



Office of General Services

Procurement Services

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AGREEMENT FOR

PROJECT-BASED INFORMATION TECHNOLOGY CONSULTING SERVICES (STATEWIDE)

BY AND BETWEEN

NEW YORK STATE

OFFICE OF GENERAL SERVICES

AND

[CONTRACTOR]

[PB00000]

(Updated 10/31/25)

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- Appendix D – Federal Funding Agency Mandatory Terms and Conditions

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**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT # [PB00000]
CENTRALIZED CONTRACT FOR THE ACQUISITION OF
PROJECT-BASED INFORMATION TECHNOLOGY CONSULTING SERVICES (STATEWIDE)**

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

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

WHEREAS, OGS has identified a need by New York State agencies and other Authorized Users for Project-Based Information Technology Consulting Services (Statewide) as further described herein; and

WHEREAS, OGS conducted a multi-award non-competitive Solicitation to identify the Bidder(s) that could provide the Project-Based Information Technology Consulting Services (Statewide) and that meet specific requirements as detailed in Solicitation number 23269 (hereinafter the "Solicitation"), which was advertised on February 7, 2024 in the New York State Contract Reporter, as required by New York State Economic Development Law; and

WHEREAS, awards were made by lot to responsive and responsible bidders who met the minimum qualifications specified in the Solicitation and offered reasonable rates as determined by OGS; and

WHEREAS, awarded contractors may bid on specific projects developed by Authorized Users in accordance with the terms of this Contract. Awards made by Authorized Users for specific projects will be based on best value and will result in an agreement between the Authorized User and awarded Contractor for the specific project; and

WHEREAS, OGS has determined that the Contractor submitted a responsive proposal for the lot(s) awarded, that the pricing proposed by Contractor is reasonable, that the Contractor is a responsible vendor, and that the Contractor is willing to provide the Project-Based Information Technology Consulting Services (PBITS) under the terms and conditions contained herein.

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

1. INTRODUCTION

1.1 Overview

This OGS Centralized Contract establishes a set of standardized terms and conditions, guidelines, processes, and templates for the development, distribution, and award of deliverable-based and fixed-price information technology (IT) projects, at the transactional level, through a mini-bid process.

There is a two-step process for each transaction. The first step was the establishment of this Centralized Contract, through a non-competitive multiple-award procurement process. The second step is competitive, based on the development of a specific project by an Authorized User in accordance with the contract terms. IT project needs, and an initial project duration not to exceed 3 years, will be identified by an Authorized User and documented in a statement of work (SOW). The statement of work will be distributed to Contractors based on specific lot(s), via the mini-bid process. An Authorized User will make a mini-bid award based on Best Value.

The mini-bid award will result in an Authorized User Agreement for Project Based IT Consulting Services. Each Authorized User Agreement for Project Based IT Consulting Services will be governed first by the terms and conditions specified in this Centralized Contract and second by terms and conditions added to the Authorized User mini-bid. See Appendix B, Section 26 regarding modification of Contract terms.

Services available under this Contract are separated into four (4) lots. Contractor may be awarded more than one (1) lot.

Lot #	Award Lots (Based on Project Value)
Lot 1A Limited to SDVOBs, M/WBEs and SBEs	\$50,000 - \$250,000
Lot 1B Limited to SDVOBs, M/WBEs and SBEs	\$250,001 - \$750,000* **\$250,001 - \$1,500,000
Lot 2	\$750,001* - \$10,000,000 **\$1,500,001 - \$10,000,000
Lot 3	\$10,000,001 - \$30,000,000
** Per the contract term indicated by * below, mini-bids issued after 11/7/2025 must follow the updated Lot thresholds as indicated above.	

**The indicated Lot thresholds are based on the discretionary buying thresholds applicable to New York State agencies for purchases from New York State certified Minority- or Women-Owned Business Enterprises, New York State certified Service-Disabled Veteran-Owned Businesses and New York State Small Businesses pursuant to New York State Finance Law Section 160(6) as of the date of this Contract. OGS reserves the right, in its sole discretion, to adjust these Lot thresholds on notice to the Contractor in the event that New York State Finance Law is amended to include a different discretionary buying threshold for purchases from such entities during the term of this Contract.*

1.2 In-Scope Projects

Project Based IT Consulting Services required by an Authorized User will be obtained via a mini-bid process under this Contract. The Authorized User will issue a mini-bid with a SOW for the required Project Based IT Consulting Services. A mini-bid may include, but will not be limited to, projects requiring analysis, data classification, design, development, testing, quality assurance, security and associated customized training for IT based applications.

Additional examples of in-scope projects include but are not limited to:

- Technical architecture advisory services;
- Business analysis for project development;
- Proprietary software application development/customization, programming, and integration;
- Data information management (including but not limited to data migration, data conversion, data manipulation, and data integration);
- Project management support services, including but not limited to project management, project quality assurance and control, and independent verification & validation (IV&V);
- Project scope development; *
- Managed services (as defined in Section 1.5– *Definitions*);
- Disaster recovery/Business continuity and testing;
- Quality assurance;
- Continuity of operations planning (COOP);
- Data categorization;
- Maintenance and support connected to a project within the same mini-bid;
- Open-source software implementation; and
- Up to 59 consecutive calendar days of Staff augmentation services that are part of a larger PBITS project as defined in Section 1.5 - *Definitions*.

*Downstream prohibition applies (see Section 2.4 – *Downstream Prohibition*).

