orders, a sub-total included under the NYS Department of Transportation for their two (2) Task Orders and a Grand Total for all five (5) active Task Orders.

The OGS HBITS Team will review each Invoice for accuracy and approve the invoice for payment. The Authorized User will be obligated to review and validate the hours worked by each Selected Candidate and will report any errors to the OGS HBITS Team or directly to the Contractor. Any required adjustments on any monthly invoice shall be included on the next monthly invoice cycle.

The Contractor must make available upon request all supporting documentation including, but not limited to time sheets with original signatures, which will include the daily hours worked by each Selected Candidate.

Timeliness of payment and any interest to be paid to Contractor is governed by Appendix B – *General Specifications (April 2016), Clause 47 Prompt Payment.*

For additional guidance on invoicing, please visit <https://bsc.ogs.ny.gov/content/vendor-information>.

### **2.6.2 Method of Payment for Non-Executive Agency Authorized Users**

This section only applies to Non-Executive Agency Authorized Users as defined herein.

Contractor shall invoice the Non-Executive Agency Authorized User, monthly in arrears, for all services rendered during the month for the benefit of the Authorized User, with appropriate invoices with full supporting detail(s) to the Authorized User's reasonable satisfaction. Invoices for payment shall be submitted to the Authorized User at the end of each month for services satisfactorily completed during that month. Bi-weekly or weekly billing for services rendered is not allowed.

At a minimum, said invoicing will include the Contract ID number, the name of the Non-Executive Agency Authorized User, the location where services were performed, the name of the Selected Candidate, the Hourly Bill Rate, Markup percentage and, either in its body or as an attachment shall itemize services performed during that month, names of Selected Candidates being billed along with total hours worked for the given billing period, for each Selected Candidate. Such information will be supported by time sheets with original signatures, which will include the daily hours worked by the respective individual(s) attached to invoices as backup. The Authorized User will be obligated to review and validate all invoices submitted by the Contractor.

Payment of purchases made by Authorized Users under this Contract shall be the sole responsibility of Non-Executive Agency Authorized Users and Contractor shall bill Non-Executive Authorized Users directly.

Timeliness of payment and any interest to be paid to Contractor is governed by Appendix B – *General Specifications (April 2016), Clause 47 Prompt Payment.*

### **2.6.3 Additional Payment Provision**



## Contract #PH (Vendor Name)

The State shall not be liable for the payment of any taxes under this Contract however designated, levied or imposed. See Appendix B – *General Specifications (April 2016), Section 8* for additional information.

### 2.7 Services Warranty

Authorized Users shall have the right to interview Candidates, either in-person, by telephone, or via Webcasting, to determine their qualifications. The qualifications must reflect the position of the specific Job Title requested. An Authorized User reserves the right to reject Candidates if the Authorized User determines that the Candidate is not qualified based on the referenced Job Title and other mandatory requirements. Authorized Users have the right to request a replacement Candidate if the original Selected Candidate is deficient in the performance of an assignment (see Attachment 7 – *HBITS Process* for details on Selected Candidate Replacement).

To ensure all services conform to Contract specifications, the Contractor must implement quality control procedures and a quality assurance plan.

Contractor must warrant that the services acquired under this Contract will be provided in a professional manner in accordance with industry standards. The Authorized User must notify Contractor of any services warranty deficiencies within ninety (90) calendar days from performance of the services that gave rise to the warranty claim.

### 2.8 Subcontractors

All Contracts between the Contractor and its Subcontractors must be by bona fide written Contracts that mandate compliance with the terms and conditions of this Contract. Contractor shall be fully liable for its Subcontractors' performance and compliance with all Contract terms and conditions. Contractor is required to identify all Subcontractors involved with the placement of a Selected Candidate with an Authorized User. This includes Subcontractors that are directly paying the Hourly Wage Rate to the hired Selected Candidate. Contractor must also identify if any Subcontractor is a New York State SBE or New York State certified M/WBE or SDVOB. A Contractor is prohibited from serving as a Subcontractor to another Contractor under this Procurement.

Contractor must include in all Subcontracts related to the Contract, in such a manner that they will be binding upon each Subcontractor with respect to work performed relating to the Contract, provisions specifying that:

- Work performed by the Subcontractor must be in accordance with the terms and conditions of this Contract including, but not limited to, Appendix A - *Standard Clauses for New York State Contracts (January 2014)*;
- Subcontractor must pass through all terms and conditions of the Contract, including but not limited to Appendix A - *Standard Clauses for New York State Contracts (January 2014)* and Hourly Wage Rate requirements, to any lower tier subcontracts;
- Nothing contained in such Subcontract shall impair the rights of the Authorized User or the State;
- Nothing contained in such Subcontract shall create any contractual relationship between any Subcontractor and Authorized User or the State;
- Subcontractor must maintain and protect against any unauthorized disclosure of records with respect to work performed under the Subcontract in the same manner as required of the Contractor;
- The State and/or Authorized User must have the same authority to audit the records of all Subcontractors as it does those of the Contractor; and
- Subcontractor must cooperate with any investigation, audit, or other inquiry related to the Contract or any litigation relating thereto.

