



**Office of General Services  
Procurement Services**

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

# Contract Award Notification

<b>Title</b>	:	<b>Group 73016 – e-Learning/Distance Learning Training Services (Statewide)</b> <b>Classification Code(s): 86</b>
<b>Award Number</b>	:	<b><u>22883</u></b> (Replaces Award 18601)
<b>Contract Period</b>	:	<b>January 1, 2016 – December 31, 2022</b>
<b>Bid Opening Date</b>	:	<b>October 27, 2015</b>
<b>Date of Issue</b>	:	<b>December 31, 2015 (Revised January 1, 2021)</b>
<b>Specification Reference</b>	:	<b>As Incorporated Herein</b>
<b>Contractor Information</b>	:	<b>Appears on Page 2 of this Award</b>

### Address Inquiries To:

State Agencies & Vendors		Political Subdivisions & Others	
Name :	<b>Katie Jezik</b>	Procurement Services	
Title :	<b>Contract Management Specialist</b>	Customer Services	
Phone :	<b>518-473-1069</b>	Phone :	518-474-6717
E-mail :	<b>Katherine.Jezik@ogs.ny.gov</b>	E-mail :	<b>customer.services@ogs.ny.gov</b>

**Procurement Services values your input.  
Complete and return "Contract Performance Report" at end of document.**

### Description

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 22883 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED OCTOBER 16, 2015.

This contract provides Authorized Users with a means of acquiring a variety of learning courses that are provided online for educational and training purposes. The online course availability saves on travel costs and provides a means for real-time learning by offering quick access and viewing flexibility of a broad array of educational courses that contribute to savings. Volume purchasing is also available for multiple different products from the same Contractor with a single order to aid in cost saving measures.

This Contract Award Notification contains MWBE goals of 0% MBE and 0% WBE.

PR #22883

22883ra5

<u>CONTRACT #</u>	<u>CONTRACTOR</u>	<u>TELEPHONE #</u>	<u>FED.IDENT.# / NYS VENDOR#</u>
PS67319 SB	Enterprise Training Solutions, Inc.	888/887-8244	13-3954395/ 1000001370
<del>PS67320 SB</del>	<del>New York Wired for Education, Inc.</del>	<del>844/691-1780</del>	<del>14-1815505/ 1000007242</del>
<del>PS67322 CANCELLED</del>	<del>Conduent State and Local Solutions, Inc.</del>	<del>801/567-5259</del>	<del>13-1996647/ 1000026082</del>

For complete Contractor contract information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at:  
<http://online.ogs.ny.gov/purchase/spg/awards/7301622883Can.htm>

Cash Discount and/or Early Payment Discount, If Shown, Should be Given Special Attention.  
**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**  
 (See "INVOICING AND PAYMENT" in this document.)

AGENCIES SHOULD NOTIFY PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES.

**SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:**

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

**RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:**

The Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

**NOTE TO AUTHORIZED USERS:**

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible. Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

#### PERFORMANCE AND BID BONDS

There are no bonds for this Contract. In accordance with Appendix B, *Performance/Bid Bond*, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the Term of the resulting Contract.

#### ORDER OF PRECEDENCE

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #22883 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (January 2014), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Revisions and Clarifications to Bid Specifications dated October 8, 2015 and October 16, 2015 (previously provided);
4. Solicitation #22883 (Revised October 16, 2015) including all Appendices and Attachments referenced therein (previously provided);
5. Contractor's bid Prices as stated in Attachment 1 – Pricelist
6. Contractor's Bid

#### OVERVIEW

This Contract provides Authorized Users with a means of acquiring e-Learning/Distance Learning Training Services, including computer based training (CBT), video based training (VBT), web based training (WBT), interactive web based training (IWBT) and other related incidental services. Procurement Instructions describing requirements for Authorized Users to purchase from the Centralized Contract are found in Section titled, *Procurement Instructions*.

#### ESTIMATED QUANTITIES

This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. All quantities or dollar values listed within this Contract are estimates. The historical dollar value of all contracts issued under the previous award is approximately \$1,000,000 annually.

Numerous factors could cause the actual value of the Contract to vary substantially from the historical value. Such factors include, but are not limited to, the following:

- The Contract is a nonexclusive Contract;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the Contract period; and,
- The State reserves the right to terminate the Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Service's experience, depending on the price of a particular item, the actual volume of purchases for that Product could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing

and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates/historical values provided in this Contract.

## GLOSSARY

The terms used in this Contract shall be defined in accordance with Appendix B, Section 2, *Definitions*. In addition, the following definitions shall apply.

- **Cloud**: Shall mean any Product or Service sold as an “as a service” offering or in which Authorized User Data is transmitted, acted upon, or stored on non-Authorized User equipment. This may include, but is not limited to, hosted applications, managed security services, and off-site Data storage. Cloud includes IaaS, PaaS, SaaS, and XaaS.
- **Cloud Provider**: Person, organization or entity responsible for making a Cloud Service available to Authorized Users.
- **Computer Based Training (CBT)**: Consists of instruction delivered on a computer, with or without supplemental workbook materials. In addition to the actual instruction, exercises are usually included. This methodology provides an opportunity for a high level of interactive participation by the student. CBT courses for computer software often simulate the software and sometimes also provide an alternative help source. CBT training may be made available for individual computers or through a network to many computers.
- **Consensus Assessments Initiative Questionnaire (CAIQ)**: As established by the Cloud Security Alliance (CSA). The Cloud Security Alliance Consensus Assessments Initiative (CAI) was launched to perform research, create tools and create industry partnerships to enable Cloud computing assessments.
- **Content Developer/Publisher**: Legal owner of the Content that directly develops the information contained in the courseware and/or has the exclusive ownership of it. A developer/publisher may also refer to a firm that has the exclusive publishing rights from the owner of the Content.
- **Content**: The intellectual property and knowledge to be disclosed; different formats for e-Learning/Distance Learning include, but are not limited to, text, audio, video, animation, and simulation.
- **Courseware**: Shall mean course Content or software.
- **Data**: Any information, Analytic Derivatives, formula, algorithms, or other Content that the Authorized User may provide to the Contractor pursuant to this Contract. Data includes, but is not limited to, any of the foregoing that the Authorized User and/or Contractor (i) uploads to the Cloud Service, and/or (ii) creates and/or modifies using the Cloud Service. See also Analytic Derivatives.
- **Data Breach**: Data Breach refers to unauthorized access by any person, including employees, officers, partners or subcontractors of Contractor, who have not been authorized to access such Data.
- **Delivery**: Any method of transferring course Content to end users including, but not limited to, web-based, computer-based, etc. For the purposes of this contract, Content Delivery Mechanism does not include Instructor-led/Live Training.
- **Distance Learning**: Term generally used in the K-12 & College/University educational areas (see e-Learning below).
- **e-Learning (Electronic Learning)**: Term covering a wide set of applications and processes, such as web-based training, computer-based training, virtual classrooms, and digital collaboration. It includes the delivery of Content via Internet, Intranet/Extranet (LAN/WAN), audio-and video, satellite broadcast, CD-ROM, and more. Also referred to as: Distance Learning, Virtual Learning, Online Learning, Internet-based Learning, and Web-based Learning.

