



Contract Amendment Number 2

THIS CONTRACT Amendment Number 2 (hereinafter "Contract" or "Centralized Contract") for the acquisition of Information Technology Commodities and/or Services is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, and **NETAPP, INC. D/B/A NETAPP** (hereinafter "Contractor"), with offices at **495 EAST JAVA DRIVE, SUNNYVALE, CALIFORNIA 94089**. The foregoing are collectively referred to as the "Parties."

WHEREAS, in the January 6, 2015 edition of the New York State Contract Reporter, OGS advertised the availability of a non-competitive periodic recruitment solicitation ("Initial Recruitment Solicitation") for manufacturers that provide Information Technology Commodities and Services; and

WHEREAS, the Initial Recruitment Solicitation set forth the minimum administrative and technical requirements that a vendor must meet to be eligible for consideration to receive an award and was structured with four separate lots: Lot 1—Software, Lot 2—Hardware, Lot 3—Cloud and Lot 4—Implementation Services; and

WHEREAS, Contractor submitted a proposal in response to the Initial Recruitment Solicitation, as the same was amended through the procurement process, and was awarded a Contract for those Lots set forth in Appendix D; and

WHEREAS, in the April 11, 2017 edition of the New York State Contract Reporter, OGS advertised the availability of a Periodic Recruitment Solicitation ("First Periodic Recruitment Solicitation") for manufacturers that provide Information Technology Commodities and Services; and

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

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

WHEREAS, upon full execution of this document, this document and all Attachments and Appendices thereto will constitute Contractor's Manufacturer Umbrella Contract.

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each party hereto from the other, the Parties hereby agree as follows:

TABLE OF CONTENTS

Section 1. Introduction	6
1.1 OVERVIEW AND PURPOSE OF THIS CONTRACT	6
Section 2. Contract Scope	6
2.1 LOT OVERVIEW	6
2.1.1 Lot 1 – Software	6
2.1.2 Lot 2 – Hardware	7
2.1.3 Lot 3 – Cloud	9
2.1.4 Lot 4 – Implementation Services	10
2.2 PRODUCTS AND SERVICES EXCLUDED FROM THE SCOPE OF THIS CONTRACT	11
2.3 SUBSEQUENT PERIODIC RECRUITMENT	11
2.4 ESTIMATED SPEND AND QUANTITIES	11
2.5 GLOSSARY	11
2.6 CONTRACT DOCUMENTS AND CONFLICT OF TERMS	17
2.7 CONTRACT TERM	18
2.8 DOWNSTREAM PROHIBITION	18
2.9 CONTRACTOR’S INSURANCE REQUIREMENTS	18
2.10 NEW YORK STATE VENDOR RESPONSIBILITY	18
2.11 TAX LAW §5-A	19
2.12 TOLL FREE NUMBER	19
2.13 DESIGNATED PERSONNEL	19
2.13.1 Account Manager	19
2.13.2 Contract Administrator	19
2.13.3 Sales Manager	20
2.13.4 Billing Contact	20
2.13.5 Emergency Contact	20
2.14 E-RATE	20
2.15 NEW YORK STATE RIGHTS	20
2.15.1 New York State reserves the right to:	20
2.15.2 Authorized User Reserved Rights	20
2.16 LIVING WAGE	20
2.17 PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS	20
2.18 SHORT TERM EXTENSION	21
2.19 PROCUREMENT INSTRUCTIONS	21
2.20 SPECIFICATIONS	21
2.21 INSTRUCTION MANUALS AND ASSOCIATED DOCUMENTATION	21
2.22 NYS OFFICE OF INFORMATION TECHNOLOGY SERVICES NOTIFICATION	21
2.23 SALES REPORTING REQUIREMENTS	21
2.23.1 Reseller Sales	22
2.23.2 Due Date	22
2.24 SERVICE REPORTS FOR MAINTENANCE/SUPPORT AND WARRANTY WORK	22
2.24.1 Service Reports for Authorized User	22
2.24.2 Service Reports for OGS	22

2.25	DISTRIBUTION OF CONTRACTOR PRICE LIST AND CONTRACT APPENDICES	22
2.26	OGS CENTRALIZED CONTRACT MODIFICATIONS.....	22
2.27	PROMPT PAYMENT DISCOUNTS.....	22
2.28	CONTRACTOR’S OBLIGATION FOR RESELLER PARTICIPATION	23
2.28.1	Conditions of Reseller Participation	23
2.28.2	Designation of Resellers	23
2.28.3	Responsibility for Reporting/Performance.....	23
2.28.4	Applicability of Contract Terms	23
2.28.5	Condition for Responding to Authorized User Request for Quote	23
2.29	PURCHASE ORDERS AND INVOICING.....	24
2.30	PAYMENTS	24
2.31	DISCRETIONARY SPENDING.....	24
2.32	MAINTENANCE AND SUPPORT PROVISIONS.....	25
2.32.1	Maintenance/Support Agreement Provisions.....	25
2.32.2	Maintenance/Support of Product.....	25
2.32.3	Obligations	25
2.32.4	Right to Refuse/Discontinue Maintenance/Support	25
2.32.5	Maintenance/Support Agreement Contract Price Survival.....	25
2.32.6	Legacy Maintenance/Support	25
2.32.7	Maintenance/Support Responsibility.....	26
2.32.8	Maintenance/Support Service Sheets.....	26
2.32.9	Remote Administration, Maintenance and Support	26
2.33	PRE-INSTALLATION SITE VISITS.....	26
2.34	NEW YORK STATE STATEWIDE FINANCIAL SYSTEM.....	26
2.35	PARTICIPATION IN CENTRALIZED CONTRACTS	27
2.36	NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS AND EXTENSION OF USE	27
2.37	EXPIRATION OF CONTRACT; SURVIVAL OF AUTHORIZED USER AGREEMENTS	27
2.37.1	Lot 1 – Software and Lot 2 – Hardware	27
2.37.2	Lot 4 - Implementation.....	27
2.38	PREFERRED SOURCE PRODUCTS	27
2.39	TRADE-INS.....	28
2.40	NEW YORK STATE OFFICE OF INFORMATION TECHNOLOGY SERVICES POLICIES	28
2.41	RECALLS	28
2.42	AMERICANS WITH DISABILITIES ACT (ADA).....	28
2.43	DIESEL EMISSION REDUCTION ACT.....	28
2.44	POOR PERFORMANCE	29
2.45	MERCURY ADDED CONSUMER PRODUCTS.....	29
2.46	SURPLUS/TAKE-BACK/RECYCLING	29
2.47	USE OF RECYCLED OR REMANUFACTURED MATERIALS.....	29
2.48	ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER 4	30
2.49	BULK DELIVERY AND ALTERNATIVE PACKAGING MATERIALS.....	30
2.50	EPA ENERGY STAR PROGRAM.....	30
2.51	NO DRUGS OR ALCOHOL.....	30
2.52	TRAFFIC INFRACTIONS	30
2.53	NOTICES	30

2.54 ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY LANGUAGE..... 31

2.55 CAPTIONS..... 31

2.56 SEVERABILITY 31

2.57 PERFORMANCE OF SERVICES..... 31

2.58 REMOVAL OF RECORDS FROM PREMISES..... 31

2.59 CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS 31

2.60 CONTRACTOR STAFF WITHIN AUTHORIZED USER AGREEMENT 32

 2.60.1 Staffing Changes within Authorized User Agreement..... 32

2.61 ADDITIONAL CONTRACTOR TERMS AND CONDITIONS WITHIN AN AUTHORIZED USER AGREEMENT33

2.62 EMPLOYEE INFORMATION REQUIRED TO BE REPORTED BY CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS..... 33

 2.62.1 INSTRUCTIONS FOR COMPLETING FORM A AND B..... 34

2.63 CONFIDENTIALITY AND PRIVACY POLICIES AND LAWS..... 34

2.64 FEDERAL FUNDING 34

2.65 ELECTRONIC WORKFLOW SYSTEM 34

2.66 TRAVEL, MEALS AND LODGING - LOT 4 – IMPLEMENTATION ONLY 34

2.67 PERFORMANCE AND BID BONDS 35

2.68 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN..... 35

I. New York State Law 35

II. General Provisions 35

III. Equal Employment Opportunity (EEO) 35

IV. Contract Goals..... 37

VI. Request for Waiver..... 38

IX. Breach of Contract and Liquidated Damages..... 40

2.69 EMERGING TECHNOLOGIES..... 40

Section 3. LOT 3 – CLOUD SPECIFIC TERMS AND CONDITIONS 40

3.1 PROTECTION OF DATA, INFRASTRUCTURE AND SOFTWARE..... 40

3.2 SECURITY POLICIES AND NOTIFICATIONS 41

 3.2.1 State Security Policies and Procedures..... 41

 3.2.2 Security Incidents 41

3.3 DATA BREACH - REQUIRED CONTRACTOR ACTIONS..... 41

3.4 DATA OWNERSHIP, ACCESS AND LOCATION 41

 3.4.1 Data Ownership..... 41

 3.4.2 Authorized User Access to Data 41

 3.4.3 Contractor Access to Data 42

 3.4.4 Data Location and Related Restrictions..... 42

 3.4.5 Support Services..... 42

 3.4.6 Infrastructure Support Services..... 42

3.5 CONTRACTOR PORTABLE DEVICES 42

3.6 TRANSFERRING OF DATA..... 42

 3.6.1 General..... 42

 3.6.2 Transfer of Data at End of Contract and/or Authorized User Agreement Term..... 43

 3.6.3 Transfer of Data; Charges..... 43

- 3.6.4 Transfer of Data; Contract Breach or Termination 43
- 3.7 ENCRYPTION..... 43
- 3.8 REQUESTS FOR DATA BY THIRD PARTIES 43
- 3.9 SECURITY PROCESSES..... 43
- 3.10 UPGRADES, SYSTEM CHANGES AND MAINTENANCE/SUPPORT 44
- 3.11 EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES..... 44
 - 3.11.1 Return of Data 44
 - 3.11.2 Suspension of Services..... 44
 - 3.11.3 Expiration or Termination of Services 44
- 3.12 SECURE DATA DISPOSAL..... 44
- 3.13 ACCESS TO SECURITY LOGS AND REPORTS 44
- 3.14 CONTRACTOR PERFORMANCE AUDIT 44
- 3.15 PERSONNEL 45
 - 3.15.1 Background Checks 45
 - 3.15.2 Separation of Duties..... 45
- 3.16 BUSINESS CONTINUITY/DISASTER RECOVERY (BC/DR) OPERATIONS 45
- 3.17 COMPLIANCE WITH FEDERAL, STATE AND LOCAL REGULATIONS 45
- 3.18 AUTHENTICATION TOKENS 45
- 3.19 MODIFICATION TO CLOUD SERVICE DEPLOYMENT MODEL, SERVICE MODEL, AND/OR INITIAL FUNCTIONALITY WITHIN AN AUTHORIZED USER AGREEMENT 45
- 3.20 APPLICATION PROGRAM INTERFACE (API) OR SELF-SERVICE ELECTRONIC PORTAL..... 45
- Section 4. LOT 4 – IMPLEMENTATION SPECIFIC TERMS AND CONDITIONS..... 46**
 - 4.1 REQUEST FOR QUOTATION (RFQ) TRANSACTION PROCESS 46
 - 4.2 BACKGROUND CHECKS..... 46
 - 4.3 FOREIGN EMPLOYEES 46
 - 4.4 PROJECT PLAN..... 46
 - 4.4.1 Development of Project Plan..... 46
 - 4.4.2 Project Plan Document 46
 - 4.4.3 Materials and Supplies Required to Complete Implementation 46
 - 4.4.4 Negotiation of Final Project Plan..... 47
 - 4.5 SINGLE POINT OF CONTACT 47
 - 4.6 RETAINAGE 47
 - 4.7 ENHANCEMENTS TO SERVICES..... 47

Section 1. Introduction

1.1 OVERVIEW AND PURPOSE OF THIS CONTRACT

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

Section 2. Contract Scope

2.1 LOT OVERVIEW

This Contract encompasses the Lots listed in Appendix D – Contractor and Reseller Information. The following descriptions, as applicable, delineate the scope of the awarded Lots.

