

**THIRD AMENDMENT TO  
CONTRACT NUMBER PS68202**

**BETWEEN**

**THE NEW YORK STATE OFFICE OF GENERAL SERVICES  
AND  
DELL MARKETING, L.P.**



**THIS THIRD AMENDMENT (the “Third Amendment”)** is made by and between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter “OGS” or the “State”), whose principal place of business is 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163, and Dell Marketing, L.P., (hereinafter “Contractor” or “Vendor”), with its principal place of business at One Dell Way, Round Rock, TX 78682. The foregoing are collectively referred to as the “Parties”.

**WITNESSETH:**

**WHEREAS**, OGS entered into a centralized contract for the acquisition of Microsoft Product,(hereinafter referred to as the “Contract” or “Contract PS68202”) with the Contractor on August 1, 2018; and

**WHEREAS**, Contract PS68202 was amended pursuant to that certain First Amendment to Contract PS68202; and

**WHEREAS**, Contract PS68202 was amended pursuant to that certain Second Amendment to Contract PS68202; and

**WHEREAS**, the original term of Contract PS68202 was from August 1, 2018 to July 31, 2023; and

**WHEREAS**, the Parties wish to amend the Contract to extend the term of the Contract for one (1) year through and including July 31, 2024 and to amend certain other terms of the Contract;

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

**Section 1. TERM**

Pursuant to Appendix B *General Specifications*, Section 23 *Contract Term - Extension*, the term of the Contract is extended for one (1) year, through and including July 31, 2024, or until the execution of an Aggregate Buy under New York OGS Prime Contract PM69723.

**Section 2. APPENDIX A**

Appendix A *Standard Clauses for New York State Contracts* (January 2014) is deleted in its entirety and replaced with the attached Appendix A *Standard Clauses for New York State Contracts* (June 2023), which is expressly made a part of this Contract as fully as if set forth at length herein. All references in the Contract to Appendix A shall be deemed to reference Appendix A *Standard Clauses for New York State Contracts* (June 2023).

**Section 3.** Section 2.22 of the Contract, Contractor Requirements And Procedures By New York State Certified Minority- And Women-Owned Business Enterprises And Equal Employment Opportunities For Minority Group Members and Women, is deleted in its entirety and replaced with the following language:

Section 2.22 Contractor Requirements and Procedures for Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

**I. New York State Law**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York

State-certified Minority- and Women-Owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OGS contracts.

**II. General Provisions**

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

**III. Equal Employment Opportunity (EEO)**

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
  - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
  - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

**B. Form EEO 100 – Staffing Plan**

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

**C. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)**

1. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. To report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.
  2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors.
  3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- B. Good Faith Efforts
- Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:
1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
  2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies

of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

**V. Fraud**

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

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

Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

**Section 4. NYS COMPTROLLER APPROVAL**

Section 2.19 [Contract Term] of the Contract is amended to add the following language:

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

**Section 5. SEVERABILITY**

In the event that any one or more of the provisions of this Third Amendment shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Third Amendment, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Third Amendment.

**Section 6.** Except as herein modified all other terms and conditions of this Contract remain in full force and effect.

CONTRACT NO. PS68202

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

DELL MARKETING, L.P.

Signature: *S. Erlich*  
Printed Name: SCOTT ERICH  
Title: MANAGING LEGAL DIRECTOR  
Date: SEPT 11, 2023  
Federal ID: 74-2616805  
NYS Vendor ID: 1000041162

THE PEOPLE OF THE STATE OF NEW YORK  
ACTING BY AND THROUGH THE COMMISSIONER  
OF GENERAL SERVICES

Signature: *Jill McCabe*  
Printed Name: Jill McCabe  
Title: Director  
Date: 9/19/23

NEW YORK STATE OFFICE OF THE STATE  
COMPTROLLER

APPROVED  
DEPT. OF AUDIT & CONTROL  
Sep 28 2023  
Randolph McConnach  
FOR THE STATE COMPTROLLER

NOTICE: This Third Amendment becomes effective once OGS approves, subject to approval by OSC if required. OGS will then post a notification to its website in the form of a Contract Award Notification Update.

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF Massachusetts }

: Sworn Statement:

COUNTY OF Middlesex }

On the 11 day of September in the year 2023, before me personally appeared SCOTT GRUCH,

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that they maintain an office at

Town of HOPKINTON

County of MIDDLESEX, State of MA; and further that:

[Check One]

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

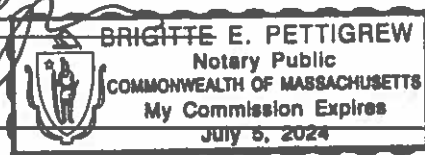
If a corporation): they are the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, they are authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_\_\_\_\_ executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

If a partnership): they are the MANAGING LEGAL DIRECTOR of DEU MARKETING L.P., the partnership described in said instrument; that, by the terms of said partnership, they are authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, they executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

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

Brigitte E. Pettigrew  
Signature of Notary Public

Notary Public Registration No. \_\_\_\_\_



State \_\_\_\_\_



# Second Amendment to Contract PS68202

## Group 76000 – Award 23116 Microsoft Reseller (Statewide)

**THIS SECOND AMENDMENT**, (the "Amendment") to Contract PS68202 (hereinafter "Contract") for the acquisition of Microsoft Product is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") whose principal place of business is the 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, and **Dell Marketing, L.P.** (hereinafter "Contractor"), with offices at One Dell Way, Round Rock, Texas 78682. The foregoing are collectively referred to herein as the "Parties."

**WHEREAS**, OGS and the Contractor are Parties to Contract PS68202; and

**WHEREAS**, Contract PS68202 was amended pursuant to that certain First Amendment to Contract PS68202; and

**WHEREAS**, OGS is exercising its reserved right to add an Online Service to the scope of the Contract at any time during the term of the Contract; and

**WHEREAS**, the Parties mutually agree to amend the Contract.

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

Section 1.1.2 of the Contract, Online Services, is deleted in its entirety and replaced with the following:

### **1.1.2 Online Services.**

Online Services authorized for acquisition under this Contract are Office 365, Azure, Intune, Dynamics CRM, and GitHub Enterprise. Online Services authorized for acquisition under this Contract for use with Criminal Justice Information Services ("CJIS") data are Office 365, Azure, and CRM. All other Online Services are not authorized for acquisition. OGS reserves the right in its sole discretion to add or remove Online Services Products from the scope of the Contract at any time during the term of the Contract, upon notice to the Contractor.