1.3 Out-of-Scope Work

There are service offerings expressly excluded from the scope of this Contract. In many instances, such services and/or offerings are (or will be) covered by another OGS Centralized Contract. The following is a non-exclusive list of out-of-scope work:

- Staff augmentation services beyond 59 calendar days (Staff augmentation that is expected to last beyond 59 calendar days should utilize [New York State OGS's Hourly Based Information Technology Services Contract Award #23158](#) [or any subsequent replacement Contract]). Staff augmentation is not allowable as a standalone project;
- Time and material services;
- Web hosting;
- Automated network monitoring or any other service provided principally through an automated process;
- Hardware maintenance and support not connected to a project within the same mini-bid;
- Software maintenance and support not connected to a project within the same mini-bid;
- Services priced on a per asset basis;
- Services priced on a contingency basis;
- Prepackaged training courses;
- E-Learning;
- Acquisition of equipment (hardware);
- Acquisition of software, either Commercial off-the-shelf (COTS) software or pre-existing software;
- Acquisition of connectivity services, such as network provisioning, voice services (local, long-distance), or video bridging;
- Cloud solutions (as defined in Section 1.5 – Definitions) or “As a Service” offerings, including but not limited to SaaS, IaaS, PaaS, and XaaS, with the only exception being for Cloud Solutions offered as part of a Managed Service;
- Any offering that is a combination of equipment, hardware, or software, and cloud or “as a service offerings”; and
- Consulting or other installation work which is considered public works is excluded from purchase under the scope of this solicitation. For questions about whether a proposed work constitutes public work, please contact the New York State Department of Labor’s Bureau of Public Work

District Office in a specific area. A listing of district offices and contact information is available at <http://www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm>.

1.4 Estimated Quantities

This Contract shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The individual value of this Contract is indeterminate and will depend upon the lots awarded, the number of mini-bids awarded, and the competitiveness of the pricing offered within those mini-bids. Authorized Users will be encouraged to purchase from Contractors who offer the products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Section 28, *Estimated/Specific Quantity Contracts*, and Section 25, *Participation in Centralized Contracts*.

Numerous factors could cause the actual quantities of products purchased under this Contract to vary substantially from the estimates in the Solicitation. Such factors include, but are not limited to, the following:

- Such Contracts may be non-exclusive Contracts.
- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the Contract period.
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

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

1.5 Definitions

Capitalized terms used in this Contract shall be defined in accordance with Appendix B, Section 2, *Definitions*, or as below.

Authorized User Agreement	The document resulting from the transactional mini-bid process, which sets forth the specifics regarding the services to be provided by the Contractor to the Authorized User, under this Contract.
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. Such basis shall be, wherever possible, quantifiable (State Finance Law §163 (1) (j)).
Business Day	Monday through Friday from 8:00 AM – 5:00 PM EST, excluding NYS holidays and federal holidays.

Cloud Solution	<p>For purposes of this Contract, Cloud Solution shall mean any product or service sold as an "as a service" offering and has one or more of the following characteristics:</p> <ul style="list-style-type: none"> (a) Authorized User data is transmitted, acted upon, or stored on equipment not owned by an Authorized User; (b) Allows a Contractor access to Authorized User data from a location other than the Authorized User's premises; (c) Allows an Authorized User access to data not owned by the Authorized User which access may or may not result in the collection of Authorized User data. <p>Cloud Solutions are permitted under this Contract only when performing Managed Services.</p>
Consultant Disclosure Legislation	<p>Chapter 10 of the laws of 2006 amends State Finance Law § 8 and § 163 by requiring:</p> <ol style="list-style-type: none"> 1. that the Office of the State Comptroller (OSC) include in the Consulting Services Report it compiles annually on contracts issued by state Agencies for consulting services during the previous fiscal year, certain additional information on employees providing services under such contracts - http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm; 2. that Contractors annually report certain employment information to the contracting Agency, the Department of Civil Service (DCS) and OSC; and, 3. that OSC include such employment information in the Procurement Stewardship Act Report it compiles annually.
Deliverables	All services or products created during the performance or provision of services hereunder or identified as a "Deliverable" in an applicable mini-bid. A Deliverable is a building block of an overall project. For the purposes of this Contract, a Deliverable shall not be set forth as a status report, meeting attendance, or an invoice submission.
Fixed Price Authorized User Agreement	An agreement pursuant to this Contract that provides for a fixed cost for a defined project.
Government Contract	A Contract let by a federal, state, or local governmental body within the United States.
Government Entity	An entity at the federal, state, county, city, or municipal level.
Joint Venture	A contractual agreement joining together two or more business enterprises for the purpose of performing on a state contract.
Knowledge Transfer	The transfer of knowledge from the Contractor to the Authorized User. Knowledge Transfer can include full written system documentation including all system changes, training classes, manuals, and other items. Depending on the scope of the transaction there may or may not be a deliverable cost associated. All materials will be the property of the Authorized User unless specifically negotiated during the award process.
Managed Services	For purposes of this Contract, Managed Services are the outsourcing for a defined term of ongoing IT functions, such as network application, infrastructure, and maintenance; authentication; data backup and recovery; systems management; IT logistics; and other ongoing IT solutions. Cloud Solutions are permitted when performing Managed Services, provided they do not conflict with services offered under OGS's Umbrella Manufacturer Contract (or a subsequent replacement Contract). Managed Services outside the scope of this Contract include, but are not limited to, managed print services and managed security services.
May	Shall refer to the permissive in a Contract clause of specification. "May" does not mean "required."
Must	Shall refer to the imperative in a Contract clause or specification. "Must" is synonymous with "required."

