

**FIRST AMENDMENT TO
CONTRACT NUMBER INSERT
CONTRACT NUMBER**

BETWEEN

THE NEW YORK STATE OFFICE OF GENERAL SERVICES

AND

INSERT CONTRACTOR NAME



THIS FIRST AMENDMENT is made by and between the State of New York, acting by and through the Office of General Services (hereinafter “OGS” or the “State”), with offices at 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law 163, and **INSERT CONTRACTOR NAME**, (hereinafter “Contractor” or “Vendor”), with its principal place of business at **INSERT ADDRESS**. The State and the Contractor are collectively referred to as the “Parties”.

WITNESSETH:

WHEREAS, the State and Contractor entered Contract **INSERT CONTRACT NUMBER** for Information Technology Contract Distributor Based; and

WHEREAS, the Parties have agreed to amend the Contract to extend the term of the Contract and make various other revisions to the Contract;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

Section 1. Pursuant to Contract §6, Contract Term, the Contract is extended for 5 years, being the period of December 7, 2021 through and including December 6, 2026.

Section 2. Section 12 of the Contract, Appendix A, is deleted in its entirety and replaced with the following language:

Section 12, Appendix A. Appendix A, Standard Clauses for New York State Contracts, dated October 2019, attached hereto, is hereby incorporated in, and expressly made a part of this Contract. All references in the Contract to Appendix A, dated January 2014, shall be deemed to reference Appendix A, dated October 2019.

Section 3. Section 25 of the Contract, Contractor Requirements And Procedures For Equal Employment And Business Participation Opportunities For Minority Group Members And New York State Certified Minority- And Women-Owned Business Enterprises, is deleted in its entirety and replaced with the following language:

Section 25. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

I. New York State Law

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

II. General Provisions

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

III. Equal Employment Opportunity (EEO)

- 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. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)
 - 1. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. 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. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.

2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their 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 complete the Workforce Audit 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 complete the Workforce Audit 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 conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- B. Good Faith Efforts
Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:
 1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
 2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
 3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
 4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

V. Fraud

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

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/MWBE>
Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

Section 4. The Contract is amended to add a new Section 25-A, Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses, to read as follows:

Section 25-A. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

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

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

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

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

Section 5. Except as herein modified all other terms and conditions of this Contract remain in full force and effect.

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

INSERT CONTRACTOR NAME

NYS Office of General Services

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Federal ID: _____

Date: _____

NYS Vendor ID: _____

Date: _____

NOTICE: This First Amendment becomes effective once an authorized signatory for OGS approves and executes. OGS will then post a notification to its website in the form of a Purchasing Memorandum.

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF _____ }
: **Sworn Statement:**
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 they maintain an office at Town of _____ County of _____, State of _____; and further that:

[Check One]

If an individual): they executed the foregoing instrument in their name and on their own behalf.

If a corporation): they are the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, they are authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _____ 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): they are the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, they are authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, they 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): they are a duly authorized member of _____, LLC, the limited liability company described in said instrument; that, they are authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, they executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Signature of Notary Public

Notary Public Registration No. _____ **State** _____



Contract

Contract Term: December 7, 2016 - December 6, 2021 (see Section 6 for details).

THIS CONTRACT (hereinafter “Contract” or “Centralized Contract”) for the acquisition of Information Technology Software and Hardware 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, pursuant to authority granted under New York State Finance Law §163, and **INSERT CONTRACTOR NAME** (hereinafter “Contractor”), with its principal place of business at **INSERT ADDRESS**. The foregoing are collectively referred to as the “Parties.”