Contractor must be fully responsible to Authorized User for the acts and omissions of, and the performance of Services by, all Subcontractors and/or persons either directly or indirectly employed or engaged by such Subcontractors, including independent contractors of those Subcontractors. Contractor must not, in any way, be relieved of any programmatic or financial responsibility under this Contract by the terms of its agreement with any Subcontractor.

### 2.9 Contract Administration

Contractor provided contact information with its bid as outlined below by completing and submitting Attachment 2 – *Contractor Information*). This information must be maintained and up-to-date at all times during the term of this Contract.

#### 2.9.1 Contract Administrator

Contractor must provide a dedicated Contract Administrator to support the updating and management of this Contract on a timely basis. The Contract Administrator shall act as the primary point of contact for Authorized Users and the OGS HBITS Team. The Contract Administrator must understand the terms and conditions of this Contract. OGS seeks a person at the Contractor's management level to meet the needs of this position; therefore, this position must not be staffed by the Contractor's clerical personnel.

Contractor must identify a secondary point of contact if the Contract Administrator is unavailable. This position may be staffed by whomever the Contractor determines can provide the best service to the State, however, the individual assigned shall not act as the Contract Administrator.

### **2.9.2 Toll-Free Number**

Contractor must provide a toll-free telephone number for Authorized Users to use, which must be staffed at a minimum from 9:00 AM to 5:00 PM EST Monday through Friday.

### **2.9.3 Webcasting**

Contractor must have access to Webcasting technology, such as Skype or GoTo Meeting for the duration of this Contract. This service must be provided to the State and Authorized Users free of charge. Authorized Users may have security restrictions which preclude them from installing certain kinds of applications, software, and/or hardware.

OGS Procurement Services expects this technology may be utilized for Contractor meetings with OGS Procurement Services and Authorized Users. In addition, prospective Candidates offered by the Contractor may be expected to interview with the Authorized User via this technology. An Authorized User reserves the right to conduct Candidate interviews via the Contractor's Webcasting technology.

Candidates will be required to have a government issued photo ID (the form of the photo ID is at the discretion of the reviewing Authorized User) available for viewing at the call. Falsification or use of another person's documentation at this time for this purpose may constitute fraud on the part of the individual Candidate, the Subcontractor and/or the Contractor.

### **2.9.4 Billing Contact**

Contractor must provide Billing Contact information to support the issuance and management of invoices throughout the term of this Contract.

### **2.9.5 Emergency Contact**

Contractor must provide Emergency Contact information to be used in the event of an emergency occurring after normal business hours or on weekends and holidays throughout the term of this Contract.

### **2.10 Insurance**

Contractor shall maintain in force at all times during the term of this Contract policies of insurance pursuant to the requirements outlined in Attachment 3 – *Insurance Requirements*.

### **2.11 NYS Vendor Responsibility**

The Contractor must 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 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 be deemed a breach thereof, nor must the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

## **2.12 NYS Tax Law Section 5-a**

Tax Law § 5-a requires certain Contractors awarded 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 (4) 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 (4) quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor shall file the completed and notarized Form ST-220-CA with the Contractor's Submission 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 [https://www.tax.ny.gov/forms/form\\_number\\_order\\_st\\_y.htm](https://www.tax.ny.gov/forms/form_number_order_st_y.htm). The ST-220-TD can be found at [https://www.tax.ny.gov/forms/form\\_number\\_order\\_st\\_y.htm](https://www.tax.ny.gov/forms/form_number_order_st_y.htm) 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 must 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.

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

## **2.13 NYS Financial System (SFS)**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts can provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>.

There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

## **2.14 Consultant Disclosure**

State Finance Law requires:

1. that the Office of the State Comptroller (OSC) include in the Consulting Services Report it compiles annually on contracts issued by state agencies for consulting services during the previous fiscal year, certain additional information on employees providing services under such contracts;
2. that contractors annually report certain employment information to the contracting agency, the Department of Civil Service (DCS) and OSC; and,
3. that OSC include such employment information in the Procurement Stewardship Act Report it compiles annually.

