

**AGREEMENT FOR
ASSISTIVE TECHNOLOGY
FOR PERSONS WITH DISABILITIES (STATEWIDE)**

BY AND BETWEEN

**NEW YORK STATE
OFFICE OF GENERAL SERVICES**

AND

CONTRACT NUMBER _____



**Office of General Services
Procurement Services**

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STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT # _____
CENTRALIZED CONTRACT FOR THE ACQUISITION OF
ASSISTIVE TECHNOLOGY FOR PERSONS WITH DISABILITIES (STATEWIDE)

THIS AGREEMENT (hereinafter the “Contract” or the “Agreement”) is made this ____ day of _____, 2021, 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 _____, having its principal place of business at _____ (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 commodities and 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 Assistive Technology for Persons with Disabilities (Statewide), as further described herein; and

WHEREAS, OGS conducted a procurement to identify the bidder(s) which could provide the Assistive Technology for Persons with Disabilities (Statewide), referred to as IFB #23235 (hereinafter the “IFB” or the “Solicitation”), which was advertised on May 14, 2021 in the New York State Contract Reporter, as required by New York State Economic Development Law; and

WHEREAS, awards were made to Contractors who are able to meet the terms and conditions of the Solicitation, and

WHEREAS, the State has determined that the Contractor is a responsible vendor; and that the Contractor is willing to provide the commodities set forth herein 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 Contract is for the acquisition of Assistive Technology and Related Services for Persons with Disabilities as specified in Section 2 – Scope , Table 1 – Lots and Disability Groups for all Authorized Users eligible to purchase through this Contract.

When making purchases from this Contract, Authorized Users shall procure products and services that best meet their form, function and utility requirements. Authorized Users are encouraged to obtain quotes from all eligible contractors prior to making a purchase. Pursuant to State Finance Law 163(10)(c), at the time of purchase, Authorized Users shall base their selection among multiple contracts upon which is the most practical and economical alternative that is in the best interests of the State.

Terms used in this Contract shall have the meanings set forth in this Contract and Appendix B.

1.2 Estimated Quantities

This Contract is 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 each this Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. 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, Estimated/Specific Quantity Contracts and 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:

1. Such Contracts may be non-exclusive Contracts.
2. 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.
3. The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
4. 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.
5. Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
6. 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 this Solicitation.

1.3 NYS Comptroller Approval

Pursuant to the Memorandum of Understanding (“MOU”) dated August 15, 2019 between the Offices of the New York State Governor Andrew M. Cuomo (“Executive”), New York State Comptroller Thomas P. DiNapoli (“OSC”), the State University of New York (“SUNY”), the State University of New York Construction Fund (“SUCF”), the City University of New York (“CUNY”), and the City University of New York Construction Fund (“CUCF”), procurement documents and contracts awarded under the Solicitation shall have no force and effect and the State bears no liability unless such procurement documents and contracts awarded under the Solicitation are approved by OSC or the pertinent pre-audit review period under the MOU has elapsed.

1.4 Definitions

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

AFFILIATE Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Contractor owns more than 50% of the ownership; or (b) any individual or other legal entity which owns more than 50% of the ownership of the Contractor. In addition, if a Contractor owns less than 50% of the ownership of another legal entity, but directs or has the right to direct such entity’s daily operations, that entity will be an Affiliate.
AGENCY OR AGENCIES The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.
ASSISTIVE TECHNOLOGY PRODUCTS Lot 1, Assistive Technology Products, includes Technology Products (items that are either electronic or computerized, or designed to be used with a product that is electronic or computerized) designed, adapted or configured for one or more of the following three Disability Groups: (1) Blindness & Low-Vision; (2) Deaf & Hard of Hearing; and (3) Cognitive & Communicative Disabilities. .
ATTORNEY GENERAL Attorney General of the State of New York.
BIDDER/OFFERER Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) which submits a Bid in response to a Bid Solicitation. The term Bidder shall also include the term “offeror.” In the case of negotiated Contracts, “Bidder” shall refer to the “Contractor.”
BUSINESS DAY shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.
COMPTROLLER Comptroller of the State of New York.

CLOUD BASED SERVICES Any Service sold as an off premise offering and having one or more of the following characteristics:

- (a) Authorized User Data is collected, acted upon, or stored on Hardware 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) the offering is based entirely in a virtual environment accessed by the Authorized User through the internet.

CLOUD SOLUTION Any Product or Service sold as an "as a service" offering and has one or more of the following characteristics:

- (a) Authorized User Data is collected, acted upon, or stored on Hardware 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) the offering is based entirely in a virtual environment accessed by the Authorized User through the internet.

HARDWARE MAINTENANCE Services that protect the computer hardware including fixes and upgrades. This includes extended warranty services such as on-site maintenance (Contractor will dispatch a Contractor representative to Agency or Authorized User's site) or depot repair services (Contractor will designate a site for pickup and delivery of hardware for maintenance services).