WHEREAS, on August 25, 2016 OGS issued a Request for Proposals (“Solicitation”) for Distributor based miscellaneous Software and Hardware, and Related Services; and

WHEREAS, the Solicitation was structured with two separate lots: Lot 1–Software, and Lot 2–Hardware; and

WHEREAS, the State evaluated Contractor’s submission and determined that the Contractor was eligible for a contract award for those Lot(s) set forth in Appendix D; and

WHEREAS, in accordance with State Finance Law Article 11, the State has made a determination that the Contractor’s not to exceed pricing is reasonable; and

WHEREAS, this Centralized Contract requires, for each transaction, that the Authorized User issue a competitive Request for Quote (RFQ) to be issued to eligible Contractors pursuant to a How to Use Process. Each Authorized User Agreement resulting from the competitive RFQ process will be governed first by the terms and conditions specified herein and second by terms and conditions added to the Authorized User Agreement by the Authorized User; and

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:

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1. SCOPE

Contractor can sell Products of a Manufacturer only if the Manufacturer itself does not have an OGS contract to sell the Manufacturer's Products. Contractor cannot sell any Products of a Manufacturer that holds an OGS Contract for the sale of the Manufacturer's Products, or any Products purchased from a vendor which holds a Distributor Contract. The Contractor can and will provide and make available the Products from the Manufacturers listed in Appendix H.

See **Appendix D**, Contractor Information, for the Lot(s) awarded under this Contract. Lots 1 and 2 are described as follows:

Lot 1 – Software

This Lot provides Authorized Users with a mechanism to purchase Software commercially available and Maintenance/Support for Manufacturer's Proprietary product line, and Related Services listed in the Manufacturer's commercial price list.

Lot 2 – Hardware

This Lot provides Authorized Users with a mechanism to purchase Hardware products (including new, refurbished, and remanufactured Hardware), Telecommunications Hardware, Appliances, Storage and the Hardware's Related Ancillary Products and Related Software. This lot also provides Warranties and Maintenance/Support for Manufacturer's Proprietary product line and Related Services listed in the Manufacturer's commercial price list.

This Contract prohibits the sale and purchase of the following Products:

- Products of a Manufacturer that holds an OGS Contract for the sale of Software and/or Hardware (please refer to Section 2, Prohibited List)

- All Cloud products (see glossary definition for “Cloud”) regardless if the Manufacturer has an OGS contract.

2. PROHIBITED LIST

The Prohibited lists are lists of Manufacturers that are not available under Lot 1 – Software and/or Lot 2 – Hardware of this Contract due to the Manufacturers having other OGS contracts or circumstances that make their Products unable to be purchased through any Contract resulting from this solicitation. Contractor cannot sell any Products of a Manufacturer within a Lot included in this solicitation if the Manufacturer already holds an OGS Contract for the sale of the Manufacturer’s Products that fall within the scope of the Lot. For example, if a Manufacturer holds another OGS contract for hardware, that Manufacturer’s Products cannot be sold under Lot 2 – Hardware. The prohibited Software Manufacturer and prohibited Hardware Manufacturer lists will be updated by OGS from time to time and such updated lists will apply to this Contract.

A listing of prohibited Software Manufacturers can be found through the following link:
<http://www.ogs.ny.gov/purchase/biddocument/22876Bid.asp>.

A listing of prohibited Hardware Manufacturers can be found through the following link:
<http://www.ogs.ny.gov/purchase/biddocument/22876Bid.asp>.

If a Manufacturer included in the Contract pricelist obtains an OGS Contract for Software and/or Hardware, that Manufacturer will be added to the prohibited list for Lot 1 – Software and/or Lot 2 – Hardware and the Manufacturer’s Products will no longer be eligible to be sold under Lot1 and/or Lot2 of the this Contract.

In light of the frequent changes in the IT industry, an Authorized User is strongly encouraged to contact the NYS Office of General Services with any questions about whether a particular Product is produced by a prohibited Manufacturer.

3. CONTRACTOR QUALIFICATIONS

Contractor shall maintain a current Manufacturer Authorization for all Products sold under this Contract. Products not supported with a Manufacturer Authorization on file with OGS may not be sold under the Contract.

4. COST-PLUS/COST-MINUS PERCENTAGES

The Cost-Plus percentages will NOT increase over the life of the Contract. The Cost-Minus percentages bid will NOT decrease over the life of the Contract. The Cost-Plus or Cost-Minus percentages for Products will also apply to maintenance provided for the Products.

The Cost-Plus or Cost-Minus percentage in Appendix H will apply to all products sold under the Contract.