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- **End-User:** The person/Authorized User for whom a particular technology is designed. The individual who uses the technology for its designated purpose. For e-Learning/Distance Learning, the End-User is usually the student.
  - **Extranet:** A local-area network (LAN) or wide-area network (WAN) using TCP/IP, HTML, SMTP, and other open Internet-based standards to transport information. An Extranet is only available to people inside and certain people outside an organization, as determined by the organization.
  - **Industrial Funding Fee:** A fee that is built into contract prices to cover the administrative costs of managing the contract.
  - **Infrastructure as a Service (IaaS):** The capability provided to the Authorized User is to provision processing, storage, networks, and other fundamental computing resources where the Authorized User is able to deploy and run arbitrary Software, which can include operating systems and applications. The Authorized User does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications; and possibly limited control of select networking components (e.g., host firewalls).
  - **Instructor-Led/Live Training (ILT):** Provides instruction in person solely under the direction of an instructor or facilitator. This contract does not include Instructor-Led/Live classroom training. IWBT is not considered ILT.
  - **Intranet:** A LAN or WAN that is owned by an eligible entity and is only accessible to people working internally. It is protected from outside intrusion by a combination of firewalls and other security members.
  - **Interactive Web Based Training (IWBT):** Consists of computer-based training that uses Web technologies (i.e. -TCP/IP, HTTP, Web browsers, and HTML as the core language of the Web) delivered across networks with the additional component of interactivity between the group of students and the instructor. Discussion forums, e-mail and/or chat sessions provide ways for trainees to interact with an instructor or the rest of the group. Also referred to as a webinar.
  - **Internet:** An international network first used to connect education and research networks, begun by the US government. The Internet now provides communication and application services to an international base of businesses, consumers, educational institutions, governments, and research.
  - **Learning:** A cognitive and/or physical process in which a person assimilates information and temporarily or permanently acquires or improves skills, knowledge, behaviors, and/or attitudes.
  - **Learning Environment:** The physical or virtual setting in which learning takes place.
  - **Learning Management System (LMS):** Software that automates the administration of training – a LMS can assist with registration of users, track courses in a catalog, and records data from learners; and provides reports to management. A LMS is typically designed to handle courses by multiple publishers and providers. It usually does not include its own authoring capabilities, but focuses on managing courses created by a variety of other sources. It is a high-level, strategic solution for planning, delivering, and managing all learning events within an organization, including online, Instructor-led, and virtual classroom courses. Also, see “Student Management System (SMS)/Student Information System (SIS)” below.
  - **Learning Management System Functions:** The ability to provide Learning Management System (LMS) capabilities to include, but not limited to, a basic integrated data tracking, reporting, and administration system, and competency/assessment tools for use by Authorized Users.
  - **Media:** Text, graphics, audio, video, or human element used to teach.
  - **Modified/Customized Content:** Pre-existing Courseware Content that has been modified/changed based upon Authorized User requirements.
  - **NYS Vendor ID:** Shall refer to the ten-character identifier issued by New York State when the vendor is registered on the Vendor File.

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- **Off-The-Shelf (OTS) Content:** Pre-packaged, commercially available courseware.
  - **Online Learning:** Learning delivered by web-based or Internet-based technologies.
  - **Periodic Recruitment:** A process whereby OGS, at any time and in its best interest, reserves the right to open the procurement to additional Bidders under the same terms and conditions as the original solicitation.
  - **Platform as a Service (PaaS):** The capability provided to the Authorized User to deploy onto the Cloud, infrastructure Authorized User-created or acquired applications created using programming languages and tools supported by the Vendor. The Authorized User does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.
  - **Preferred Source Offering:** Shall refer to those commodities or services that have been approved in accordance with State Finance Law Section 162.
  - **Preferred Source Program:** Shall refer to the special social and economic goals set by New York State in State Finance Law §162 that require a governmental entity purchase select commodities and services from designated organizations when the commodities or services meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law Section 163, purchases of commodities and services from preferred sources are given the highest priority and are exempt from the competitive Bidding requirements. The New York State preferred sources include: Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries); New York State Preferred Source Program for People Who Are Blind, NYS Industries for the Disabled; and the Office of Mental Health. These requirements apply to a State agency, political subdivision and public benefit corporation (including most public authorities).
  - **Proprietary:** In Information Technology, proprietary describes a technology, product, or service that is owned exclusively by a single company that carefully guards knowledge about the related inner workings.
  - **Reseller:** Any model for distribution of Product other than direct from the Contractor. Resellers include but are not limited to approved value added resellers (VARs), distributors, dealers, sales agents, and alternate channel partners.
  - **Statewide Learning Management System (SLMS):** SLMS is New York State’s enterprise learning management system. It is the State’s solution to manage, deliver and track training for all state employees and for all external learners who agencies provide training, such as first responders. The system is used by State agencies, authorities and NYS authorized users to access and complete e-Learning training.
  - **Software as a Service (SaaS):** The capability provided to the Authorized User is to use the provider’s applications running on a Cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email), or a program interface. The Authorized User does not manage or control the underlying Cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
  - **Student Management System (SMS)/Student Information System (SIS):** Generally used in the K-12 & college/university Educational areas; provisions to include, but not limited to, a basic integrated data tracking, reporting, and administration system, and competency/assessment tools for use by school administrators, instructors, staff, etc. Also, see Learning Management System (LMS) above.
  - **System Requirements:** The technological conditions including, but not limited to, the operating system, programming language, database, hardware configuration, bandwidth, processing power, etc., required to run an application successfully.