INTEGRATED MICROCOMPUTER SYSTEM (IMS) Lot 2 A laptop, desktop, or tablet personal microcomputer that has been modified via integration of Assistive Technology devices (hardware and software) for one or more of the following three Disability Groups: (1) Blindness & Low-Vision; (2) Deaf & Hard of Hearing; and (3) Cognitive & Communicative Disabilities. The IMS is sold as a complete, ready to use, "plug and play" system that may also include a printer and scanner, and must meet the form, function and utility of the Authorized User. Attachment 1 – Pricing includes one example IMS configuration and does not reflect predetermined volume purchases by an Authorized User.

MANUFACTURER shall refer to an organization or business entity that creates, makes, processes, or fabricates a product or something of value, which changes a raw material or commodity from one form to another or creates a new product of commodity.

MAY shall refer to the permissive in a contract clause of specification. "May" does not mean "required."

MICROCOMPUTER Computer(s) that uses a microprocessor for its central processing unit, including but not limited to: desktop computers, laptop computers and personal computers.

MULTIPLE AWARD A determination and award of a Contract in the discretion of the Commissioner to more than one responsive and responsible Bidder who meets the requirements of a specification, where the multiple award is made on the grounds set forth in the Bid Document in order to satisfy multiple factors and needs of Authorized Users (e.g., complexity of items, various manufacturers, differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, geographic location or other pertinent factors).

MUST shall refer to the imperative in a contract clause or specification. “Must” is synonymous with “required.”
MWBE shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority-and/or Women-owned Business Enterprise.
NYS VENDOR ID is 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.
PREFERRED SOURCE PRODUCTS shall refer to those Products that have been approved in accordance with New York State Finance Law § 162.
PREFERRED SOURCE PROGRAM shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to a state agencies, political subdivisions and public benefit corporations (including most public authorities).
PROCUREMENT RECORD Documentation by the Authorized User of the decisions made and approach taken during the procurement process and during the contract term.
PROCUREMENT SERVICES shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSP”) and Procurement Services Group (“PSG”).
RELATED SOFTWARE Software that is related to the Assistive Technology Lots and Disability Groups listed in the Section 2 - Scope Table 1- Lots and Disability Types, and is either (a) required for hardware setup, or to take full advantage of all features of hardware acquired under this Contract; (b) Operating system software purchased with or included with the Integrated Microcomputer System (IMS) purchase, such as Windows, UNIX, Linux and Apple OS; (c) Third Party Software that meets the requirements of Section 2 – Scope, and has been pre-approved by OGS for inclusion in the Contract pricelist ; or (d) Assistive Technology software designed for use by persons with disabilities . The above categories (a) and (b) must be acquired and delivered at the time of the hardware purchase. Category (c), Third Party Software, must also be acquired and delivered at the time of the hardware purchase, unless the software can also be classified as category (d), Assistive Technology software.
RESELLER is a company or individual (merchant) that purchases goods or services with the intention of selling them rather than consuming or using them
SDVOB shall refer to a NYS-certified Service-Disabled Veteran-Owned Business
SHALL refers to the imperative in a contract clause or specification. “Shall” is synonymous with “required.”
TECHNOLOGY PRODUCTS include items that are either electronic or computerized, or designed to be used with a Product that is electronic or computerized.

WEB-BASED ORDER MANAGEMENT SYSTEM (OMS) is an electronic system accessible via the internet which tracks sales, inventory, orders and order fulfillment.

1.5 Appendices and Attachments

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

Appendix A – Standard Clauses for NYS Contracts (October 2019)

Appendix B – General Specifications (April 2016)

Appendix C – Contract Modification Procedure

Appendix D – FEMA Terms and Conditions

Attachment 1 – Pricing

Attachment 2 – Insurance Requirements

Attachment 3 – Report of Contract Usage

1.6 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;
2. This Contract;
3. Appendix B, General Specifications;
4. All other appendices and attachments to this Contract;

2. SCOPE

2.1 Lots Overview

OGS reserves the right, at its sole discretion, to expand or limit the types of products in the list below, to deny the inclusion of any products or services, or require the removal of previously approved products or services. To the extent that the Contractor's price list includes products or services which overlap other OGS Centralized contracts, OGS reserves the right, in its sole judgment:

1. to exclude or delete overlapping items from this Contract, or
2. to include items of a similar nature from other OGS contracts so long as they have a designation indicating they have been integrated for use with Assistive Technology products. Integrated items like printers and scanners will not be considered part of the excluded product list as specified in Section 2.4 – Excluded Products. and must be marked with a separate item name and description of "for integrated Assistive Technology" to distinguish between them and similar products on the excluded list.