2.1.1 Lot 1 – Software

This Lot provides Authorized Users with a mechanism to purchase Products including Software licenses (perpetual and term), Maintenance/Support for Contractor’s Proprietary product line, training, and fleet management as set forth below. Competition is required at the Authorized User transactional level from Contractors and Resellers.

The Products must be commercially released Products and available for purchase through the Manufacturer’s normal marketing channels. Alpha, beta, experimental or unannounced equipment shall not be offered. **Contractor shall not offer stand-alone third party Products through this Contract.** No Products at End of Life or within six months prior to End-of-Life are to be sold, except with prior written approval by the Authorized User.

Lot 1 – Software	
Inclusions	
<ul style="list-style-type: none"> • Software Licenses for Contractor’s proprietary product line, including <ul style="list-style-type: none"> ○ Perpetual licenses ○ Term licenses • Pre-Packaged Software Maintenance/Support for Contractor’s proprietary product line • Pre-Packaged Software Installation for Contractor’s proprietary product line • Configuration Services (Limited in amount to 10% of the net NYS Contract Price for the total Products being procured not to exceed \$25,000 total.) • Pre-Packaged Software Training Packages, Remote and On-Site that are standardized for Contractor’s proprietary product line • Fleet management (management of software license inventory) • Electronic Health Records Software • Software Bundles, including: <ul style="list-style-type: none"> ○ Software Third Party Products ○ Maintenance • Enterprise Software Purchases • Legacy Software Maintenance 	
Restrictions	
<ul style="list-style-type: none"> • On Premise Software Only • Third Party Products are allowed as part of a Software Bundle only if they are required to facilitate the provision of the Software solution. 	

Lot 1 – Software

Exclusions

In addition to the items excluded under this section, Contractors cannot sell a Product that does not qualify as Software under the Contract. The following are examples of excluded Products:

- Consulting Services
- Cloud Solutions
- Implementation
- Customized Training
- Stand-alone Professional Services
- SKUs that equate to “blocks of hours”
- Stand-alone Third Party Products
- Products that are provided under other Lots cannot be purchased under this Lot
- Configuration Services other than as set forth in Inclusions
- Leasing
- Rentals
- Deferred Payment Plans
- Refinancing of Prior Balances
- Pooling of Copier Allowances
- Managed Print Services.

2.1.2 Lot 2 – Hardware

This Lot provides Authorized Users with a mechanism to purchase Hardware Products, Pre-Packaged Installation, Configuration, training, extended warranties, Maintenance/support, and, ancillary equipment and accessories offered by the Contractor in its Manufacturer’s Price List. Related Software which is bundled with the Hardware and is required for Installation, Configuration and is integral to the operation of the Hardware is acceptable for purchase under this Lot. This Related Software must be acquired and delivered at the time of the Hardware purchase.

Product shall be new, factory produced, assembled for the first time, and may contain new and/or recycled parts or components that have been fully inspected, tested and fully meet required Product performance specifications. Product must be newly serialized and the Authorized User must be the first end user of the Product. The Products must be commercially released Products and available for purchase through the Contractor’s normal marketing channels. Alpha, beta, experimental or unannounced equipment is outside the scope of this Contract. Contractor shall not offer stand-alone Third Party Products through this Contract. No Products at End-of-Life or within six months prior to End of Life are to be sold, except with prior written approval by the Authorized User.

Refurbished or remanufactured parts may be offered only when production of new parts has ceased and the refurbished or remanufactured parts are required to maintain existing End-of-Life Equipment. Refurbished or remanufactured parts must be clearly labeled as “Refurbished Parts” or “Remanufactured Parts,” respectively. For purposes of Lot 2 -Hardware, “Part” refers to a component of an item of Equipment. Refurbished or Remanufactured parts shall be designated as such on Appendix E – Pricing Pages.

Refurbished and Remanufactured Equipment is outside the scope of this Contract.

Lot 2 – Hardware

Inclusions

- Appliances
- UPS Systems including Generators and Switchgear
- Server & Mainframe Hardware & Server Racks
- Storage
- Microcomputer Systems, System Peripherals & Accessories
- Telecommunications Hardware, System Peripherals & Accessories
- Copper and Fiber Cabling for Telecommunications and Data Communications Systems
- Key Systems
- Private Branch Exchange
- Desktop / Notebooks / Laptop / Tablets / Workstations
- Printers (Personal and networked workgroup)
- Receipt and Access Card Printers (Smart Card or Magnetic Card)
- Multifunction Printers
- Production Printing Equipment
- Printer Consumables branded by the Contractor for use with Hardware manufactured by the Contractor
- Scanners
- Electronic Whiteboards
- Audio / Video Conferencing Hardware
- Pre-Packaged Hardware Maintenance/Support for Contractor's proprietary product line
- Pre-Packaged Hardware installation services for Contractor's proprietary product line
- Configuration Services (Limited in amount to 10% of the net NYS Contract Price for the total Products being procured, not to exceed \$25,000 total.)
- Pre-Packaged Hardware Training Packages (Remote and On-Site) that are standardized for Contractor's proprietary product line
 - Fleet management (management of Hardware asset inventory)
 - Hardware Bundles, including Related Software
 - Imaging and/or Loading Services
 - Remote Hardware Administration/Maintenance/Support
 - Enterprise Hardware Purchases
 - Legacy Hardware Maintenance

Restrictions

- Manufacturers Only, as defined in the Glossary as Manufacturer – Hardware
- Third Party Products are allowed as part of a Hardware Bundle only if they are required to facilitate the provision of the Hardware solution

Exclusions

In addition to the items excluded under this section, Contractors cannot sell a Product that does not qualify as Hardware under the Contract. The following are examples of excluded Products:

- Consulting Services
- Cloud paired appliances
- Cloud Solutions
- Customized Training
- Implementation Services
- Configuration Services other than as set forth in Inclusions
- Medical Testing, Imaging and Lab Equipment
- Software not in compliance with Related Software
- Stand-alone Third Party Products
- Products that are provided under other Lots cannot be purchased under this Lot
- Leasing
- Rentals
- Deferred Payment Plans
- Refinancing of Prior Balances
- Pooling of Copier Allowances
- Refurbished or Remanufactured Equipment

Lot 2 – Hardware

- Printer Exclusions:
 - Single function facsimile (fax) machines;
 - Standalone mailing machines, scales, folders, inserters, sorters, address printers, bursters and cutters, pressure sealing mailing systems, tabbing and labeling systems, and envelope sealers;
 - Medical imaging products;
 - Microfilm equipment and scanners;
 - Typewriters;
 - Remanufactured toner cartridges, except when remanufactured and sold as new by the Manufacturer of the Printer;
 - Paper/Film, except for the Contractor’s-branded product that is intended for use in the Contractor’s-branded Printing and Imaging Equipment;
 - Traditional printing presses and technologies (e.g., offset, lithography, flexography, gravure, or letterpress).
 - Managed Print Services

2.1.3 Lot 3 – Cloud

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

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

It is REQUIRED that prior to a Request for Quote, the Authorized User complete a Data categorization study, consistent with NYS-S14-002 Information Classification Standard (or successor standard) available at: <http://www.its.ny.gov/tables/technologypolicyindex.htm>, which applies to ITS, all State Agencies that receive services from ITS, staff and affiliates of same which have access to or manage information, and serves as recommended practice for the State University of New York, the City University of New York, non-Executive branch agencies, authorities, NYS local governments and third parties acting on behalf of the same to determine the following:

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

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

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

Lot 3 - Cloud

Inclusions

- Cloud Solutions
- Software as a Service (SaaS)
- Platform as a Service (PaaS)
- Infrastructure as a Service (IaaS)
- Mirrored Data Center
- Pre-Packaged Cloud-Based training services that are standardized
- Anything as a Service (XaaS)
- Pre-Packaged Cloud installation and Pre-Packaged configuration services for Contractor’s offered Cloud Solution
- Pre-Packaged Cloud Training Packages (Remote and On-Site) that are standardized for Contractor’s offered Cloud Solution
- Apps for Mobile Devices
- Managed Security Services, Including Internet Traffic Monitoring Services
- Fleet Management (management of Cloud Solution inventory)
- Enterprise Cloud Purchases

Lot 3 - Cloud
<ul style="list-style-type: none"> • Automated Network Monitoring (or any other service provided principally through an automated process) • Pre-Packaged Maintenance and Support for Contractor’s offered Cloud Solution • Pre-Packaged Self-Service Portal for Contractor’s offered Cloud Solution
Restrictions
<ul style="list-style-type: none"> • Manufacturers Only, as defined in the Glossary as Manufacturer – Cloud Solution
Exclusions
<ul style="list-style-type: none"> • Consulting Services • Customization Services • Customized Implementation Services • Customized Configuration Services • Customized Training • Stand-alone Professional Services • Managed Print Services

2.1.4 Lot 4 – Implementation Services

Implementation Services are for the efficient deployment of Products and Services procured under Lots 1, 2 and/or 3 and any applicable future Lots awarded through Periodic Recruitment. Implementation Services are limited to services required to install or implement Products from other Lots.

Implementation Services are only for Products that are available for sale on a Contractor’s Umbrella Manufacturer Price List.

Lot 4 – Implementation Services
Inclusions
<p>Implementation services and configuration of Lots 1 through 3. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> • Business Process Analysis for new Products • Project Management Services • Data Conversion • Customized Training on Products included within Lots 1, 2 and 3 • Programming Services capped at no more than 20% of the total implementation cost of the Authorized User Agreement
Restrictions
<ul style="list-style-type: none"> • Restricted to Manufacturers holding contracts for Lots 1, 2 or 3 • Implementation services may only be procured to implement a Product purchased from Lots 1, 2 or 3 above, or • To implement a Product purchased prior to this Umbrella Manufacturer Contract if the Product is currently included within the Contractor’s Price List for Lots 1, 2, or 3 • An Authorized User Agreement for Implementation shall be no longer than 60 months in duration including any time extensions
Exclusions
<ul style="list-style-type: none"> • Ongoing services such as: <ul style="list-style-type: none"> – Staff augmentation – Application Service Provisioning • Consulting Services not related to implementation of Products in all other Lots of the Contract • Programming Services requiring more than 20% of the total implementation costs of the Authorized User Agreement

2.2 PRODUCTS AND SERVICES EXCLUDED FROM THE SCOPE OF THIS CONTRACT

This Contract expressly excludes the following from its scope:

- Consulting services not related to Implementation of Products in Lots 1, 2 and 3 of the Contract;
- SKUs that equate to blocks of hours
- Stand-alone Connectivity Services (e.g. connectivity services not bundled with any Product within the scope of this Contract)
- Staff augmentation (stand-alone hourly based IT Services)
- Services provided on a time and material billing basis;
- Large scale IT support infrastructure such as smoke detection, fire suppression and cooling systems; and
- Stand-alone Third Party Products.