- **Training:** A process that aims to improve knowledge, skills, attitudes, and/or behaviors in a person to accomplish a specific job task or goal. Training is often focused on business needs and driven by time-critical business skills and knowledge, and its goal is often to improve performance.
- **Video Based Training (VBT):** Consists of instruction presented on pre-recorded video, such as DVDs, VBT does not include WBT. Supplemental workbook materials may also be used.
- **Virtual Learning:** Acquiring knowledge or skills through the use of a web-based simulated classroom environment. This platform is often referred to as a Virtual Learning Environment (VLE) It allows learners to be placed in groups, presents resources, and may provide electronic communication, such as email, threaded discussions, and chats, and other interactions such as assignments and assessments. .
- **Web Based Training (WBT):** Consists of computer-based training that uses various web technologies (i.e. - TCP/IP, HTTP, web browsers, and HTML or XML as the core language of the web) and is delivered across networks. This includes “Streaming Video/Digital Media”. WBT can be broken down into real-time, non-real-time, and various combinations of the two. WBT has also been referred to as Internet based training (IBT), web based learning (WBL), e-Learning, Distance Learning, Virtual Learning, and web-based instruction (WBI). These are all very similar, if not synonymous with, WBT and for the contract are interchangeable.

## SCOPE

The Contract sets forth the terms and conditions governing the acquisition of e-Learning/Distance Training Products (CBT, VBT, WBT, and IWBT), and related incidental products. E-Learning Training Products include, but are not limited to, providing the following: High quality and cost effective Course Content, including but not limited to off-the-shelf product courses & libraries by groups, including but not limited to: PC/Desktop skills (Microsoft Office ), IT skills & any related certifications (Cisco, Linux, Oracle, etc.), Business/Professional Development (Accounting/Finance, Legal, Human Resources, Health/Safety, etc.), Educational-based (K-12 schools & Colleges/Universities), trades and operations courses, direct care courses and Adult Education Basics (basic skill courses). Delivery (web hosting, etc.), and integration with the NYS Statewide Learning Management System (SLMS) or other LMS systems is desirable. All learning management and student management functionality should include administration and basic reporting and tracking.

## EXAMPLES OF ONLINE TRAINING OFFERINGS:

### Business Skills:

- Business Analysis (with Agile)
- Project Management (with LEAN)
- DevOps
- Data Analysis
- Professional Skills / Management for New Managers

### IT Skills:

- Office 365
- Enterprise Architecture
- Responsive Web Design
- Cyber Security / Information Security
- UX/UI
- Object-Oriented Programming
- APIs
- Ruby (on Rails)
- Groovy (on Grails)
- Drupal
- Java
- Git
- NET
- J2EE
- HTML5 and CSS3

- PHP
- JavaScript
- Oracle 11g and 12c
- Siebel / RightNow
- Business Intelligence (OBIEE)
- Web Analytics (Google and Adobe)
- Search Engine Optimization
- Mobile Application Development
- DB2

This contract does **NOT** include Instructor-Led/Live classroom training, consulting and custom/modified content development (however, making minor modifications, such as adding relevant contact information, done free of charge is permitted). Terms used in this document shall have the meanings set forth in Appendix B and in Section titled, *Glossary*. Amendments or modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties and with the approval of the New York State Office of General Services, Procurement Services.

#### CONTRACT PERIOD AND RENEWAL

The term of this Contract shall be for five (5) years. The contract shall commence after all necessary approvals by both parties and shall become effective upon the mailing or electronic communication of the final executed contract documents (see Appendix B, *Contract Creation/Execution*). All e-Learning/Distance Learning Training Products (CBT, VBT, WBT, and IWBT) Contracts will terminate conterminously five (5) years from the date of OGS approval of the first Contract awarded.

Contracts awarded under any additional periodic recruitment periods or those Contracts awarded in phases, will have a lesser initial Contract term such that the Contracts from all periodic recruitments and all phases of awards end on the same date, regardless of start date.

The parties may renew the contract by written agreement signed by both parties, upon expiration of the original term and approval of the OGS, for two additional one (1) year terms. Upon termination of the Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made or individual licenses granted to Authorized Users prior to such termination.

#### CANCELLATION FOR CONVENIENCE

The State of New York retains the right to cancel this Contract, in whole or in part without reason (see Appendix B, §46.b, *Termination for Convenience*).

#### SHORT TERM EXTENSION

In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) month 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 three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

#### PROCUREMENT INSTRUCTIONS

1. The Contracts are issued under a multiple award structure. Products and services offered under the Contracts, pricing, and other Contract information will be posted to the OGS website or the awarded Contractors' dedicated NYS websites. Authorized Users shall procure Products and services that best meet their form, function, and utility requirements.
2. Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities/services of Preferred Source suppliers such as Correctional Industries (Corcraft), NYS Preferred Source Program for People Who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities/services meet the form, function and utility of the Authorized User.