Table 1 – Lots and Disability Groups

Lots	Disability Groups		
	1) Blind & Low Vision	2) Deaf & Hard of Hearing	3) Cognitive & Communication Disabilities
1) Assistive Technology Products	Closed circuit televisions (CCTVs) (desktop, portable, head mounted & handheld); screen magnifiers & readers; optical character recognition (OCR) with speech software; braille display, translation software, printers/ embossers, keyboard notetakers; and related services.	Personal amplification systems; amplifier & amplifier telephone; computer assisted notetaking (computer assisted or speech recognition technology), closed captioning decoders; and related services.	Computer cursor control interface; computer keyboard modifications; head wands, mouth sticks; communication boards & software; and related services.
2) Integrated Microcomputer Systems (IMS)	Laptop computer with screen reader and refreshable braille.	Desktop computer with speech and scanner/reader.	Tablet computer with touch screen and screen reader.

Details and applicable terms and conditions for the Lots listed in Table 1 above, as well as Excluded Items are further described as follows:

2.2. Lot 1 - Assistive Technology Products:

Adaptive Technology Products (as defined in Section 1.4 – Definitions) include hardware, related software, and related services and may be sold as individual items. Assistive Technology Products, includes the following Products and Services, and a Contractor offering products in this Lot is subject to the following Terms and Conditions:

1. Hardware: Assistive Technology Products for persons with disabilities, included in the Contractor’s US commercial price list. Product types include, but are not limited to, those listed in Table 1.
2. Related Software:

 Related Software (as defined in Section 1.4 – Definitions) must be in a format that does not require any conversion by the Authorized User. Related software includes the following four types of software:

- a. Software required for hardware setup, or to take full advantage of all features of hardware acquired under this contract.
- b. Operating system software purchased with or included with the Integrated Microcomputer System (IMS) purchase, such as Windows, UNIX, Linux and Apple OS.
- c. Third Party Software that meets the requirements of Section 4.48 – Third Party Products, and has been pre-approved by OGS for inclusion in the Contract pricelist.
- d. Assistive Technology software designed for use by persons with disabilities, including, but not limited to, those listed in the table above.

The above categories (a) and (b) must be acquired and delivered at the time of the hardware purchase. Category (c), Third Party Software, must also be acquired and delivered at the time of the hardware purchase, unless the software can also be classified as category (d), Assistive Technology software.

Related Software offered under this Contract shall be licensed in accordance with the software developer's standard license and warranty terms, or the terms provided in Appendix B, whichever is more favorable to the Authorized User. Additionally, operating system software shall be licensed in accordance with the terms and conditions offered on the software developer's direct NYS software Contract, if available. License and warranty terms shall be furnished to Authorized User at time of purchase in either hard copy or electronic form. Notwithstanding the foregoing, warranty coverage for Related Software must start at the same time as the Product warranty period set forth in this Contract, (see Appendix B, Clause 54 i, Additional Warranties). Any costs associated with this requirement shall be borne by the Contractor.

3. Related Services:

Authorized Related Services may be acquired directly from Contractor under this Contract at the rates specified in Attachment 1 – Pricing . Unless otherwise noted in Attachment 1 - Pricing, fees for these Services are not included in the Product price. Only Services with fees listed in Attachment 1 – Pricing can be obtained using the Contract. The authorized Related Services are as follows: (a) Hardware Maintenance/Support; (b) Related Software Maintenance; (c) Installation/Configuration; and (d) Professional Services.

- a. Hardware Maintenance/Support: Extended warranty and Remote Administration Services to maintain/support the Assistive Technology Hardware, including but not limited to fixes and upgrades, are authorized under this category. The Contractor agrees that malfunctions that cannot be immediately diagnosed and pinpointed to a certain piece of equipment will require the participation of the Contractor until the problem resolution and responsibility is identified. In accordance with Appendix B, Clause 61, Product Acceptance, Product warranty shall become effective upon Acceptance of the Product. While under Hardware Maintenance, Contractor shall maintain the Product so as to provide Authorized User with the ability to utilize the Product without significant functional downtime to the Authorized User's ongoing business operations in accordance with the terms and conditions of the applicable service descriptions.

i. Extended warranty services: An Authorized User may elect to obtain extended warranty services, which includes those options made available by the manufacturer in its normal course of business and which are routinely included as options in its commercial price list and listed in Attachment 1 - Pricing. Extended warranty services may include on-site maintenance (Contractor will dispatch a Contractor representative to Agency or Authorized User's site) or depot repair services (Contractor will designate a site for pick up and delivery of hardware for maintenance services).

ii. Remote Administration Services: Attachment 1 – Pricing must include a description of any Remote Administration Service arrangements if provided with the Product. The description must include the frequency of the remote access and the resulting data. Connections to networks must be performed in a manner prescribed by an Authorized User to preserve the integrity of the network, confidentiality and integrity of information transmitted over that network, and the availability of the network.

iii. The Contractor shall furnish the Authorized User with a warranty repair service sheet for all service requests upon completion of the services to include:

- 1) Date and time notified;
- 2) Date and time of arrival;
- 3) Description of malfunction reported;
- 4) Diagnosis of failure and work performed;
- 5) Date and time failure was corrected;
- 6) Charges for the service, if applicable; and
- 7) Name of person performing the service.

b. Related Software maintenance: Unless otherwise provided by written agreement between the Contractor and User, maintenance offered shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, patches, and upgrades to the User, and (ii) help desk assistance at no additional cost, either by toll-free telephone or on-line functionality. See Appendix B, Clause 60 d, Product Technical Support & Maintenance, for full details.

c. Installation/Configuration Services: Installation/Configuration Services may include moving equipment to its final location, uncrating, assembling, fully integrating products into the Authorized User's environment, adjusting, connecting all services and leaving ready to operate to the full extent of its design capabilities. See Appendix B, Clause 37, Installation.