MWBE	A business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.
Not-To-Exceed Hourly Rates (NTE)	The maximum dollar amount for a specific title that may be charged by a Contractor. Not-to-Exceed Hourly Rates shall be defined values in US dollars.).
NYS Holidays	The legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Dr. Martin Luther King, Jr. Day; Washington’s Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans’ Day; Thanksgiving Day; and Christmas Day. The complete list can be found at https://www.cs.ny.gov/attendance_leave/index.cfm#legal under “Calendars of Legal Holidays.”
NYS Vendor ID	A unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the Vendor is registered on the Vendor File System.
Prime Contractor	For the purposes of technical qualifications, the business entity with whom a Government Entity directly has a Contract.
Procurement Services	A business unit of OGS, formerly known as New York State Procurement (“NYSPRO”) and Procurement Services Group (“PSG”).
Project Based IT Consulting Services (PBITS)	An OGS Centralized Contract which will provide a set of standardized terms and conditions, guidelines, processes, and templates for the development, distribution, and award of specific deliverable-based and fixed-price Information Technology projects.
Project Plan	A formal, approved document used to guide both project execution and project control. The primary uses of the Project Plan are to document planning assumptions and decisions, facilitate communication among stakeholders, and document approved scope, cost, and schedule baselines.
Retainage	A portion of the Authorized User and Contractor fixed-price agreement amount that is held back by the Authorized User until the deliverable or project is satisfactorily finished in accordance with the requirements of the applicable mini-bid.
SBE	Shall mean a Small Business Enterprise. A “New York State Small Business” is defined as a company that is a resident to New York State, independently owned and operated, not dominant in its field, and employs one hundred (100) or fewer persons (see State Finance Law section 160(8)).
SDVOB	A NYS-certified Service-Disabled Veteran-Owned Business
Shall	Refers to the imperative in a Contract clause or specification. “Shall” is synonymous with “required.”
Staff Augmentation	The hiring of outside Contractors to enhance staffing for commencement or continuation of an Authorized User’s normal work. For this Contract, staff augmentation is limited to the titles offered in New York State OGS’s Hourly Based Information Technology Services Contract Award #23158 (or any subsequent replacement Contract). Staff augmentation for PBITS is limited to a time period of 59 consecutive calendar days with no extensions. Staff augmentation is intended for use as part of a larger PBITS project and is not allowable as a standalone project.
Vendor	An enterprise that sells goods or services.

2. ADMINISTRATIVE INFORMATION

2.1 NYS Comptroller Approval

In accordance with Section 112 of the State Finance Law, this Contract shall not be valid, effective or binding upon the State until such Contract has been approved by the Office of the New York State Comptroller ("OSC"). Purchase orders or other procurement transactions issued under this Contract may also be subject to OSC approval.

2.2 Appendices and Attachments

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

APPENDICES

Appendix A – Standard Clauses for NYS Contracts (June 2023)

Appendix B – General Specifications

Appendix C – Contract Modification Procedure

Appendix D – Federal Funding Agency Mandatory Terms and Conditions

ATTACHMENTS

Attachment 1 – Pricing

Attachment 4 – Insurance Requirements

Attachment 8 – Report of Contract Usage

Attachment 14 – Mini-Bid Participation Interest Template

Attachment 15 – Mini-Bid Template

Attachment 16 – How to Use This Contract

Attachment 17 – No Cost Change Request Template

Attachment 18 – Enhancement Request Template

Attachment 19 – No Cost Time Extension Request Template

Attachment 20 – Mini-Bid Financial Response Template

Attachment 21 – Contractor Information Update Form

Attachment 22 – Pricelist Update Form

2.3 Conflict of Terms

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

1. Appendix A, Standard Clauses for New York State Contracts (June 2023);
2. Appendix D, Federal Funding Agency Mandatory Terms and Conditions
3. This Contract;
4. Appendix B, General Specifications;
5. All other appendices and attachments to the Contract.

2.4 Downstream Prohibition

Any and all work from this Contract that involves developing specifications, establishing a base for other applications, or otherwise gaining information that would give the Contractor an unfair competitive advantage in a future procurement may result in the Contractor being precluded from further work (downstream prohibition) due to conflicts of interest. Authorized User shall provide notification of any downstream prohibitions known at the time the mini-bid is released. It is in the interest of the Authorized User and the Contractor to explore these issues during the pre-award negotiations and review as the

project progresses. See State Finance Law section 163-a and section 163 (2) for additional information on the statutory prohibitions. Non-State Agency Authorized Users may have additional prohibitions.

2.5 Joint Ventures

Joint Ventures are not permitted under this Contract.

3. CONTRACTOR QUALIFICATIONS

If awarded the following Lots, Contractor shall meet the following qualifications throughout the term of this Contract:

3.1 Minimum Qualifications

Minimum Qualifications
Lot 1A – For projects between \$50,000 and \$250,000 total Eligibility for this lot is limited to the following: <ul style="list-style-type: none"> • Bidder is a New York State Certified Minority- or Women-Owned Business Enterprise; or • Bidder is a New York State certified Service-Disabled Veteran-Owned Business; or • Bidder meets the definition of a New York State Small Business which is as follows: A business which is resident in New York State, independently owned and operated, not dominant in its field, and employs one hundred or less persons (see State Finance Law section 160(8)).
Lot 1B – For projects between \$250,001 and \$750,000* total Eligibility for this lot is limited to the following: <ul style="list-style-type: none"> • Bidder is a New York State Certified Minority- or Women-Owned Business Enterprise; or • Bidder is a New York State certified Service-Disabled Veteran-Owned Business; or • Bidder meets the definition of a New York State Small Business which is as follows: A business which is resident in New York State, independently owned and operated, not dominant in its field, and employs one hundred or less persons (see State Finance Law section 160(8)).
Lot 2 – None
Lot 3 – None

4. PERSONNEL AND BID BONDS

4.1 Designated Personnel

The Contractor will provide and update contact information for each of the following throughout the term of the Contract:

1. A designated account manager for the Contract. The account manager is responsible for the overall relationship with the State during the course of the Contract and shall act as the central point of contact.

-
2. A designated billing contact. The billing contact will become the single point of contact between the Contractor and the Authorized User for matters related to invoicing, billing, and payment.
 3. A designated emergency contact. The emergency contact will be available to OGS and Authorized Users 24 hours a day, 365 days per year.

4.2 Performance and Bid Bonds

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

5. PERIODIC RECRUITMENT

5.1 Periodic Recruitment

This Contract allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. A bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new solicitation.

If a bid is deemed non-responsive during the initial solicitation or any recruitment period, a bidder cannot reapply for a future Contract until the next recruitment period.