Section 2.15.4 of the Contract, Online Services – Criminal Justice Information (CJI), is deleted in its entirety and replaced with the following:

### **2.15.4 Online Services - Criminal Justice Information (CJI).**

The only Online Services authorized for acquisition under this Contract for use with Criminal Justice Information Services ("CJIS") data are Office 365, Azure, and CRM. OGS will notify Contractor and Authorized Users of any changes in this restriction in the future.

Except as herein modified, all other terms of Contract PS68202 shall remain in full force and effect.



## Signature Page

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

### DELL MARKETING, L.P.

### THE PEOPLE OF THE STATE OF NEW YORK

Signature:

Signature:

Printed  
Name:

Printed  
Name:

Title:

Title:

Company  
Name:

Date:

Date:

FEIN: 74-2616805

NYS Vendor  
ID 1000041162

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }

: ss:

COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that they maintain an office at \_\_\_\_\_

and further that:

**[Check One]**

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

**If a corporation**): they are the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, they are authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, they executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

**If a partnership**): they are the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, they are authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, they executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

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

\_\_\_\_\_  
Signature of Notary Public

**Notary Public Registration No.** \_\_\_\_\_ **State** \_\_\_\_\_



# First Amendment to Contract PS68202

## Group 76000 – Award 23116 Microsoft Reseller (Statewide)

**THIS FIRST AMENDMENT**, (the "Amendment") to Contract PS68202 (hereinafter "Contract") for the acquisition of Microsoft Product is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") whose principal place of business is the 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, and **Dell Marketing, L.P.** (hereinafter "Contractor"), with offices at One Dell Way, Round Rock, Texas 78682. The foregoing are collectively referred to herein as the "Parties."

**WHEREAS**, OGS and the Contractor are Parties to Contract PS68202; and

**WHEREAS**, the Contractor proposed the addition of an authorized Online Service and OGS is exercising its reserved right to add an Online Service to the scope of the Contract at any time during the term of the Contract; and

**WHEREAS**, the Parties mutually agree to amend the Contract.

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

Section 1.1.2 of the Contract, Online Services, is deleted in its entirety and replaced with the following:

### **1.1.2 Online Services.**

Online Services authorized for acquisition under this Contract are Office 365, Azure, Intune, Dynamics CRM, and GitHub Enterprise. The only Online Service authorized for acquisition under this Contract for use with Criminal Justice Information Services ("CJIS") data is Office 365. All other Online Services are not authorized for acquisition. OGS reserves the right in its sole discretion to add or remove Online Services Products from the scope of the Contract at any time during the term of the Contract, upon notice to the Contractor.

Section 3.1 of the Contract, Microsoft Certification, is deleted in its entirety and replaced with the following:

### **3.1 MICROSOFT CERTIFICATION.**

Contractor shall maintain certification by Microsoft as both a Licensing Solutions Partner (LSP) and as an Authorized Educational Reseller (AER) for the term of the Contract. Contractor must be authorized by Microsoft to provide the entire Microsoft Product line available in the CMBA (though the only Online Services authorized are Office 365, Azure, Intune, Dynamics CRM and GitHub Enterprise).

## Signature Page

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

### DELL MARKETING, L.P.

### THE PEOPLE OF THE STATE OF NEW YORK

Signature:

Signature:

Printed  
Name:

Printed Name:

Title:

Title:

Company  
Name:

Date:

Date:

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

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

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

**[Check One]**

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

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**Notary Public**

**Registration No.**



## Contract

**THIS CONTRACT** (hereinafter “Contract”) for the acquisition of Microsoft Product is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter “State” or “OGS”) whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, and **Dell Marketing, L.P.** (hereinafter “Contractor”), with offices at One Dell Way, Round Rock, Texas 78682. The foregoing are collectively referred to herein as the “Parties.”

**WHEREAS**, there is a substantial pre-existing install base of Microsoft Products within New York State Authorized Users; and

**WHEREAS**, OGS has determined that Authorized Users may need additional Microsoft Products, and has determined it is in the best interest of Authorized Users to establish a centralized contract to facilitate such acquisitions; and

**WHEREAS**, Microsoft does not sell directly to government customers, but rather sells exclusively through its authorized reseller network. Since Microsoft does not sell directly to governmental customers, it does not set the actual price paid by governmental customers; and

**WHEREAS**, OGS and Microsoft established a Custom Microsoft Business Agreement (CMBA), referenced as PS67984, which sets forth the overall licensing framework and the applicable terms and conditions for the acquisition of Microsoft Product; and

**WHEREAS**, OGS issued Request for Proposal (RFP) 23116 to acquire the services of one authorized reseller to fulfill its needs for the duration of the term of the CMBA, which RFP was advertised in the May 29, 2018 edition of the New York State Contract Reporter; and

**WHEREAS**, Contractor submitted a Proposal which earned the highest score and satisfied all other requirements in the RFP; and

**WHEREAS**, Contractor agrees to the terms and conditions set forth in this Centralized Contract, referenced as PS68202, and

**WHEREAS**, the Contractor is willing to provide the Products as set forth 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:

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**APPENDICES**

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- Appendix B – General Specifications (April 2016)
- Appendix C – Contract Modification Procedure
- Appendix D – NYS Price List
- Appendix E – Implementation Plan/Transition Plan
- Appendix F – Issue Escalation Plan
- Appendix G – Custom Microsoft Business Agreement
- Appendix H – Contractor Information
- Appendix I – How to Use and Frequently Asked Questions
- Appendix J – Report of Contract Sales
- Appendix K – Primary Security and Policy Mandates
- Appendix L – Contractor Attestation
- Appendix M – Contractor Deficiency Report

## **Section 1 SCOPE**

This Contract is a statewide centralized contract to acquire Microsoft Products that are determined by OGS to be within Contract scope. References to the State and its agencies as Authorized Users under this Contract encompass and include all such entities within the definition of “Authorized User” set forth in State Finance Law §163(1)(k) and Appendix B.