When configuring equipment to an Authorized User’s Microcomputer, Services may include, but are not limited to, the following:

- i. Hardware Set-Up (install drivers; test equipment with other system components);
- ii. System Enhancements (memory upgrades; network cards; etc.);
- iii. Software Installation; and
- iv. Install on Network (installation of hardware onto network, including any applicable software).

d. Professional Services (Consulting, Training, and other Incidental services which are billed hourly):

An Authorized User may acquire consulting, training and other incidental services directly related to the Assistive Technology products purchased from the Contractor under this Contract, as set forth in Attachment 1 – Pricing. Professional Services shall not exceed twenty (20%) percent of the total order price for Hardware, Hardware Maintenance, Related Software and Related Software maintenance. “Total order price” shall be defined as the aggregate purchase order amount for Hardware, Hardware Maintenance, Related Software, and Related Software maintenance placed by the Authorized User under this Contract in a twelve-month period. Professional Services which exceed twenty (20%) must be procured using the OGS IT Services mini-bid process or another procurement process selected by the Authorized User. Professional Services may include, but are not limited to the following:

i. Consulting Services:

Consulting Services may include, but are not limited to, analyzing the existing assistive technological environment, assessing the needs of a disabled individual and recommending applicable technology.

ii. Training Services:

Training Services may include pre-packaged training products, and/or the development or customization of training programs as requested, including Live Training, Computer Based/Multi-Media Training which encompasses Internet-Delivered Training, and/or Video Based Training.

iii. Incidental Services:

Incidental Services include services which may be required for the integration/implementation or deployment of Products purchased under this Contract and has been approved by OGS for inclusion under Attachment 1 – Pricing.⁴

e. Assistive Technology Products Pricing

A Contractor offering Assistive Technology Products must have completed A.T. Pricing tabs (see Attachment 1 – Pricing) for each Product or Service to be offered by the Contractor. Pricing shall be provided as a discount from list price.

2.3 Lot 2 - Integrated Microcomputer Systems (IMS):

Integrated Microcomputer Systems (IMS) (as defined in Section 1.4 Definitions), includes the following Products and Services. A Contractor offering products in this Lot is subject to the following Terms and Conditions:

1. IMS Products and Related Services

a. Integrated Microcomputer Systems (IMS) Hardware and Software:

A laptop, desktop, or tablet personal microcomputer that has been modified for use by persons with disabilities via the integration of Assistive Technology Products (as described in Section 2.2 - Assistive Technology Products) that meets the Authorized User's form, function and utility. The IMS is sold as a complete, ready to use, "plug and play" system that may also include a printer and scanner. Parts and accessories which do not fall under the scope of Lot 1 (i.e. Microcomputer Systems, printers, scanners) shall only be sold as part of the initial IMS, or individually as upgrades/replacement parts for an IMS previously provided by the Contractor. Integrated items like printers and scanners must include the phrase "for integrated Assistive Technology" in the item name and description to distinguish them from similar products on the excluded list.

b. Related Services:

Related Services may be acquired directly from Contractor under this Contract at the rates specified in Attachment 1 – Pricing . Unless otherwise noted in Attachment 1 - Pricing, fees for these Services are not included in the Product price. Only Services with fees listed in Attachment 1 – Pricing can be obtained using the Contract. The authorized Related Services are as follows: (a) Hardware Maintenance/Support; (b) Related Software Maintenance; (c) Installation/Configuration; and (d) Professional Services. Integration charges as described in Section 2.3.2 - IMS Pricing, are not considered a Service under this Service type.