More favorable pricing can be offered to Authorized Users in the Request for Quote (RFQ) process. At time of purchase, to facilitate competition, Authorized Users will be required to solicit quotes from all awardees within a lot; Contractor is encouraged to quote the best pricing possible during the RFQ process.

5. NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY (HEREINAFTER THE “QUESTIONNAIRE”)

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

The Commissioner of OGS or her designee, 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.

6. CONTRACT TERM

This Contract will be for an initial term not to exceed five years. The Contract term shall commence upon full execution by Procurement Services and the Contractor, and the initial term shall end on the day immediately preceding the fifth anniversary of the Contract commencement date. Upon mutual agreement of a Contractor and Procurement Services, a Contract resulting from this RFP may be extended for one additional five year term, for a total contract term not to exceed ten years.

7. SHORT TERM EXTENSION

This section shall apply in addition to any rights set forth in the Contract Term section above and in Appendix B, *Contract Term – Renewal*. In the event a replacement Contract has not been issued, this Contract may be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

8. CONTRACT MODIFICATION PROCEDURES

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to offer higher discounts or change a contractor's address are examples of updates. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract, Attachments and the Appendices may be made in accordance with the contractual terms and conditions to make price level revisions, update the Prohibited List, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix

C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.

E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §28.

9. PERIODIC RECRUITMENT

During the term of the Contract, the State reserves the right to conduct Periodic Recruitments. The purpose of Periodic Recruitments will be to receive Proposals to:

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

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 in effect at the time of the Periodic Recruitment. Should a Contractor Submission for a Lot be deemed non-responsive under any Periodic Recruitment, a Contractor cannot reapply for that Contract Lot until the next Periodic Recruitment is opened.

10. ESTIMATED QUANTITIES

This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. Numerous factors could cause the actual volume of Product purchased under the Contract to vary substantially from any estimates in Solicitation 22876 or any subsequent Periodic Recruitment. Such factors include, but are not limited to, the following:

- All Contracts will be nonexclusive Contracts;
- 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.

11. DEFINITIONS

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

Term	Definition
Appliance	An Appliance is a device with integrated Software (firmware), 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.
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.

Term	Definition
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	Cloud shall mean any Product, Bundles or Service sold as an “as a service” offering or in which Authorized User Data is transmitted, acted upon, or stored on non-Authorized User equipment. This may include, but is not limited to, hosted applications, managed services, and off-site Data storage. Cloud includes IaaS, PaaS, SaaS, and XaaS.
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.
Contract Term	The initial term of the Contract and any renewals and/or extensions.
Cost-Minus Percentage	Percentage subtracted from cost Contractor pays a Manufacturer for Products, Maintenance, and Related Services. Percentages bid become Contract pricing and will not decrease over the life of the Contract.
Cost-Plus Percentage	Percentage added to cost Contractor pays a Manufacturer for Products, Maintenance, and Related Services. Percentages bid become Contract pricing and will not increase over the life of the Contract.
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.
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. More common forms of discounts include trade discounts, quantity discounts, seasonal discounts and cash discounts.
Distributor	A company or individual (merchant) that purchases a large volume of IT Hardware and Software Products from multiple manufacturers or other Distributors/resellers with the intention of selling them rather than consuming or using them. Also known as large account value added reseller (VAR), channel partner or dealer.
Distributor Published Price List	A price list published in some form by the Distributor and available to and recognized by the trade.
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,” “equipment” and “Hardware,” “machine.”
General Services Administration (GSA)	The department within the U.S. government that is responsible for procurement of goods and services.
Hardware	Refers to IT Equipment and is contrasted with Software. See also Equipment.
Hosted Catalog	A catalog hosted by the State on a website.
Information Technology Services (ITS)	New York State Office of Information Technology Services (http://www.its.ny.gov/). It is the responsibility of ITS to provide centralized IT services to the State and its governmental entities with the awareness that our citizens are reliant on those services.