### **1.1 PRODUCTS IN SCOPE.**

Products authorized by OGS for acquisition under this Contract are Microsoft Software and certain Online Services.

#### **1.1.1 Software.**

All Products classified by Microsoft as Software are authorized for acquisition under this Contract, except as specifically excluded by OGS. OGS reserves the right in its sole discretion to add or remove Software Products from the scope of the Contract at any time during the term of the Contract, upon notice to the Contractor. Training services offered free of charge in relation to Software Products are in scope.

#### **1.1.2 Online Services.**

Online Services authorized for acquisition under this Contract are Office 365, Azure, Intune and Dynamics CRM. The only Online Service authorized for acquisition under this Contract for use with Criminal Justice Information Services (“CJIS”) data is Office 365. All other Online Services are not authorized for acquisition. OGS reserves the right in its sole discretion to add or remove Online Services Products from the scope of the Contract at any time during the term of the Contract, upon notice to the Contractor.

### **1.2 PRODUCTS OUT OF SCOPE.**

The following are expressly excluded from the scope of this Contract:

- Any items considered out of scope for the CMBA, as indicated in the Out-of-Scope Work and Products section included in CMBA Section 1.7.
- Paid training services.

### **1.3 CONTRACT AND ORDER OF PRECEDENCE.**

The Parties’ Contract is comprised of the following documents. Conflicts among such documents shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts January 2014;
2. This document;
3. Appendix B – General Specifications April 2016;
4. Appendix C – Contract Modification Procedure;

5. Appendix D – NYS Price List;
6. Appendix E – Implementation/Transition Plan;
7. Appendix F – Issue Escalation Plan;
8. Appendix G – Custom Microsoft Business Agreement;
9. Appendix H – Contractor Information;
10. Appendix I – How to Use and Frequently Asked Questions;
11. Appendix J – Report of Contract Sales;
12. Appendix K – Primary Security and Policy Mandates;
13. Appendix L – Contractor Attestation;
14. Appendix M – Contractor Deficiency Report.

#### **1.4 ESTIMATED SPEND AND QUANTITIES.**

This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. Numerous factors could cause the actual volume of Products purchased under this Contract to vary substantially from historical purchasing volumes. Such factors include, but are not limited to the following:

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

The Contractor must furnish all quantities or dollar values actually ordered regardless of historical sales volumes. The actual value of the Contract is indeterminate and will depend upon the pricing of the award and the actual demand of Authorized Users. See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, General Specifications.

#### **1.5 DEFINITIONS.**

In addition to the listing of defined terms listed in Appendix B, OGS has provided the following definitions that fall within the scope of this Contract:

**Affiliate Registration Form** shall have the same definition as found in the CMBA Section titled "Definitions."

**Best Value** shall refer to the basis for awarding a Contract for services to the Bidder which best optimizes quality, cost and efficiency among Responsive and Responsible Proposers. See State Finance Law § 163(1)(j).

**Business Day** shall mean Monday through Friday, excluding NYS Holidays, between the hours of 7:30 AM and 5:00 PM ET.

**Cost-Plus Percentage** shall mean the percentage markup added to Net Reseller Cost.

**Cost-Minus Percentage** shall mean the percentage markdown subtracted from Net Reseller Cost.

**Custom Microsoft Business Agreement (CMBA)** shall refer to the agreement executed between the State of New York and Microsoft (including all Appendices, Program Agreements and associated

updates and amendments) to establish the overall licensing framework and the applicable terms and conditions for New York State's acquisition and use of Microsoft Product. The OGS Contract number for the CMBA is PS67984.

**Data Categorization** shall refer to the process of risk assessment of data.

**Enrollment** shall have the same definition as found in the CMBA Section titled "Definitions."

**ET** shall mean Eastern Time.

**Governmental Entity** shall mean an entity at the federal, state, county, city or provincial level.

**May** denotes the permissive in a contract clause or specification. Also see **Should**.

**Microsoft** means the business entity that has entered into the Custom Microsoft Business Agreement with the State of New York.

**Must** denotes the imperative in a contract clause or specification. Also see **Shall**.

**Net Reseller Cost** shall have the same definition as found in the CMBA Section titled "Definitions."

**NYS Holidays** refers to the legal holidays for State Employees in the Classified Service of the Executive Branch, as more particularly specified on the website of the NYS Department of Civil Service. Link to NYS Department of Civil Service's Website: [https://www.cs.ny.gov/attendance\\_leave/index.cfm](https://www.cs.ny.gov/attendance_leave/index.cfm)

**NYS Vendor ID** shall refer to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

**Procurement Services** shall mean a division of the New York State Office of General Services which issues centralized, statewide Contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such Contracts.

**Online Services** shall have the same definition as found in the CMBA Section titled "Definitions."

**Product** shall have the same definition as found in the CMBA Section titled "Definitions."

**Product Terms** shall have the same definition as found in the CMBA Section titled "Definitions."

**Program Agreements** shall mean the following documents attached in Appendix C to the CMBA:

1. Enterprise Agreement Program Agreement
2. Select Plus License Program Agreement (State and Local Government)
3. Academic Select Plus License Program Agreement
4. Campus and School Agreement Program Agreement

**Reference Price** shall have the same definition as found in the CMBA Section titled "Definitions."

**Reseller** shall have the same definition as found in the CMBA Section titled “Definitions.”

**Shall** denotes the imperative in a contract clause or specification. Also see **Must**.

**Should** denotes the permissive in a contract clause or specification. Also see **May**.

## **Section 2 GENERAL TERMS AND CONDITIONS**

### **2.1 APPENDIX A.**

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

### **2.2 APPENDIX B.**

Appendix B, General Specifications (April 2016), attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein. The requirements of Appendix B apply to this Contract between the Contractor and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services provided for in the CMBA.

#### **2.2.1 APPENDIX B MODIFICATIONS.**

The following Appendix B clauses are hereby modified for the purposes of this Contract:

A. Section 22, *Contract Creation/Execution*, is deleted.

B. Subsections c (Product Warranty), f (Workmanship Warranty) and i (Additional Warranties) of Section 54, *Warranties*, are amended to read as follows:

c. RESERVED.

f. RESERVED.

i. No Implied Warranties To the extent permitted by law, these warranties are exclusive and there are no other express or implied warranties or conditions.