2. IMS Pricing:

A Contractor proposing to offer Integrated Microcomputer Systems must complete the IMS Pricing Forms (see Attachment 1 – Pricing) for each sample configuration to be offered by the Contractor. Integration charges are to be quoted as a percentage of the entire cost of the total integrated configuration package. Integration charges should not be included in the individual cost of each item being integrated. Specific hardware/software unit pricing offered for the three sample integrated packages should be the same regardless of the ordered configuration. Pricing shall also be listed for individual components (set forth in Attachment 1 – Pricing) and shall be identical to prices quoted for the same items within the integrated configurations. The three sample configurations should have unit pricing that does not include the cost of integration. The integration fee should be clearly stated as a separate percentage of total cost of the package, as shown in the example below:

1 Computer	= \$2,000.00
1 Adaptive Aid	= \$1,000.00
Subtotal	= \$3,000.00
Integration @ 2%	= \$ 60.00
TOTAL	= \$3,060.00

The integration percentage must be uniform regardless of the products and configuration quoted. Integration cost shall be specific to the integration service; defined as:

- a. The configuration of a microcomputer so that it may be used by a person with disabilities, per the Authorized User's specifications.
- b. The development of appropriate disk, large print and cassette tape operating manuals, beyond what is already in existence (see Section 4.47, Instruction Manuals and Documentation).
- c. The appropriate labeling of computers and peripherals (i.e. printers, scanners).
- d. The installation and testing of the completed configuration.
- e. The specialized coding of standardized setup/access mechanisms of more complex menus or files.

The integration cost does not include the normal costs of providing services, administration expenses and other normal daily business expenses.

2.4 Excluded Products

The following products are excluded from the scope of this contract:

1. Durable Medical Equipment (i.e. wheelchairs, motorized scooters, diabetic products);
2. Products designed to assist persons with disabilities that are either not electronic or computerized, or not designed to be used with a Product that is electronic or computerized (i.e. lamps, magnifying glasses, braille books (other than instruction manuals and Product documentation))
3. Talking household products to assist the blind (i.e. microwave ovens and other small appliances, watches, scales, clocks).
4. Vibrating or flashing household items to assist the deaf (i.e. alarm clocks, bed shakers, watches)
5. Individually sold IMS components, parts and accessories which do not fall under the scope of Lot 1 (i.e. Microcomputer Systems, printers, scanners), unless sold as upgrades/replacement parts for a previously provided IMS.
6. Supplies for printers and other Microcomputer System peripherals (i.e. printer toner, non-specialty paper) that are not designed specifically to assist persons with disabilities, except for the starter supply that is included with the initial IMS purchase.

7. Cloud Based Services and Cloud Solutions

OGS reserves the right, at its sole discretion, to expand or limit the above list of excluded products.

3. PROCUREMENT INSTRUCTIONS FOR AUTHORIZED USERS

This Contract was issued under a multiple award structure. Authorized Users shall procure Products that best meet their form, function, and utility requirements.

Before proceeding with their purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly § 162, regarding commodities/services provided by preferred source suppliers.

Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

4. TERMS AND CONDITIONS

4.1 Contract Term and Extensions

This Contract will be in effect for a term of up to (5) years. The Contract term shall commence on the later of (i) February 1, 2022, or (ii) consistent with the MOU.

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, and consistent with the MOU, this Contract may be extended for two (2) 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. 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, consistent with the MOU 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, 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 this 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).

Upon termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made or individual licenses granted to Authorized Users prior to such termination.

4.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, Contract Term – Extension. In the event a replacement Contract has not been issued, this Contract may be extended unilaterally by the

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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.

4.3 Price

Contract pricing is set forth on Attachment 1 – Pricing.

Pricing shall be all-inclusive, including but not limited to labor, bundling, delivery charges, fuel surcharges, utility rate surcharges, dock fees, license fees, procurement or transportation surcharges, tariffs, customs duties and charges, or other surcharges applied.

New York State anticipates that the State shall be treated as a single entity and that prices reflect volume aggregated discounts commensurate with the statewide volume. Authorized Users may negotiate better pricing with Contractor at any time throughout the Contract period.

OGS, at its discretion, has the right to request Contractor to update its Price List.

OGS, at its discretion, has the right to remove Products from Price Lists.

4.4 Price Updates

Contractor may update its pricelist as follows:

Commencing with the first anniversary date of the Bid Opening, the Contractor may update the pricelist to reflect Contractor price increases. No Product or Service shall have its price increased more than once in a twelve month period.

The Contractor shall provide OGS with one electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under its contract.

Contractors shall be permitted to reduce their pricing, add new Products or Services, or remove Products or Services at any time during the contract term. Products or Services may not be removed from the Contract without written confirmation from the Product manufacturer or Service provider that the Product or Service is no longer offered.

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 price lists 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 for pricelist updates in a single year of the Contract shall not exceed the escalation cap as set forth in Escalation Cap subdivision, below. All percentage discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract

4.5 Pricelist Format

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2016 or lower version) spreadsheet via email (preferred) or on USB flash drive to the OGS Procurement Services contract administrator. The pricelist must be dated and the format shall be consistent with the format of the Contractor’s approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

1. Price increases;
2. Price decreases;
3. Products being added; and
4. Products being deleted.

4.6 Contractor’s Submission of Contract Updates

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

1. Request additional information;
2. Reject Contract updates;
3. Remove Products from Contracts;
4. Remove Products from Contract updates; and
5. Request additional discounts for new or existing Products.