2.3 SUBSEQUENT PERIODIC RECRUITMENT

During the term of the Contract, the State reserves the right to conduct subsequent future Periodic Recruitments. The purpose of future periodic recruitments will be to:

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

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

2.4 ESTIMATED SPEND AND QUANTITIES

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

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

2.5 GLOSSARY

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

Term	Definition
Analytic Derivatives	The outcome from Data Mining or other aggregated Data analysis techniques.
Anything as a Service (XaaS)	XaaS is a collective term said to stand for a number of things including "X as a service," "anything as a service" or "everything as a service." The acronym refers to an increasing number of services that are delivered over the Internet rather than provided locally or on-site. Examples include but are not limited to: Big Data/Data Mining as a Service; Business Continuity/Disaster Recovery as a Service (BC/DRaaS); Data Center as a Service (DCaaS); Hosted Call Center as a Service (HCCaaS); Managed Security Services as a Service (MSSaaS); Storage as a Service (STaaS).
Appliance	A device with integrated Software (firmware), specifically designed to provide a specific computing resource. The Hardware and Software are pre-integrated and pre-configured before delivery to customer, to provide a "turn-key" solution to a particular problem. Unlike general purpose computers, Appliances are generally not designed to allow the customers to change the Software (including the underlying operating system), or to flexibly reconfigure the Hardware. To be considered an Appliance, the (Hardware) device needs to be integrated with Software, and both are supplied as a package. See also "Equipment".
Authentication	The process of establishing confidence in the identity of users or information systems.

Term	Definition
Authorized User Agreement	Authorized User Agreement shall mean the Purchase Order and/or such other documents memorializing the Contractor's obligations with respect to a given transaction resulting from an RFQ issued by an Authorized User.
Best Value	The basis for awarding all service and technology Contracts to the Bidder that optimizes quality, cost and efficiency, among responsive and responsible Bidders. (State Finance Law §163 (1) (j)).
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State or Federal holidays.
Business Entity	Any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
Cloud Solution	<p>Cloud Solution shall mean any Product or Service sold as an “as a service” offering and has one or more of the following characteristics:</p> <p>(a) Authorized User Data is transmitted, acted upon, or stored on equipment not owned by an Authorized User;</p> <p>(b) Allows a Contractor access to Authorized User Data from a location other than the Authorized User's premises;</p> <p>(c) Allows an Authorized User access to data not owned by the Authorized User which access may or may not result in the collection of Authorized User Data.</p>
Commercial Off-The-Shelf (COTS)	A term for Products available in the commercial marketplace that can be purchased and used under government Contract. Does not include Custom Software.
Compliance	Conformity in fulfilling requirements.
Configuration	An arrangement of elements in a particular form, figure, or combination which includes minor physical or software setting changes that can be implemented without custom physical modifications or changes to the base code. Configuration may include Installation.
Consulting	The providing of expert knowledge by a third party for a fee.
Consumables	Refers to items and supplies such as ink and toner, staple cartridges, stitching wire, developer, and fuser oil that is utilized by printing and imaging equipment and needs to be replenished when it is depleted.
Continental United States (CONUS)	The 48 contiguous States, and the District of Columbia.
Contract Term	The initial term of the Contract and any renewals and/or extensions.
Copyright	A legal concept, enacted by most governments, that grants the creator of an original work exclusive rights to its use and distribution, usually for a limited time, with the intention of enabling the creator of intellectual wealth (e.g. the photographer of a photograph or the author of a book) to receive compensation for their work and be able to financially support themselves.
Custom Software	Software that does not meet the definition of COTS Software.
Customization	The modification of packaged Product to meet the individual requirements of an Authorized User.
Customized Training	Training that is designed to meet the special requirements of an Authorized User.
Data	Any information, Analytic Derivatives, formula, algorithms, or other content that the Authorized User may provide to the Contractor pursuant to this Contract. Data includes, but is not limited to, any of the foregoing that the Authorized User and/or Contractor (i) uploads to the Cloud Service, and/or (ii) creates and/or modifies using the Cloud Solution. See also Analytic Derivatives.
Data Breach	Refers to unauthorized access to Data or equipment which is used to transmit, store, or act upon such Data by any person, including employees, officers, partners or subcontractors of Contractor, who have not been authorized to access such Data.
Data Center	All facilities which Authorized User Data is processed or stored.
Data Categorization	The process of risk assessment of Data. See also “High Risk Data”, “Moderate Risk Data” and “Low Risk Data”.
Data Conversion	The conversion of computer data from one format to another.

Term	Definition
Data Mining	The computational process of discovering patterns in large data sets involving methods at the intersection of artificial intelligence, machine learning, statistics, and database systems. The overall goal of the Data Mining process is to extract information from a data set and transform it into an understandable structure for further use. Aside from the raw analysis step, it involves database and data management aspects, data pre-processing, model and inference considerations, interestingness metrics, complexity considerations, post-processing of discovered structures, visualization, and online updating.
Database	A single collection of Data stored in one place that can be used by personnel to make decisions and assist in analysis.
Deferred Payment Plan	Refers to a methodology where equipment is purchased on a deferred, extended payment basis with no buyout due after the last monthly payment is remitted. A deferred payment plan is not a lease and the Contractor cannot assert a security interest in the equipment.
Deliverable	Products, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished within the provision of services.
Device	A piece of electronic equipment (such as a laptop, server, hard drive, USB drive) adapted for a particular purpose. See also "Equipment".
Discount	An allowance, reduction or deduction from a selling price or list price extended by a seller to a buyer in order for the net price to become more competitive.
Discount from List	Mathematical calculation to determine the buyer's price from a Manufacturer's Price List.
Encryption	A technique used to protect the confidentiality of information. The process transforms ("encrypts") readable information into unintelligible text through an algorithm and associated cryptographic key(s).
End-of-Life	When a product is no longer being manufactured and/or is no longer being marketed or sold.
Equal Employment Opportunity (EEO)	Policies and procedures of the jurisdiction to ensure non-discrimination and equal opportunity to all employees, especially women, minorities, and persons with disabilities.
Equipment	An all-inclusive term which refers either to individual Machines or to a complete Data Processing System or Subsystem, including its Hardware and Operating Software (if any). See also "Device," "Appliance," and "Hardware," "Machine."
Federal Information Security Management Act (FISMA)	The Federal Information Security Management Act of 2014 ("FISMA", 44 U.S.C. § 355441, et seq.). FISMA requires each federal agency to document, and report major security incidents and data breaches to the data and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source.
Fleet Management	The development and management of inventory (e.g. Software inventory, Hardware inventory, Cloud Solution inventory).
Follow the Sun	A type of global workflow in which tasks are passed around daily between work sites that are many time zones apart.
General Services Administration (GSA)	The department within the U.S. government that is responsible for procurement of goods and services.
Government Entity	A federal, state, municipal entity or tribal government located in the United States.
Hardware	Refers to IT Equipment and is contrasted with Software. See also "Equipment."
Hardware Bundle	Any combination of Products or services that do not transmit, store, or act upon Authorized User Data in a non-premise based solution. The largest portion of the cost of the bundle must be made up of Lot 2 products in which the Contractor holds Intellectual Property rights.
High Risk Data	Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems ("High Impact Data").
Implementation	The post sales process of guiding a client from purchase to use of the Product that was purchased. This may include but is not limited to post sales requirements analysis, scope analysis, limited customizations, systems integrations, data conversion/migration, business process analysis/improvement, user policy, customized user training, knowledge transfer, project management and system documentation.

Term	Definition
Information Technology (IT)	Includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
Information Technology Services (ITS)	New York State Office of Information Technology Services (http://www.its.ny.gov/).
Infrastructure as a Service (IaaS)	The capability provided to the Authorized User is to provision processing, storage, networks, and other fundamental computing resources where the Authorized User is able to deploy and run arbitrary Software, which can include operating systems and applications. The Authorized User does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications; and possibly limited control of select networking components (e.g., host firewalls).
Installation	The act or process of making Products ready to be used. Installation does not include Configuration.
Installation Date	The date specified in the Authorized User Agreement by which the Contractor must have the ordered Equipment ready for use by the Authorized User.
Installation of Hardware	Involves physically installing various types of computer systems and/or adding new components to an already existing system. Installation set up of computer systems includes the initial installation of Hardware and other components that are or may be part of a larger system.
Intellectual Property (IP)	Includes inventions, patents, Copyrights, trade secrets, trademarks, technical Data, industrial designs that are generally protected and proprietary.
Internet Access	Connection to the internet through an Internet Service Provider (ISP).
Internet Service Provider (ISP)	An organization that provides services for accessing, using, or participating in the Internet.
Interoperability	The capability to communicate, to execute programs, or to transfer Data among various functional units under specified conditions.
Legacy Systems	Any outdated Hardware/Software system that remains in use despite the availability of more current technology. It usually is an archaic Data management platform that may contain proprietary custom designed Software (e.g. An old database management system running on mainframes).
Logical Partition (LPAR)	A subset of computer's Hardware resources, virtualized as a separate computer.
Low Risk Data	Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems ("Low Impact Data").
Machine	An individual unit of a Data processing system or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
Maintenance	The upkeep of Product that keeps the Product operating in accordance with the Manufacturer's specification.
Managed Print Services	A service offered by printer manufacturers that is designed to assist the business end user to streamline management and minimize costs associated with printing and imaging.
Mandatory	Refers to items or information that the State has deemed that a Vendor must submit as compulsory, required and obligatory. These items or information are noted as such, or the requirements may be phrased in terms of "must" or "shall". Mandatory requirements must be met by the Vendor for Vendor's Submission to be considered responsive.
Manufacturer	An organization or Business Entity that creates, makes, processes, or fabricates a Product or something of value, which changes a raw material or commodity from one form to another or creates a new Product or commodity.
Manufacturer - Software	An organization or Business Entity that creates, programs, or develops proprietary Software that is branded, warranted, supported, and maintained by that organization or Business Entity and holds all IP rights of the assembled solution.