3. Where commodities/services are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded herein. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users are strongly encouraged to obtain quotes from at least three (3) Contractors prior to issuing a purchase order, in order to ensure that the Authorized User is receiving the best possible pricing.
4. When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
  - a. statement of need and associated requirements, including any LMS software integration requirements;
  - b. obtaining all necessary prior approvals;
  - c. a summary of the Contract alternatives considered for the purchase; and
  - d. the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).
5. Authorized Users will issue purchase orders directly to the Contractor or the Contractor's authorized Reseller (if applicable), as specified by the Contractor, and specifying any shipping/delivery requirements and/or LMS integration requirements (if applicable).
6. Upon Authorized User acceptance of Products and/or services itemized on the purchase order, Contractor will invoice Authorized User for any portion of Products and/or services accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products and services.

***Note: Contractor must disclose any forms or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions must receive pre-approval by the Authorized User prior to the issuance of an order. OGS has not and will not review specific Contractor licensing terms and conditions. Additional terms or conditions that were not pre-approved by the Authorized User or which conflict with the Contract terms and conditions are void and unenforceable at the sole discretion of the State.***

#### Plan to Procure

New York State Agencies are reminded that they must submit a Notification of Plan to Procure (PTP) before any solicitation of technology products or services. The PTP request form, along with supporting documentation should be submitted online at: <https://www.its.ny.gov/ptp>.

#### Contractor Certifications

It is important that all Authorized Users require Contractors to provide written proof of any certifications, accreditations, memberships, etc. (copies of original certificates, original letters on company letterhead, etc.) to confirm compliance of any standards/guidelines. Note that some of the organizations that establish and maintain standards also require a recertification. All submitted proof should also verify the contractor's current, active status.

#### AICC/SCORM Certifications

Authorized Users may request proof of AICC/SCORM Compliance as an added benefit to their procurement. Authorized Users may visit the AICC website ([www.aicc.org](http://www.aicc.org)) and/or SCORM website ([www.adlnet.org](http://www.adlnet.org)) for additional information regarding AICC and SCORM and for a listing of certified products. Below is a brief definition of these requirements:

- Aviation Industry Computer-Based Training Committee (AICC): These standards apply to the development, delivery, and evaluation of training courses that are delivered via technology. AICC is an association of technology based training professionals that originally developed training guidelines for the aviation industry.

- Sharable Courseware Object Reference Model (SCORM): A set of specifications that, when applied to course Content, produces small, reusable learning objects. A result of the Department of Defense's Advanced Distributed Learning (ADL) initiative, SCORM-compliant courseware elements can be easily merged with other compliant elements to produce a highly modular repository of training materials, [www.adlnet.org](http://www.adlnet.org).

Educational Entity Authorized Users (K-12 schools and colleges/universities)

These Authorized Users should confirm that the contractors, course Content, and related products/services selected for their procurement meet the requirements and standards established by the NYS Education Department (NYSED) and those specified by the contract user. For degree-granting facilities and courses, this also includes current, active accreditation by the NYS Board of Regents and/or one of their approved accrediting organizations (see approved organization list at <http://www.highered.nysed.gov/ocue/ded/database.html>).

Note: Authorized Users are responsible for ensuring that contractors submit the necessary proof that their firm and products/services meet NYSED's and contract user's specified requirements/standards prior to awarding the procurement. If any products and/or services are proven to not meet these requirements and standards at a later date, contractors must provide Authorized Users with either: 1) a complete refund of all costs incurred, or 2) replace the failed products/services with those that will meet the specified requirements at no additional cost.

### PRICE

Price shall include all customs, duties and charges and shall be net, F.O.B. destination, any point in New York State. Upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause. Price shall also include any integration with LMS software.

Contractor's pricing information is included in the posted Pricelist linked from the Contractor Information page.

Discounts are firm for the entire period of the Contract, and no discount reductions will be allowed at any time. Discount increases are permitted at any time. See Section titled, *Pricelist Updates*.

### LICENSE DISCOUNTS

A Contractor may have offered a license discounts at the transactional level using the following thresholds:

- 1 – 500
- 501 – 1000
- 1001 – 3000
- 3001 – 5000
- 5001 – 7000
- 7001 – 10,000
- 10,000 and above

In addition to the above, a Contractor will indicate the ability for New York State as an entity, or for any individual NYS agency, authority or NYS Authorized Users to purchase an enterprise license allowing use by all NYS employees, or all employees in the purchasing agency who have access to a computer and the internet during work hours. The cost for this enterprise type license must be at a rate which is significantly reduced from the cost of a per person license.

The ability to purchase licenses mid-year based on staffing numbers would be preferred.

### VOLUME DISCOUNTS

Contractor may offer volume discounts **at the transaction level** using the following thresholds (Refer to each Contractor's Information Page):

- \$500.00 - \$1,000.00
- \$1,000.01 - \$2,500.00
- \$2,500.01 - \$5, 000.00
- \$5,000.01 and above

### PROMPT PAYMENT DISCOUNTS

Contractor may offer prompt payment discounts **at the transaction level**. (Refer to each Contractor's Information Page).

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## PRICELIST UPDATES

The procedures below outline how Contract pricelist updates will be handled under this Contract. NOTE: THE FOLLOWING PROCEDURES ARE NOT APPLICABLE TO CONTRACTOR PROPOSED CHANGES TO CONTRACT TERMS AND CONDITIONS. Any implied or express request for changes in or additions to existing Contract terms and conditions, including new terms and conditions associated with a specific product line being added to the Contract for the first time, requires a formal Contract amendment and requires the approval of OGS. New or revised Contract terms and conditions are subject to the restrictions set forth in Appendix B, Section 27, *Modification of Contract Terms*.

### General

Contractor may update their pricelist as follows:

- In the first year of the Contract, the Contractor shall be allowed to update the pricelist twice to add/delete Products and services as established by the Contractor in their normal course of business. However, pricelist updates must be submitted no earlier than sixty (60) calendar days from the date of OGS approval of prior pricelist update. There shall be no price increases allowed for existing Products and services during the first year of the contract.
- Commencing with the second year of the Contract, the Contractor may update the pricelist semiannually to reflect Contractor price changes and the addition/deletion of Products and services as established by the Contractor in their normal course of business; thirty (30) calendar days from the anniversary date of the Contract; and, thirty (30) calendar days from the semiannual anniversary date of the Contract. The thirty (30) calendar days includes the anniversary and semiannual anniversary date of the Contract.