4.7 Cover Letters

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

4.8 CPI Price Update

On each annual anniversary date of the Bid Opening, the Contractor may request a rate change (increase or decrease) based upon fluctuations in the latest published copy of the Consumer Price Index for all urban consumers as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212.

In a single year of the Contract, the maximum price increase for each individual item on contract shall not exceed the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at www.bls.gov.

The index is also available through the Internet at the Bureau of Labor Statistics web site at <https://stats.bls.gov/>. Go to “Subjects” > “Inflation and Prices Overview” > “Consumer Price Index” > “CPI

Tables” and then refer to “Table Containing History of CPI-U U.S. All Items Indexes and Annual Percent Changes From 1913 to Present is now available in the CPI Detailed Report as Table 24”.

The Contractor is solely responsible for notifying OGS Procurement Services that the Contractor wishes to receive the CPI rate change and to submit a request for the adjusted rate on the applicable Bid Opening anniversary date; and Contractor shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease to OGS Procurement Services and the Authorized User(s), as appropriate. Should the Contractor fail to make a request and submit supporting documentation to OGS Procurement Services within ninety (90) days after the applicable anniversary date, the Contractor shall be deemed to have waived its right to any increase in price for that year, but the State shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

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 for the month prior to the current Pricelist Update request and subtract the CPI value the same month in the previous 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 for a hypothetical July 2021 Bid Opening calculation:

CPI for current period (June 2021)	185.2
Less CPI for previous period (June 2020)	181.7
Equals index point change	3.5
Divided by previous period CPI	181.7
Equals	0.0192
Result multiplied by 100	<u>0.019 x 100</u>
Equals percent change/ price adjustment value	1.9

The “CPI for current period” shall be the index in effect at the time the Contract pricelist update request is received; “CPI for previous period” shall be the index in effect when the Contract pricelist was last updated. Increases are not cumulative. Price increases 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 is provided.

4.9 Best Pricing Offer

During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract

at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

4.10 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, *Savings/Force Majeure*.

Should the Commissioner in the Commissioner's 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.

4.11 Volume Discounts

Volume Discounts offered by Contractor, if any, will be shown on its Attachment 1 - Pricing.

4.12 Ordering

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, Purchase Orders. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

4.13 Purchasing Card Orders

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, 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.

4.14 Minimum Order

There is no Minimum Order required for this Contract.

4.15 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *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:

1. Contractor Name
2. Contractor Billing Address
3. Contractor Federal ID Number
4. NYS Vendor ID Number
5. Account Number
6. NYS Contract Number
7. Name of Authorized User indicated on the Purchase Order
8. NYS Agency Unit ID (if applicable)
9. Authorized User's Purchase Order Number
10. Order Date
11. Invoice Date
12. Invoice Number
13. Invoice Amount
14. Product Descriptions
15. Unit Price
16. Quantity
17. Unit of Measure
18. 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>.

4.16 Product Delivery

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

4.17 Product Returns and Exchanges

In addition to the provisions of Appendix B, Title and Risk of Loss, Product Substitution, and Rejected Product, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within 10 business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

4.18 Unanticipated Excessive Purchase

The State reserves the right to negotiate lower pricing, or to advertise for Bids, for any unanticipated excessive purchase.

4.19 Contract Administration

The 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 it's 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 e-mail to the OGS Contract Management Specialist.

OGS retains the right to request any additional information pertaining to the Contractor's ability, qualifications, and procedures used to accomplish all work or sell products under this Contract, as it deems necessary to ensure satisfactory work.

4.20 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 is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://ogs.ny.gov/procurement/emarketplace>.

There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State may be implementing additional PeopleSoft modules in the near 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/>.

4.21 Web-Based Ordering

The State requires that the Contractor (and any approved Resellers) establish and maintain a dedicated NYS website specifically for the Contract that has a web-based ordering system with the capability of receiving electronic orders from over 5,000 Authorized Users via the internet. The web-based ordering system shall have full order inquiry capabilities and shall acknowledge receipt of an Authorized User's order. Contractor (and any approved Resellers) shall be required to post a copy of Contract Pricing, in both Excel and PDF formats on the website. The website link(s) will be listed under the Contractor information on the OGS website. The Contractor's (and any approved Resellers) website will be the responsibility of the Contractor (and any approved Resellers) to maintain and keep updated. The Contractor's website shall be operational and able to accept orders within 90 calendar days of Contract execution. The State reserves the right to request demonstrations of the Contractor's website.

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

1. Contractor Name and Address
2. Contract Number
3. Ordering Agency/Facility/Political Subdivision, etc. and Address
4. Purchase Order/Requisition Numbers
5. Contact (individual placing order)
6. Delivery Location
7. Delivery Instructions
8. Stock Number
9. Manufacturer
10. Description
11. Unit of Measure
12. List Price (unit)
13. Net Price (unit)

In the event the Contractor utilizes Resellers under the Contract, Contractor must provide on the landing page of its dedicated NYS website, a link to each Reseller's website. All Resellers must provide a dedicated NYS website that mirrors that of the Contractor as set forth above.