6. AUTHORIZED USER OVERVIEW AND MINI-BID PROCESS

Authorized Users should follow instructions provided in the Attachment 16 - *How to Use and Attachment 15 - Mini-Bid Template* which, among other things includes the provisions for minimum time allowed for mini-bid responses:

The minimum time, excluding the date of release, between issuance of the Mini-Bid by the Authorized User to the Mini-Bid Opening is as follows:

- Lot 1A and 1B Mini-Bids: Five (5) Business Days;
- Lot 2 Mini-Bids: Ten (10) Business Days; and
- Lot 3 Mini-Bids: Fifteen (15) Business Days.

Also included in Attachment 16 – *How to Use* and Attachment 15 – *Mini Bid Template* is the provision that the Authorized User must notify the tentative awardee and non-awardees of tentative Mini-Bid results in writing. This notification should also include debriefing language, availing all Contractors fair and equal treatment with respect to its opportunity for debriefing.

7. AUTHORIZED USER AGREEMENT TERMS AND CONDITIONS

The terms and conditions set forth in this Contract, are expressly incorporated in, and applicable to, the Authorized User Agreement resulting from a mini-bid. The following sections are not intended to limit or otherwise restrict the terms and conditions set forth herein.

7.1 Authorized User Agreement Transactional Order of Precedence

Conflicts of terms and conditions for Authorized User Agreements shall be resolved in the following order of precedence:

- A. Appendix A, Standard Clauses for New York State Contracts (June 2023), including all Attachments and Appendices, in the order of precedence contained in Section 2.3 thereof;
- B. Authorized User Agreements or purchases made between an Authorized User and the Contractor.

7.2 Contract Survival

The starting date for each Authorized User Agreement will vary but the initial term will not exceed three (3) years in duration. Authorized User Agreements fully executed prior to the expiration of the OGS Centralized Contract shall survive the expiration date of the OGS Centralized Contract, if applicable, based on the term of the Authorized User Agreement.

7.2.1 No Cost Time Extension

A no cost time extension may be initiated to extend an Authorized User Agreement without a cost increase to the Authorized User. No cost time extensions must be submitted and agreed upon before the expiration of the Authorized User Agreement and require mutual written agreement between the Authorized User and Contractor. Either the Authorized User or Contractor may request the no cost time extension by using Attachment 19 – *No Cost Time Extension Request Template*.

A no cost time extension may be utilized to extend the length of an Authorized User Agreement for any tasks already included in the Authorized User Agreement Scope of Work. This may include, but is not limited to, completion of deliverable(s), performance testing after completion of deliverable(s), continuing maintenance/support services, or implementing changes from no cost change requests and enhancement budget requests.

Upon completion of the no cost time extension request, the Authorized User must provide a copy of Attachment 19 – *No Cost Time Extension Request Template* to the OGS Contract Manager at the Authorized User inbox – ogs.sm.pbits.authorizedusers@ogs.ny.gov.

An Authorized User Agreement may be extended up to three (3) times: the first extension may be up to one (1) calendar year, and the remaining two extensions up to six (6) months each. There will be no additional cost for any extensions. A maximum of three (3) no cost time extensions beyond the initial term of up to three years is permitted. An Authorized User Agreement may not be extended by more than a total of two (2) years. This may not be used to extend the time of staff augmentation under PBITS.

7.3 No Cost Change Request

A no cost change request may be initiated to amend a Deliverable without a cost increase to the Authorized User. No cost change requests must be submitted and agreed upon before the expiration of the Authorized User Agreement and require mutual written agreement between the Authorized User and Contractor. The Authorized User may initiate the no cost change request by using Attachment 17 - *No Cost Change Request Template*.

The Authorized User reserves the right to reasonably amend a Deliverable, provided the amendment does not materially change the scope of the Deliverable, without a cost increase. Although the Authorized User has endeavored to identify many tasks associated with a Deliverable, additional tasks which can reasonably be anticipated to carry out the Deliverable shall be within the scope of the Deliverable and shall not result in a cost increase.

7.4 Enhancement Budget

An enhancement budget request may be initiated to make an amendment to an Authorized User Agreement that will result in a cost increase to the Authorized User. Enhancement budget requests must be submitted and agreed upon before the expiration of the Authorized User Agreement and require mutual written agreement between the Authorized User and Contractor. The Authorized User may initiate the enhancement budget request by using Attachment 18 – *Enhancement Request Template*.

Enhancements refer to additional functionality and deliverables unknown to the Authorized User at the time of mini-bid release. An Authorized User is strongly encouraged to consider including an enhancement budget, as included in the mini-bid (up to 25%). The total cost of the project including the enhancement budget shall not exceed the lot threshold from which the award was made. For example, a project estimated to be \$700,000 that includes an enhancement budget of 25% (\$175,000) would total to \$875,000 and would be a Lot 2 project as the final cost including enhancement would exceed the \$750,000 Lot 1B threshold. Authorized User shall define specific criteria and method of reimbursement for the enhancement budget in the mini-bid/statement of work documents.

An enhancement budget included in the mini-bid is the sole opportunity for additional funding to be available for an Authorized User Agreement. Increasing the budget after the mini-bid is awarded is not permitted. If an enhancement budget is not included in a mini-bid, then it shall not be available under the final Authorized User Agreement or any no cost time extension(s).

Written approval of the Enhancement Budget Request is required from both the Authorized User and the Contractor.

7.5 Contractor Responsibilities to the Authorized Users in the Performance of Mini-Bids

7.5.1 Project Organization Chart

As part of the mini-bid, the Authorized User may require the Contractor to develop and submit a proposed project organization chart. The project organization chart should identify all the proposed titles of each team component and how the team will be managed. If required, the project organization chart must include both Contractor and State staff roles if identified in the mini-bid.

7.5.2 Eligibility to Work

The Contractor must ascertain and validate whether all proposed staff, including all employees, Subcontractors, and agents, are U.S. citizens or non-U.S. citizens.

