

**NOVATION AGREEMENT AND AMENDMENT
STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
NYS CONTRACT # PB181AA**

THIS NOVATION AGREEMENT (hereinafter referred to as the “Novation Agreement”) is among (i) the State of New York, acting by and through **New York State Office of General Services** with offices located at **38th Floor, Corning Tower, Empire State Plaza, Albany, NY 12242** (hereinafter referred to as the “State”) and (ii) **NTT America, Inc.**, having a principal place of business at **One Penn Plaza, Suite 1820, New York, NY 10119**, with Employer Identification Number **13-3922003** and NYS Vendor Number **1100258493** (hereinafter referred to as “Transferee”), acting as successor in interest by **merger** to **NTT America Solutions Inc.** (hereinafter referred to as “Transferor”), which prior to its **merger** with Transferee maintained a principal place of business at **One Penn Plaza, Suite 1820, New York, NY 10119** with Employer Identification Number **13-2554344** and NYS Vendor Number **1000038797**. The State and the Transferee are hereinafter referred to as the “Parties.” The Novation Agreement is effective on the ____ day of _____, 20__.

WHEREAS, the Transferor entered into a contract (hereinafter referred to as “the Contract”) with the State with a contract number of **PB0877AA**, for **Project Based Information Technology Consulting Services (“PBITS”)** for specified consideration, all as fully described in the Contract. The Contract includes any amendments and purchase orders, including all modifications, made between the State and the Transferor before the effective date of this Novation Agreement (whether or not performance and payment have been completed and releases executed if the State or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders, including all modifications). The Contract also includes all amendments and purchase orders, including all modifications, made between the State and the Transferor, on or after the effective date of this Novation Agreement; and

WHEREAS, as of **January 1, 2021**, the Transferor transferred to the Transferee all the assets of the Transferor by operation of law by virtue of a **merger** between the Transferor and the Transferee, resulting in the Transferee being the surviving legal entity and the Transferor ceasing to exist as a legal entity; and

WHEREAS, Attachment “A” to this Novation Agreement, attached to and made part of this Novation Agreement, is a copy of the **certificate of merger** evidencing the **merger** of the Transferor into the Transferee; and

WHEREAS, with Transferee’s consent, all rights, titles, and interests in the Contract were transferred by the Transferor to the Transferee by virtue of the above-referenced **merger**; and

WHEREAS, the Transferee has agreed to assume all duties, obligations, and liabilities of the Transferor under the Contract by operation of law by virtue of the above-referenced **merger**; and

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

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

1. The Transferee warrants and represents that, based upon commercially reasonable due diligence, to the best of its knowledge, there are no known liens against the Contract or relating to the Contract, and that Transferee has no reason to believe that any such liens will be filed in the future, which may result in a finding that the transfer of the Contract to Transferee was made to avoid payment of such liens.
2. The Transferee agrees to be bound by and to perform the Contract in accordance with the conditions contained in the Contract.
3. The State recognizes the Transferee as the Transferor's successor in interest in and to the Contract. The Transferee, by this Novation Agreement, understands and agrees that it is entitled to all rights, titles, and interests and is bound by all duties, obligations, and liabilities of the Transferor in and to the Contract as if the Transferee were the original party to the Contract. As of the effective date of this Novation Agreement, the terms "Contractor" or "Vendor," as used in the Contract, shall refer to the Transferee.
4. The Transferee agrees to be bound by all indemnification obligations of the Transferor set forth in the Contract.
5. The State reserves any and all rights of any kind or nature whatsoever which it may have against the Transferor and the State's consent to the transfer of the Contract is expressly conditioned upon the understanding that the Novation Agreement shall not operate to discharge any losses, liabilities, claims, demands or causes of action the State heretofore had, now has, or hereafter may have against the Transferor for or by any reason or any matter or thing whatsoever.
6. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the Contract as if the Transferee were the original party to the Contract.
7. The Transferee ratifies all previous actions taken by the Transferor with respect to the Contract, with the same force and effect as if the action had been taken by the Transferee.
8. All payments and reimbursements previously made by the State to the Transferor shall be considered to have discharged the State's obligations to make such payments and reimbursements under the Contract. All payments and reimbursements made by the State in relation to the Contract after the date of this Novation Agreement shall be made in the name of or to the Transferee, and shall constitute a complete discharge of the State's obligations under the Contract, to the extent of the amounts paid or reimbursed.

9. The Transferee agrees that the State is not obligated to pay or reimburse Transferee, or otherwise give effect to, any costs, fees, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of the Transferor's rights and obligations under the Contract, other than those that the State in the absence of such transfer would have been obligated to pay or reimburse under the terms of the Contract.
10. The Contract shall remain in full force and effect pursuant to its terms, except as modified by this Novation Agreement.
11. Pursuant to State Finance Law §§139-j and 139-k, a novation is a "governmental procurement" and, therefore, there are certain restrictions on communications during the transfer process. Transferee is restricted from making "contacts" from the earliest notice of intent to transfer the Contract through final approval of the Novation Agreement by the State ("restricted period") to other than designated staff unless it is a contact that is included among the statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified as Nancy Dougherty, Daniel Blake, and Anthony Montes. These provisions also require that State employees obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Transferee. Certain findings of non-responsibility may result in rejection of a novation and, in the event of two findings of non-responsibility within a four-year period, the Contractor is debarred from obtaining any governmental procurement contracts. Further information about these requirements, including the certification that must be filed by the Transferee, in accordance with New York State Finance Law §139-k, can be found on the OGS website:
www.ogs.ny.gov/acpl

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

12. Appendix A of the Contract is deleted and replaced by the attached Appendix A, dated **October 2019**.
13. Appendix G of the Contract is deleted and replaced by the attached Appendix G.
14. This Novation Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
15. This Novation Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Novation Agreement.