Any new Products or services added to pricelists shall have a discount structure consistent with existing Products and services on the pricelist that are comparable in scope. Contractors shall submit their updated pricelist to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website.

All approved pricelist updates shall apply prospectively upon approval by OGS. Any request for a pricelist update not received in accordance with this section shall be deemed denied. Total price increases for pricelist updates in a single year of the Contract shall not exceed the escalation cap in set forth in Escalation Cap subdivision, below. All percentage discounts shall remain firm (unchanged) or they may increase for the duration of the Contract.

### Pricelist Format

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract administrator. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

- Price increases;
- Price decreases;
- Products being added; and
- Products being deleted.

### Contractor's Submission of Contract Updates

In connection with any Contract pricelist update, OGS reserves the right to:

- Request additional information;
- Reject Contract updates;
- Remove Products from Contracts;
- Remove Products from Contract updates; and
- Request additional discounts for new or existing Products.

Escalation Cap

In a single year of the Contract the total request for price increases shall not exceed the lesser of:

- three (3%) percent annually, or
- the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0,CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at [www.bls.gov](http://www.bls.gov).

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	2.2

The “CPI for current period” shall be the index in effect at the time the Contract pricelist update request is received; “CPI for previous period” shall be the index in effect when the Contract pricelist was last updated.

Supporting Documentation

Each pricelist update request must be accompanied by an electronic copy of Contractor’s nationally published pricelist(s) in its original format detailing current list prices relevant to the Products the Contractor is updating. If the NYS net prices are based on a GSA Schedule or WSCA Contract, that pricing must also be included with the update request.

Cover Letters

All Contract pricelist updates shall be accompanied by a cover letter describing the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA Schedule or WSCA Contract pricing update, to add/delete Products or services, etc.).

GSA Pricing

Where NYS net pricing is based upon an approved GSA Supply Schedule:

1. Associated Discounts: The State is entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to, discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in the NYS Contract or GSA schedule, when calculating the NYS Net Price; and
2. Industrial Funding Fee: GSA pricing incorporates a sum referred to as the “GSA Industrial Funding Fee.” (“IFF”) OGS reserves the right to require either that: the IFF is remitted directly to OGS, or the NYS Contract prices are reduced by an amount equivalent to the IFF. If the latter, the NYS Net Price shall be calculated by reducing the published GSA price, after the discounts, if any, set forth in paragraph (1), above, downward by the amount of the IFF, currently set at .75%. Therefore, the “NYS Net Price” shall be calculated by multiplying 0.9925 times the GSA price.

**DISPUTE RESOLUTION POLICY**

Section 63 of Appendix B is hereby deleted. All disputes under this Contract shall be handled through the OGS Dispute Resolution Process found at: <http://nyspro.ogs.ny.gov/sites/default/files/uploaded/Dispute%20Policy%209-2014.pdf>.

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## PERIODIC RECRUITMENT

The State reserves the right to add Contractors beginning in the second year of the Contract and at one year intervals thereafter. The State will formally announce when the bid is reissued, at the discretion of the State. Bidders shall be required to submit such Bid documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the new Bid solicitation. Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration. In addition, if a Bid is deemed non-responsive under periodic recruitment, a vendor cannot reapply for a future Contract until the next periodic recruitment period. For Contracts that are awarded under periodic recruitment, the Contract term will commence upon OGS approval in accordance with Appendix B, Section 24, *Contract Creation/Execution* and will terminate on the then current end date of the Contract or at the end of any approved extension or renewal period.

Vendors shall be required to submit this original bid document which may include additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bidders are advised to review the "Qualification of Bidders" clause before submitting a bid under periodic recruitment to ensure they can meet all bid requirements. Under periodic recruitment, the Bidder must demonstrate proof of a minimum sales volume of \$100,000.00 in Products and services for the pricelist offered to national public entities in the 12 month period preceding the Bid opening date. Required proof of sales may be demonstrated in the form of a summary of the total sales reported, which shall include the names of the purchasers, the total amount of sales by purchaser and the date of each sale. Reseller sales can be counted toward meeting this requirement. OGS reserves the right to request proof of sales. Failure to submit proof of sales at the time of bid submission may result in rejection of bid. NYS OGS Procurement Services reserves the right to request copies of purchase orders and/or invoices for verification or clarification. In addition, if a bid is rejected under periodic recruitment, a Bidder cannot reapply for a future contract until the next periodic recruitment period. For bids that are awarded under periodic recruitment, the Contract term will commence upon award and terminate on the current end date of the Contract unless an extension is mutually agreed upon between Procurement Services and the Contractor.

## CONTRACT ADVERTISING

In addition to the requirements set forth in Appendix B, *Advertising Results*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance.

## MINIMUM ORDER

Minimum order shall be \$50.00. Contractor may elect to honor orders for less than the minimum order; however, no additional charges shall be allowed. See Contractor Information page located on the OGS Website for additional information: <http://www.ogs.ny.gov/purchase/spg/awards/7301622883Can.htm>

## NEW YORK STATE PURCHASING CARD

See "Purchasing Card" in Appendix B, OGS General Specifications. Contractors indicated if they will accept the NYS Purchasing Card for orders not to exceed \$50,000. For all purchases executed using a New York State Purchasing Card, Contractor shall provide an itemized receipt with each delivery. Contractor shall state the discount offered when using the NYS Purchasing Card on each Contractor's Information page.

## ORDERS

Contractor shall be capable of accepting orders manually, via facsimile, and, electronically via email. As an option, Contractor may also accept orders electronically via the Internet through a web-based ordering system. Contractor shall be required to provide written quotes to Authorized Users who request them prior to placing an order, which details List Price, discount, and Net Price, as applicable.