C. Subsection c of Section 58, *Limitation of Liability*, is amended to read as follows:

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit or loss of data by the Authorized User, the Contractor, or by others.

D. Subsection i (Restricted Use by Licensee) of Section 60, *Software License Grant*, is amended by adding the following language at the end thereof:

Contractor and Licensee acknowledge that the Microsoft Products under this Contract are subject to the export control laws and regulations of the United States of America and other countries from which Microsoft Products were supplied and in which Microsoft Products are used and agree to abide by those laws and regulations. Licensee acknowledges that Licensee is responsible for obtaining any necessary licenses relating to the export of Microsoft's Products.

E. The first sentence of Section 61, *Product Acceptance*, is deleted and amended to read as follows:

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept Product.

F. Section 64, *Ownership/Title to Project Deliverables*, is deleted and replaced with the following language:

**64. OWNERSHIP/TITLE TO PROJECT DELIVERABLES:**

The Contractor agrees that no development or customization work can be provided pursuant to this Contract.

**2.3 APPENDIX C.**

Appendix C, Contract Modification Procedure, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

**2.4 APPENDIX D.**

Appendix D, NYS Price List, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

**2.5 APPENDIX E.**

Appendix E, Implementation/Transition Plan is hereby expressly made a part of this Contract as fully as if set forth at length herein.

**2.6 APPENDIX F.**

Appendix F, Issue Escalation Plan is hereby expressly made a part of this Contract as fully as if set forth at length herein.

**2.7 APPENDIX G.**

Appendix G, Custom Microsoft Business Agreement (CMBA) is hereby expressly made a part of this Contract as fully as if set forth at length herein. OGS reserves the right during the Contract term to negotiate amendments to the CMBA with Microsoft and incorporate an amended CMBA into this Contract unilaterally, at any time, upon notice to the Contractor. OGS will notify Contractor of any such amendments to the CMBA, and such amended CMBA shall then be deemed incorporated in this Contract as of the date of notification.

## **2.8 APPENDIX H.**

Appendix H, Contractor Information, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

## **2.9 APPENDIX I.**

Appendix I, How to Use and Frequently Asked Questions, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

## **2.10 APPENDIX J.**

Appendix J, Report of Contract Sales, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

## **2.11 APPENDIX K.**

Appendix K, Primary Security and Policy Mandates, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

## **2.12 APPENDIX L.**

Appendix L, Contractor Attestation, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

## **2.13 APPENDIX M.**

Appendix M, Contractor Deficiency Report, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

## **2.14 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY (hereinafter the "Questionnaire")**

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

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the Contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

## **2.15 AUTHORIZED USER RESPONSIBILITIES.**

### **2.15.1 Determination of Compliance with Statutory and Regulatory Requirements.**

It is the responsibility of each Authorized User to evaluate the Contract offerings and determine if an offering complies with the Authorized User's statutory and regulatory requirements prior to acquisition. For a list of selected statutory and regulatory requirements, Authorized Users may refer to Appendix K, Primary Security and Policy Mandates.

### **2.15.2 Note to Authorized Users.**

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

- a statement of need and associated requirements,
- all necessary prior approvals,
- a summary of the Contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase.

### **2.15.3 Data Categorization Study.**

For Authorized User purchases of Online Services other than Office 365, it is recommended that the Authorized User complete a Data Categorization study, consistent with NYS-S14-002 Information



Classification Standard (or successor standard) available at <http://www.its.ny.gov/tables/technologypolicyindex.htm>.

The Authorized User should make a business decision, based on its Data Categorization study results, and/or any applicable Microsoft Product terms or Product documentation, as to the appropriateness of the Online Services solution being considered.

#### **2.15.4 Online Services - Criminal Justice Information (CJI).**

The only Online Service authorized for acquisition under this Contract for use with Criminal Justice Information Services ("CJIS") data is Office 365. OGS will notify Contractor and Authorized Users of any changes in this restriction in the future.

#### **2.15.5 Online Services – Federal Tax Information (FTI).**

Because the CMBA does not contain specific contractual provisions related to the requirements set forth in IRS Publication 1075, Online Services may not be used for the storage and processing of FTI. OGS will notify Authorized Users if this restriction is changes in the future.

#### **2.15.6 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://www.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.

#### **2.15.7 Poor Performance.**

If the Contractor fails to meet the requirements of the Contract, Authorized Users are encouraged to submit a Contractor Deficiency Report as described in Section 3.5, Contractor Non-Compliance with Contract Requirements.

### **2.16 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS.**

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

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 (<http://www.ogs.state.ny.us/purchase/snt/othersuse.asp>).

Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

## **2.17 EXTENSION OF USE.**

This Contract may **not** be extended to additional States or beyond those entities included in the definition of Authorized User.

## **2.18 EXTENSION OF USE COMMITMENT.**

Contractor agrees to honor all orders from State Agencies, Political Subdivisions and others authorized by law (see "Extension of Use" clause), which are in compliance with the pricing, terms, and conditions set forth in this Contract. Any unilateral limitations/restrictions imposed by the Contractor and/or manufacturer on eligible Authorized Users will be grounds for cancellation of the Contract. If this Contract, or any portion thereof, is canceled for this reason, any additional costs incurred by the eligible purchaser will be borne by the Contractor.

## **2.19 CONTRACT TERM.**

The Contract shall commence after receiving all necessary approvals by OGS and shall be deemed effective as of August 1, 2018. The Contract will remain in effect for sixty (60) full calendar months unless it is terminated in accordance with the Contract terms.

If at any time the Contract is canceled, terminated or expires, the Contractor has the affirmative obligation to extend appropriate and reasonable cooperation to assure the orderly transition of Contract services to the subsequent Contractor.

## **2.20 SHORT TERM EXTENSION.**

In the event the replacement Contract has not been issued, the Contract, may be extended unilaterally by the State for an additional period of up to one month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement Contract be issued in the interim.

## **2.21 WARRANTY.**

Contractor warrants that all services performed under the Contract shall be provided in a professional manner in accordance with industry standards. The Authorized User must notify Contractor of any such warranty deficiencies within ninety (90) days from performance of the service that gave rise to the warranty claim.