Term	Definition
Manufacturer – Cloud Solution	A Cloud Solution Manufacturer is an organization or Business Entity that: <ol style="list-style-type: none"> 1. Sells its own proprietary Cloud Solution; or 2. Assembles a package of Products or Services into its own proprietary Product to create a Cloud Solution. This Product may include the services of one or more organizations or Business Entities that directly produce and/or provide components of the package. <p>The Cloud Solution, must be branded, supported, and maintained by the entity for the life of the transaction.</p>
Manufacturer - Hardware	An organization or Business Entity that creates or assembles Hardware components into an integrated proprietary system that is branded, warranted, supported, and maintained by that organization or Business Entity and holds all IP rights of the assembled solution.
Manufacturer Part Number (SKU)	A unique identifier assigned to an individual Product or part by the Manufacturer or distributor of that Product or part; usually includes a combination of alpha and/or numeric characters or may be a unique product name or unique product description. SKUs must be unique and cannot be the same as any other SKU on the price list.
Manufacturer's Price List	A price list published in some form by the Manufacturer and available to and recognized by the trade.
May	Denotes the permissive in a contract clause or specification.
Minimum NYS Discount	The discount associated with a Product Category. Must be numeric to two decimal places (e.g. 20.00%). Discount range is not acceptable, nor is the use of "varies" or "custom."
Minority and/or Woman-Owned Business (MWBE)	A business certified with Empire State Development (ESD) as a Minority and/or Woman-Owned Business.
Model Number	An identification number assigned to describe a style or class of item, such as a particular design, composition or function, by the Manufacturer or distributor of that item.
Moderate Risk Data	Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems ("Moderate Impact Data").
Must	Denotes the imperative in a Contract clause or specification.
National Institute of Standards and Technology (NIST)	The federal technology agency that works with industry to develop and apply technology, measurements, and standards. http://www.nist.gov
New York State Small Business Enterprise (NYS SBE) or Small Business	Please refer to State Finance Law section 160(8) for the definition of "small business concern" or "small business."
Non-State Agencies	Political subdivisions and other entities authorized by law to make purchases from OGS Centralized Contracts other than those entities that qualify as State Agencies. This includes all entities permitted to participate in centralized contracts per Appendix B, §39(b), Non-State Agency Authorized Users and §39(c), Voluntary Extension and State Finance Law Section 163(1)(k).
Not-To-Exceed (NTE) Price	The price listed on the published Contract price list. Contractor and/or Reseller cannot quote or sell a Product for more than the NTE Price.
NYS Procurement Services	The division within OGS that establishes centralized, statewide contracts for use by NYS agencies, political subdivisions, schools, libraries and others authorized by law to participate in such contracts. http://nyspro.ogs.ny.gov
Office of the State Comptroller (OSC)	The New York State (NYS) Office of the State Comptroller. http://www.osc.state.ny.us/
Operating System (OS)	Those routines, whether or not identified as program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
Personally Identifiable Information (PII)	As defined in NIST Special Publication 800-122 "Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)".

Term	Definition
Platform as a Service (PaaS)	The capability provided to the Authorized User to deploy onto the Cloud, infrastructure Authorized User-created or acquired applications created using programming languages and tools supported by the Contractor. The Authorized User does not manage or control the underlying cloud infrastructure including network, servers, Operating Systems or storage, but has control over the deployed applications and possibly application hosting environment configurations.
Pre-Packaged	A standard commercially available, non-customized offering related to a specific Product and having a unique SKU.
Preventive Maintenance	Maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
Processor	A microprocessor or other form of central processing unit that accesses shared resources. A dual-core or multicore processor (an integrated circuit with two or more microprocessors or central processing units plugged into the same socket) shall be considered a single Processor
Product Bundle	Multiple Products combined for sale as a single Product offering. In the instance where a Product Bundle is comprised of Products by multiple Manufacturers, the Product Bundle can only be offered for sale under the Contract by the Manufacturer having the largest portion of the cost of the Product Bundle based on the Manufacturer's list price for the Product Bundle components. This term does not apply to Cloud Solutions.
Programming Services	Programming Services are modifications or additions to Source Code.
Project Manager (PM)	A professional in the field of project management. A PM can have the responsibility of the planning, execution and closing of any project, typically relating to construction industry, architecture, aerospace and defense, computer networking, telecommunications or Software development.
Project Plan	A formal, approved document used to guide both project execution and project control. The primary uses of the Project Plan are to document planning assumptions and decisions, facilitate communication among stakeholders, and document approved scope, cost, and schedule baselines.
Related Software	Software which is bundled with Hardware and is required for Installation, Configuration and is integral to the operation of the Hardware.
Remote Administration	Any method of controlling a Product from a remote location.
Reseller	A Business Entity that purchases goods or services with the intention of selling them rather than consuming or using them. Also known as Value Added Reseller (VAR) or channel partner. Resellers must be eligible to quote statewide, independently and lower than Manufacturer (Contract) pricing for procurements under resulting Contracts. Reseller must also be able to accept orders, invoice and receive payment for Products.
Sales Agent	A Business Entity or individual who may assist the Manufacturer with sales, but is not authorized to accept orders, invoice or receive payment.
Security Incident	A violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices; and any event that adversely affects the confidentiality, integrity, or availability of a System and its Data. See NYS ITS Policy NYS-S13-005 or its successor for additional information.
Service	The performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For the purposes of Article 11 of the State Finance Law, technology shall be deemed a Service.
Service-Disabled Veteran-Owned Business	Please refer to New York Executive Law Article 17-B for the definition of Service-Disabled Veteran-Owned Business.
Shall	Denotes the imperative in a Contract clause or specification.
Should	Denotes the permissive in a Contract clause or specification.
Software	An all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including operating Software, programming aids, application programs, and program Products.

Term	Definition
Software as a Service (SaaS)	The capability provided to the Authorized User is to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email), or a program interface. The Authorized User does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
Software Bundle	Any combination of Products or Services that do not transmit, store, or act upon Authorized User Data in a non-premise based solution. The largest portion of the cost of the Bundle must be made up of Lot 1 Products in which the Contractor holds Intellectual Property rights.
Statement of Work (SOW)	A document that captures and defines the work activities, Deliverables, and timeline an Authorized User seeks from a Vendor. The SOW usually includes detailed requirements, with standard regulatory and governance terms and conditions.
Statewide Financial System (SFS)	The NYS Enterprise Resource Planning (ERP) system.
Storage	Specific to technology, a computer memory that retains data for some period of time. Storage can be categorized in many ways such as: primary, secondary, read-only, random access and/or magnetic storage.
System	The complete collection of Hardware, Software and Services as described in the resulting Authorized User Agreements, integrated and functioning together, and performing in accordance with the Authorized User Agreement.
Third Party Products	Third Party Intellectual Property or Third Party Products means any intellectual property owned by parties other than Authorized User or Contractor and provided to Authorized Users for use in connection with the Services.
Trademark	A recognizable sign, design or expression which identifies Products or services of a particular source from those of others. Also written as trade mark, or trade-mark.
Transaction	An agreement between an Authorized User and a Contractor to exchange a Product or Service for payment.
Usage	The quantity of an inventory item consumed over a period of time expressed in units of quantity or of value in dollars.
Vendor	A Business Entity that sells goods or services.
Will	Denotes the permissive in a contract clause or specification.
Written / Written Communication	Any writing that makes use of words. Examples of written communications include e-mail, Internet websites, letters, proposals, and contracts.

2.6 CONTRACT DOCUMENTS AND CONFLICT OF TERMS

This Centralized Contract is composed of the documents set forth below. In the case of any conflict among these documents, conflicts shall be resolved in the order of precedence indicated below.

1. Appendix A – Standard Clauses for New York State Contracts;
2. This Document, Appendix J – Contractor's Insurance Requirements, and Appendix J.1 – Contractor-Specific Insurance Requirements (as applicable)
3. Appendix B – 22802 - Information Technology Umbrella Contract - Manufacturer Based (Statewide) General Specifications (August 2017)
4. Appendix C – Contract Modification Procedure
5. Appendix D – Contractor and Reseller Information
6. Appendix E – Pricing Pages
7. Appendix F – Primary Security and Privacy Mandates
8. Appendix G – Processes and Forms Templates
 - a. How to Use the Manufacturer Umbrella Contract
 - b. How to Use the Manufacturer Umbrella Contract - Examples of Procurement Scenarios
 - c. Basic Request for Quote
 - d. Basic RFQ Financial Response
 - e. Complex Request for Quote
 - f. Complex RFQ Financial Response

- g. CLOUD - How to Use the Manufacturer Umbrella Contract – Cloud Solution Supplement
 - h. CLOUD - How to Use the Manufacturer Umbrella Contract - Cloud Solution Supplement - Examples of Procurement Scenarios
 - i. CLOUD - Request for Quote – Cloud Solution
 - j. CLOUD - Request for Quote - Financial Response - Cloud Solution
 - k. CLOUD - RFQ – Cloud Solution Checklist
9. Appendix H – Maintenance and Warranty Service Report
10. Appendix I – Report of Contract Sales

2.7 CONTRACT TERM

The Term of this Contract commenced on December 10, 2015 and shall end on November 29, 2020. The State reserves the right, at its sole discretion, to extend the term of this Contract by an additional five (5) years upon Contractor's agreement thereto. Any Authorized User Agreements awarded prior to the date of execution by OGS set forth below shall be governed by the Contract terms and conditions incorporated in such Authorized User Agreements.

Notwithstanding the commencement of the term of the Contract, Contractor shall not bid on an RFQ for a specific Lot until the OGS website identifies Contractor as eligible to participate in an RFQ for that specific Lot.

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

2.8 DOWNSTREAM PROHIBITION

Any and all work from this Contract that involves developing specifications, establishing a base for other applications or otherwise gaining information that would give Contractor an unfair competitive advantage in a future procurement may result in the Contractor being precluded from further work (downstream prohibition) due to conflicts of interest. Authorized User shall provide notification of any downstream prohibitions known at the time the RFQ is released. See State Finance Law sections 163(2) and section 163-a for additional information on the statutory prohibitions. Non-State agency Authorized Users may have additional statutory prohibitions.

2.9 CONTRACTOR'S INSURANCE REQUIREMENTS

The insurance requirements of this Contract are set forth in Appendix J and, if applicable, Appendix J.1.

2.10 NEW YORK STATE VENDOR RESPONSIBILITY

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

2.11 TAX LAW §5-A

Section 5-a of the Tax Law requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to the NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor filed the ST-220-TD with DTF. Note: DTF receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed with the Proposal and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Proposal submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form No. ST-220-TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf.

Vendors may call DTF at (518) 485-2889 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF website: <http://www.tax.ny.gov>.

2.12 TOLL FREE NUMBER

If Contractor provides a toll-free telephone number for Authorized User usage, Contractor should staff this toll-free number at a minimum from 9:00 AM to 5:00 PM Monday through Friday Eastern Time, excluding New York State or federal holidays. The toll-free number is set forth in Appendix D – Contractor and Reseller Information. This number is to be provided at no cost to the State.

2.13 DESIGNATED PERSONNEL

The Contractor will provide the Designated Personnel listed below for the duration of the Contract at no charge to the State. Information regarding the Designated Personnel is set forth in Appendix D – Contractor and Reseller Information.

Contractor must notify OGS within five (5) business days if any of the Designated Personnel change, and provide an interim contact person until the position is filled. Contractor may submit a Designated Personnel change by submission electronically via e-mail of a revised Appendix D – Contractor and Reseller Information to the OGS Contract Administrator. The Designated Personnel must have the authority to act on behalf of the Contractor:

2.13.1 Account Manager

The Account Manager is responsible for the overall relationship with the State during the course of the Contract and shall act as the central point of contact.

2.13.2 Contract Administrator

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

2.13.3 Sales Manager

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

2.13.4 Billing Contact

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

2.13.5 Emergency Contact

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

2.14 E-RATE

Authorized users who receive E-rate funding are encouraged to review Universal Service Fund rules and regulations to verify the applicability of this Contract to the E-rate program.

2.15 NEW YORK STATE RIGHTS

2.15.1 New York State reserves the right to:

- A. Unilaterally make revisions, changes and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to this Contract without processing a formal amendment and/or modification.
- B. Exclude any price lists or individual Products and services that do not fall within the scope of this Contract.
- C. Use on-line processes, such as a reverse auction, to make acquisitions under the resulting Contracts. Contractor agrees that it will participate in these on-line processes.
- D. Incorporate an electronic workflow system that may include elements of the Authorized User RFQ process.
- E. Publish Authorized User Contract usage of this Contract on the OGS website.
- F. In determining whether to consent to a Contractor request to assign this Contract in whole or in part to another entity, consider the experience and operations of the proposed assignee, its parent company, subsidiary, predecessor entity, related entity or other entity, to determine whether the proposed assignee possesses the necessary qualifications to perform the Contract. In making such determination, OGS may ask for additional information or require a contract performance guarantee and other assurances from Contractor, the proposed assignee or other entities.

2.15.2 Authorized User Reserved Rights

In addition to the above reserved rights, the Authorized User shall have the following additional reserved rights:

- A. The Authorized User reserves the right to add requirements to the RFQ and resulting Authorized User Agreement that are more advantageous than the terms and conditions established with the Contract.
- B. The Authorized User reserves the right to require the Contractor to identify any Subcontractors, and to approve such Subcontractors.
- C. The Authorized User reserves the right to request the Contractor's insurance policy language for purposes of substantiating Contractor's compliance with Contract Section 2.9 Contractor's Insurance Requirements, or such other Insurance Requirements as required by the Authorized User as part of a RFQ.

2.16 LIVING WAGE

An Authorized User subject to a local law establishing a "living wage", such as Section 6-109 of the New York City Administrative Code, is required to ensure that the Contractor sought to be hired complies with such local law. If the pay rate for a job title as set forth in Appendix E – Pricing Pages, is less than the local law "living wage" then an Authorized User subject to such local law cannot use this Contract for such job title. Local laws, however, are not a term and condition of the OGS Contract.

2.17 PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS

Work being done under a resulting Authorized User Agreement may be subject to the prevailing wage rate provisions of the New York State Labor Law. Such work will be identified by the Authorized User within the RFQ. See "Prevailing Wage

Rates – Public Works and Building Services Contracts' in Appendix B, Clause 10, OGS General Specifications. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility and rejection of proposal.

The Prevailing Wage Case Number for this Contract is PRC# 2014011745.

The Prevailing Wage Rates for various occupations and General Provisions of Laws Covering Workers on Article 8 Public Work Contract can be accessed at the following NYS Department of Labor website:

<https://applications.labor.ny.gov/wpp/showFindProject.do?method=showlt>

- Insert PRC# 2014011745 in the box provided and click Submit.
- Click Wage Schedule located underneath the main header of this page. The PDF file may be searched to obtain the Prevailing Wage Rate for a specific occupation.

2.18 SHORT TERM EXTENSION

In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to 3 months upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, prices and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to 6 months in lieu of 3 months. However, this extension terminates should the replacement Contract be issued in the interim.

2.19 PROCUREMENT INSTRUCTIONS

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

2.20 SPECIFICATIONS

During the term of the Contract, the Authorized User may request Product specifications for particular items that have been included by the Contractor in its Pricing Pages. These specifications will be provided by the Contractor at no cost.

2.21 INSTRUCTION MANUALS AND ASSOCIATED DOCUMENTATION

Product shall be furnished, at no extra charge, with one complete set of standard operator instruction manuals and Documentation (hard copy, CD/DVD or web link) as would normally accompany such Product(s). Contractor shall also ensure that the part numbers and net prices associated with the documentation are available to the Authorized User and included on its approved price list for the Contract should an Authorized User need to purchase additional sets of technical manuals. Where Documentation is provided in electronic format, an Authorized User shall be entitled to make copies to the extent necessary to fully enjoy the rights granted under this Contract provided that the Authorized User reproduces the copyright notice and any other legend of ownership on any copies made.

2.22 NYS OFFICE OF INFORMATION TECHNOLOGY SERVICES NOTIFICATION

All New York State Agencies must notify the Office of Information Technology Services of any and all plans to procure IT and IT -related products, materials and services meeting required thresholds defined in Technology Policy NYS-P08-001: <https://its.ny.gov/sites/default/files/documents/NYS-P08-001.pdf>, as may be amended, modified or superseded.

2.23 SALES REPORTING REQUIREMENTS

Contractor shall furnish OGS with quarterly sales reports utilizing Appendix I - Report of Contract Sales. Purchases by Non-State Agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. All fields of information shall be accurate and complete. OGS reserves the right to unilaterally make revisions, changes and/or updates to Appendix I - Report of Contract Sales or to require sales to be reported in a different format without processing a formal amendment and/or modification. Further, additional related sales information and/or detailed Authorized User purchases may be required by OGS and must be supplied upon request.

2.23.1 Reseller Sales

Product sold through Reseller(s) must be reported by Contractor in the required Appendix I – Report of Contract Sales.

2.23.2 Due Date

The Appendix I - Report of Contract Sales will be quarterly (January - March, April - June, July - September and October - December). Reports will be due 1 month after the closing quarter.

2.24 SERVICE REPORTS FOR MAINTENANCE/SUPPORT AND WARRANTY WORK

2.24.1 Service Reports for Authorized User

An Authorized User in an RFQ may require compliance with any or all of this section.

If requested by the Authorized User, the Contractor shall furnish the Authorized User with service reports for all Maintenance/support and warranty work upon completion of the services. The service reports may include the following information in either electronic or hard copy form as designated by the Authorized User:

- Date and time Contractor was notified
- Date and time of Contractor's arrival
- Make and model of the Product
- Description of malfunction reported by Authorized User
- Diagnosis of failure and/or work performed by Contractor
- Date and time failure was corrected by Contractor
- Type of service – Maintenance/support or warranty
- Charges, if any, for the service

2.24.2 Service Reports for OGS

For all Lots OGS reserves the right to request the Contractor provide OGS an annual report on the 1st day of March of each year of the Contract detailing all Maintenance/support and warranty work conducted under the Contract for Authorized Users during the immediate prior calendar year. The Contractor shall use Appendix H – Maintenance and Warranty Service Reports. The report shall include the name of the Authorized User and all of the information in Section 2.24.1 and be submitted electronically in Microsoft Excel 2010 or newer version unprotected, via e-mail to the attention of the OGS Contract Administrator.

2.25 DISTRIBUTION OF CONTRACTOR PRICE LIST AND CONTRACT APPENDICES

Contractor shall provide Authorized Users with electronic copies of the Contract, including price lists and Appendices, upon request.

2.26 OGS CENTRALIZED CONTRACT MODIFICATIONS

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

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

2.27 PROMPT PAYMENT DISCOUNTS

If a Contractor offers a discount for prompt payment, the Contractor shall include the terms of the discount on all invoices, the amounts which are due if the Authorized User meets the terms, and the number of days for which the prompt payment discount offer applies.

2.28 CONTRACTOR'S OBLIGATION FOR RESELLER PARTICIPATION

Contractor shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to participate or compete in an Authorized User RFQ.

2.28.1 Conditions of Reseller Participation

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

1. such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. those qualifying criteria met by the Reseller must be identified in Reseller designations at the time that Reseller approval is requested;
4. Immediate notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term; and,
5. Resellers must be eligible to quote statewide, independently and lower than Contract pricing for procurements under this Contract.

2.28.2 Designation of Resellers

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

2.28.3 Responsibility for Reporting/Performance

A Reseller shall be deemed to be a subcontractor or the Contractor, and Contractor shall be fully liable for Reseller's performance and compliance with all Contract terms and conditions. Products sold through Resellers must be reported by Contractor in the required quarterly sales reports to OGS as a condition of payment. In addition to inclusion of Reseller volume in the Contractor's sales reporting obligation to OGS, at the request of Authorized User, Reseller shall provide Authorized User with reports of the individual Authorized User's Contract activity with Reseller.

2.28.4 Applicability of Contract Terms

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

Maintenance or support may be carried out by a Reseller, but the Manufacturer is fully responsible for the performance of the entire package, conformity with the Centralized Contract, and any Authorized User Agreement.

2.28.5 Condition for Responding to Authorized User Request for Quote

The Authorized User transaction is required to be competitive (see Appendix G, How to Use the Manufacturer Umbrella Contract - Examples of Procurement Scenarios for examples of Procurement Scenarios). Contractors are encouraged to identify multiple Resellers to participate in competitive transactions.

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

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

2.29 PURCHASE ORDERS AND INVOICING

All invoices shall at a minimum, include the items listed below and any additional information identified in the Authorized User RFQ and resulting Authorized User Agreement:

- Contract Number;
- Contractor/Reseller Name;
- NYS Vendor ID;
- Manufacturer Part Number (SKU);
- Product Name;
- Product Description;
- Quantity;
- NYS Net Price for each Product;
- Specific designation of special price(s) which may be better than the NYS Net Contract Price; and
- Invoice Total.

2.30 PAYMENTS

Payments cannot be processed by Authorized Users until Products have been delivered and accepted in accordance with Appendix B §33 Product Delivery and Appendix B §66 Product Acceptance. Payment will be based on any invoice used in the Contractor's normal course of business. Invoices must contain all requirements outlined in Section 2.29 Purchase Orders and Invoicing.

Authorized Users are instructed not to process invoices that do not include the required information set forth above. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice all of the required items. Failure to comply may result in lengthy payment delays.

2.31 DISCRETIONARY SPENDING

An Authorized User may, in accordance with the provisions of this section, limit an RFQ to either a Manufacturer, or the Resellers under the Manufacturer, where either the Manufacturer or the Resellers have a designation listed below and the RFQ will not exceed \$200,000.

- New York State Small Business (SBE) as defined in State Finance Law Section 160(8);
- NYS Minority Owned Business Enterprise (MBE) as certified pursuant to Article 15-A of the New York State Executive Law;
- NYS Women Owned Business Enterprise (WBE) as certified pursuant to Article 15-A of the New York State Executive Law; and/or
- NYS Service-Disabled Veteran-Owned Business (SDVOB) as certified pursuant to Article 17-B of the New York State Executive Law.

Where the Manufacturer and/or the Resellers have one or more of the above listed designations, the RFQ shall be issued as follows:

1. If an Authorized User does not have a predefined Manufacturer, the RFQ must be sent to all of the Manufacturers and Resellers in the Lot(s) who have at least one of the designations listed above within the applicable Lot(s).
2. If an Authorized User has predefined a Manufacturer that has one of the designations listed above and the Manufacturer has 5 or more Resellers in the applicable lot that have at least one of the designations listed above, then the Authorized User must send the RFQ to the Manufacturer and all of its Resellers holding at least one of the designations listed above.
3. If an Authorized User has predefined a Manufacturer but that Manufacturer does not have a designation listed above but has 5 or more Resellers in the applicable lot that each have at least one of the designations listed above, then the Authorized User must send the RFQ to all the Manufacturer's Resellers holding at least one of the designations listed above.

2.32 MAINTENANCE AND SUPPORT PROVISIONS

2.32.1 Maintenance/Support Agreement Provisions

Maintenance agreements may include the following:

- Scope of Services
- Delivery and Acceptance Timeframes and Procedures
- Time Commitments & Prioritization of Services
- Preventive and Corrective Maintenance/Support Activities
- Service Level Agreements
- Service Level Agreement Penalties/Rewards; and
- Reporting Requirements/Problem Escalation and Follow-up Procedures

2.32.2 Maintenance/Support of Product

Contractor shall fully disclose all terms and conditions of Maintenance available to Licensee, including the extent to which updates, upgrades, revisions, and new releases are included in Maintenance.

2.32.3 Obligations

The Contractor shall not be obligated to repair damage caused by fire or other casualty (except that caused by the Contractor or those under Contractor's control), or willful or grossly negligent operation or handling of the Product by the Authorized User.

2.32.4 Right to Refuse/Discontinue Maintenance/Support

An Authorized User shall not be required to purchase Maintenance/support for use of Product.

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

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

2.32.5 Maintenance/Support Agreement Contract Price Survival

An Authorized User's Maintenance/support agreement, entered into during the term of this Contract, may continue beyond the end of the Contract based on the following limitations:

- Maintenance/support period must start prior to the expiration of the Contract;
- Authorized User has pre-paid for the entire Maintenance/support term;
- Maintenance period cannot last longer than a 60 month period past the expiration of the Contract.
- Example: A Contractor offers a SKU for a 2 year Maintenance/support term, which is discounted 5% less than a SKU for 2 single year engagements. In addition, Contractor also offers a 5% discount for pre-payment on the 2 year Maintenance/support term. Should the Authorized User fully pre-pay the 2 year Maintenance/support period and this Maintenance/support period begins prior to the expiration of the Contract, the Maintenance/support term will survive the Contract.

2.32.6 Legacy Maintenance/Support

Contractor may offer Legacy Maintenance/support Services on End-of-Life, or obsoleted Product, that is not being offered under this Contract, provided that the Equipment fits within the scope of the Contract. Legacy Maintenance/support options shall be included in Appendix E - Pricing Pages. A description of each type of Legacy Maintenance/support option shall be provided in Appendix E - Pricing Pages.

2.32.7 Maintenance/Support Responsibility

As a part of Maintenance/support responsibilities, the Contractor shall represent the Authorized User in regards to other involved Equipment and service providers to identify and correct the malfunction. Malfunctions that cannot be immediately diagnosed and pinpointed to a certain piece of Product will require the participation of the Contractor until the responsibility for the problem has been established. See Appendix B Section 57, Cooperation with Third Parties.

2.32.8 Maintenance/Support Service Sheets

Upon Authorized User's request, the Contractor shall furnish the Authorized User with a Maintenance/support service sheet for all Maintenance/support requests. At a minimum, the Maintenance/support service sheet should include the following data for each request for service:

- Date and time notified by Authorized User;
- Date and time of arrival of Contractor;
- Description of malfunction reported by Authorized User;
- Diagnosis of failure and work performed by Contractor;
- Date and time failure was corrected;
- Charges for the service, if applicable; and
- Name of person performing the service.

2.32.9 Remote Administration, Maintenance and Support

Appendix E – Pricing Pages must include a Product description of any Remote Administration and/or Maintenance/support service arrangements if offered/provided with the Product. The cost for any Equipment required to perform this function and the cost of the service, must be borne by the Contractor, as part of the cost of Maintenance/support. Connections to the Authorized User's networks must be performed in a manner prescribed by an Authorized User to preserve the integrity of the Authorized User's network, confidentiality and integrity of information transmitted over that Authorized User's network, and the availability of the network.

Monitoring of network performance metrics, such as throughput, firmware levels and updates, or uptime, can be provided through Lot 1 – Software and Lot 2 - Hardware. All Contractors/Resellers should review NYS ITS Technology Standard NYS-S14-010, Remote Access.

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

2.33 PRE-INSTALLATION SITE VISITS

In accordance with Appendix B, Section 19, Site Inspection, Authorized User can require a site visit as part of the Authorized User's RFQ.

2.34 NEW YORK STATE STATEWIDE FINANCIAL SYSTEM

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions. The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities.

Vendors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. 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 and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

2.35 PARTICIPATION IN CENTRALIZED CONTRACTS

This Contract is available for use by all Authorized Users (See Appendix B – Definitions) and may be extended with the joint approval of the Contractor and the Commissioner for joint purchasing by any department, agency or instrumentality of the United States government and/or any state including political subdivisions thereof (“other authorized entities”). In the event that this Contract is so extended, such other authorized entities shall be solely responsible for liability and performance under the Contract and Contractor agrees to hold them solely responsible for such liability and performance.

2.36 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS AND EXTENSION OF USE

New York State political subdivisions and others authorized by New York State law may participate in this Contract. 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, Section 2 Definitions Authorized User and Section 27 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), services to be provided may include locations adjacent to New York State.

Upon request, all eligible Non-State Agencies must furnish a Contractor with the proper tax exemption certificates and documentation certifying eligibility to use State Contracts. Questions regarding an organization's eligibility to purchase from New York State Contracts may be directed to OGS New York State Procurement's Customer Services at 518-474-6717.

This Contract may be extended to additional States or Governmental jurisdictions upon mutual written agreement between New York State (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. In the event that this Contract is so extended, such other authorized entities shall be solely responsible for liability and performance under the Contract and Contractor agrees to hold them solely responsible for such liability and performance.

2.37 EXPIRATION OF CONTRACT; SURVIVAL OF AUTHORIZED USER AGREEMENTS

Except as permitted below, Authorized User Agreements cannot extend 12 months past the Contract expiration.

2.37.1 Lot 1 – Software and Lot 2 – Hardware

Pre-paid Maintenance/Support services within an Authorized User Agreement that is fully executed prior to the expiration of the OGS Centralized Contract shall survive the expiration date of the OGS Centralized Contract no longer than 60 months.

2.37.2 Lot 4 - Implementation

Authorized User Agreements fully executed prior to the expiration of the OGS Centralized Contract shall survive the expiration date of the OGS Centralized Contract based on the term of the Authorized User Agreement. An Authorized User Agreement for Lot 4, including any extensions, shall be no longer than 60 months in duration.

2.38 PREFERRED SOURCE PRODUCTS

State Finance Law §162 requires that governmental entities afford first priority to the products/services of Preferred Source suppliers such as Correctional Industries (Corcraft), New York State Preferred Source Program for People who are Blind, and NYS Industries for the Disabled (NYSID), when such products/services meet the form, function and utility of the Authorized User. 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 §162(3) or (4)(b), respectively, before engaging the Contractor. Some products/services in the Contract may be available from one or more Preferred Sources.

Contractor will be required to prominently display the following language on all pricelists:

Authorized Users Note: Some products/services in this Contract may be available from one or more Preferred Sources. Authorized Users are reminded to comply with the statutory requirements under §162 of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to products/services available from Preferred Sources which meet your form, function and utility.

The complete, updated list of Preferred Source Offerings is available on the OGS website, at <http://www.ogs.state.ny.us/procurecounc/pdffdoc/pslist.pdf>.

2.39 TRADE-INS

An Authorized User may trade in Products when making purchases from this Contract. Trade-ins must be negotiated between the Authorized User and the Contractor as there is no mandatory trade-in policy established in this Contract. Contractor is prohibited from imposing any mandatory requirements or restrictions on Product disposal (e.g., prohibiting cross-brand trade-ins), other than generic environmental safety concerns.

An Authorized User is obligated to actively seek current fair market value when trading in Products and must keep accurate records in the procurement record verifying the process. For State Agencies, such trade-ins must comply with State Finance Law § 167 and it may be necessary to provide supporting documentation to the Office of the State Comptroller.

2.40 NEW YORK STATE OFFICE OF INFORMATION TECHNOLOGY SERVICES POLICIES

Authorized Users may require, as part of an RFQ, Contractor compliance with applicable ITS policies found at: <http://www.its.ny.gov/tables/technologypolicyindex.htm>.

2.41 RECALLS

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

2.42 AMERICANS WITH DISABILITIES ACT (ADA)

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

2.43 DIESEL EMISSION REDUCTION ACT

Pursuant to §19-0323 of the N.Y. Environmental Conservation Law (“the Law”) it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra low sulfur diesel fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by Contractors “on behalf of” State agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

2.44 POOR PERFORMANCE

An Authorized User should notify OGS Customer Services promptly if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services
New York State Procurement Services
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242
Customer Services Coordination E-mail: customer.services@ogs.ny.gov
Telephone: (518) 474-6717

2.45 MERCURY ADDED CONSUMER PRODUCTS

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

2.46 SURPLUS/TAKE-BACK/RECYCLING

- A. A State agency is reminded of its obligation to comply with the NY State Finance Law §§ 167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- B. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section C below for specific requirements governing electronic equipment recycling.
- C. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
- D. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

2.47 USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment.

2.48 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER 4

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

2.49 BULK DELIVERY AND ALTERNATIVE PACKAGING MATERIALS

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

2.50 EPA ENERGY STAR PROGRAM

The Federal EPA, in cooperation with the Manufacturers, continues a program to foster the manufacture of energy efficient equipment. New York State fully supports this effort. The State may discontinue use of and/or delete from the Contract selected Products as mandated by any Federal, State or local energy legislation that is enacted during the term of this Contract. The Contractor shall have no recourse with the State for such discontinuance/deletion.

2.51 NO DRUGS OR ALCOHOL

For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

2.52 TRAFFIC INFRACTIONS

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

2.53 NOTICES

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

22802 Contract Administrator
Office of General Services
New York State Procurement Services
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242

and (ii) if to Contractor, addressed to Contract Administrator at the address included in Appendix D – Contractor and Reseller Information. Either Party may from time to time, specify any address in the United States as its address for purpose of notices under this Agreement by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of the Contract.

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

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

2.54 ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY LANGUAGE

For State Agency Authorized User Acquisitions: 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 follows:

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

2.55 CAPTIONS

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

2.56 SEVERABILITY

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

2.57 PERFORMANCE OF SERVICES

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

2.58 REMOVAL OF RECORDS FROM PREMISES

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

2.59 CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS

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

- The Contractor shall not in any way be relieved of any responsibility under the Contract by any subcontract.
- The Contractor shall be solely responsible to the State and Authorized User for the acts or defaults of its Subcontractors and of such Subcontractors' officers, agents, and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.
- Any Deliverable provided or furnished by a Subcontractor shall be deemed for purposes of the Contract to be provided or furnished by the Contractor.
- The Contractor shall inform each Subcontractor fully and completely of all provisions and requirements of the Contract, including:
 - a. those relating either directly or indirectly to the Deliverables to be provided and the materials to be furnished or Services provided pursuant to its respective subcontract,
 - b. to maintain and protect against any unauthorized disclosure of records with respect to work performed under the subcontract in the same manner as required of the Contractor,
 - c. those relating to the State's rights to audit records and
 - d. to cooperate with any investigation, audit, or other inquiry related to the Contract or any litigation relating thereto. Contractor agrees that every such subcontract shall expressly stipulate that all labor performed and materials furnished pursuant thereto shall strictly comply with the requirements of the Contract and that no subcontract shall

impair the rights of the State or Authorized User or create any contractual relationship between the Subcontractor and the State or Authorized User.

- Failure to disclose the identity of any and all Subcontractors used by the Contractor as required hereunder may, at the sole discretion of the Authorized User, result in a disqualification of the Subcontractor, if not immediately cured, or may result in termination of the Authorized User Agreement for cause.
- The Contractor shall pay all Subcontractors for and on account of Services and/or Deliverables provided by such Subcontractors in accordance with the terms of their respective subcontracts. If and when required by the State or Authorized User, the Contractor shall submit satisfactory evidence that it has made such payment.
- The Contractor shall, within 5 business days of the State or Authorized User written request, file promptly with the requestor a copy of any subcontract providing services for an Authorized User Agreement.
- The Contractor shall require that the Subcontractor must pass through all terms and conditions of the Contract, including but not limited to Appendix A, to any lower tier subcontractors.

2.60 CONTRACTOR STAFF WITHIN AUTHORIZED USER AGREEMENT

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

All employees of the Contractor, or of its Subcontractors, who shall perform under an Authorized User Agreement, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All Business Entities that perform Services under the Contract on behalf of Contractor shall, in performing the Services, comply with all applicable Federal, State, and local laws concerning employment in the United States.

2.60.1 Staffing Changes within Authorized User Agreement

1. Any staffing represented as key personnel are anticipated to fulfill the entire life of the project. If staffing changes are required for any of the key personnel on the project prior to the completion of his or her assignment period, the Contractor shall first, before proceeding with such removal, consult with and seek the approval of the Authorized User. If, after said consultation, it is mutually agreed that such removal shall take place, the Contractor shall provide the resumes of up to 3 potential replacements with similar or better qualifications for the Authorized User review and approval within 3 business days, or as otherwise agreed to by the Authorized User.
2. The newly-assigned Contractor staff must have qualifications as good as or better than those of the replaced staff. At the commencement of the transition period, the departing staff and the new staff will work together to develop a written transition plan to transition the responsibilities. The Authorized User reserves the right to approve this transition plan.
3. The Authorized User shall also have the right in its reasonable discretion to request removal of a Contractor Staff member at any time, and the Contractor must provide the resumes of up to 3 potential replacements with similar or better qualifications for the Authorized User's review and approval within 3 business days, or as otherwise agreed to by the Authorized User. Any associated cost will be borne by the Contractor. As documentation to facilitate knowledge transfer is the sole responsibility of the Contractor, the replacement staff will be provided at no cost during the knowledge transfer period.
4. Where Contractor Staff ceases work for reasons beyond the control of the Contractor, the Contractor must immediately notify the Authorized User and provide the resumes of up to 3 potential replacements with similar or better qualifications for the Authorized User's review and approval within 3 business days, or as otherwise agreed to by the Authorized User.
 - a. Reasons beyond the control of the Contractor shall be defined as: (i) death of the Contractor Staff member; (ii) disability or illness; (iii) Contractor Staff member resigns his or her position; (iv) termination for cause by the Contractor; (v) military service or (vi) any other reason deemed acceptable by the Authorized User.
 - b. The provisions of this section do not preclude any Contractor Staff member from reasonable sick leave or annual leave.
5. Upon the Authorized User's approval, replacement staff will become project staff and will be subject to the terms and conditions of the Contract and Authorized User Agreement.

If the Authorized User does not approve one of the proposed replacement candidates, the Contractor must provide additional candidates for the Authorized User's review within three (3) business days. If the Authorized User still does not find a proposed replacement acceptable, the Authorized User reserves the right to either suspend activities under the Authorized User Agreement or terminate the Authorized User Agreement for cause pursuant to Appendix B paragraph 47, Termination.

2.61 ADDITIONAL CONTRACTOR TERMS AND CONDITIONS WITHIN AN AUTHORIZED USER AGREEMENT

Additional Contractor Terms and Conditions may become part of an Authorized User Agreement in accordance with Section 28 of Appendix B.

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

Civil Service Law § 97 and State Finance Law § 163 establish reporting requirements for maintaining certain information concerning Contract Employees working under State Agency service and consulting Contracts. State Agency consultant Contracts are defined as “Contracts entered into by a state Agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*” (“covered consultant Contract” or “covered consultant services”). The information must be provided to the state Agency awarding such Contracts, OSC, DOB and CS. To meet these requirements, the Contractor agrees to complete:

- A. Form A - Contractor’s Planned Employment Form, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information.
- B. Form B - Contractor’s Annual Employment Report. Throughout the term of the Contract by May 15th of each year the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an Centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such Contract was in effect during such prior State fiscal year Contractor reports the:
 - 1. Total number of Employees employed to provide the consultant services, by employment category.
 - 2. Total number of hours worked by such Employees.
 - 3. Total compensation paid to all Employees that performed consultant services under such Contract.*

*NOTE: The information to be reported is applicable only to those Employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to Employees of Subcontractors who perform any part of the service Contract or any part of the covered consultant Contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an Employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to The Department of Civil Service (CS) and OSC as designated below:

Department of Civil Service
Alfred E. Smith State Office Building
Albany, NY 12239

Office of the State Comptroller
Bureau of Contracts
110 State St., 11th Floor
Albany, New York
Attn: Consultant Reporting
Fax: (518) 474-8030 or (518) 473-8808

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual Employee names or social security numbers are set forth on a document, the State Agency making such disclosure is obligated to redact both the name and social security number prior to disclosure. Further information is available in Section XI.18.C of the Office of the State Comptroller’s Guide to Financial Operations (<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>), “Consultant Disclosure Legislation.”

2.62.1 INSTRUCTIONS FOR COMPLETING FORM A AND B

Form A and Form B should be completed for Contracts for consulting services in accordance with Section XI.18.C of the Office of the State Comptroller's Guide to Financial Operations (<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>), "Consultant Disclosure Legislation," and the following:

- A. **Form A - Contractor's Planned Employment Form** (available from and submitted to the using Agency, if necessary.) (Form AC-3271-S: <http://www.osc.state.ny.us/agencies/forms/index.htm>)
- B. **Form B - Contractor's Annual Employment Report** (to be completed by May 15th of each year for each consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the CS, OSC and procuring Agency.) (Form AC-3272-S: <http://www.osc.state.ny.us/agencies/forms/index.htm>)

Scope of Contract: choose a general classification of the single category that best fits the predominate nature of the services provided under the Contract.

Employment Category: enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describes the Employees providing services under the Contract.

*(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)*

Number of Employees: enter the total number of Employees in the employment category employed to provide services under the Contract during the report period, including part time Employees and Employees of subcontractors.

Number of Hours: enter the total number of hours worked during the report period by the Employees in the employment category.

Amount Payable under the Contract: enter the total amount paid by the State to the State Contractor under the Contract, for work by the Employees in the employment category, for services provided during the report period.

2.63 CONFIDENTIALITY AND PRIVACY POLICIES AND LAWS

The Contractor shall comply with all State and Authorized User policies regarding compliance with various confidentiality and privacy laws, rules and regulations, including but not limited to the Family Educational Rights and Privacy Act (FERPA), the Health Insurance and Portability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH). As part of such compliance, Contractor shall execute written confidentiality/non-disclosure agreements as requested by the State or an Authorized User.

2.64 FEDERAL FUNDING

For an Authorized User using Federal funds, Contractor shall cooperate in adding to the Authorized User's Agreement any Federal funding contract clauses necessary for the Authorized User's Project. An Authorized User shall identify to Contractor, as a condition of using this Contract and during the RFQ process, whether Federal funds will be utilized for the Project.

2.65 ELECTRONIC WORKFLOW SYSTEM

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

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

2.66 TRAVEL, MEALS AND LODGING - LOT 4 – IMPLEMENTATION ONLY

For Lot 4 only, when provided for in the RFQ and resultant Authorized User Agreement, the Authorized Users may reimburse travel expenses. All rules and regulations associated with this travel can be found at <http://osc.state.ny.us/agencies/travel/travel.htm>. In no case will any travel reimbursement be charged that exceeds these rates. All travel will be paid only as specified within the Authorized User Agreement and must be billed with the associated services on the same Invoice with receipts attached.

The Contractor shall receive prior approval from the Authorized User for any travel that occurs during the term of an Authorized User Agreement. Parking fees and/or parking tickets shall not be paid by an Authorized User.

Unless otherwise specified in writing by the Authorized User, a vehicle will not be provided by Authorized User to the Contractor for travel. Therefore, the Contractor will be responsible for ensuring that the Contractor has access to an appropriate vehicle (e.g., personal vehicle or rental vehicle) or common carrier with which to carry out any necessary travel.

For the Contractor to obtain reimbursement for the use of a rental vehicle, such use must be justified as the most cost-effective mode of transportation under the circumstances (including consideration of the most effective use of time).

The Contractor is responsible for keeping adequate records to substantiate any claims for travel reimbursement.

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

2.67 PERFORMANCE AND BID BONDS

There are no BONDS for this Contract. However, an Authorized User may require in an RFQ a performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance for the resultant Authorized User Agreement.

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

I. New York State Law

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

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract, and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because

of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 - Staffing Plan. To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")
1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
 2. Separate forms shall be completed by Contractor and all subcontractors.
 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Contract Goals

- A. For purposes of this procurement, OGS hereby establishes the following goals for Minority-owned Business Enterprises (MBE) participation, Women-owned Business Enterprises (WBE) participation, and total Minority- and Women-Owned Business Enterprises (collectively referred to as MWBE) participation:

Lot No.	Lot Description	MBE Goal	WBE Goal	Total MWBE Goal
1	Software	10 %	10 %	20 %
2	Hardware	10 %	10 %	20 %
3	Cloud	0 %	0 %	0 % (see note below)
4	Implementation Services	15 %	15 %	30 %

Questions regarding compliance with MWBE participation goals should be directed to the OGS Office for Minority- and Women- Owned Business Enterprises Designated Contacts identified as follows:

New York State Office of General Services
Office for Minority and Women Owned Businesses & Community Relations
Empire State Plaza, Corning Tower - 29th Floor
Albany, NY 12242

Primary Contact	
Anuola Surgick 518-486-9284 Anuola.surgick@ogs.ny.gov	
Secondary Contacts	
Tryphina Ramsey 518-473-7083 Tryphina.Ramsey@ogs.ny.gov	Lori Brodhead 518-473-7083 Lori.Brodhead@ogs.ny.gov
Ashley Pallone 518-473-7083 Ashley.pallone@ogs.ny.gov	Mariam Mehanna 518-473-7083 Mariam.Mehanna@ogs.ny.gov

Note that with respect to Lot Number 3 Cloud only: OGS has conducted a comprehensive search and has determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to the awarded Contractors. Contractors are, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs for Lot 3, Cloud, who perform commercially useful functions on this Contract for the provision of services and materials.

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

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

V. MWBE Utilization Plan

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

VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Business Enterprises for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made

subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports, determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within 7 business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. Required Good Faith Efforts

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

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

VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month’s activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System (“NYSCS”) to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor’s responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification (“audit notice”) indicating that a representative of its company needs to log-in to the NYSCS to report the company’s MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor’s responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: **“Introduction to the System – Vendor training”** and **“Contract Compliance Reporting - Vendor Training”** to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on **“Account Lookup”** to identify the Contractor’s account by company name. Contact information should be reviewed and updated if necessary by choosing **“Change Info.”** It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through **“Request New User.”** When identifying the person responsible, please add **“- MWBE Contact”** after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person

receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for “**Contact Us & Support**” then “**Technical Support**” on the NYSCS website.

- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month’s activity to: OGS MWBE Office, 29th Floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor’s responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages provisions in clause IX below.

IX. Breach of Contract and Liquidated Damages

- A. Where OGS determines that the Contractor is not in compliance with the requirements of subsection 4.7 of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. Fraud

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

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

2.69 EMERGING TECHNOLOGIES

The State reserves the right to modify the terms of this Contract or any future Periodic Recruitments, to allow for emerging technologies. OGS reserves the right to include such technology(ies) hereunder or to issue a formal modification or amendment to this Contract.

Section 3. LOT 3 – CLOUD SPECIFIC TERMS AND CONDITIONS

To the extent that Contractor has received an award for Lot 3, Cloud, the following terms and conditions apply to Lot 3, Cloud.

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

3.1 PROTECTION OF DATA, INFRASTRUCTURE AND SOFTWARE

Contractor is responsible for providing physical and logical security for all Data, infrastructure (e.g. hardware, networking components, physical devices), and software related to the services the Contractor is providing under the Authorized User Agreement.

All Data security provisions agreed to by the Authorized User and Contractor within the Authorized User Agreement may not be diminished for the duration of the Authorized User Agreement without prior written agreement by the parties amending the Authorized User Agreement.

3.2 SECURITY POLICIES AND NOTIFICATIONS

3.2.1 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).

3.2.2 Security Incidents

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

3.3 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 24 hours from the time the Contractor confirms the Data Breach. An Authorized User may specify a shorter notification time in their RFQ;
2. consult with and receive authorization from the Authorized User as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by the Authorized User;
3. coordinate all communication regarding the Data Breach with the ITS EISO and Authorized User (including possible communications with third parties);
4. cooperate with the Authorized User, ITS EISO and any Contractor working on behalf of the Authorized User or 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 such corrective actions that the Contractor deems necessary to contain the Data Breach. Contractor shall provide Written notice to the Authorized User as to all such corrective actions taken by the Contractor to remedy the Data Breach. Unless otherwise agreed to in the Authorized User Agreement, if Contractor is unable to complete the corrective action within the required timeframe, the remedies provided in Appendix B, Section 52, Remedies for Breach shall apply and (i) the Authorized User may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the Authorized User, or until the Authorized User has completed a new procurement for a replacement service system; (ii) and the Contractor will be responsible for the reasonable cost of these services during this period.

Nothing herein shall in any way (a) impair the authority of the OAG 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.

3.4 DATA OWNERSHIP, ACCESS AND LOCATION

3.4.1 Data Ownership

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

3.4.2 Authorized User Access to Data

The Authorized User shall have access to its Data at all times, through the term of the Authorized User Agreement, plus the applicable period as specified in Section 3.11 Expiration, Termination or Suspension of Services.

The Authorized User shall have the ability to import or export Data in piecemeal or in its entirety at the Authorized User's discretion at no charge to the Authorized User. This includes the ability for the Authorized User to import or export Data to/from other Contractors. This can, if specified within the Authorized User Agreement, be carried out by providing application programmable interface or other such efficient electronic tools.

3.4.3 Contractor Access to Data

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

3.4.4 Data Location and Related Restrictions

All Data shall remain in 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 the Continental United States (CONUS). All Data in transit must remain in CONUS and be encrypted in accordance with Section 3.7, Encryption, below.

3.4.5 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.

3.4.6 Infrastructure Support Services

Infrastructure support services that do not directly or indirectly access Data may be provided in a Follow the Sun format, if expressly outlined within the Authorized User Agreement.

3.5 CONTRACTOR PORTABLE DEVICES

Contractor shall not place Data on any portable Device unless Device is located and remains within Contractor's CONUS Data Center.

For Authorized Users subject to ITS policies, the Data, and/or the portable device 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.

3.6 TRANSFERRING OF DATA

3.6.1 General

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

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

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

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

At the end of the Contract and/or Authorized User Agreement term, Contractor may be required to facilitate transfer of Data to a new Contractor. This transfer must be carried out as specified by the Authorized User in the Authorized User Agreement.

3.6.3 Transfer of Data; Charges

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

3.6.4 Transfer of Data; Contract Breach or Termination

Notwithstanding Section 3.6.3, in the case of Contract breach or termination for cause of the Contract, all expenses for the transfer of Data shall be the responsibility of the Contractor.

3.6.5 Transfer Format

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

3.7 ENCRYPTION

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

All Data in transit must be handled in accordance with ITS Policy NYS-S14-007 (or successor) or the National Institute of Standards and Technology (NIST) Federal Information Processing Standard (FIPS)-140-2 or Transport Layer Security (TLS) 1, or TLS2 (or successor).

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

3.8 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.

3.9 SECURITY PROCESSES

If requested by an Authorized User as part the Request for Quote process, Contractor shall complete a Consensus Assessment Initiative Questionnaire (CAIQ) including on an annual basis thereafter, if requested by the Authorized User. The CAIQ 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 Contractors.

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 RFQ response or terminate an Authorized User Agreement when such a request has been denied.

For example, Federal, State and local regulations and/or laws may require that 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.

3.10 UPGRADES, SYSTEM CHANGES AND MAINTENANCE/SUPPORT

The Contractor shall give a minimum of 5 business days advance Written notice to the designated Authorized User contact of any upgrades, system changes and Maintenance/support actions that may potentially impact services described in the Authorized User Agreement.

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

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

3.11 EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES

3.11.1 Return of Data

The Contractor shall return Data in a format agreed upon within the Authorized User Agreement or as agreed to with the Authorized User. This can, if specified within the Authorized User Agreement, be carried out by providing application programmable interface or other such efficient electronic tools. The Contractor must certify all Data has been removed from its system and removed from backups within timeframes established in the Authorized User Agreement or as agreed to with the Authorized User.

3.11.2 Suspension of Services

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

3.11.3 Expiration or Termination of Services

Upon expiration or termination of an Authorized User Agreement, the Authorized User shall have full access to all Data for a period of 60 calendar days. Unless noted in the original Authorized User Agreement, this period will be covered at no charge. This can, if specified within the Authorized User Agreement, be carried out by providing application programmable interface or other such efficient electronic tools. During this period, the Contractor shall not take any action to erase and/or withhold any Data, except as directed by the Authorized User. An Authorized User shall have the right to specify a period in excess of 60 calendar days in its RFQ.

3.12 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 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.

3.13 ACCESS TO SECURITY LOGS AND REPORTS

Upon request, the Contractor shall provide access to security logs and reports to the State or Authorized User in a format as specified in the Authorized User Agreement.

3.14 CONTRACTOR PERFORMANCE AUDIT

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

The Contractor shall perform an independent audit of its Data Centers, at least annually, at Contractor expense. The Contractor will provide a data owner facing audit report upon request by the Authorized User. The Contractor shall identify

any confidential, trade secret, or proprietary information in accordance with Appendix B, Section 9(a), Confidential/Trade Secret Materials.

3.15 PERSONNEL

3.15.1 Background Checks

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

3.15.2 Separation of Duties

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

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

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

3.17 COMPLIANCE WITH FEDERAL, STATE AND LOCAL REGULATIONS

If required within the Authorized User Agreement, 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. See Appendix F – Primary Security and Privacy Mandates.

3.18 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.

3.19 MODIFICATION TO CLOUD SERVICE DEPLOYMENT MODEL, SERVICE MODEL, AND/OR INITIAL FUNCTIONALITY WITHIN AN AUTHORIZED USER AGREEMENT

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

Any changes to the deployment model, service model, functionality, or SKU (e.g., PaaS to IaaS) must be provided to OGS via Appendix C - Contract Modification Procedure.

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

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

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

Section 4. LOT 4 – IMPLEMENTATION SPECIFIC TERMS AND CONDITIONS

To the extent that Contractor has received an award for Lot 4, Implementation Services, the following terms and conditions apply to Lot 4, Implementation Services.

4.1 REQUEST FOR QUOTATION (RFQ) TRANSACTION PROCESS

The RFQ for this Lot will contain a deliverable-based Statement of Work (SOW). The RFQ will include, but is not limited to: Authorized User timeframes; system integration requirements; and other risks that may affect the cost to the Authorized User.

All responses to RFQs must include detailed price information, including but not limited to: hours required per title, cost per hour etc. Travel, lodging and per diem costs must be itemized in the total quote and may not exceed the rates in the NYS OSC Travel Policy. More information can be found at <http://www.osc.state.ny.us/agencies/travel/travel.htm>.

All costs must be itemized and included in the Contractor's quote.

4.2 BACKGROUND CHECKS

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

4.3 FOREIGN EMPLOYEES

H-1B VISA costs shall not be passed through to the Authorized User under this Contract. Although Authorized Users will not affirm employment for immigration purposes, an Authorized User may be asked to confirm Contractor's statement of the individual's employment for immigration purposes. Based on RFQ security requirements the Authorized User may require that all staff must be citizens of the United States, and if so, Authorized User will so indicate in the RFQ.

4.4 PROJECT PLAN

4.4.1 Development of Project Plan

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

4.4.2 Project Plan Document

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

- Name of the Project Manager, Contact Numbers and E-Mail Address;
- Names of the Project Team Members, Contact Numbers and E-Mail Address;
- A list of implementation milestones based on the Authorized User's desired installation date;
- A list of responsibilities of the Authorized User during system implementation;
- A list of designated Contractor Authorized Personnel;
- Escalation procedures including management personnel contact numbers;
- Full and complete documentation of all implementation work;
- Samples of knowledge transfer documentation; and
- When applicable, a list of all materials and supplies required to complete the implementation described in the RFQ.

4.4.3 Materials and Supplies Required to Complete Implementation

In the event that there are items required to complete an Implementation, the Contractor may request the items be added to its Contract if the items meet the scope of the Contract.

4.4.4 Negotiation of Final Project Plan

If the Authorized User chooses to require a full Project Plan, the State further reserves the right for Authorized Users to negotiate the final Project Plan with the apparent RFQ awardee. Such negotiation must not substantively change the scope of the RFQ plan, but can alter timeframes or other incidental factors of the final Project Plan. Authorized User will provide the Contractor a minimum five business days' notice of the final negotiation date. The Authorized User reserves the right to move to the next responsible and responsive bidder if Contractor negotiations are unsuccessful.

4.5 SINGLE POINT OF CONTACT

The Contractor must provide, at the request of the Authorized User, a Single Point of Contact (SPOC) regardless of the breadth of the services being provided. The Contractor is required to provide the name and contact telephone numbers (desk, cell phone etc.) of the SPOC.

4.6 RETAINAGE

The Authorized User may retain a percentage of each deliverable payment of no more than twenty-five (25) percent until the acceptance of the complete Implementation. This retainage may be reduced up to 5 percent as described in the SOW, when the Contractor substantially reduces the time required from the timeframes negotiated between the Authorized User and the Contractor.

4.7 ENHANCEMENTS TO SERVICES

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

THIS PAGE LEFT INTENTIONALLY BLANK

Signature Page

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

CONTRACTOR

Signature: _____
Printed Name: _____
Title: _____
Company Name: **NETAPP, INC. D/B/A NETAPP**

THE PEOPLE OF THE STATE OF NEW YORK

Signature: _____
Printed Name: _____
Title: _____
Date: _____

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF _____ }
 } **SS.:**
COUNTY OF _____ }

On the _____ day of _____ in the year 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he maintains an office at _____, and further that:

[Check One]

- If an individual):** __he executed the foregoing instrument in his/her name and on his/her own behalf.
- If a corporation):** __he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, __he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, __he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- If a partnership):** __he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- If a limited liability company):** __he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public
Registration No.