1. Where the staff is a U.S. citizen, the Contractor must identify the proposed individual staff with, at a minimum, the first and last name of the individual staff as it appears on his/her driver license, non-driver ID card, or other accepted forms of government identification.
2. Where the staff is not a U.S. citizen, the Contractor shall identify such to the Authorized User. The Contractor must identify if the proposed individual staff will be working under an H1-B or other visa during the time of the placement. The Contractor must identify the proposed individual staff with, at a minimum, the first and last name of the individual staff as it appears on his/her visa and/or passport. No other names or derivations may be used.
3. The Contractor must retain all necessary paperwork throughout the full term of this Contract, the full term of any Authorized User Agreement, and for such longer period as is required by applicable law.
4. The Contractor is responsible for ensuring that all staff retain the authorization to legally work in the United States throughout the term of the engagement.
5. H-1B costs are not allowed under this Contract and Authorized Users will not affirm employment for immigration purposes. Any foreign employees retained through this Contract shall be the employee of the Contractor and not the Authorized User. Based on the scope of the project, the Authorized User may require that all staff must be citizens of the United States, and if so, Authorized User must indicate this requirement in the mini-bid.

7.5.3 Additional Requirements from Authorized Users

An Authorized User may have distinct requirements that must be met by all individuals employed by or working for the Authorized User. The Contractor's staff will be expected to comply with these requirements as a condition of the placement.

1. An Authorized User may, at its discretion, conduct background checks or request background checks be conducted by the Contractor. Such background checks may include, but are not limited to, finger-printing, and shall be at the expense of the Authorized User.
2. An Authorized User may require the signing of confidentiality and/or non-disclosure agreements.
3. An Authorized User may require individual staff to provide photo identification such as a NYS driver license, non-driver ID card, passport, etc. in order to receive access into the Authorized User's building and/or facilities.

7.6 Authorized User Engagement Requirements

1. The initial term of all Authorized User Agreements shall be no longer than three (3) years. Authorized User Agreements may be extended as outlined in Section 7.2.1 – *No Cost Time Extension*.
2. Contractor staff must adhere to workplace rules of the Authorized User. This includes, but is not limited to, the following: building access procedures, computer/phone usage guidelines, and other Agency policies (such as Drug-free Workplace Policy Statement, Workplace Violence Policy, and smoking policy).
3. The Authorized User shall define the manner in which it requests Knowledge Transfer to occur from the Contractor to the Authorized User's staff.
4. The Authorized User shall indicate a change in working hours at the Authorized User building and/or facilities where appropriate and not previously specified during the requisition process.

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5. Contractor and any Subcontractors must work cooperatively with Authorized User staff and with other Vendors working at Authorized User sites.
 6. Professional workplace conduct and attire will be expected at all times.
 7. Any data stored and all services performed for an Authorized User shall only be stored and performed within the continental United States. An Authorized User is expressly prohibited from granting any and all exceptions to this clause.
 8. Contractor shall comply with all Authorized User funding requirements and certifications included in the Authorized User Agreement.

7.7 Deliverables for an Authorized User Agreement (Transaction)

Deliverables must be identified as a measure of progress in the Authorized User Agreement. Deliverables are the benchmarks by which the Contractor will be paid and should have clear and measurable criteria.

7.8 Retainage

As part of the mini-bid, Authorized Users may include Retainage in their mini-bid. Authorized Users may include a provision to retain a percentage of each individual Deliverable payment of no more than 20% until after they accept a completed specific Deliverable or after they accept a completed project. Additionally, Authorized Users may include a provision that Retainage may be reduced when the Contractor substantially reduces the agreed upon Deliverable timeline. If Authorized Users include a Retainage provision they must include the requirement for Retainage, the total percentage of Retainage to be withheld, and the requirements for the release of the Retainage amount.

The use of Retainage, the retained percentages and timing for release employed is at the discretion of the Authorized User within the limits listed in the preceding paragraph. An Authorized User may negotiate with a tentative awardee regarding Retainage if Retainage is included in the mini-bid. If Retainage is not included in a mini-bid, then it must not be available under the final Authorized User Agreement.

7.9 Reasonableness of Price

An Authorized User will be required to demonstrate reasonableness of price for each project as part of the evaluation prior to the execution of an Authorized User Agreement. The Contractor's OGS Centralized Contract includes a NYS Contract pricelist, which was assessed to determine that the "Not-to-Exceed" hourly rates offered to New York State are at or below the Not-To-Exceed Hourly Rates offered to other government customers. Amounts proposed by the Contractor at the transactional level shall not exceed the Not-to-Exceed Hourly Rates provided under this Contract.

In accordance with Appendix B, Section 30, *Purchase Orders*, OGS encourages an Authorized User to negotiate for better pricing than is listed on the pricelist, as the total hourly rates established by OGS Centralized Contracts are Not-to-Exceed total hourly rates. An Authorized User must follow the internal procurement guidelines of their organization and obtain all required control Agency approvals when purchasing from OGS Centralized Contracts.

7.10 Fixed-Price

An Authorized User Agreement shall be awarded on a fixed-price basis only.

7.11 Consultant Disclosure Legislation

In 2006 the NYS State Finance Law was amended to require state contractors who provide consulting services to disclose, by employment category, the number of persons employed to provide services

under a contract for consulting services, the number of hours worked, and the amount paid to the contractor by the state as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the state contractor.

Under this law, consulting services contracts have been defined as any contract entered into by a State Agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

In order to comply with this law the bidder must complete Consultant Disclosure, Form A, located at <https://www.osc.state.ny.us/files/state-agencies/2017-11/agency-form-ac3271s.doc>.

This form will need to be submitted by all applicants to a mini-bid. The purpose of this form is to capture the necessary planned employment information prospectively from the start date of the Authorized User Agreement through the end of the Authorized User Agreement term.

7.12 Travel, Meals, and Lodging

When provided for in the mini-bid and resultant Authorized User Agreement, the Authorized Users may reimburse travel expenses. All rules and regulations associated with this travel can be found at <http://osc.state.ny.us/agencies/travel/travel.htm>. In no case will any travel reimbursement be paid that exceeds these rates. All travel will be paid only as part of a deliverable specified within the Authorized User Agreement and must be billed with that associated invoice with receipts attached.