The Contractor shall pass through all product warranties, performance guarantees or other warranties set forth in the CMBA.

OGS acknowledges that the Product warranties provided to OGS from Microsoft in the CMBA are the applicable warranties for all orders placed with Contractor hereunder. OGS acknowledges that its remedies for breach of Product warranties are provided through the CMBA.

## **2.22 Contractor Requirements and Procedures for Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women.**

### **I. New York State Law.**

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

### **II. General Provisions.**

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

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

### **III. Equal Employment Opportunity (EEO).**

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

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

#### B. Form EEO 100 - Staffing Plan.

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

#### C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")

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

2. Separate forms shall be completed by Contractor and all subcontractors.

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

D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic

characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

#### **IV. Contract Goals.**

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

#### **B. Good Faith Efforts.**

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

(1) A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.

(2) A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

(3) Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.

(4) A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

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

(6) Other information deemed relevant to the request.

#### **V. Fraud.**

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

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

## **2.23 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/default.asp>

Bidder/Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

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

## **Section 3 CONTRACTOR QUALIFICATIONS.**

During the term of the Contract, OGS retains the right, at its sole discretion, to request any information pertaining to the Contractor's ability, qualifications, and procedures used to accomplish all work under this Contract as OGS deems necessary to ensure satisfactory performance.

### **3.1 MICROSOFT CERTIFICATION.**

Contractor shall maintain certification by Microsoft as both a Licensing Solutions Partner (LSP) and as an Authorized Educational Reseller (AER) for the term of the Contract. Contractor must be authorized by Microsoft to provide the entire Microsoft Product line available in the CMBA (though the only Online Services authorized are Office 365, Azure, InTune and Dynamics CRM).

### **3.2 FINANCIAL STABILITY.**

Contractor affirms that it has the financial stability to service this Contract. If requested by OGS, Contractor must provide current financial statements within five (5) business days of request. The State reserves the right to request additional documentation from the Contractor and to request reports on financial stability from independent financial rating services at the expense of the Contractor.

### **3.3 SALES VOLUME.**

If requested, Contractor must document its ability to service a Contract with sales volume similar to the scope of this Contract. Proof of sales history may be requested and must be provided within five (5) business days of request or such other period specified by Procurement Services. Proof of sales history may be presented as invoices issued within the past three (3) years that show the name of the ordering entity, Contractor name, product ordered and invoice amount.

### **3.4 CONTRACTOR RESPONSIBILITIES.**

#### **3.4.1 Reseller of Record.**

Contractor shall be the Reseller of record for all Enrollments/Affiliate Registration Forms under the former OGS Reseller Contract (PS67650), except as notified otherwise by OGS, and under this Contract. All billings due on or after the effective date of this Contract shall be issued by and paid to Contractor. Contractor acknowledges this responsibility and agrees to cooperate fully to facilitate this transition, including executing any OGS-requested waivers of Microsoft Change of Channel Partner Form timeframes.

#### **3.4.2 How to Use and Frequently Asked Questions.**

Contractor agrees to assist OGS in maintaining the "How to Use and Frequently Asked Questions" document attached as Appendix I for Authorized Users to consult in using the Contract throughout the life of the Contract. Contractor acknowledges the right of OGS to revise or direct that revisions be made by Contractor to the "How to Use and Frequently Asked Questions" document and Contractor shall fully comply with such directives. Such revisions shall not require a formal amendment to this Contract, and they shall be deemed incorporated in the Contract as of the date of OGS notification to the Contractor.

#### **3.4.3 Implementation/Transition Plan.**

Contractor shall adhere to the Implementation/Transition Plan attached hereto as Appendix E, as the same may be revised from time to time during the term of this Contract.

Contractor acknowledges the right of OGS to require that revisions be made to the "Implementation/Transition Plan" document that are necessary to comply with Microsoft processes, or that are otherwise directed by OGS during the term of this Contract, and Contractor shall fully comply with such directives. Such revisions shall not require a formal amendment to this Contract, and they shall be deemed incorporated in the Contract as of the date of OGS notification to the Contractor.

### **3.4.4 Issue Escalation Plan.**

Contractor shall adhere to the Issue Escalation Plan attached hereto as Appendix F, as the same may be revised from time to time during the term of this Contract.

Contractor acknowledges the right of OGS to require that revisions be made to the "Issue Escalation Plan" document that are necessary to comply with Microsoft processes, or that are otherwise directed by OGS during the term of this Contract, and Contractor shall fully comply with such directives. Such revisions shall not require a formal amendment to this Contract, and they shall be deemed incorporated in the Contract as of the date of OGS notification to the Contractor.

### **3.4.5 NYS Price List.**

Contractor shall use Appendix D, NYS Price List, as the price list format. At all times during the Contract term, each item on the NYS Price list must have a unique Contract SKU (unique identifier) in the "Contract SKU" column of the NYS Price List. The unique Contract SKU shall be created by combining the "Microsoft Model / Part Number" and the "Product Description" fields, as provided by Microsoft. The price listed on the NYS Price List for each Contract SKU shall be a not-to-exceed price. Contractor may offer more favorable pricing to Authorized Users for particular transactions.

Contractor shall update the NYS Price List document on a monthly basis, submitting all required documentation to OGS by the 10th of each month, using Appendix C, Contract Modification Procedure to reflect updated Net Reseller Cost, Reference Price and Net NYS Price. Net NYS Price for each Contract SKU shall be calculated by applying the applicable Program Agreement Cost-Minus Percentage to the new Net Reseller Cost set by Microsoft. Such updates are required to include not only price increases based on increased Net Reseller Cost, but also price decreases based on decreased Net Reseller Cost. Contractor shall also update the NYS Price List to add any new Products that become available and fall within the scope of the CMBA, and delete any Products that have been discontinued by Microsoft.

Contractor may also submit a request for Contract modification on an as-needed basis for price decreases per Contract SKU, or Cost-Minus Percentage increases.

The NYS Price List shall be updated for each required monthly update and each as-needed Contract modification so that the NYS Price List remains current. See Appendix C, Contract Modification Procedure for more information. Any price list update without an accurate and complete NYS Price List or other required documentation shall be rejected. OGS reserves the right to unilaterally modify the NYS Price List or to request an updated NYS Price List from the Contractor at any time.