*Process and Document Preparation:*

STATE CONTRACTORS EMPLOYMENT INFORMATION

State contractors are required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked, and the amount paid to the contractor by the State as compensation for work performed by these employees. This includes information on any persons working under any subcontracts with the state contractor.

CONTRACTS FOR CONSULTING SERVICE

The definition of contracts for consulting services includes any contract entered into by a state agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

REPORT REQUIREMENTS

State Finance Law requires that OSC report to the Legislature on contracts for consulting services that were issued by state agencies during the previous fiscal year. OSC is required to include in the Consulting Services Report the employment information described above.

To enable compliance with the law, state agencies must include the New York State Consultant Services Contractor's Planned Employment form ([AC 3271-S](#)) in the procurement record submitted to OSC for new consultant contracts. The completed form must include information for all employees providing service under the contract, whether employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information prospectively from the start date of the contract through the end of the contract term.

In order to provide notice to potential contractors that the contractor selected may be required to complete the form, state agencies may incorporate the Form A into new solicitations for consulting services.

It is important to note that regardless of a contract's payment methodology (for example, deliverable based payment or lump sum payments), an agency must structure the procurement/contract to be able to ascertain and report the required data.

Submission of a completed Form A is required for OSC approval of new contracts for consulting services, except in extraordinary circumstances as determined at the sole discretion of OSC.

ANNUAL REPORT REQUIREMENTS

State agencies must require state contractors to report annually on the employment information described above, including work performed by subcontractors. The annual employment reports are to be submitted by the contractor to the contracting agency, to OSC and to DCS. OSC must include the employment information in the Procurement Stewardship Act Report. State Finance Law § 163 (subd 14) requires that OSC annually report to the State Procurement Council, the Governor and the Legislature on active and planned employment under consultant contracts subject to OSC approval.

State Consultant Services Contractor's Annual Employment Report ([AC 3272-S](#)) is to be used to report the information. Please note that, in contrast to the information to be included on Form A, which is a one-time report of planned employment data for the entire term of a consulting contract on a projected basis, Form B is required to be submitted each year the contract is in effect and is intended to capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st - March 31st).

To enable compliance with the law, state agencies must incorporate the annual reporting requirement and the Form B template into new solicitations for consulting services to provide notice to potential contractors that the contractor selected will be required to submit the form annually. Furthermore, incorporation of the requirement for Form B to be submitted annually by the contractor is a requirement for OSC approval of new contracts for consulting services, including those contracts resulting from mini-bids, except in extraordinary circumstances as determined in the sole discretion of OSC. Since the annual reporting requirement is contained in Appendix A - Standard Clauses for All New York State Contracts as of November 2010, compliance with this requirement may be satisfied by incorporating the latest version of Appendix A into the contract.

The State Consultant Services Contractor's Annual Employment Reports will be due no later than May 15th of each year.

SUMMARY

RFPs and other solicitations for consulting services should include notice of these reporting requirements. The procurement record for new contracts for consulting services received by OSC for approval must include, upon submission of the contract for approval, a completed Form A. New contracts for consulting services, including those contracts resulting from mini-bids, must include a requirement that Form B be submitted annually by the contractor to the contracting agency, DCS and OSC.

## COMPLETING THE FORMS

Form A and Form B should be completed for contracts for consulting services in accordance with the following:

- Scope of Contract (Form B only): a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- Employment Category: the specific occupation(s), as listed in the O\*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O\*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at [online.onetcenter.org](http://online.onetcenter.org) to find a list of occupations.).
- Number of Employees: the total number of employees in the employment category employed to provide services under the contract during the report period, including part time employees and employees of subcontractors.
- Number of hours (to be) worked: for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the report period by the employees in the employment category.
- Amount Payable under the Contract: the total amount paid or payable by the State to the state contractor under the contract, for work by the employees in the employment category, and for services provided during the report period.

To facilitate annual reporting by contractors, it is recommended that the contracting entity make available to the contractor a version of Form B with the Agency Name, Business Unit, and Department ID fields completed.