Please be advised that some Authorized Users may not order from a Contractor unless the Contractor has established a Web Based Order Management System (OMS). Minimum requirements and desirables for a Web Based OMS are as follows:

1. Minimum Requirements: In order to be offered under this Contract, Bidders must certify via Attachment 5 – Bidder Information Questionnaire that a Web Based OMS will, at minimum:
 - a. For lots 1 and 2, only incorporate pricing for all Product and Service offerings approved under Attachment 1 – Pricing;
 - b. For lot 2, only configure options, products, and services that OGS approves for sale under the NYS Contract.
 - c. Have directions and assistance for using the Web Based OMS available at entry; and

d. Be available at the start of the Contract term and thereafter throughout the Contract term.

b. Desirables: In addition to the minimum requirements listed above, the Authorized User may also necessitate that the Contractor's Web Based OMS meet or exceed additional desirables. These may include, among other desirables, being JAWS (Job Access With Speech) compatible, processing transactions via a secure password protected web-based application, and/or the ability to create and send ordering information via an export function into purchasing software electronically as specified by the Authorized User

4.22 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.

4.23 Americans with Disabilities Act (ADA)

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Contractor is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities.

4.24 Web-Based OMS

Contractor's Web Based OMS (Order Management System) will, at minimum:

1. For Lots 1 and 2, only incorporate pricing for Product and Service that OGS approved for sale under the Contract;
2. For Lot 2, only configure options, products, and services that OGS approved for sale under the Contract.
3. Have directions and assistance for using the Web Based OMS available at entry; and
4. System should be available at the start of the Contract term and thereafter throughout the Contract term.

4.25 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 2 – Insurance Requirements.

4.26 Report of Contract Usage

Contractor shall submit Attachment 3 – *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 e-mail 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 3 – *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 cancellation and designation of Contractor as non-responsible.

4.27 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**1. 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.

2. General Provisions

a. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

b. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations

promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.

c. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

3. 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.

i. 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.

ii. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

b. Form EEO 100 - Staffing Plan.

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

c. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)

i. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

ii. Separate forms shall be completed by Contractor and any subcontractor.

iii. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

4. Contract Goals

a. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

b. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.

The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses Enterprises.

Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

c. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

5. MWBE Utilization Plan

a. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.

b. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

c. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.

d. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.

e. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

f. OGS may disqualify a Bidder’s bid/proposal as being non-responsive under the following circumstances:

i. If a Bidder fails to submit an MWBE Utilization Plan;

- ii. If a Bidder fails to submit a written remedy to a notice of deficiency;
 - iii. If a Bidder fails to submit a request for waiver; or
 - iv. If OGS determines that the Bidder has failed to document good faith efforts.
- g. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- h. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

6. Request for Waiver

- a. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- b. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- c. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- d. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

7. Required Good Faith Efforts

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

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- a. 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.
 - b. 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.
 - c. 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.
 - d. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
 - e. 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.
 - f. Other information deemed relevant to the request.

8. Monthly MWBE Contractor Compliance Report

- a. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month’s activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System (“NYSCS”) to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- b. When a Contractor receives a payment from a State agency, it is the Contractor’s responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification (“audit notice”) indicating that a representative of its company needs to log-in to the NYSCS to report the company’s MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor’s responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

c. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: “**Introduction to the System - Vendor training**” and “**Contract Compliance Reporting - Vendor Training**” to become familiar with the NYSCS. To view the training schedule and to register visit:

<https://ny.newnycontracts.com/FrontEnd/TrainingList.asp>

d. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on “**Account Lookup**” to identify the Contractor’s account by company name. Contact information should be reviewed and updated if necessary by choosing “**Change Info.**” It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through “**Request New User.**” When identifying the person responsible, please add “- **MWBE Contact**” after the person’s last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for “**Contact Us & Support**” then “**Technical Support**” on the NYSCS website.

e. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month’s activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

f. It is the Contractor’s responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

9. Breach of Contract and Liquidated Damages

a. Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.

b. Such liquidated damages shall be calculated as an amount equaling the difference between:

- i. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- ii. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

c. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to

OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

10. 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>

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

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

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

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

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

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

4.29 Use of Recycled or Remanufactured Materials

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components or Products must be identical to the

manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

4.30 Bulk Delivery and Alternate Packaging

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

4.31 Surplus/Take-Back/Recycling

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

4.32 Environmental Attributes and NYS Executive Order Number 4

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract,

may be found at <https://ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

4.33 Consumer Products Containing Mercury

Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

4.34 Diesel Emission Reduction Act

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

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

4.35 Overlapping Contract Products

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

4.36 Preferred Source Products

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

4.37 NYS Vendor Responsibility

OGS conducts a review of prospective Contractors (“Bidders”) to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter “Questionnaire”) is used for non-construction Contracts and is designed to provide information to assess

a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Bidder agreed to fully and accurately complete the Questionnaire. The Contractor acknowledges that the State's execution of the Contract was contingent upon the State's determination that the Contractor is responsible, and that the State relied upon the Contractor's responses to the Questionnaire, in addition to all other information the State may have obtained from other sources, when making its responsibility determination.