### **3.4.6 Expiration of Contract Term/Transition.**

No later than 45 calendar days before the end of the term of this Contract, Contractor shall provide to OGS a list of all unexpired Enrollments/Affiliate Registration Forms executed under the CMBA. Such list shall be in a form acceptable to OGS and shall, at minimum, include the following: Microsoft Enrollment/Affiliate Registration Form number, Authorized User name, Product name, Microsoft part number, Contractor SKU, quantity, and term for each individual Product listed under the Enrollment/Affiliate Registration Form number. OGS reserves the right to request a list of all unexpired



Enrollments/Affiliate Registration Forms executed under the CMBA or for which Contractor is the Reseller of record under an OGS centralized contract, including prices paid for all orders under each unexpired Enrollment/Affiliate Registration Form, at any time during the Contract term.

If at any time the Contract is canceled, terminated or expires, the Contractor has the affirmative obligation to ensure the expeditious and orderly transition of Contract services and all unexpired Enrollments/Affiliate Registration Forms to any subsequent Contractor. This may include executing any OGS-requested waivers of Microsoft Change of Channel Partner Form timeframes.

### **3.4.7 Enrollment Pricing.**

Except for Online Services designated in the Product Terms as being exempt from fixed pricing, pricing quoted to Authorized Users for each Product ordered under an Enrollment (Enterprise Enrollment, Enterprise Subscription Enrollment, Enterprise Server and Cloud Enrollment or Enrollment for Education Solutions) shall be fixed throughout the applicable initial or renewal Enrollment term (i.e., pricing quoted to Authorized Users cannot be increased on a year by year basis during the life of the initial or renewal term of the Enrollment). Pricing for each Product ordered under an Enrollment may be reestablished at the beginning of the renewal Enrollment term. Notwithstanding the foregoing, a change in Reseller during the term of an Enrollment may result in a change in pricing based on the new Reseller's Contract pricelist.

### **3.4.8 Authorized User Refunds.**

In the event of termination of service for any reason, Contractor will reimburse Authorized Users for any prepaid amount that has been applied to the portion of the service that has been terminated. The refund may be in the form of credit or cash, which will be decided by the Authorized User.

### **3.4.9 Service Credit related to Online Services.**

As described in Section 4.11, Service Credits for Online Services, of the CMBA, Contractor shall, on behalf of Authorized Users, facilitate and submit any claims for service credit for Online Services to Microsoft. In the event Microsoft grants a claim for service credit, the Authorized User will receive that service credit directly from the Contractor.

### **3.4.10 Product Quotes.**

Contractor must provide quotes for Product within a maximum of two (2) business days after receiving a request for a quote for Product listed on the NYS Price List. Contractor must honor all quotes for thirty (30) calendar days, regardless of any price increases.

### **3.4.11 Report of Contract Sales.**

Contractor shall submit to OGS Appendix J, Report of Contract Sales, including total sales to Authorized Users, no later than fifteen (15) business days after the close of each calendar quarter. If the Contract term 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.

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the contact listed on the OGS website and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The format of Appendix J, Report of Contract Sales 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.

### **3.4.12 Contractor Responsibility to Inform Authorized Users.**

Contractor shall have the following responsibilities in addition to all other responsibilities under the Contract:

- a. It is essential that Authorized Users fully understand the nature of Products being offered or provided under the Contract prior to issuing a Purchase Order. Accordingly, Contractor is required to fully answer any questions an Authorized User may have regarding the Product and upon request, provide a full written description of the Product.
- b. Contractor shall provide Microsoft-specific available information, as appropriate, to the Authorized User in order to facilitate a determination as to whether an offering complies with the Authorized User's statutory and regulatory requirements and is within the scope of this Contract. This includes, but is not limited to, Microsoft's data protection and privacy protocols and protocols for Authorized User transfer of data at the end of the Enrollment/Affiliate Registration Form term.
- c. Upon request of the Authorized User, the Contractor shall provide for all Online Services, a chart of all roles and responsibilities pertaining to security, data ownership, encryption, and data location, including backup.
- d. Contractor must provide to the Authorized User a copy of the CMBA at the time of an executed Enrollment/Affiliate Registration Form between the Contractor and the Authorized User.
- e. Contractor shall provide and maintain a toll-free telephone and/or online functionality for customer support within Attachment 2, Administrative Proposal Forms.

### **3.4.13 Program Agreements, Enrollments, Affiliate Registration Forms and Participation Agreements.**

As part of the CMBA between OGS and Microsoft, Custom Program Agreements, Enrollments, Affiliate Registration Forms, Consortia Agreements, Participation Agreements and Participation Forms have been established for use by the Authorized Users of this Contract. Contractor must utilize these custom forms and documents for transactions under this Contract.

## **3.5 CONTRACTOR NON-COMPLIANCE WITH CONTRACT REQUIREMENTS.**

Contractor deficient performance or other non-compliance with contractual obligations may result in a Contractor Deficiency Report (CDR). At the discretion of OGS or the Authorized User, a CDR may be

filed or submitted at any time by OGS or the Authorized User to identify a Contractor performance issue or other non-compliance with contractual requirements. A template for the CDR is set forth in Appendix M, Contractor Deficiency Report. This CDR process does not impair or limit any other rights OGS or an Authorized User has under the Contract, including, but not limited to, termination for convenience.

When an Authorized User identifies a performance issue or other non-compliance with contract requirements by a Contractor, the Authorized User is encouraged to alert OGS to the deficiency or non-compliance using the CDR, where it will be recorded centrally.

OGS shall provide the Contractor with a copy of each CDR filed. Upon the filing of three Contractor Deficiency Reports within any twelve-month period of the Contract, OGS will, upon notice to the Contractor, commence a Contractor Status Review.

During the Contractor Status Review, Contractor shall continue to fulfill all contractual obligations, provided, however, that OGS reserves the right to issue a suspension notice. During the suspension period the Contractor may not be eligible to receive new orders. The issuance of a suspension notice shall not affect any other rights either OGS or an Authorized User has under the Contract.

After OGS provides the Contractor with notice, it will provide the Contractor with an opportunity to be heard at the Contractor Status review. The Contractor Status Review shall include a discussion with the Contractor regarding the specific incidents as recorded in the CDRs. The time and manner of these discussions shall be at OGS's sole discretion. At the conclusion of its discussions with the Contractor, OGS may, at its sole discretion, make a determination that the Contractor has materially breached the Contract and may terminate the Contract.