### **Reports that are to be submitted to OSC may be transmitted as follows:**

By mail:

NYS Office of the State Comptroller  
Bureau of Contracts  
110 State Street, 11th Floor  
Albany, NY 12236  
Attn: Consultant Reporting

### **Reports that are to be submitted to DCS may be transmitted as follows:**

By mail:

NYS Department of Civil Service  
Alfred E. Smith Office Building  
Albany, NY 12239  
Attn: Executive Office

### **To OGS HBITS Team (Required for the Contractor's Annual Evaluation)**

By email:

[ogs.sm.hbits.contractors@ogs.ny.gov](mailto:ogs.sm.hbits.contractors@ogs.ny.gov)

## **2.15 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 ("MWBES 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 M/WBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

### III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
  - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
  - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 - Staffing Plan  
To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)
  - 1. 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](mailto: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.
  - 2. Separate forms shall be completed by Contractor and all subcontractors.
  - 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the 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.
- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any

employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### IV. Contract Goals

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and/or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR §§ 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women-Owned Business Enterprises. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

#### V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, and the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder’s bid/proposal as being non-responsive under the following circumstances:



- (a) If a Bidder fails to submit an MWBE Utilization Plan;
- (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- (c) If a Bidder fails to submit a request for waiver; or
- (d) If OGS determines that the Bidder has failed to document good faith efforts.

- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

## VI. Request for Waiver

- A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the [OGS Office of Minority- and Women-Owned Business Enterprises for guidance.](#)**
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports, determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

## VII. Required Good Faith Efforts

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

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

### VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two (2) webinar trainings offered through the NYSCS: "**Introduction to the System – Vendor training**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com>.
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "**Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "**Change Info.**" It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User.**" When identifying the person responsible, please add "**- MWBE Contact**" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "**Contact Us & Support**" then "**Technical Support**" on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29<sup>th</sup> Floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages provisions in clause IX below.

### IX. Breach of Contract and Liquidated Damages

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

- A. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

- B. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

**X. Fraud**

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

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

**2.16 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses**

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

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

**I. Contract Goals**

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

**II. SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their Bid.
- B. The Utilization Plan must list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future Bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract Award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.
- C. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it must respond to the notice of deficiency, within seven (7) Business Days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency.



If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS must notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five (5) Business Days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Bid or proposal

- E. OGS may disqualify a Bidder's Bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB Contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan must constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS must be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

### III. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor must speak to the Designated Contacts in the Division for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting Documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (C), (D) & (E) will apply. If the Documentation included with the Bidder's/Contractor's waiver request is complete, OGS must evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. Contractor must attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regard to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) Business Days of receipt. Such response may include a request for partial or total waiver of SDVOB Contract goals. Waiver requests must be sent to [ogs.sm.ps\\_hbits@ogs.ny.gov](mailto:ogs.sm.ps_hbits@ogs.ny.gov).

### IV. Required Good Faith Efforts

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

- A. Copies of Solicitations to SDVOBs and any responses thereto.
- B. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' Solicitation was not selected.
- C. Dates of any pre-Bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.
- D. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

E. Other information deemed relevant to the waiver request.

V. Monthly SDVOB Contractor Compliance Report

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

VI. Breach of Contract and Damages

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

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

## 2.17 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B – *General Specifications (April 2016), Clause 25 Participation in Centralized Contracts*.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State Contracts. A list of categories of eligible entities is available on the OGS web site at <https://www.ogs.ny.gov/purchase/snt/othersuse.asp>. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS OGS Procurement Services Customer Services at 518-474-6717.

## 2.18 Extension of Use

This Contract may be extended to additional states or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in this Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

## 2.19 New Accounts

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, Agency code, name, address, and contact person. State Agencies must not be required to provide credit references.

## 2.20 Centralized Contract Modifications

1. OGS, an Authorized User, or the Contractor may suggest modifications to this Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Contract terms and conditions. A request to add new products at the same or better rate level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of this Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
2. Updates to this Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products, make rate level revisions, delete products, or to make such other updates to the established Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

3. OGS reserves the right to consider modifications which are not specifically covered by the terms of this Contract but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Contract and may require negotiations between Contractor and OGS before execution.
4. Modifications proposed by OGS or an Authorized User, including updates and amendments, must be processed in accordance with the terms of this Contract and Appendix B, *Clause 26 Modification of Contract Terms*.

### **2.21 Drug and Alcohol Use Prohibited**

For reasons of safety and public policy, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of this Contract.

### **2.22 Traffic Infractions**

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

### **2.23 Information Security Breach and Notification Act**

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York State who own or license computerized data which includes private information including an individual's unencrypted personal information plus one (1) or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Disclosure of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after necessary measures to determine the scope of the breach and to restore integrity, but with delay if law enforcement determines it impedes a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: Office of the Attorney General and the Department of State and the State Office of Information Technology Services (for Section 208 only), and the State Police (for Section 899 Only). Information relative to the law and the notification process is available at: <https://its.ny.gov/incident-reporting>.

### **2.24 Work in the United States**

All work performed by Selected Candidates under this Contract must be performed within the contiguous United States.

### **2.25 Minimum Utilization**

The State shall not be held liable under this Contract for any minimum utilization of the Contractor's Candidates.