The web-based ordering system, if offered, shall allow Authorized Users to enter orders and have full order inquiry capabilities. All orders (manual, fax, electronic) shall reference requisition and/or purchase order number as required. If offering a web-based ordering system, the Contractor represents and warrants that it is the sole owner of the software product used for its ordering system, or, if not the owner, has received all proper authorizations from the owner to license the software product, and has the full right and power to grant the rights contained in any Contract resulting from this Invitation for Bids and as described further in Appendix B. Contractor further warrants and represents that the software product is of original development, and/or that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person/company.

Contractor shall defend, indemnify and save New York State wholly harmless from all costs, liability, and damages, including attorney fees incurred by New York State as a result of claims by a third party that New York State use of such data, information, and software infringes the rights of such third party. New York State shall promptly notify Contractor in the event New York State learns of such claim by a third party.

The web-based ordering system shall be capable of processing, controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Agency/Facility/Political Subdivision, etc.
- Contract Number
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- Net Price
- Extended and Total Amounts
- Comparable systems meeting the intent of the specifications may be considered.

If offering a web-based ordering system, the Contractor shall provide any necessary software (excluding communication software) and training guides/manuals or online support in the use of the web-based ordering system at no additional cost to all Authorized Users capable of placing orders electronically. Samples of software and training guides/manuals may be required. If requested, Contractor must demonstrate its system at an Albany, NY area location designated by the State.

#### INTERNET WEBSITES

The State encourages Contractors to provide a designated NYS Contract website for Authorized Users' direct access. This website will be listed under the Contractor information. The website will be the responsibility of the Contractor to maintain and keep updated. Changes in Products/services or pricing must be approved by Procurement Services prior to addition to the website. Hard copy catalog and pricelists, either in paper format or electronic format, must be available to all Authorized Users who either do not have Internet access or prefer the optional format.

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

Contractor is solely responsible for administration, Content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, Resellers, Sub-Contractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services f/k/a Office for Technology policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based Intranet and Internet information accessible for persons with disabilities. In accordance with such policy, the following language is incorporated into any Contract resulting from this procurement:

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by Information Technology Systems (ITS) and OGS and the results of such testing must be satisfactory to ITS and OGS before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

#### NEW YORK STATE 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 Bundle 18, operating on PeopleTools version 8.49.33.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with centralized contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly. The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

Future SFS procurement functionality envisions the ability to fully host Contractor catalogs or to integrate Contractor-hosted punch-out catalogs. OGS reserves the right to integrate either of these future catalog functions with a Contractor during the contract period. No costs or expenses associated with providing information and integration shall be charged to NYS. Technical Requirements for the data elements, such as data types, maximum field lengths, and cXML element names shall be provided by SFS during integration. Upon completion of integration and activation of an SFS-based catalog ordering system, State agencies shall process their orders through the SFS functionality and the other Authorized Users shall continue to process orders in accordance with Contract terms and conditions, including through any Contractor-hosted web based ordering system. For more information on SFS, its use, and its capabilities please visit the SFS website here: <http://www.sfs.ny.gov/>.

## INVOICING AND PAYMENT

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, Section 48, *Contract Invoicing*.

The standard format for invoicing shall be single invoices; meaning the Contractor shall provide the Authorized User with an invoice for each order at the time of delivery. Invoices must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the correct price on the original date of order. At a minimum, the following fields must be included on all invoices:

- Vendor Name
- Vendor Billing Address
- Vendor Federal ID Number
- NYS Vendor ID Number
- Authorized User Account Number
- NYS Contract Number (PSXXXXXX)
- Authorized User’s Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users.

Payment of purchases made by Authorized Entities other than State Agencies under this agreement shall be the sole responsibility of such entities and the Contractor shall bill such entities directly on vouchers authorized by the said entities.

## PRODUCT DELIVERY

Delivery of all Contract Products shall be made in accordance with Appendix B, Section 32, *Product Delivery*, and Appendix B, Section 34, *Shipping/Receipt of Product*.

The Contractor must offer single dock delivery. Each delivery shall be delivered based upon the needs of the Authorized User.

Delivery shall be made in accordance with the instructions on the Purchase Order from each Authorized User and in accordance with Authorized User's security rules, which will be communicated during purchase ordering process. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the Authorized User and, if applicable, from OGS.

The Contractor shall address all order and invoice discrepancies (e.g., shortages, incorrect item received, etc.) within five (5) business days from notification.

#### CURRENT AGREEMENTS BETWEEN CONTRACTOR AND ELIGIBLE AUTHORIZED USERS

Authorized Users, including educational institutions of the State of New York, with independent contracts for Contractor products and services may, at any time, convert any existing contract(s) with Contractor to participate under this Contract and upon doing so shall have all rights of an "Authorized User", provided that notice of such migration shall be forwarded to the Contractor. Contractor has an affirmative responsibility to inform eligible Authorized Users, via e-mail or other formal communications, of the terms, conditions and pricing of this Contract at the earliest opportunity after approval of this Contract by all parties.

#### PRODUCT RETURNS AND EXCHANGES

##### Contractor Errors or Quality Problems

Products returned/exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, or Contractor errors otherwise not specified, shall be replaced with specified Products or the Authorized User shall be credited/refunded for the full purchase price.

Products shall be replaced within five (5) business days of written notification to the Contractor. Delivery for a replacement Product shall be the same as stated in the Section titled, *Product Delivery*. Returned Products shall be picked up by the Contractor in accordance with Appendix B, Section 38, *Rejected Product*.

No restocking Fee is allowed.

##### Authorized User Errors

Products returned/exchanged due to Authorized User errors shall be replaced with specified Products or the Authorized User shall be credited/refunded for the full purchase price.

Product shall be replaced within five (5) business days of written notification to the Contractor. Delivery for a replacement Product shall be the same as stated in Product Delivery clause herein. Returned Products shall be picked up by the Contractor at the time of delivery of the replacement Product, or within ten (10) calendar days of receipt of written notification by the Contractor if a credit/refund is to be issued.