In the alternative, OGS may direct that the Contractor develop an improvement and monitoring plan ("Plan"), subject to OGS approval, to correct the service issues identified in the CDRs. The Plan shall set forth the actions Contractor is required to take to address the issues identified in the CDRs. The Plan shall specify the level of documentation Contractor shall provide to OGS as to its compliance with the Plan and a timeline for submission of such documents.

OGS shall in its sole discretion prescribe the length of time the Contractor shall be allowed to address the issues. OGS, in establishing the length of time, shall consider the severity of the deficiencies or non-compliance. The Plan will be issued in a form and manner determined by OGS. At the end of the time period specified in the Plan, OGS shall review the Contractor's actions and documentation submitted to assess compliance with the Plan. Contractor's failure to comply with the Plan shall constitute a material breach of the Contract and may result in termination of the Contract.

### **3.6 REPLACEMENT CONTRACTOR.**

In the event that OGS terminates this Contract, OGS reserves the right to then make a contract award to the RFP 23116 Bidder with the next highest Final Cost Proposal Score that is willing to accept a Contract award. The new Contract awardee will be required to update its original Cost proposal, which shall include any decreases in Net Reseller Cost and which may include any increases in Net Reseller Cost that occurred after July 12, 2018, the deadline for Submission of Bid and Bid Opening of RFP 23116. Prices will increase or decrease by the Contractor applying the applicable Program Agreement Cost-Plus/Cost-Minus Percentage, included in the Contractor's original Bid submission, to the then

current Net Reseller Cost set by Microsoft for each SKU. Under no circumstances will the new Contract awardee be permitted to increase the Cost-Plus Percentages or decrease the Cost-Minus Percentages included with its initial Bid submission. Any changes in pricing attributable to a change in Net Reseller Cost are required to be attested to by the Contractor via Appendix L, Contractor Attestation.

**Section 4 Pricing**

**4.1 NYS CONTRACT PRICE.**

The pricing under this Contract is established on a Cost-Minus basis. The Cost-Minus Percentage applied to the Net Reseller Cost is the maximum Net NYS Price to the State of New York for each Contract SKU. Contractor can offer greater Cost-Minus Percentages at any time. The following are the Microsoft Program Agreements, Microsoft Price Levels and Contractor Cost- Minus Percentage(s):

<b>MICROSOFT PROGRAM AGREEMENT</b>	<b>MICROSOFT PRICE LEVEL</b>	<b>COST-MINUS PERCENTAGE</b>
1. Enterprise Agreement Program Agreement	Level D	-1.630000%
2. Select Plus License Program Agreement (State and Local)	Level D	-1.630000%
3. Campus and School Agreement Program Agreement	Level A, B, C, D (varies by organization counts)	-3.940000%
4. Academic Select Plus Program Agreement	Level A	-1.630000%

The Net NYS Price to the State of New York for each Contract SKU shall be all-inclusive and shall cover all shipping, handling, insurance, associated delivery charges, and all other costs. No additional charges may be billed to an Authorized User including, but not limited to, processing or other fees for NYS Procurement Card purchases.

Cost-Minus Percentage increases or price decreases by the Contractor will be permitted at any time. Cost-Minus Percentage decreases by the Contractor shall not be allowed and are specifically excluded from the terms and conditions of this Contract.

**4.2 BEST PRICING.**

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, after consultation with the Contractor, shall be reduced to the lower price.

#### **4.3 NET RESELLER COST VERIFICATION.**

Upon request from OGS, Contractor will disclose the price it pays to Microsoft for Products sold under the Contract.

### **Section 5 ADDITIONAL TERMS AND CONDITIONS**

#### **5.1 CENTRALIZED CONTRACT MODIFICATIONS.**

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. OGS reserves the right to revise Appendix C, Contract Modification Procedure during the Contract term, and at its sole discretion, without seeking a formal Contract amendment. OGS will notify Contractor of any such revisions, and such revisions shall then be deemed incorporated in this Contract as of the date of notification.

#### **5.2 PRICE INCREASES AND DECREASES.**

During the term of the Contract, price increases and decreases shall be processed in accordance with Appendix C, Contract Modification Procedure. Contract prices will increase or decrease by the Contractor applying the applicable Program Agreement Cost-Minus Percentage to the new Net Reseller Cost set by Microsoft. Net Reseller Cost decreases must be reflected in any NYS Price List updates. Any change in pricing attributable to a change in Net Reseller Cost are required to be attested to by the Contractor via Appendix L, Contractor Attestation and may only take effect upon OGS approval and posting to the OGS website.

Contractor may submit a request to decrease prices on the NYS Price List at any time during the Contract term. For individual transactions, Contractor may offer more favorable prices than those listed on the NYS Price List at any time.

Cost-Minus Percentage increases or price decreases by the Contractor will be permitted at any time. Cost-Minus Percentage decreases by the Contractor shall not be allowed and are specifically excluded from the terms and conditions of this Contract.

#### **5.3 CONTRACT ADMINISTRATOR.**

For the duration of the Contract, Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five (5) business days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the individual shown on the front of the Contract Award Notice. On Appendix H, Contractor Information, Contractor has designated the

dedicated Contract Administrator who shall serve throughout the duration of the Contract term to support the updating and management of the Contract on a timely basis.

The Contract administrator must have a minimum of five (5) years of experience administering contracts. The Contract administrator also must have experience managing large scale accounts.

Contractor must notify OGS within five (5) business days if its Contract administrator changes, and provide an interim contact person until the position is filled. The interim contact person and the replacement Contract Administrator must have a minimum of five (5) years of experience administering contracts, and must also have experience managing large scale accounts. OGS reserves the right to reject a replacement Contract Administrator proposed by the Contractor. Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail using Appendix C, Contract Modification Procedure.

#### **5.4 INTERNET ACCESS TO CONTRACT AND PRICING INFORMATION.**

Access by Authorized Users to Contract terms and pricing information shall be made available and posted on the OGS website.

#### **5.5 PERFORMANCE AND BID BONDS.**

The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the Contract term.

#### **5.6 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 any Products it offers that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities.