The Contractor shall receive prior approval from the Authorized User for any travel that occurs during the term of an Authorized User Agreement. Parking costs may not be paid by an Authorized User unless agreed upon in the Authorized User Agreement.

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

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

The Contractor shall provide evidence of three (3) written or telephone price quotes, and the paid invoice must detail the type of vehicle rented, miles traveled, license plate number, and time of pickup and return. The Contractor is responsible for keeping adequate records to substantiate any claims for reimbursement, by personnel for travel in performance of the services. Determinations regarding claims for reimbursement are at the sole discretion of the Authorized User.

7.13 Payment Schedule

Except as provided in Section 7.12 *Travel, Meals and Lodging*, payments will only be made based on Deliverables outlined within the Authorized User Agreement. Any invoice not related directly to a completed deliverable will be rejected. Any charge included on the invoice without backup documentation as specified in the Authorized User Agreement (travel receipts, etc.) may be removed. Any outstanding charges un-invoiced or removed from the invoice must be submitted/resubmitted within 120 calendar days or may not be reimbursed.

Each Deliverable may contain a retainage allotment as specified within the Authorized User Agreement. Each invoice is to include a detailed and itemized list of all retainage withholdings that are in place since the activation of the Authorized User Agreement.

Payment schedule shall be based on the final Authorized User Agreement as negotiated by the Authorized User and Contractor. Payment is only to be made after the Deliverable within the Authorized User Agreement is accepted by the Authorized User. A Contractor may submit no more than one invoice per month. Invoices must include cumulative retainage holdback. Invoices submitted to an Authorized User must include backup documentation as defined in the negotiated Authorized User Agreement.

7.14 Mini-Bid Dispute Resolution Process

In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result through negotiation.

In the event that the Contractor and the Authorized User are unable to resolve a conflict through negotiation, then both parties will comply with the Authorized User's stated dispute resolution policy which must be included as part of the Authorized User Agreement.

If the Authorized User does not have a dispute resolution policy, please refer to OSC or OGS dispute resolution policy for guidance in creating a policy.

Any dispute submitted by a Contractor regarding a mini-bid will be considered and decided by the Authorized User.

7.15 Mini-Bid Proposal Validity

All Contractor responses to Authorized User mini-bids must remain open and valid for at least 180 days from the mini-bid opening date, unless the time for awarding the Authorized User Agreement is extended by mutual consent of the Authorized User and the Contractor. A Vendor's mini-bid response shall continue to remain an effective offer, firm and irrevocable, subsequent to such 180-day period until either tentative award of the Authorized User Agreement by the Authorized User is made or withdrawal of the Contractor response in writing by the Contractor. Tentative award of the Authorized User Agreement shall consist of written notice to that effect by an Authorized User to a successful Contractor, who shall thereupon be obligated to execute a formal Authorized User Agreement.

8. CENTRALIZED CONTRACT TERMS AND CONDITIONS

8.1 Incorporation

Portions of Contractor's bid and of the Solicitation have been incorporated into this final Contract.

8.2 Contract Term and Extensions

This Contract shall be in effect for a term of up to 5 years beginning on the later of September 9, 2024, or the date of OSC approval. Individual Contract awards shall commence after all necessary approvals and shall become effective upon OSC approval of the final executed documents. The Contract term shall end on September 8, 2029.

All OGS Centralized Contracts resulting from the Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for up to 5 years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to the approval of OSC and any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, Section 23, *Contract Term – Extension*.

The Contract term provided for in this section shall extend 6 months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g., changes in minimum prevailing or living wages, or regulated services).

8.3 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, Section 23, *Contract Term – Extension*. 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.

8.4 Price

Pricing collected on Attachment 1 – *Pricing*, as it may be updated from time to time pursuant to the terms of this Contract, will be posted on the OGS PBITS website.

8.5 Pricelist Adjustments

Contractor may update their pricelist as follows:

Commencing with the first anniversary date of the bid opening, February 7th, 2025, and annually thereafter, the Contractor may update the pricelist to reflect Contractor price changes. Such price increases will only apply to the OGS Centralized Contracts and shall not be applied retroactively to Authorized User Agreements or any mini-bids already submitted to an Authorized User.

Requests for pricelist adjustments shall be submitted no earlier than 30 days prior to the anniversary date of the bid opening date. Should the Contractor fail to make a request and submit supporting documentation to OGS Procurement Services within 90 days after the applicable anniversary of the bid opening date, the Contractor shall be deemed to have waived its right to any CPI price adjustments for that year. Requests from Contractor(s) for CPI price adjustments at any other time will not be granted. The Contractor shall provide OGS with one electronic copy of the updated pricing. No Pricelist updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance, or any other documentation that is required under the Contract.

For all pricelist adjustments, the Contractor shall submit a completed Attachment 22 – *Pricelist Update Form*, accompanied by a completed Appendix C – *Contract Modification Procedure*.

Contractors shall submit their updated pricelist to the OGS Procurement Services Contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts or pricelists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

All approved pricelist updates shall apply prospectively upon approval by OGS. Total price increases in a single year of the Contract shall not exceed the maximum price increase as set forth in Section 8.5.1 – *CPI Price Adjustments*.

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

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

8.5.1 CPI Price Adjustments

On each anniversary date of the bid opening, February 7th, the Contractor may request a rate change (increase or decrease) not to exceed the lesser of five (5%) percent, or the annual percent increase in the National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at <https://www.bls.gov>.

The Contractor is solely responsible for notifying OGS Procurement Services that the Contractor wishes to receive the CPI Price Adjustment and to submit a request for the adjusted rate on the applicable bid opening date anniversary. Contractor shall provide a copy of the index, a completed Appendix C - *Contract Modification Form*, and other supporting documentation necessary to support the price adjustment to OGS Procurement Services.

Price adjustments using the CPI involve changing the base payment by the percent change in the level of the CPI for the current year compared to the previous year. This is calculated by first determining the index point change between the two readings and then the percent change. The price adjustment shall be calculated as follows: Take the CPI value in effect at the time of the price adjustment submission and subtract the CPI value for the same month in the prior year. The difference is then divided by the previous period CPI value and this result is then multiplied by 100 to equal the percent change which is the price adjustment value. This percentage change (increase or decrease) shall be applied to the next Contract year, upon release of a Contract addendum from OGS Procurement Services.