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, 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, in The Commissioner's sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when the Commissioner 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 issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that 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 at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner the Commissioner 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.

4.38 NYS Tax Law Section 5-a

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

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be

filed with OGS. The ST-220-CA can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

4.39 “OGS or Less” Guidelines

Purchases of the Products included in this 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.

4.40 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, 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.

4.41 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.

4.42 Resellers

1. Definitions

“Reseller/Distributor/Authorized Dealer” is a company or individual (merchant) that purchases goods with the intention of selling them rather than consuming or using them.

2. Conditions of Reseller Participation

Resellers must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State’s sole discretion, at any time. Contractor shall have the right to qualify Resellers and their participation under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria (“qualifying criteria”), provided that:

- a. such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor’s established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
- b. all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
- c. those qualifying criteria met by the Reseller must be identified in Reseller designations Attachment 9 – Contractor and Reseller/Distributor Information at the time that Reseller approval is requested; and,
- d. immediate advance notice is provided to OGS in the event that a change in Reseller’s status occurs during the Contract term.

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

3. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 9 – Contractor and Reseller/Distributor Information. Contractor shall also specify whether orders must be placed directly with Contractor, or may be placed directly with designated Resellers.

4. Responsibility for Reporting/Performance

Contractor shall be fully liable for a Reseller’s performance and compliance with all Contract terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required quarterly sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor’s sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User’s Contract activity with the Reseller.

5. Applicability of Contract Terms

Product ordered directly through Resellers shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

4.43 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.

4.44 Centralized Contract Modifications

1. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. “Amendments” are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

2. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, 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.

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

4. All modifications proposed by Contractor shall be 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.

5. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

4.45 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

4.46 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.

4.47 Instruction Manuals and Documentation

At the time of delivery, Contractor shall provide a complete instruction manual for the Product and for each component supplied, as applicable, to the Authorized User. All Products shall be furnished with one complete set of Documentation at no extra charge. The Documentation shall include the standard operator instruction manuals (hard copy or electronically) as would normally accompany such Product(s). However, in some instances, an Authorized User may wish to reduce its volume of paper when ordering multiple units, and should be able, if possible, to opt not to receive extra copies of Documentation. This arrangement should be worked out between the Contractor and the Authorized User prior to order. An Authorized User may also want to purchase additional sets of Documentation, if needed. If the provision of additional sets of Documentation is subject to a separate cost, the Contractor must ensure that the part numbers and net prices associated with this provision of additional sets of Documentation are available to the Authorized User and included in Attachment 1 – Pricing.

Further, where Related Software Documentation is provided in electronic format, Authorized User shall be entitled to make copies to the extent necessary to fully enjoy the rights granted under the Contract provided that the Authorized User reproduces the copyright notice and any other legend of ownership on any copies made.

4.48 Third Party Products

Only third party Products, (which includes third party software), which meet all of the following criteria may be authorized for sale under this Contract:

1. The third party Products are available under the Contractor's standard commercial price list. Third party Products not incorporated in the Contractor's standard commercial price list shall not be authorized for sale under the Contract;
2. The third party Products fit the scope set forth in Section 2.2.1 – Hardware and/or Section 2.2.2 – Related Software;
3. If the third party Products are available on another OGS centralized contract, such item must be sold at or below the price on the other contract.

4.49 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 this Contract.

4.50 Supplier/Manufacturer's Certificate

Through completion and submission of the Supplier/Manufacturer's Certificate, the supplier or manufacturer guaranteed that the Contractor is an authorized dealer and has agreed to supply the Contractor with all quantities of Products required by the Contractor in fulfillment of its obligations under this Contract

The Commissioner reserves the right to investigate or make any inquiry into the capabilities of the Contractor to properly perform under this Contract. See Appendix B, Participation in Centralized Contracts and Employees, Subcontractors, and Agents.

4.51 Periodic Recruitment

The Solicitation allowed for periodic recruitment of additional Contractors during the term of this 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 the 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.

Contractor may resubmit a Bid for future consideration for Lots covered by the scope of this Contract only during an additional recruitment period. In addition, 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.

5. GENERAL PROVISIONS**5.1 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 mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address set forth below, and (ii) if to Contractor, addressed to Contract Administrator at the address set forth below.

The parties may, from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. 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.

5.2 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.

5.3 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.

5.4 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.

5.5 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

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 effective on 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

THE PEOPLE OF THE STATE OF NEW YORK

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Company Name: _____

Federal ID: _____

NYS Vendor ID: _____

Date: _____

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

CORPORATE ACKNOWLEDGMENT

STATE OF _____ }
COUNTY OF _____ } : ss.:

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