Term	Definition
Implementation	Refers to 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.
Installation	The act or process of making Products ready to be used.
Maintenance	The upkeep of Product that neither adds to its permanent value nor prolongs its intended life appreciably, but instead keeps it in an efficient operating condition. Maintenance shall not include Cloud offerings or remote monitoring of any type.
Mandatory	Refers to items or information that the State has deemed that a Bidder 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 Bidder for Bidder’s Submission to be considered responsive.
Manufacturer	A person 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 Authorization Letter	A document signed by an officer of a Manufacturer company who is authorized to sign on behalf of the company. The Manufacturer Authorization Letter provides proof that the Contractor has a relationship with the Manufacturer and is authorized to sell the Manufacturer’s products.
Manufacturer List Price	The price for a Product contained in the Manufacturer Price List
Manufacturer 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. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “Should.” “Will.”
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 Contractor of that item.
Must	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall” and “Will.”
New York State Small Business Enterprise (NYS SBE)	A “New York State Small Business” is defined as a company that is a resident to New York State, independently owned and operated, with 100 or fewer employees, and not dominant in its field. See State Finance Law §160(8).
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, §27(b), Non-State Agency Authorized Users and §27(c), Voluntary Extension and State Finance Law Section 163(1)(k).
Office of the State Comptroller (OSC)	The New York State Office of the State Comptroller. http://www.osc.state.ny.us/

Term	Definition
Product	Shall mean Hardware, Software, Maintenance, and Related Services. Product does not include Cloud.
Punch-out Catalog	A catalog that allows an Authorized User to buy from a Contractor's website from within the Authorized User's own procurement application. The Authorized User leaves ("punches out") the procurement application and enters the Contractor's Web-based catalog which launches the Contractor's website within the Authorized User's browser frame.
Related Services	Related services are limited to the following items if listed in the Manufacturer's pricelist: Installation; Implementation; Configuration; Pre-packaged Training; and Volume License Agreement management. Related Services cannot exceed 20% of total purchase of Product and Maintenance.
Related Software	Software which is bundled with Hardware and is required for installation, configuration and is integral to the operation of the Hardware.
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 this Contract, technology shall be deemed a service.
Shall	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see "Must" and "Will".
Should	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "May."
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.
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 or secondary; read-only, random access and 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 this Contract.
Training	Training that is designed to meet the special requirements of an Authorized User.
Vendor	An enterprise that sells goods or services.
Volume Software License Agreement	A Volume Software License Agreement can occur when there is a large quantity of Software purchased from a particular Software Manufacturer, for a specified time period, which results in additional discounting beyond the Contract discounts.
Will	Denotes the permissive in a contract clause or specification. Also see "May," "Shall."
Written / Written Communication	Written Communication makes use of the written word. Examples of written communications include e-mail, Internet websites, letters, proposals, and contracts.

12. APPENDIX A

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is here by incorporated in, and expressly made a part of this Contract.

13. APPENDIX B

Appendix B, Office of General Services General Specifications – Manufacturer Based, attached hereto, is hereby incorporated in, and expressly made a part of this Contract.

a) Appendix B Amendments. Appendix B Sections 63A and 63B shall not apply to this Contract.

14. APPENDIX C

Appendix C, Contract Modification Procedures, attached hereto, is hereby incorporated in, and expressly made a part of this Contract.

15. APPENDIX D

Appendix D, Contractor Information, attached hereto, is hereby incorporated in, and expressly made a part of this Contract.

16. APPENDIX E

Appendix E, Insurance Requirements, attached hereto, is hereby incorporated in, and expressly made a part of this Contract.

17. APPENDIX F

Appendix F, How to Use the Distributor Umbrella Contract, attached hereto, is hereby incorporated in, and expressly made a part of this Contract.

- Attachment 1 – Request for Quote

18. APPENDIX G

Appendix G, Report of Contract Sales, attached hereto, is hereby incorporated in, and expressly made a part of this Contract.

19. APPENDIX H

Appendix H, Contract Rates, attached hereto, is hereby incorporated in, and expressly made a part of this Contract.