There shall be no restocking fee if returned Products are suitable for resale. Contractor may charge a restocking fee not to exceed the net price of a returned Product if not suitable for resale.

#### CONTRACT ADMINISTRATOR/HELP DESK

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor shall also provide technical assistance/help desk services, which may be available or provided by the Contract Administrator. Information regarding the Contract Administrator shall be set forth in Attachment 9 – General Questions. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

#### INSURANCE REQUIREMENTS

The Contractor shall procure, at its sole cost and expense and shall maintain in full force at all times during the term of this Contract, all policies of insurance pursuant to the requirements outlined in Insurance Requirements of the bid solicitation.



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**REPORT OF CONTRACT USAGE**

Contractor shall submit Attachment 7 - Report of Contract Usage, including total sales to Authorized Users of this Contract by Contractor, and all Resellers, if any, no later than the fifteenth of the month following the end of each six month period of the Contract start date. If Resellers are utilized, the Contractor shall be responsible for consolidating all contract purchases into a single report.

Purchases by non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. All fields of information shall be accurate and complete. The report is to be submitted electronically in Microsoft Excel 2013 or lower format unprotected, via e-mail to the attention of the designated OGS Procurement Services Contract Administrator and shall reference the Group Number, Award Number, Contract Number, Sales Period, and Contractor's Name, and all other fields required. OGS reserves the right to amend the Report of Contract Sales Template or to require sales to be reported in a different format. Further, additional related sales information and/or detailed Authorized User purchases may be required by OGS and must be supplied upon request.

Contractor shall specify if any Resellers are NYS Certified Minority and/or Women-Owned Business Enterprises (MWBES) within the Report of Contract Usage document. Contractor shall refer to Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women section for information on how to verify certified status.

The State reserves the right to seek alternate data and reporting elements. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

**ENTIRE AGREEMENT**

This Contract and the referenced appendices constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto. Licensees 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.

**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.

The New York State Contract Administrator for this Contract is:

NYS Office of General Services  
Procurement Services Group  
Corning Tower, 38th Floor  
Empire State Plaza  
Albany, New York 12242  
**Phone: (518) 473-1069**  
**Email: katherine.jezik@ogs.ny.gov**

**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.

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**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.

**USE OF RESELLERS**

Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall insure that sufficient resources are available directly, or through Resellers to insure maximum service capability throughout the State. The State agrees to permit Contractor to utilize approved, designated Resellers to participate as alternate distribution sources for Contractor. Such participation is subject to the following conditions:

1. **Designation of Reseller(s):** Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering, billing addresses and Federal Identification numbers in the format provided in Attachment 8 - Reseller Directory.
2. **Conditions of Participation:** Reseller(s) must be approved in advance by the State as a condition of eligibility under this section. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time.

Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by Product/service line, contracting program (i.e., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that: i) such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; ii) all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term, and iii) those qualifying criteria met by the Reseller must be identified on the form provided in Attachment 8 - Reseller Directory at the time that Reseller approval is requested under this paragraph; and iv) immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Except as otherwise set forth in Attachment 8, Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order.

3. **Responsibility for Reporting/Performance:** Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions. Products/services purchased through Reseller(s) must be reported by Contractor in the required Semi-Annual Reports to the State as a condition of payment, and where applicable, to Third Party Developer(s) in accordance with the reporting requirements of this Contract. In addition to inclusion of Reseller(s) volume in the Contractor's semi-annual reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with semi-annual reports of the individual Authorized User's Contract activity with Reseller. For details, refer to Section titled, *Report of Contract Usage*.
4. **Applicability of Contract Terms:** Products/services ordered directly through Reseller(s) shall be limited to Products/services previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

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

The New York State Office of General Services (“OGS”), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

**EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

The Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for 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, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Contractor further agrees to submit with the bid a staffing plan on Form EEO 100 identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to OGS, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBEs)**

- A. For purposes of this procurement, OGS has conducted a comprehensive search and has determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to the awarded Contractors. Contractors are, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
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.

**Please Note:** Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

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

#### USE OF RECYCLED OR REMANUFACTURED MATERIALS

The New York State, as a member of the Council of Great Lakes Governors, supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Bid solicitation. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See "Remanufactured, Recycled, Recyclable or Recovered Materials" in Appendix B, Section 13, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

#### SURPLUS/TAKE-BACK/RECYCLING

1. A State agency is reminded of its obligation to comply with the NY State Finance Law §§167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
2. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section 3 below for specific requirements governing electronic equipment recycling.
3. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of

electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.

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

#### ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4

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

State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

#### PREFERRED SOURCE PRODUCTS

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

#### NEW YORK STATE VENDOR RESPONSIBILITY

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS or her designee, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract. The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

#### NEW YORK STATE TAX LAW SECTION 5-A

Tax Law Section 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 quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

Contractors may consult with DTF's website at <http://www.tax.ny.gov/> for additional information and frequently asked questions.

#### OVERLAPPING CONTRACT ITEMS

Products/services available in the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

#### NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in 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, Sections 2, *Definitions* ("Authorized User") and 26, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site ([www.ogs.state.ny.us](http://www.ogs.state.ny.us)). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

#### EXTENSION OF USE

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

#### EMERGENCY PURCHASING

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

#### CONTRACTOR PERFORMANCE/POOR PERFORMANCE

Contractors shall be required, upon request, to provide performance surveys to customer agencies. Contract performance measures may include, but not be limited to, the following: delivery time, fill rate, response time to inquiries, resolution of problems, employee courtesy, staff knowledge ability, and overall performance. The

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information reported on the surveys will be used to assess contractor's performance and may, if necessary, be used to determine continuation or cancellation of award.

#### MERCURY-ADDED CONSUMER PRODUCTS

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

#### AMERICANS WITH DISABILITIES ACT (ADA)

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

#### BULK DELIVERY AND ALTERNATE PACKAGING

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

#### CENTRALIZED CONTRACT MODIFICATIONS

1. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
2. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products or services, make price revisions, delete Products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
3. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
4. All modifications proposed by Contractor shall be made in writing. OGS reserves the right to accept or reject all or part of a proposal that are found to be in the best interests of the State.
5. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, Section 27, Modification of Contract Terms.