The following example illustrates the computation of percent change:

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

The “CPI for current period” shall be the index in effect at the time of the anniversary of the bid opening (February 2024). “CPI for previous period” shall be the index in effect one year prior. Increases are not cumulative. CPI price adjustments are limited to the prior year prices only.

OGS reserves the right to permit increases above the CPI rate if requested by the Contractor and when justification and reasonableness of price are provided. These requests will be considered in situations such as unforeseeable long-term or permanent industry-wide cost increases outside of the Contractor’s control, or where the increase is determined by OGS to be in the best interest of the state.

8.5.2 Price Decreases

Contractor shall be permitted to reduce their pricing any time during the Contract term. Additionally, some price decreases may be calculated in accordance with Appendix B, Section 13, *Pricing*.

8.5.3 Adding New Services

When requesting to add a new service, the Contractor is required to demonstrate that all the New York proposed prices are reasonable. The Contractor must submit a Pricelist Update Form (Attachment 22), along with Appendix C – *Contract Modification Procedure*, and should include all referenced electronic Contract files to demonstrate that the rates offered to NYS are at or below rates offered to other government customers.

Contractor should submit documentation from other Government Contracts, as defined in Solicitation Section 4.3 – *Demonstrating Reasonableness of Price* and Contract Section 7.9 – *Reasonableness of Price*, to show price reasonableness.

8.5.4 Deleting Services

Contractor may remove services from the pricelist with OGS Approval. Contractor must provide reasonable justification to OGS’s satisfaction that the removal of services is necessary.

8.6 Price Structure

If, during the Contract term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, Section 44, *Savings/Force Majeure*.

Should the Commissioner in their sole discretion determine during the Contract term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.

8.7 Purchasing Card Orders

If the Contractor accepts orders using the State's purchasing card (see Appendix B, Section 15, *Purchasing Card*), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the purchasing card, including but not limited to processing charges, surcharges, or other fees.

8.8 Minimum Order

There is no minimum order for this Contract.

8.9 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, Section 45, *Contract Invoicing*. The Contractor is required to provide the Authorized User with one invoice for each purchase order at the time of delivery. 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:

- Contractor name
- Contractor billing address
- Contractor federal ID number
- NYS Vendor ID number
- Account number
- NYS Contract number
- Name of Authorized User indicated on the purchase order
- NYS Agency unit ID (if applicable)
- Authorized User's purchase order number
- Order date
- Invoice date
- Invoice number
- Invoice amount
- Product descriptions
- Unit price
- Quantity
- Unit of measure
- Dates of service (if applicable)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for Vendors on invoicing: <https://bsc.ogs.ny.gov/nys-vendors>.

8.10 Contract Administration

Contractor shall provide a sufficient number of customer service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Contractor shall also provide an emergency contact in the event of an emergency occurring after business hours or on weekend/holidays.

Contractor shall provide a dedicated Contract administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five business days if its contract administrator, emergency contact, or customer service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via email using Appendix C – *Contract Modification Procedure* and the Attachment 21 - *Contractor Information Update Form* to the OGS Contract Management Specialist.

8.11 NYS Financial System (SFS)

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

The State may implement additional PeopleSoft modules in the future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

8.12 Accessibility of Web-Based Information and Applications Policy

Contractor is solely responsible for administration, content, intellectual property rights, and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Subcontractors, or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities.

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

8.13 Insurance

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

8.14 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers, and distributors, if any, no later than 30 days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

Contractors shall specify if any authorized resellers, dealers, or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBEs), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

The report is to be submitted electronically via email in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract award notification and shall reference the Contract group number, award number, Contract number, sales period, and Contractor's name.

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract termination and designation of Contractor as non-responsible.

8.15 Contract Participation

This Contract may be terminated if, on the one-year anniversary date of the Contract award, and annually thereafter, the reports required to be filed under Section 8.14 Report of Contract Usage, and/or Authorized User accounts, show that the Contractor is not actively participating in the Contract mini-bid process. Termination of the Contract under this section is in addition to Appendix B, Section 43, *Termination*, and shall take effect upon written notification to the Contractor. The Contract may also be terminated for failure to file the reports as required under the Contract.

8.16 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.**

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- 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. OGS has conducted a comprehensive search of the directory and while there is availability, we are unable to set a goal at the Centralized Contract level. As the scope will vary for each Authorized User Agreement dependent upon the Authorized Users needs and statement of work, we strongly recommend that Authorized Users set agency-specific goals (user level goals) equal to or greater than 30% for the applicable lots (Lot 2 and 3) as Lot 1A and Lot 1B are discretionary for designated groups.
- B. 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/>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

C. 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.

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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.

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

Article 3 of the New York State Veterans’ Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

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

I. Contract Goals

- A. OGS hereby establishes an overall goal of 3% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the OGS designated contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at (518) 474-2015 or

VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as Subcontractors or suppliers in the performance of the Contract (see clause IV below).

II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid. (<https://ogs.ny.gov/sdvob-100-utilization-plan>)
- B. The Utilization Plan shall list the SDVOBs that the bidder intends to use to perform the Contract, a description of the work that the bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a Contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.
- C. OGS will review the submitted SDVOB Utilization Plan and advise the bidder/Contractor of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the bidder/Contractor and direct the bidder/Contractor to submit, within five business days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. (<https://ogs.ny.gov/sdvob-200-waiver-form>). Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. OGS may disqualify a bidder’s bid or proposal as being non-responsive under the following circumstances:
 - (a) If a bidder fails to submit an SDVOB Utilization Plan;
 - (b) If a bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB Contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. Request For Waiver

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- A. Prior to submission of a request for a partial or total waiver, bidder/Contractor shall speak to the designated contacts at OGS for guidance
 - B. In accordance with 9 NYCRR § 252.2(m), a bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200 (<https://ogs.ny.gov/sdvo-200-waiver-form>) , accompanied by supporting documentation. A bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
 - C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
 - D. If OGS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101 - <https://ogs.ny.gov/sdvo-101-monthly-compliance-report>) determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB Contract goals.