20. CONTRACT INTEGRATION, MERGER AND ORDER OF PRECEDENCE

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
3. Appendix B – General Specifications
4. Appendix C – Contract Modification Procedure
5. Appendix D – Contractor Information
6. Appendix E – Insurance Requirements
7. Appendix F – How to Use the Distributor Umbrella Contract
 - Attachment 1 – Request for Quote
8. Appendix G – Report of Contract Sales
9. Appendix H – Contract Rates

21. REPORT OF CONTRACT USAGE

Contractor shall furnish a report of all Products provided under the Contract on a quarterly basis, no later than the 15th of the month following the close of each prior three months. All fields of information shall be accurate and complete. OGS reserves the right to unilaterally make revisions, changes and/or updates to **Appendix G - 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.

22. REPORTS GENERATED BY STATE OGS PROCUREMENT SERVICES

Contractor must provide Procurement Services with the ability to generate reports using a report template or other easy to use query tool such as a portal or Access. Information must be maintained and accessible for the life of the Contract. Reports must be downloadable in comma delimited format or in Excel. Available fields must at a minimum include: Customer Name, Customer Number, Customer PO #, Order #, Contractor Item #, Manufacturer Item #, Product Description, Manufacturer, Quantity Ordered, Unit Price, Extended Price, Date Ordered, Date of Invoice, Ship Date, Quantity Shipped, Product Type, Ship To: Name, Address Line 1, Address Line 2, City, State, Zip, Ship To: Name, Address Line 1, Address Line 2, City, State, Zip, Maintenance Expiration Date (if applicable).

23. REQUIRED INSURANCE

The Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of the Contract, policies of insurance pursuant to the requirements outlined in **Appendix E – Insurance Requirements**. At least 30 calendar days prior to the expiration of any policy required by the Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to OGS than the expiring policies shall be delivered to OGS in accordance with Appendix E - Contractor Insurance Requirements.

24. PERFORMANCE AND BID BONDS

There are no Bonds for this Contract. In accordance with Appendix B, §45 Performance/Bid Bond, the Commissioner of OGS has determined that no performance, payment or Bid Bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the Contract.

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

I. Policy Statement

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

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the Statewide certified minority- and women-owned business enterprises program. The

recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

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. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority- and women-owned business enterprises (“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. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract.

III. Equal Employment Opportunity (EEO)

- A. Contractor shall comply with the provisions of Article 15-A set forth below. These provisions 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.
- 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 any subcontractor.
 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, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528> Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

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

- (1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
- (2) A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- (3) Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
- (4) A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

(5) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.

(6) Other information deemed relevant to the request.

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

26. TAX LAW §5-A

Tax Law §5-a requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four 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: NYS 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 bid 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 business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form 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 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 DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov/>.

27. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §139-j and §139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Vendor during the procurement process. A Vendor is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page and in Section 1.6. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Vendor pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period; the Vendor is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

28. NEW YORK STATE RIGHTS

New York State reserves the right to:

- A. Unilaterally make non-material revisions, changes and/or updates to any templates and/or Attachments to the OGS Centralized Contract without processing a formal amendment and/or modification.
- B. To exclude any price lists or individual Products and services that do not fall within the scope of the Solicitation.
- C. To use on-line processes, such as reverse auction, to make acquisitions under the resulting Contracts. Bidder agrees that if awarded a Contract, it will participate in these on-line processes established by OGS.
- D. To incorporate an electronic workflow system that may include elements of the Authorized User RFQ process.
- E. To post Authorized User Contract usage of Centralized Contracts.
- F. Remove specific Manufacturers or Products from the Contract, as determined by OGS.

29. 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 Products 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 Contractor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

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

30. ELECTRONIC PROCUREMENT SYSTEMS (EPROCUREMENT)

Contractor shall, in the event the State implements a Web-based system to support catalog purchasing and upon at least 120 calendar days’ notice, participate as directed by Procurement Services to successfully activate and maintain a contract and technically compliant catalog.

31. ON-LINE CONTRACTOR CATALOG

Contractor must maintain an on-line catalog of available Products with pricing. The catalog must be accessible via any commonly used browser, with no need to download additional Software. All awarded Lots must be included in the catalog. It must be available 24x7, except for scheduled maintenance timeframes. It must also include a mechanism for on-line ordering. The website must be ADA compliant.

It is required that the catalog allow searches by OEM, Product, Product descriptions, and Manufacturer.

The website hosting the catalog must also include information, such as contact information for customer account representatives and links (if requested) to State websites.