### **2.26 Contract Amendment Process**

During the term of this Contract, the Contract may be amended as changes occur within the industry. 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. OGS, an Authorized User, or the Contractor may suggest amendments.

### **2.27 Performance and Bid Bonds**

There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract is required at any time during the term of this Contract.

### **2.28 Non-Compete Agreements**

To help achieve the objectives of promoting competition, maximizing options for Authorized Users, and encouraging mobility and opportunities for Candidates, Contractor agrees that any Candidate proposed by the Contractor under the Contract Positions shall be free to work unrestricted for the Contractor or Subcontractor (as applicable) and any such Candidate shall

not be subject to any non-compete agreements or restrictive covenants for any work performed under the Contract. The Contractor further agrees that, to the extent a Candidate may be restricted by a pre-existing non-compete agreement or restrictive covenant, the Contractor or Subcontractor (as applicable) agrees not to enforce any such restrictions for purposes of work performed under any contract resulting from the Solicitation.

The Contractor shall be responsible for verifying, prior to proposing a Candidate, that such Candidate is not subject to any work restrictions as described herein, regardless of whether any restriction rights are held by the Contractor or any other party, including Subcontractors.

The provisions of this section shall apply regardless of whether the proposed Candidate is working as an employee or independent contractor, and regardless of whether the proposed Candidate is working directly for the Contractor or through a Subcontractor. This is a material term of this Contract.

## **2.29 Audit of Contractor**

At any time during the life of this Contract, OGS Procurement Services reserves the right to suspend this Contract for failure of the Contractor to provide accurate and timely documentation as required by this Contract. This will include, but is not limited to submission of all reports, proof of insurance and Consultant Disclosure documents. OGS will activate this right for the failure of the Contractor to make timely and accurate payment of the quarterly Administrative Fee. This suspension will impact the Annual Contractor Evaluation.

At any time during the life of this Contract, OGS Procurement Services reserves the right to audit the accuracy and timeliness of the Administrative Fee. Audits shall be conducted during regular business hours, upon not less than fifteen (15) business days prior written notice. Administrative Fees will be due immediately for any errors or omissions disclosed by any such audit. If, as a result of any such audit, Administrative Fees are determined to have been underpaid by more than five (5) percent (5%) for the period audited, Contractor shall pay the costs of such audit or three (3) times the discrepancy, whichever is higher. Failure to make such payments or repeated errors on subsequent audits may result in the scheduling of a responsibility meeting and may lead to termination of this Agreement.

At any time during the life of this Contract, OGS Procurement Services reserves the right to audit the accuracy and timeliness of all payments and supporting documentation between Contractor, Subcontractors and Selected Candidates. Audits shall be conducted during regular business hours, upon not less than fifteen (15) business days prior written notice. Failure to comply or repeated errors on subsequent audits may result in the scheduling of a responsibility meeting and may lead to termination of this Agreement.

## **3 GENERAL PROVISIONS**

### **3.1 Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address set forth below, and (ii) if to Contractor, addressed to Contract Administrator at the 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. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

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

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

### **3.2 Captions**

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

### **3.3 Severability**

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

### **3.4 Counterparts**

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Contract and shall bind such party.

### **3.5 Entire Agreement**

This Contract and the referenced Appendices and Attachments constitute the entire agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein. In accordance with the terms set forth in Appendix B, Section 26, *Modification of Contract Terms*, and Section 30, *Purchase Orders*, no alteration or modification shall be made by including terms or conditions on a Purchase Order, order form or other document which seek to vary the terms of this Contract or impose new duties or obligations on the Contractor or Authorized User, and no such terms shall have any force and effect.

### CONTRACT SIGNATURE PAGE

**IN WITNESS WHEREOF**, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties as set forth in Appendix B, Section 22, *Contract Creation/Execution*. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Contract, the approved signature page(s) will be affixed by the State, upon receipt of all necessary approvals, to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

**CONTRACTOR**

**THE PEOPLE OF THE STATE OF NEW YORK**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Federal ID: \_\_\_\_\_

NYS Vendor ID: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

**CORPORATE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }  
  : ss.:  
COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally came:  
\_\_\_\_\_, to me known, who, being by me duly sworn,  
did depose and say that he/she/they reside(s) in  
\_\_\_\_\_; that he/she/they is (are)  
\_\_\_\_\_ (the President or  
other officer or director or attorney in fact duly appointed) of \_\_\_\_\_  
\_\_\_\_\_, the corporation described in and which  
executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of  
directors of said corporation.

\_\_\_\_\_  
**Notary Public Signature**