#### APPENDIX B AMENDMENT

Appendix B, § 60, Indemnification is hereby deleted and replaced with the following:  
Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise

from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder is due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

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

## **CLOUD SPECIFIC TERMS AND CONDITIONS**

### **PROTECTION OF DATA, INFRASTRUCTURE AND SOFTWARE**

Contractor is responsible for providing physical and logical security for all Data, infrastructure (e.g. hardware, networking components, physical devices), and software related to the services the Contractor is providing pursuant to this Contract. Authorized Users and Contractors are encouraged to document any specific Authorized User requirements, including LMS software integration, in the Purchase Order.

### **SECURITY POLICIES AND PROCEDURES**

#### State Security Policies and Procedures

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

#### Security Incidents

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

### **DATA BREACH – REQUIRED CONTRACTOR ACTIONS**

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

1. notify the ITS EISO and any potentially affected Authorized User(s), or their designated contact person(s), by telephone as soon as possible, but in no event more than four (4) hours from the time the Contractor either has knowledge of a Data Breach;
2. consult with and receive authorization from the Authorized User(s) as to the Content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by the Authorized User;
3. coordinate all communication regarding the Data Breach with the ITS EISO and Authorized User(s);
4. cooperate with the Authorized User and ITS EISO in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and
5. take corrective action in the timeframe required by the Authorized User. If Contractor is unable complete the corrective action within the required timeframe, in addition to the remedies provided in Appendix B, Section 51,



*Remedies for Breach*, the Authorized User may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the Authorized User, or until the Authorized User has completed a new procurement for a replacement service system. The Contractor will be responsible for the cost of these services during this period.

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

## DATA OWNERSHIP, ACCESS AND LOCATION

### Data Ownership

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

### Authorized User Access to Data

The Authorized User shall have access to its Data at all times, through the terms as specified in the Purchase Order, plus the applicable period as specified in Section titled, *Expiration, Termination or Suspension of Services*.

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

### Contractor Access to Data

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

### Data Location and Related Restrictions

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

- Support Services

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

- Infrastructure Support Services

Infrastructure support services that do not directly or indirectly access Data may be provided in a Follow the Sun format.

## CONTRACTOR PORTABLE DEVICES

Contractor shall not place Data on any portable Device unless Device is located and remains within Contractor's CONUS Data Center. The Data, and/or the storage medium containing the Data, shall be destroyed in accordance with applicable ITS destruction policies (ITS Policy S13-003 Sanitization/Secure Disposal and S14-003 Information Security Controls or successor) when the Contractor is no longer contractually required to store the Data.

## TRANSFERRING OF DATA

### General

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

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

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

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

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

Transfer of Data; Charges

Transfer of Data shall be done at no charge to the Authorized User.

Transfer of Data; Contract Breach or Termination

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

## ENCRYPTION

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

## REQUESTS FOR DATA BY THIRD PARTIES

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

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

## SECURITY PROCESSES

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

In addition to a request for a CAIQ, Contractor shall cooperate with all reasonable Authorized User requests for a written description of Contractor's physical/virtual security and/or internal control processes. The Authorized User shall have the right to reject any Contractor's quote or cancel or terminate any purchase under the Contract if such request is denied. For example, Federal, State and local regulations and/or laws may require that Cloud Contractors operate within the Authorized User's regulatory environment. In order to ensure that security is adequate and free of gaps in control coverage, the Authorized User may require information from the Contractor's Service Organization Controls (SOC) audit report.

## UPGRADES, SYSTEM CHANGES AND MAINTENANCE/SUPPORT

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

## EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES

Return of Data

The Contractor shall return Data as agreed to with the Authorized User. The Contractor must certify all Data has been removed from its system and removed from backups within timeframes as agreed to with the Authorized User.

Suspension of Services

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

Expiration or Termination of Services

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

## SECURE DATA DISPOSAL

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

## ACCESS TO SECURITY LOGS AND REPORTS

Upon request, the Contractor shall provide reports to the State or Authorized User within a reasonable time.

## CONTRACTOR PERFORMANCE AUDIT

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

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

## PERSONNEL

Background Checks

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

Separation of Duties

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

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

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

## COMPLIANCE WITH FEDERAL, STATE AND LOCAL REGULATIONS

If required within the Purchase Order, Contractor will provide verification of compliance with specific Federal, State and local regulations, laws and IT standards that the Authorized User is required to comply with.

## AUTHENTICATION TOKENS

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

## MODIFICATION TO CLOUD SERVICE DELIVERY TYPE AND DESCRIPTION

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

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

**PROHIBITION AGAINST COLLECTING PERSONAL, PRIVATE, OR SENSITIVE INFORMATION (PPSI)**

Contractor, in the regular course of businesses, may collect and store information from Authorized Users, including student name and contact information. Contractor is prohibited from collecting or storing **any** PPSI for **any** reason. PPSI includes Social Security Numbers, Driver's License or other Government ID Card Numbers (not including employee ID numbers or similar Authorized User tracking numbers), Mother's maiden name, and Financial information (including credit card numbers).

**NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 22883 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED OCTOBER 16, 2015.**

**State of New York  
Office of General Services  
Procurement Services  
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one Contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

**Contract No.:** \_\_\_\_\_ **Contractor:** \_\_\_\_\_

**Describe Product\* Provided (Include Item No., if available):** \_\_\_\_\_

**\*Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

**CONTRACTOR**

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_ (over)

Agency: \_\_\_\_\_ Prepared by: \_\_\_\_\_

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

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

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ E-mail: \_\_\_\_\_

**Please detach or photocopy this form & return to:**

OGS Procurement Services  
 Customer Services, 38th Floor  
 Corning 2<sup>nd</sup> Tower - Empire State Plaza  
 Albany, New York 12242  
 customer.services@ogs.ny.gov

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