If the State has restricted Products that cannot be obtained from the Contractor, it is desirable that the catalog show only those Products which Authorized Users are allowed to obtain from the Contractor.

The Contractor must provide a means of making any information needed to log in to the catalog available to any Authorized User who wishes to do so, whether by assigning different codes to each Authorized User or establishing a single set of login codes and distributing these codes to Authorized Users. This method must not require any administrative tasks on the part of OGS Procurement Services.

The Contractor shall provide logins to a production website that will meet the requirements of this section, including report generation, within 30 calendar days of award. If the Contractor fails to meet this requirement, OGS may suspend the ability to sell Products under the Contract until website is in compliance with the requirements of this section.

32. NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. 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), delivery is allowed to locations adjacent to New York State.

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

33. EXTENSION OF USE

Any contract resulting from this Bid solicitation 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.

34. PREFERRED SOURCE PRODUCTS

NYS Finance Law Section 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, 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 Section 162(3) or (4)(b), respectively, before engaging Contractors.

35. NOTE TO AUTHORIZED USERS: ALL AUTHORIZED USERS ARE URGED TO PROCESS EVERY PAYMENT EXPEDITIOUSLY GIVING PARTICULAR ATTENTION TO THOSE INVOLVING CASH DISCOUNTS FOR PROMPT PAYMENT.

When placing purchase orders under the Contract, the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS contracts, should hold the Contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:

- A statement of need and associated requirements
- Obtaining all necessary prior approvals

36. PROCUREMENT INSTRUCTIONS

Authorized Users should refer to Appendix F – How to Use the Distributor Umbrella Contract for specific instructions on the usage of this Contract. OGS reserves the right to unilaterally make revisions, changes

and/or updates to **Appendix F – How to Use the Distributor Umbrella Contract** without processing a formal amendment and/or modification.

37. AUTHORIZED USER RESERVED RIGHTS

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

- A. 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. To require the Contractor to identify any sub-contractors, and to approve such sub-contractors.
- C. To request the Contractor's insurance policy language for purposes of substantiating Vendor's compliance with Appendix E – Contractor's Insurance Requirements, or such other Insurance Requirements as required by the Authorized User as part of a RFQ.

38. POOR PERFORMANCE

Authorized Users should notify Procurement Services 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	Tel: 518-474-6717
New York State Procurement	Fax: 518-474-2437
Customer Services Coordination	E-mail: customer.services@ogs.ny.gov
38th Floor Corning Tower	
Empire State Plaza	
Albany, NY 12242	

39. PARKING FEES/ALCOHOL AND DRUG USE

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. 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.

40. SPECIFICATIONS

Product shall be designed and assembled in accordance with all applicable industry standards and comply with all governmental regulations. If applicable, the appropriate decals indicating compliance shall be affixed to the Product. Product shall conform to any and all applicable New York State laws, regulations and directives, including but not limited to, New York Codes, Rules and Regulations (NYCRR) and Environmental Protection Agency (EPA) and Occupational Safety & Health Administration (OSHA) requirements.

41. SHIPPING DATES AND DELIVERY TIME

Delivery shall be expressed in number of calendar days required to make delivery after receipt of a Purchase Order. Delivery time will be based on timeframes specified by each Authorized User's Request for Quote at time of purchase. Pursuant to Appendix B, §35, Shipping/Receipt of Product, freight terms are FOB Destination.

The following provisions for Shipping Dates and Delivery Time shall apply:

- A. Contractor shall provide the Authorized User with written acknowledgement of orders, which will include anticipated shipping date, within two business days after receipt of order.
- B. Contractor shall provide the Authorized User with written acknowledgement of the shipping date at least five calendar days prior to shipment.

C. If shipment will not be made within the delivery time, the Contractor shall provide Authorized User written notice as soon as a delay is anticipated, but no less than three calendar days prior to the latest date of the original delivery obligation. This notification must include the reasons for the delay and the latest date the Product will be shipped.

D. All correspondence on shipping dates and delivery time shall be directed to the ordering Authorized User's contact person.

42. BULK DELIVERY AND ALTERNATE PACKAGING

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

43. CONTRACT PAYMENTS

Payments cannot be processed by Authorized Users until the Products have been delivered and accepted in accordance with Appendix B, §33, Product Delivery. Payment will be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in **Section 42, Purchase Orders and Invoicing**, including description of the Products as well as Product/SKU number.

44. RETURN OF UNUSED PRODUCT

The Contractor must allow unopened Product to be returned with no restocking fee up to 30 calendar days from the date of receipt by the Authorized User. Return shipping and delivery costs for Product will be paid by the Authorized User. If custom orders require a restock fee mandated by the Manufacturer, the Contractor must state this information on the Quote.

45. DELIVERY OF SOFTWARE VIA DOWNLOAD

The Contractor must allow downloaded Software to be returned with no additional fees up to 30 calendar days from the date of download by the Authorized User, if allowed by the Manufacturer, provided that the Authorized User provides any certifications required by the Manufacturer concerning the Authorized User's use of the Software. If the Manufacturer has a shorter timeframe for returns or requires additional fees, this must be stated on the quote.

If the Authorized User encounters difficulty in downloading or installing the Software, the Contractor must provide or arrange for provision of assistance to the Authorized User within 8 business hours of being informed of the problem.

If requested by the Authorized User during the order process, download information, including keys if applicable, will be provided by the Contractor to a party other than the individual placing the order (the "end user"). The individual placing the order will supply contact information for the end user.

46. TIME TO RETURN PHONE CALLS OR RESPOND TO EMAILS

Contractor must return phone calls or respond to emails within a maximum of four business hours (8:00 AM – 5:00 PM between Monday and Friday) after a phone call is placed or an email is received.

47. OBTAINING QUOTES

Contractor must provide quotes within a maximum of four business hours after receiving a request for a quote, for Product which is currently in the Contractor's catalog. The Contractor is required to honor all quotes for 30 calendar days, regardless of price increases, unless otherwise specified in Authorized User Request for Quote.

Contractor must accept requests for quotes via email, or online, and must provide quotes, via email or online as requested by the Authorized User. Quotes generated online must be guaranteed in the same manner as quotes provided through other means.

The quote must clearly indicate the method of Product delivery, and whether Software is delivered via media, download, or some other means.

48. PURCHASE ORDERS AND INVOICING

General - All orders and invoices/vouchers shall include the contract number and a line by line listing of separate charges. **Purchase Orders Involving Price Lists** - Purchase Orders are to include the following information when a Product is purchased from a price list:

- Product description;
- Product code/Manufacturer number;
- Calculation of NYS net contract price per unit by quantity; and
- Specific designation of any special pricing which may be better than the NYS Contract price.

Invoicing and payment: All invoices and payments shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*. Contractor cannot use resellers to sell Products or invoice Authorized Users under any Contract resulting from this solicitation.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- A. Vendor Name
- B. Vendor Billing Address
- C. Vendor Federal ID Number
- D. NYS Vendor ID Number
- E. Account Number
- F. NYS Contract Number
- G. Name of Authorized User indicated on the Purchase Order
- H. NYS Agency Unit ID (if applicable)
- I. Authorized User's Purchase Order Number
- J. Order Date
- K. Invoice Date
- L. Invoice Number
- M. Invoice Amount
- N. Product Number/Identifier
- O. Product Descriptions
- P. Unit Price
- Q. Quantity
- R. Unit of Measure
- S. Dates of Service (if applicable)

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

49. MANUFACTURER WHO HAS NO PRIOR RELATIONSHIP WITH THE CONTRACTOR

Contractor must work to establish relationships with Manufacturers who are new to them to obtain quotes and be able to deliver Product in a timely fashion. If after three business days a Contractor has been unable to obtain a quote and assurances that the Contractor will be able to provide the Product, the Contractor must contact the

Authorized User with a status report. Authorized User will determine whether or not the Request for Quote period should be extended, so the Contractor can continue to pursue a quote and agreement with the Manufacturer.

If the Contractor has been unable to obtain a quote and agreement with the Manufacturer within 10 calendar days (unless another time period is specified by Authorized User) of the request for quote, Contractor must respond “no bid”, in writing, to the Request for Quote.

50. CONSISTENT QUOTE FORMAT

Contractor must use a standard quote format when providing best and final pricing to Authorized Users. Product terms and conditions included in the quote must match the terms and conditions that are associated with the Product. If a Product or maintenance agreement attached to the quote identifies different types of licenses or maintenance, the quote must indicate which is being quoted.

51. NOTIFICATION OF UPCOMING MAINTENANCE EXPIRATION

The Contractor must notify Authorized Users 60 calendar days prior to the expiration date of any product maintenance services, and monthly thereafter until an order is placed, unless the Authorized User confirms that they do not wish to renew the maintenance services, or the expiration date has passed. If the email notification to the Authorized User is returned as undeliverable, the Contractor must notify other contacts at the Authorized User, if any, and if unable to communicate the upcoming maintenance expiration to any representative of the Authorized User, to notify the OGS Procurement Services.

52. CONTRACT TERMINATION AND MAINTENANCE EXPIRATION

At no additional charge and at the request of the OGS Procurement Services, Contractor will provide any information and cooperation needed to facilitate the transfer of all Volume Software License Agreements to other vendors.

53. MANUFACTURER UPGRADES AND/OR “PATCHES”

In cases where the Contractor is the only entity to receive Software version upgrades or patches from the Manufacturer, the Contractor must agree to ensure means of distributing these to license holders. Acceptable methods include distribution of media, provision of access to a secure website to download the upgrades or patches, or information provided to license holders which will enable them to access the appropriate area of the OEM website.

54. AUTHORIZED USER SECURITY PROCEDURES

Contractor must perform all services in accordance with all security requirements defined by the Authorized User in writing during the Request for Quote process. These may include, but are not limited to, ID badges for all service technicians, signing of an Authorized User confidentiality agreement, limitations on the number of service technicians, and procedures for ensuring the destruction of confidential data stored in memory or other storage media before removal of equipment from Authorized User’s premises.

55. 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 policies).

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

56. 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 the Contract.

57. 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.

58. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 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/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

59. USE OF RECYCLED OR REMANUFACTURED PRODUCTS

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 or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this bid solicitation. Warranties on refurbished or remanufactured components or products must be identical to the Manufacturer's new equipment warranty or industry's normal

warranty when remanufacturer does not offer new equipment. See "Remanufactured, Recycled, Recyclable or Recovered Materials" in Appendix B, OGS General Specifications.

60. TRAVEL, MEALS AND LODGING

NYS Net Price is inclusive of all travel, meals and lodging.

61. 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 the Contractor sought to be hired complies with such local law. If the pay rate(s) for a job title(s), as allowed for through contract rates, are less than the local law "living wage" than Authorized User subject to such local law cannot use this Contract for such job title(s). Local laws, however, are not a term and condition of the OGS Contract.

62. 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# 2016007939.

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:

<http://wpp.labor.state.ny.us/wpp/showFindProject.do?method=showlt>

- Insert PRC# 2016007939 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.

63. NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Agreement shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address set forth below and (ii) if to Contractor, addressed to Contract Administrator at the address set forth in **Appendix D**. The parties 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) calendar days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Agreement. The New York State Contract Administrator for this Contract is set forth below and will be updated through the P-memo process. The Contractor's Contract Administrator is initially set forth in **Appendix D**. 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.

TO STATE: Dewan Bristo
Contract Management Specialist 2
Corning Tower, Empire State Plaza
38th Floor, New York State Procurement

Albany, NY 12242
Telephone: 518-474-6716

64. 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.

65. SEVERABILITY

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

66. COUNTERPARTS

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

67. ENTIRE AGREEMENT

This Contract and the referenced appendices constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with the approval of the Attorney General and the Comptroller for the State of New York. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein in accordance with the terms set forth in Appendix B Clauses 28, Modification of Contract Terms, and 32, Purchase Orders.

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: _____
Federal ID: _____
NYS Vendor ID: _____

THE PEOPLE OF THE STATE OF NEW YORK

Signature: _____
Printed Name: _____
Title: _____

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.