Waiver requests should be sent to ogs.sm.ps.pbitsbid@ogs.ny.gov.

IV. Required Good Faith Efforts

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

- 1. Copies of solicitations to SDVOBs and any responses thereto.
- 2. Explanation of the specific reasons each SDVOB that responded to bidders/Contractors' solicitation was not selected.
- 3. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.
- 4. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- 5. Other information deemed relevant to the waiver request.

V. Monthly SDVOB Contractor Compliance Report

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

VI. Breach of Contract and Damages

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

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

8.18 Vendor Responsibility

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or his 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 his 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 his 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 his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or his or her designee to be non-responsible. In such event, the Commissioner of OGS or his 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.

8.19 Tax Law Section 5-A

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

Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Vendor filed the ST-220-TD with the NYS Department of Taxation and Finance (DTF). Please note that the NYS Department of Taxation and Finance should receive the completed Form ST-220-TD, not OGS. OGS should only receive the Form ST-220-CA. Proposed Contractors should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned

with submission). Failure to make either of these filings may render Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

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

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

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

8.20 “OGS or Less” Guidelines

Purchases of the products included in the solicitation and Contract are subject to the “OGS or Less” provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase products from sources other than the Contractor provided that such products are substantially similar in form, function, or utility to the products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g., delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two business days prior to purchase. In addition, purchases made under “OGS or Less” flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

8.21 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, Section 25, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the Price clause shall be modified to include delivery to locations adjacent to New York State.

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

8.22 Extension of Use

This Contract may be extended to additional states or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in this Contract if

such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

8.23 Subcontracting

The following requirements shall supplement the requirements of Appendix B, sections 39 and 41:

1. The Contractor shall not in any way be relieved of any responsibility under the Contract by any subcontract. The Contractor shall be solely responsible to the State and Authorized User for the acts or defaults of its Subcontractor(s) and of such Subcontractors' officers, agents, and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. Any Deliverable provided or furnished by a Subcontractor shall be deemed for purposes of the Contract to be provided or furnished by the Contractor.
2. The Contractor shall inform each Subcontractor fully and completely of all provisions and requirements of the Contract, including (1) those relating either directly or indirectly to the Deliverables to be provided and the materials to be furnished or services provided pursuant to its respective subcontract, (2) to maintain and protect against any unauthorized disclosure of records with respect to work performed under the subcontract in the same manner as required of the Contractor, (3) those relating to the State's rights to audit records and (4) to cooperate with any investigation, audit, or other inquiry related to the Contract or any litigation relating thereto. Contractor agrees that every such subcontract shall expressly stipulate that all labor performed, and materials furnished pursuant thereto shall strictly comply with the requirements of the Contract the Authorized User Agreement and that no subcontract shall impair the rights of the State or Authorized User or create any contractual relationship between the Subcontractor and the State or Authorized User.
3. The Contractor shall pay all Subcontractors for and on account of services and/or Deliverables provided by such Subcontractors in accordance with the terms of their respective subcontracts. If and when required by the State or Authorized User, the Contractor shall submit satisfactory evidence that it has made such payment.
4. The Contractor shall require that the Subcontractor must pass through all terms and conditions of the Contract, including but not limited to Appendix A, to any lower tier Subcontractors.

8.24 New Accounts

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

8.25 Centralized Contract Modifications

- 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 add new products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

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- B. Updates to the Centralized Contract and the appendices may be made in accordance with the contractual terms and conditions to incorporate new products, make price level revisions, delete products, 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, Section 26, *Modification of Contract Terms*.
 - F. Notwithstanding the foregoing, New York State reserves the right, in its sole discretion, to unilaterally make clerical or administrative revisions, changes and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to the Contract without processing a formal amendment and/or modification.”

8.26 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, the Contractor's personnel shall not be impaired by alcohol or drugs of any kind in the performance of the Contract.

8.27 Traffic Infractions

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

8.28 Contract Documents; Records Retention

Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically pertaining to the Solicitation or this Contract for the term of the Contract and any extensions thereof, and for a period of six (6) years after the term of the Contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the Contract during the term, Contractor shall provide all documents relating to the bid and Contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

9. GENERAL PROVISIONS

9.1 Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when emailed,

mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address set forth in this Contract, and (ii) if to Contractor, addressed to Contract Administrator at the address set forth on the Contract Award Notification and Contractor Information page for this Contract.

The parties may, from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

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

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

9.2 Captions

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

9.3 Severability

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

9.4 Counterparts

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

9.5 Entire Agreement

This Contract and the referenced Appendices and Attachments 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 all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein. In accordance with the terms set forth in Appendix B, Section 26, *Modification of Contract Terms*, and Section 30, *Purchase Orders*, no alteration or modification shall be made by including terms or conditions on a Purchase Order, order form or other document which seek to vary the terms of this Contract or impose new duties or obligations on the Contractor or Authorized User, and no such terms shall have any force and effect.

[*Contract Signature Page Follows*]

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties as of the date of OSC approval. The Contract shall be in effect for Authorized User use beginning on the later of September 9, 2024, or the date of OSC approval. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Contract, the approved signature page(s) will be affixed by the State, upon receipt of all necessary approvals, to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

CONTRACTOR

Signature: _____
 Printed Name: _____
 Title: _____
 Company Name: _____
 Federal ID: _____
 NYS Vendor ID: _____
 Date: _____

THE PEOPLE OF THE STATE OF NEW YORK

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

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications), Appendix C, 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).

APPROVED AS TO FORM

Letitia James
 Attorney General

APPROVED

Thomas P. DiNapoli
 State Comptroller

Office of the New York State Comptroller

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

CORPORATE ACKNOWLEDGMENT

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

Notary Public Signature