#### **5.7 INSURANCE.**

Contractor shall procure and maintain in force at all times during the term of the Contract, at its sole cost and expense, the insurance detailed below. Contractor shall provide proof of all insurance after renewal or upon request according to the timelines set forth in Section A.13 below.

Contractor shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance as required herein. All insurance required herein shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements herein should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below

“A-,” Class “VII,” the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements herein.

Contractor shall deliver to OGS evidence of the insurance required by this Contract in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OGS does not, and shall not be construed to, relieve Contractor of any obligations, responsibilities or liabilities under this Contract.

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

**A. General Conditions Applicable to Insurance.**

All policies of insurance required by this Contract shall comply with the following requirements:

**1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from Contractors are specified in Paragraph B Insurance Requirements below.

**2. Policy Forms.** Except as otherwise specifically provided herein, all policies of insurance required herein shall be written on an occurrence basis.

**3. Certificates of Insurance/Notices.** Contractor shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section B below. Certificates shall reference the award number and shall name The New York State Office of General Services, Procurement Services, 38th Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Contract;
- Refer to this Contract by award number;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractor should refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire

insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractor from submitting the requested insurance documentation.

**4. Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.

**5. Breach for Lack of Proof of Coverage.** The failure to comply with the requirements herein at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.

**6. Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. Contractor shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator, shall be provided upon request.

**7. Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required herein and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.

**8. Waiver of Subrogation.** For all liability policies and the workers' compensation insurance required below, the Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the



Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

**9. Additional Insured.** The Contractor shall cause to be included in each of the liability policies required below, ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage), naming as additional insureds: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section B below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. If Contractor is self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to herein had the Contractor obtained such insurance policies.

**10. Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

**11. Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Contract.

**12. Policy Renewal/Expiration.** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Contract shall be delivered to OGS. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.

**13. Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain insurance documents must be provided to the OGS Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days from request or renewal, whichever is later;
- For information on self-insurance or self-retention programs: 15 calendar days from request or renewal, whichever is later;

- For other requested documentation evidencing coverage: 15 calendar days from request or renewal, whichever is later;
- For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal, whichever is later; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: 5 business days from receipt.

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

**B. Insurance Requirements**

Contractor shall obtain and maintain in full force and effect, throughout the term of this Contract, at its own expense, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
<b>Commercial General Liability</b>	Not less than \$2,000,000 each occurrence	As provided in section A.13 above.
General Aggregate	\$2,000,000	
Products – Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Medical Expenses Limit	\$5,000	
<b>Business Automobile Liability Insurance</b>	Not less than \$2,000,000 each occurrence	
<b>Professional Errors &amp; Omissions</b>	Not less than \$2,000,000 each claim	
<b>Crime Insurance</b>	Not less than \$50,000 each occurrence	
<b>Workers’ Compensation</b>		
<b>Disability Benefits</b>		

**1. Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, and liability assumed in a contract (including the tort liability of another assumed in a contract).

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under the Contract;
- Cross liability for additional insureds;
- Products/completed operations for a term of no less than one (1) year, commencing upon acceptance of the work, as required by the Contract;

**2. Business Automobile Liability Insurance:** Such insurance shall cover liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of this Contract.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor must: (i) obtain Business Automobile Liability Insurance as required by this Contract, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements herein and provide proof of such coverage to OGS in accordance with the insurance requirements of this Contract.

**3. Professional Errors & Omissions Insurance:** Contractor is required to maintain during the term of this Contract, and as otherwise required herein, Professional/Technology Errors & Omissions Insurance.

- Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract.

- If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that the continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than one (1) year from the time work under this Contract is completed. Written proof of this extended reporting period or evidence of your ability to purchase at the completion of your work must be provided to OGS upon request.
- The policy shall cover professional misconduct or lack of ordinary skill.
- The policy shall provide coverage for damages arising from computer related services including but not limited to the following:
  1. Distribution or maintenance; and
  2. Manufactured, distributed, licensed, marketed or sold software or online services.

**4. Crime Insurance:** If, during the term of this Contract, the Contractor plans to enter the premises of an Authorized User to fulfill its obligation under this Contract, the Contractor shall maintain, during the term of the Contract, Crime Insurance on a “loss sustained form” or “loss discovered form,” and coverage must include the following:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Contractor’s insurer as a result of the Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Contractor as a result of this Contract.
- The policy shall include coverage for third party fidelity and name “The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an Authorized User and their officers, agents, and employees” as “Loss Payees” for all third party coverage secured. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.
- The policy shall include coverage for computer crime/fraud.

**5. Workers’ Compensation Insurance and Disability Benefits Requirements.** Sections 57 and 220 of the New York State Workers’ Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers’ compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a contract renewal.** Proof of workers’ compensation and disability benefits coverage, or proof of exemption must be submitted to OGS at the time of policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers’ Compensation Board. **An ACORD form is not acceptable proof of New York State workers’ compensation or disability benefits insurance coverage.**

Proof of Compliance with Workers’ Compensation Coverage Requirements:

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- Form C-105.2 (9/07 or later), Certificate of Workers' Compensation Insurance, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- Form SI-12, Certificate of Workers' Compensation Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- Form DB-120.1, Certificate of Disability Benefits Insurance, sent to OGS by the Contractor's insurance carrier upon request; or
- Form DB-155, Certificate of Disability Benefits Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

## 5.8 NOTICES.

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

23116 Contract Administrator  
Office of General Services  
New York State Procurement Services  
38th Floor Corning Tower  
Empire State Plaza  
Albany, NY 12242

and (ii) if to Contractor, addressed to Contract Administrator at the address included in Appendix H – Contractor Information. Either Party 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.

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

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

#### **5.9 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.

#### **5.10 SEVERABILITY.**

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

#### **5.11 ENTIRE AGREEMENT.**

This Contract, including all appendices, constitutes the entire agreement between the Parties hereto 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 both parties hereto, except as otherwise provided herein.

**THIS PAGE LEFT INTENTIONALLY BLANK**

**Signature Page**

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

**DELL MARKETING, L.P.**

**THE PEOPLE OF THE STATE OF NEW YORK**

Signature:

Signature:

Printed  
Name:

Printed Name:

Title:

Title:

Company  
Name:

Date:

Date:



