

FIRST AMENDMENT TO CONTRACT NUMBER PS68742

TENEX SOFTWARE SOLUTIONS, INC.

GROUP 76000, AWARD 23167

ELECTRONIC POLL BOOK SYSTEMS (Statewide)

THIS FIRST AMENDMENT, (the “First Amendment”) is made between the People of the State of New York, acting by and through the Commissioner 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, pursuant to authority granted under New York State Finance Law §163, and Tenex Software Solutions, Inc. (hereinafter “Contractor”), with its principal place of business at 5402 W Laurel Street, Suite 206, Tampa FL 33607. The foregoing are collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, OGS entered into a Centralized Contract for the acquisition of Electronic Poll Book Systems, (hereinafter referred to as the “Contract” or “Contract No. PS68742”) with Tenex Software Solutions, Inc. on August 21, 2019; and

WHEREAS, Contract No. PS68742 provided for an initial term from August 21, 2019 through and including August 14, 2024, and an option for an extension of the initial term was provided in Section 3.1, *Contract Term and Extensions*, as follows:

At the State’s option, the Contract may be extended for an additional 5 years, in increments as deemed to be in the best interest of the State.

WHEREAS, the Parties now wish to amend the Contract to extend the Contract term through and including August 14, 2029, pursuant to Contract Section 3.1 *Contract Term and Extensions*, and to amend other terms of the Contract, as set forth below;

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

1. TERM

Pursuant to Section 3.1 *Contract Term and Extensions*, the term of the Contract is extended for five (5) years through and including August 14, 2029 or until a new contract for Electronic Poll Book Systems is awarded, whichever occurs first.

2. DEFINITIONS

Section 1.5 *Definitions* is amended to delete the definition for “New York State Holidays (NYS Holidays)” in its entirety and replace it with the following new definition:

1.5 DEFINITIONS.

Term	Definition
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New York State Holidays (NYS Holidays)	The legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year's Day; Dr. Martin Luther King, Jr. Day; Washington's Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans' Day; Thanksgiving Day; and Christmas Day.
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3. NYS COMPTROLLER APPROVAL

The Contract is amended to add the following new Section, 3.1.1 *NYS Comptroller Approval*, to read as follows:

3.1.1 NYS COMPTROLLER APPROVAL.

In accordance with Section 112 of the State Finance Law, this Contract shall not be valid, effective or binding upon the State until 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.

4. CONFLICT OF TERMS

Section 3.5 *Conflict of Terms* of the Contract is deleted in its entirety and replaced with the following new Section 3.5 *Conflict of Terms*, to read as follows:

3.5 CONFLICT OF TERMS.

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

1. Appendix A *Standard Clauses for New York State Contracts*;
2. This First Amendment;
3. Appendix C *Federal Funding Agency Mandatory Terms and Conditions*;
4. Attachment 2 *Contractor's Approval Package from SBOE*, composed of an approval notification from SBOE, an approved vendor application and SBOE Vendor Assessment Report, and any other SBOE evaluation reports;
5. Attachment 1, *Board of Elections Application for Approval*;
6. Contract and Appendix F, *Contractor's Insurance Requirements*;
7. Appendix B *General Specifications*;
8. All other appendices and attachments to this Contract, including those added by a Contract Amendment;
9. Attachment 3 *Contractor's Application Submission to SBOE*, composed of all vendor submissions, artifacts and documents submitted to the SBOE during the application process, including completed application.

5. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

Section 3.22 *Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- And Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women*, of the Contract is deleted in its entirety and replaced with the following new section 3.22 *Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- And Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women*, to read as follows.:

3.22 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN.

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
RESERVED.
- 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.

6. ENVIRONMENTAL SUSTAINABILITY AND NYS EXECUTIVE ORDER NUMBER 22

Section 3.27 *Environmental Attribute And NYS Executive Order Number 4* of the Contract is deleted in its entirety and replaced with the following new Section 3.27 *Environmental Sustainability and NYS Executive Order Number 22*, to read as follows:

3.27 ENVIRONMENTAL SUSTAINABILITY AND NYS EXECUTIVE ORDER NUMBER 22.

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. 22 (Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 22, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 22 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.

7. CONTRACT DOCUMENTS; ELECTRONIC FORMAT

The Contract is amended to add the following new Section, 3.41 *Contract Documents; Electronic Format*, to read as follows:

3.41 CONTRACT DOCUMENTS; ELECTRONIC FORMAT.

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

8. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The Contract is amended to add the following new Section, 4.12 *Prohibition On Contracting for Certain Telecommunications and Video Surveillance or Equipment*, to read as follows:

4.12 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

In accordance with Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019, under this Contract or any subcontract, Contractor or Subcontractor shall not provide to the State or Authorized User any equipment, system, or service that uses covered telecommunications equipment or services, as defined by the NDAA, as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver, as set forth in the NDAA and the rules and regulations promulgated thereunder.

9. APPENDIX A

Appendix A *Standard Clauses for New York State Contracts*, included in the original Contract, is deleted in its entirety and replaced with the Appendix A dated June 2023, attached hereto, which is expressly made a part of this Contract Amendment 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).

10. APPENDIX C

The Contract is amended to add Appendix C *Federal Funding Agency Mandatory Terms and Conditions* dated October 2023, attached hereto, which is expressly made a part of this Contract Amendment as fully as if set forth at length herein.

Appendix C *Contract Modification Procedure*, included in the original Contract, is therefore deemed to be titled Appendix I *Contract Modification Procedure*, within the Appendix and in any references to the *Contract Modification Procedure* within the Contract.

11. APPENDIX G

Appendix G *How to Use the Electronic Poll Book Systems Contract*, included in the original Contract, is deleted in its entirety and replaced with the Appendix G dated December 2023, attached hereto, which is expressly made a part of this Contract Amendment as fully as if set forth at length herein. All references in the Contract to Appendix G shall be deemed to reference Appendix G, *How to Use the Electronic Poll Book Systems Contract* (December 2023).

12. SEVERABILITY

In the event that any one or more of the provisions of this First 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 First Amendment, which shall then be construed as if such unenforceable provision had never been written or was never contained in this First Amendment.

13. Except as herein modified, all other terms of Contract PS68742 shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this First Amendment being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this First Amendment, Appendix A *Standard Clauses For New York State Contracts* (June 2023), Appendix B *General Specifications* (April 2016), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

CONTRACTOR

Signature: Ravi Kallam
 Printed Name: Ravi Kallam
 Title: President
 Date: 02/12/2024
 Company Name: Tenex Software Solutions, Inc.
 Federal ID: 59-3647858
 NYS Vendor ID: 1100232959

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

Signature: Maureen Younkin
 Printed Name: Maureen Younkin
 Title: CMS 3
 Date: 5/29/24
Office of General Services

**NEW YORK STATE OFFICE OF THE STATE
COMPTROLLER**



NOTICE: This First Amendment becomes effective upon OSC approval. OGS will then post a notification to its website in the form of a Contract Award Notification Update.



Contract

PS68742

THIS CONTRACT (hereinafter "Contract") for the acquisition of Electronic Poll Book Systems 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 TENEX SOFTWARE SOLUTIONS, INC. (hereinafter "Contractor"), with offices at 5402 W LAUREL STREET, SUITE 206, TAMPA, FL 33607. The foregoing are collectively referred to as the "Parties."

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

WHEREAS, OGS has identified a need by New York State Authorized Users for Electronic Poll Book (E-Poll Book) Systems, to allow implementation of E-Poll Book Systems for use at Early Voting locations as well as Election Day polling places in 2019 and future elections, as further described herein; and

WHEREAS, in the June 24, 2019 edition of the New York State Contract Reporter, OGS advertised the availability of a Solicitation, referred to as Solicitation 23167 (hereinafter the "Solicitation") for qualified vendors of E-Poll Book Systems, as required by New York State Economic Development Law; and

WHEREAS, the Solicitation set forth the minimum requirements that a Contractor must meet to be eligible for consideration to receive an award; and

WHEREAS, Contractor submitted a proposal in response to the Solicitation, as the same was amended through the procurement process; and

WHEREAS, the State evaluated Contractor's proposal and determined that the Contractor submitted a responsive proposal, is a responsible vendor and that the Contractor's not to exceed pricing is reasonable; and

WHEREAS, the Contractor agrees to the terms and conditions set forth in this Centralized Contract, referenced as PS68742; and

WHEREAS, the Contractor is willing to provide the Products 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 Procedures*
- Appendix D - *Contractor Information*
- Appendix D.1 - *Administrative Update Form*
- Appendix E - *NYS Contract Price List*
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- Appendix F - *Contractor's Insurance Requirements*
- Appendix G - *How to Use the Electronic Poll Book Systems Contract*

Appendix G.1 - Request For Quotes Template
Appendix G.2 - RFQ Financial Response Template
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ATTACHMENTS

Attachment 1 – Board of Elections Application for Approval
Attachment 2 - Contractor's Approval Package from SBOE
Attachment 3 - Contractor's Application Submission to SBOE

SECTION 1 INTRODUCTION

1.1 OVERVIEW AND PURPOSE.

This Contract is a statewide centralized contract to acquire Electronic Poll Book (E-Poll Book) Systems and related services, accessories, consumables, training, and Maintenance as specified herein for all Authorized Users eligible to purchase through this Contract.

In March of 2019, NYS passed legislation to allow for Early Voting and the use of E-Poll Book Systems, and NYS intends to implement the E-Poll Book Systems for use at Early Voting locations as well as Election Day polling places in 2019 and future elections. This Contract will allow the individual New York State County Boards of Elections (CBOEs) to procure E-Poll Book Systems either through a competitive Request for Quotes (RFQ), or by submitting a Purchase Order. Each CBOE will be responsible for the purchase of their own Equipment, and the implementation of the System, including training and support.

This Contract outlines the procedures and methods used by Authorized Users, OGS, and Contractors to provide Authorized Users with a method for procuring E-Poll Book Systems. All Contractors will have the same terms and conditions for the duration of the Contract thus providing a fair and level playing field across the E-Poll Book System marketplace. It is highly recommended that Authorized Users procure E-Poll Book Systems via a Request for Quotes (RFQ).

1.2 SCOPE.

The NYS Board of Elections (SBOE) must approve any E-Poll Book System before it can be used by a CBOE in New York State. Contractor cannot sell any E-Poll Book System that has not been approved by the SBOE under this Contract. Attachment 1, *Board of Elections Application for Approval* has been included as a reference for the requirements as set forth by the SBOE.

1.2.1 Products in Scope.

Product shall be new, factory produced, assembled for the first time, and may contain new and/or recycled parts or components that have been fully inspected, tested and fully meet required Product performance specifications. Product must be newly serialized and the Authorized User must be the first end user of the Product. The Products must be commercially released Products and available for purchase through the Contractor's normal marketing channels. Alpha, beta, experimental or unannounced Equipment is outside the scope of this Contract. No Products at End-of-Life or within six months prior to End-of-Life are to be sold, except with prior written approval by the Authorized User.

1.2.1.1 E-Poll Book Systems and Related Products.

Only the Contractor's E-Poll Book System(s) as approved by the SBOE will be available for purchase under State contract by a CBOE.

Ancillary or related Products, as approved by SBOE, meant to enhance the SBOE approved E-Poll Book System are authorized for acquisition under this Contract. This may include optional upgrade items, ancillary Products, consumables, Training Services and Support Services.

All references to E-Poll Book System(s) shall be meant to include E-Poll Book Systems and Related Products.

1.3 OUT OF SCOPE.

The following items are out of Scope of the Contract:

- E-Poll Book Systems sold through other OGS Centralized Contracts
- Part/Stock Numbers that relate to blocks of hours
- Refurbished/remanufactured Equipment
- voting machines and/or any e-voting machines

1.4 ESTIMATED QUANTITIES.

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

Numerous factors could cause the actual quantities of Products purchased under the Contract to vary substantially from the estimates in Solicitation 23167. Such factors include, but are not limited to, the following:

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

Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates provided in Solicitation 23167.

Counties may decide to implement E-Poll Book Systems in part, in whole, or not at all, and this Contract does not guarantee any volume of sales.

1.5 DEFINITIONS.

Capitalized terms used in this Contract shall be defined according to Appendix B, Definitions, or as below:

Term	Definition
Authorized User Agreement	Authorized User Agreement shall mean the document memorializing the Contractor's obligations with respect to a given transaction with an Authorized User.
Bidder Submission	The complete response to Solicitation 23167 submitted by a Bidder to provide Products described in the Solicitation.
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State Holidays or Federal Holidays.
Business Entity	Any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
CBOE	New York State County Boards of Election.
Continental United States (CONUS)	The 48 contiguous States, and the District of Columbia.
Contract Term	The initial term of the Contract and any renewals, or extensions, or both.
Data Breach	Acquiring of information by a person without valid authorization or through unauthorized acquisition.
Days	Unless otherwise specified reference to days in this Contract shall mean Business Days, not Calendar Days.
Device	A piece of electronic Equipment (such as a tablet, bar-code scanner, printer, or portable hot spot) adapted for a particular purpose. See also "Equipment."
Discount	An allowance, reduction or deduction from a selling price or list price extended by a seller to a buyer in order for the net price to become more competitive.
Early Voting	An option available to the counties under NYS law which allows voters to cast their selections prior to Election Day in predetermined locations specified by the CBOE.
Election Day	A day legally established for the election of public officials.
Electronic Poll Book (E-Poll Book)	An electronic list (as opposed to a paper list) of the names and addresses of voters. It is used to check-in voters as they appear to vote and to attribute voting credit to that particular voter's record.

Term	Definition
Electronic Poll Book System (EPBS)	Includes all Software (e.g. operating systems, vendor applications, etc.) and connected Hardware (e.g. electronic poll books, laptops, and peripherals including scanners, printers, signature pads, routers, servers, removable media devices, chargers, batteries, etc.), configured to support the creation of a computer generated registration list of voters for use during elections.
End-of-Life (EOL)	When a Product is no longer being marketed or sold.
Equal Employment Opportunity (EEO)	Policies and procedures of the jurisdiction to ensure non-discrimination against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status.
Equipment	An all-inclusive term which refers either to individual Devices or to a complete data processing System or subsystem, including its Hardware and operating Software (if any). See also "Device," and "Hardware."
General Services Administration (GSA)	The department within the U.S. government that is responsible for procurement of goods and services.
Government Entity	A federal, state, municipal entity or tribal government located in the United States.
Hardware	The physical aspect of E-Poll Book Systems. Hardware shall also include "Device" and "Equipment."
Maintenance	The upkeep of a Product that neither adds to its permanent value nor prolongs its intended life appreciably, but instead keeps it in an efficient operating condition.
Mandatory	Refers to items or information that the State has deemed that a Contractor must submit as compulsory, required and obligatory. These items or information are noted as such, or the requirements may be phrased in terms of "Must" or "Shall".
May	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should" and "Will."
Minority and/or Woman-Owned Business (MWBE)	A business certified with Empire State Development (ESD) as a Minority and/or Woman-Owned Business.
Must	Denotes the imperative in a Contract clause or specification. Means required, being determinative/Mandatory, as well as imperative. Also see "Shall."
National Institute of Standards and Technology (NIST)	The federal technology agency that works with industry to develop and apply technology, measurements, and standards. http://www.nist.gov
Network	A group of two or more Devices that can communicate.
New York State Board of Elections (SBOE)	The State Board of Elections is the bipartisan agency vested with the responsibility for administration and enforcement of all laws relating to elections in New York State.

Term	Definition
New York State Holidays (NYS Holidays)	The legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.
New York State Service-Disabled Veteran-Owned Business (SDVOB)	A NYS-certified Service-Disabled Veteran-Owned Business. Please refer to New York Executive Law Article 17-B for additional details.
New York State Small Business Enterprise (NYS SBE)	A company that is a resident to New York State, independently owned and operated, with 100 or fewer employees, and not dominant in its field. See State Finance Law §160(8).
New York State Statewide Financial System (SFS)	The NYS Enterprise Resource Planning (ERP) System.
New York State Vendor Identification (NYS Vendor ID)	The ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
Non-State Agencies	Political subdivisions and other entities authorized by law to make purchases from OGS Centralized Contracts other than those entities that qualify as State Agencies. This includes all entities permitted to participate in Centralized Contracts per Appendix B, §25(b), Non-State Agency Authorized Users and §25(c), Voluntary Extension and State Finance Law Section 163(1)(k).
Office of the State Comptroller (OSC)	The New York State Office of the State Comptroller.
Part/Stock Number	A unique identifier assigned to an individual Product and/or Service or part by the Contractor for that Product and/or Service; usually includes a combination of alpha and/or numeric characters or may be a unique product name or unique product description. Part/Stock Numbers must be unique and cannot be the same as any other Part/Stock Number on the price list.
Procurement Services	A business unit of OGS, formerly known as New York State Procurement (NYSPRO) and Procurement Services Group (PSG).
Quote	Contractor’s response to an Authorized User’s Request for Quotes (RFQ).
Security Incident	A violation or imminent threat of violation of computer security policies, acceptable user policies, or standard security practices. A computer security incident is also defined as any event that adversely affects the confidentiality, integrity, or availability of system and its data.
Shall	Denotes the imperative in a Contract clause or specification. Means required, being determinative/Mandatory, as well as imperative. Also see “Must.”

Term	Definition
Should	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May” and “Will.”
Small Business	Please refer to State Finance Law section 160(8) for the definition of “small business concern” or “small business.”
Software	A general term for the various kinds of programs used to operate E-Poll Book Systems and related Devices. Software shall also include authentication tools, security features, origin policy, updates, major and/or minor enhancements, versions, releases, corrections, or any other modifications, improvement or enhancements provided as part of this Contract.
Support Services	Technical services that include but are not limited to: help-desk support, enhanced help-desk support, on-site client support and E-Poll Book System implementation.
System	A collection of elements or components that are organized for a common purpose.
Training Services	Training options and materials offered by a Contractor for use by a CBOE under this Contract which will allow CBOE staff and polling inspectors to be trained in the use of the E-Poll Book System, where appropriate.
User Data	Any information, formula, algorithms, or other content that the Authorized User may directly or indirectly provide to the Contractor pursuant to the resulting Contract.
Will	Denotes the permissive in a Contract clause or specification. Also see “May” and “Should.”
Written / Written Communication	Written Communication makes use of the written word. Examples of Written Communications include email, Internet websites, letters, proposals, and Contracts.

1.6 APPENDICES AND ATTACHMENTS.

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

APPENDICES

- Appendix A – *Standard Clauses for NYS Contracts* (January 2014)
- Appendix B – *General Specifications* (April 2016)
- Appendix C – *Contract Modification Procedures*
- Appendix D - *Contractor Information*
- Appendix D.1 - *Administrative Update Form*
- Appendix E - *NYS Contract Price List*
- Appendix E.1 - *Contract Pricing Modifications*
- Appendix F - *Contractor's Insurance Requirements*
- Appendix G - *How to Use the Electronic Poll Book Systems Contract*
- Appendix G.1 - *Request For Quotes Template*
- Appendix G.2 - *RFQ Financial Response Template*

Appendix H - *Report of Contract Usage*

ATTACHMENTS

- Attachment 1 – *Board of Elections Application for Approval*
- Attachment 2 - *Contractor's Approval Package from SBOE*
- Attachment 3 - *Contractor's Application Submission to SBOE*

SECTION 2 CONTRACTOR QUALIFICATIONS

During the term of the Contract, OGS Procurement Services retains the right, at its sole discretion, to request any additional information pertaining to the Contractor's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under this Contract as it deems necessary to ensure safe and satisfactory work. All statements made must be able to be independently verified by OGS.

2.1 NEW YORK STATE BOARD OF ELECTIONS APPROVAL.

The New York State Board of Elections has established an approval process with minimum security standards and redundancy procedures for Electronic Poll Book Systems. Please see Attachment 1, *Board of Elections Application for Approval*, *Functional Requirements* tab, *Security Requirements* tab, and *Challenge Report Requirements* tab for a comprehensive list of all the requirements for E-Poll Book System(s).

Contractor must obtain such approval for any E-Poll Book System(s) submitted and must include proof of approval with submission under Appendix C, *Contract Modification Procedures*. A Contractor that has not provided proof of approval from the SBOE for an E-Poll Book System shall be ineligible for a Contract Modification.

SECTION 3 TERMS AND CONDITIONS

3.1 CONTRACT TERM AND EXTENSIONS.

The term of the Contract shall commence upon execution of the Contract by OGS as evidenced by the date accompanying the OGS Signature line. Unless terminated in accordance with the Contract, the term of each contract, including those awarded during any subsequent periodic recruitment, shall be a maximum of five (5) years commencing on the date the first Contract is executed by OGS.

All OGS Centralized Contracts resulting from Solicitation 23167 shall have a coterminous end date, including those Contracts awarded during the continuous recruitment period or any periodic recruitment period. At the State's option, the Contract may be extended for an additional 5 years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

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

3.2 SHORT TERM EXTENSION.

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

3.3 CONTINUOUS RECRUITMENT.

There will be a Continuous Recruitment period for up to one (1) year following the initial award of Contracts resulting from Solicitation 23167. OGS may post a notice in the Contract Reporter to commence the Continuous Recruitment process. Under the Continuous Recruitment of Contractors concept (once the initial bidding process is completed and the initial round of Contracts are awarded) a Bidder will be provided with a Solicitation and allowed to complete and submit a full Bid proposal. This proposal will be evaluated under the same terms and conditions as the original Bids. If the Bidder's Submission is accepted, a Contract will be awarded. Once a Contractor has been awarded a Contract, they must remain under the terms of their initial bid and will not be allowed to submit a new Bid under the Continuous Recruitment of Contractors provision.

For Contracts that are awarded under Continuous Recruitment, the Contract Term will commence upon execution of the Contract by OGS as evidenced by the date accompanying the OGS signature line. Contracts will co-terminate on the then current end date of the Contract, or at the end of any approved extension or renewal period.

After the initial period of Continuous Recruitment, there may be subsequent Periodic Recruitments as OGS deems necessary during the remainder of the Contract Term.

3.4 SUBSEQUENT PERIODIC RECRUITMENT.

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

- Add additional Products and/or emerging technologies; and
- Add additional Contractors.

OGS will formally announce when a periodic recruitment Solicitation is issued. Periodic recruitments will be issued at the discretion of the OGS. A Bidder shall be required to submit such Submission documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the periodic recruitment. For Contracts that are awarded under periodic recruitment, the Contract Term will commence upon execution of the Contract by OGS as evidenced by the date accompanying the OGS signature line. Contracts will co-terminate on the then current end date of the Contract, or at the end of any approved extension or renewal period.

3.5 CONFLICT OF TERMS.

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

1. Appendix A, *Standard Clauses for New York State Contracts*;
2. Attachment 2, *Contractor's Approval Package from SBOE*, composed of an approval notification from SBOE, an approved vendor application and SBOE Vendor Assessment Report, and any other SBOE evaluation reports;
3. Attachment 1, *Board of Elections Application for Approval*;
4. Contract and *Appendix F, Contractor's Insurance Requirements*;
5. Appendix B, *General Specifications*;
6. All other appendices and attachments to the Contract;
7. Attachment 3, *Contractor's Application Submission to SBOE*, composed of all vendor submissions, artifacts and documents submitted to the SBOE during the application process, including completed application.

3.6 PRICING.

3.6.1 NYS Contract Price List.

All approved NYS Contract Price Lists will be posted on the OGS Procurement Services website. OGS reserves the right in its sole discretion to remove any Products deemed to be out of scope of the Contract from the Contract price list at any time during the term of the resulting Contract, upon notice to the Contractor.

All NYS Net Prices must include all applicable shipping, handling, insurance, and associated delivery charges (F.O.B. Destination the dock/delivery location of the Authorized User). See Appendix B, *Shipping/Receipt of Product*.

A Part/Stock Number is to be provided in the "Part/Stock Number" column for every Product on Appendix E, *NYS Contract Price List* and for all future offerings. Each Part/Stock Number must be unique. A Part/Stock Number may be equal to the Product's Name.

Appendix E, *NYS Contract Price List* shall only contain plain text. Contractor's Appendix E, *NYS Contract Price List* shall not include any marketing language, marketing materials or any additional terms and conditions.

3.6.2 Monetary Values.

All monetary values shall be in U.S. Dollar amounts and will be two decimal points (for example: \$1.12).

3.6.3 Discount Percentage Values.

All Discount percentage values shall not exceed two decimal places (for example: 20.25222% shall be rounded to nearest one hundredth 20.25%). A Discount Percentage value cannot be expressed as a range (for example: 10%-20%, or "varies").

3.6.4 Volume Discounts.

Contractor is encouraged to offer Volume Discounts to Authorized Users.

3.6.5 Discounts.

All Discounts shown on the Contractor's Appendix E, *NYS Contract Price List* shall not be decreased by the Contractor during the Contract term or any resulting Authorized User Agreements or Purchase Orders.

Discounts shown on the Contractor's Appendix E, *NYS Contract Price List* may be increased by the Contractor at any time during the Contract term or any resulting Authorized User Agreements or Purchase Orders.

3.6.6 GSA Associated Discounts.

Where the NYS Net Price is based upon an approved GSA supply schedule, New York State shall be entitled to all associated Discounts enumerated in the GSA supply schedule (including, but not limited to Discounts for additional sites and volume Discounts), as well as any other pricing or Discount terms as are expressly enumerated in this NYS Contract or GSA supply schedule, when calculating the NYS Net Price.

3.6.7 GSA Industrial Funding Fee.

GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee (IFF)". If the Contractor provides GSA pricing they shall identify the amount of the IFF.

3.6.8 Prompt Payment Discounts.

If Contractor offers a Discount for prompt payment, the Contractor shall include the terms of the Discount on all invoices, the amounts which are due if the Authorized User meets the terms, and

the number of days for which the prompt payment Discount offer applies. If offered, Contractor's prompt payment Discount percentage and time frame is listed on Contractor's Appendix D, *Contractor Information*.

3.7 PRICE LIST UPDATES.

Contractor may update their price list as provided in this Section. All price list modifications proposed by Contractor shall be processed in accordance with Appendix C, *Contract Modification Procedures*.

Contractor may submit a request for Product addition, change, and/or deletion at any time following the commencement date of the Contract, and on an as-needed basis during the term of the Contract. The Discount offered on any new Products added to the Contractor's price list shall be no lower than the minimum established product category Discount. Contractors shall submit all requests to the OGS Procurement Services Contract administrator in the form and format contained in Appendix C, *Contract Modification Procedures* for the review and written approval of OGS. The State reserves the right to request copies of existing contracts or price lists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

Commencing with the first anniversary date of the date that the Contractor's Bid was opened by OGS, and annually thereafter, the Contractor may update the price list to reflect Contractor price increases, once every 365 days per Product. Price increase updates are subject to all Contract update provisions included within Appendix C, *Contract Modification Procedures*.

Requests for price increases shall be submitted 30 days prior to the anniversary date of the date that the Contractor's Bid was opened by OGS and annually thereafter. Requests from Contractor(s) for price increases at any other time will not be granted. The Contractor shall provide OGS with one electronic copy of the updated pricing. No price list updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under the resulting contract.

Contractors shall be permitted to reduce their pricing any time during the Contract Term.

All approved price list updates shall apply prospectively upon approval by OGS. Total price increases for price list updates in a single year of the Contract shall not exceed the maximum price increase cap as set forth in Section 3.7.3, below. All percentage Discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract.

3.7.1 Price List Format.

Contractor is required to submit Contract price list updates utilizing Appendix E.1, *Contract Pricing Modifications* electronically or via e-mail (and in hard copy if requested by OGS) to the OGS Procurement Services Contract Administrator. The list must be dated. The price list should include and identify (e.g., by use of designated fields on the Appendix E.1 form) :

- Price increases;
- Price decreases;

- Products being added; and
- Products being deleted.

3.7.2 Contractor’s Submission of Contract Updates.

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

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

3.7.3 Maximum Price Increase.

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

The following example illustrates the computation of percent change:

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

The “CPI for current period” shall be the index in effect at the time the Contract price list update request is received; “CPI for previous period” shall be the index in effect when the Contract price list was last updated. Increases are not cumulative. Price increases are limited to the prior year prices only.

3.7.4 Cover Letters

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

3.8 BEST PRICING OFFER.

During the Contract Term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local Government entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

3.9 PERFORMANCE AND BID BONDS.

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

3.10 ORDERING.

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

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

3.11 PURCHASING CARD ORDERS.

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

3.12 MINIMUM ORDER.

There is no minimum order for this Contract.

3.13 INVOICING AND PAYMENT.

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

The Contractor must provide the Authorized User with one invoice for each Purchase Order or Authorized User Agreement at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the

Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name;
- Name of Authorized User indicated on the Purchase Order or Authorized User Agreement;
- Product Descriptions;
- Quantity; and
- Invoice Amount.

If Contractor fails to include the above information, then an Authorized User must reject the invoice, and notify the Contractor within one (1) Business Day to resubmit a proper invoice with the necessary information. Contractor must not receive payment until a proper invoice is submitted and processed by an Authorized User.

At a minimum, the following fields should be included on each invoice:

- Contractor Billing Address;
- Contractor Federal ID Number;
- NYS Vendor ID Number;
- Account Number;
- NYS Contract Number;
- NYS Agency Unit ID (if applicable);
- Authorized User's Purchase Order Number or Authorized User Agreement number;
- Order Date;
- Invoice Date;
- Invoice Number;
- Unit Price;
- Unit of Measure; and
- Dates of Service (if applicable).

If Contractor fails to include the above information, then an Authorized User may work with Contractor to obtain the above information or return the invoice to the Contractor for correction. When an Authorized User returns an invoice for a Contractor to correct these items, the Authorized User should notify the Contractor within one (1) Business Day to resubmit a proper invoice with the necessary information. Contractor must reject the invoice and notify the Contractor within one (1) Business Day to resubmit a proper invoice with the necessary information. Contractor may not receive payment until an invoice with the above requested information is submitted and processed by an Authorized User.

Contractors should note that the Authorized Users that use the Statewide Financial System (SFS) will require a unique invoice number. The Statewide Financial System (SFS) requires Authorized Users to enter a unique invoice number on each Contractor's payment voucher. The SFS has automated validations that prohibit Authorized Users from processing and paying duplicate invoices. Contractor may not receive payment until an invoice with a unique invoice number is submitted and processed by an Authorized User.

The Contractor's billing System shall be flexible enough to meet the needs of varying ordering Systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/content/vendor-information>.

3.14 PRODUCT DELIVERY.

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

3.15 RESERVED RIGHTS.

3.15.1 NYS Reserved Rights.

New York State reserves the right, in its sole discretion, to:

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;

- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State; and
- T. Conduct Contract negotiations with -the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products.
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.
- W. Reject an E-Poll Book System(s) that has not been approved by the SBOE.
- X. Add templates for use by the Authorized User, such as an RFQ template or a How-to-Use document.

3.15.2 Authorized User Reserved Rights.

The Authorized User shall have the rights listed in Section 3.15.1 when requesting a quote.

3.16 CONTRACT ADMINISTRATION / DESIGNATED PERSONNEL / CONTACT INFORMATION.

Contractor will provide Designated Personnel for the duration of the Contract at no charge to the State. This information will be listed in Appendix D, *Contractor Information*.

During the Contract Term and until the end of any related Authorized User Agreements or Purchase Orders, Contractor must notify OGS within five (5) Business Days if its Designated Personnel change, and provide interim contact personnel until the position is filled. Contractor may submit a Designated Personnel change electronically via email per the instructions contained in Appendix C, *Contract Modification Procedures*. The Designated Personnel must have the authority to act on behalf of the Contractor.

3.16.1 Contract Administrator.

The Contract Administrator shall be responsible for the updating and management of the resulting Contract on a timely basis. The Contract Administrator shall serve as the Single Point of Contact (SPOC) for the Authorized User for all issues regarding Products. The Contract Administrator must also serve as the SPOC for any additional Products that may be added to the Contract.

3.16.2 Account Manager.

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

3.16.3 Sales Manager.

The Sales Manager shall be responsible for the overall relationship with the Authorized Users for matters relating to RFQs or Purchase Orders, or both.

3.16.4 Billing Contact.

The Billing Contact shall be responsible for serving as the single point of contact between the Contractor and the Authorized User for matters related to invoicing, billing and payment.

3.16.5 Emergency Contact.

The Emergency Contact shall be responsible for being available 24 hours a day, 365 days per year for emergencies occurring after business hours or on weekend/holidays.

3.16.6 Toll Free Number.

Contractor shall provide and maintain a toll-free telephone number for use by Authorized Users. Contractor shall staff this toll-free number at a minimum from 9:00 AM to 5:00 PM Monday through Friday Eastern Time, excluding New York State or federal holidays. This number shall be provided at no cost to the State.

3.17 NYS FINANCIAL SYSTEM (SFS).

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

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

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

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

3.18 ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY.

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

Any network-based information and applications development, or programming delivered to or by the State pursuant to this Contract or procurement, will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and be consistent with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified or superseded (the "Accessibility Policy"). The Accessibility Policy requires that State Entity Information Communication Technology shall be accessible to persons with disabilities as determined by accessibility compliance testing. Such accessibility compliance testing will be conducted by the State and any report on the results of such testing must be satisfactory to the State.

3.19 AMERICANS WITH DISABILITIES ACT (ADA).

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Contractor is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not Mandatory for Contractor to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

3.20 INSURANCE.

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Appendix F, *Contractor's Insurance Requirements*.

3.21 REPORT OF CONTRACT USAGE.

Contractor shall submit Appendix H, *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, *no later than 10 days after the close of each calendar quarter*. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the *quarterly* report.

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

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

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

3.22 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN.

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 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: <https://ogs.ny.gov/MWBE>

3.23 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/>

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

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

3.24 USE OF RECYCLED OR REMANUFACTURED MATERIALS.

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

3.25 BULK DELIVERY AND ALTERNATE PACKAGING.

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

3.26 SURPLUS/TAKE-BACK/RECYCLING.

I. A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167, Transfer and Disposal of Personal Property, and § 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of Equipment that is still in operable condition.

II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic Equipment recycling.

III. The NYS Department of Environmental Conservation (“DEC”) Electronic Equipment Recycling and Reuse Act (“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic Equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>

IV. If a Contractor offers a take-back/recycling program or offers an electronic Equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic Equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (“NIST”) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

3.27 ENVIRONMENTAL ATTRIBUTE AND NYS EXECUTIVE ORDER NUMBER 4.

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

3.28 CONSUMER PRODUCTS CONTAINING MERCURY.

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

3.29 DIESEL EMISSION REDUCTION ACT.

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

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

3.30 NYS VENDOR RESPONSIBILITY.

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

The Commissioner of OGS, in 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 issues a written notice authorizing a resumption of performance under the Contract.

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

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS at the Contractor’s expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner 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.

3.31 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS.

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, *Participation in Centralized Contracts*. For Purchase Orders or Authorized User Agreements issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New

York State), the terms of the *Price* clause shall be modified to include delivery to locations adjacent to New York State.

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

3.32 EXTENSION OF USE.

This Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional Discounts based on any increased volume generated by such extensions.

3.33 NEW ACCOUNTS.

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

3.34 CENTRALIZED CONTRACT MODIFICATIONS.

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "E-Poll Book Systems Updates," as defined in Appendix C, *Contract Modification Procedures*, are changes related to a SBOE approved E-Poll Book System. All such changes are subject to the prior approval of SBOE, proof of which must be provided by the Contractor along with the Appendix C, Contract Modification Form. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

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

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

D. All modifications proposed by Contractor shall be processed in accordance with Appendix C, *Contract Modification Procedures*. The Contractor shall submit all requests in the form and format contained in Appendix C, *Contract Modification Procedures*. The form contained within Appendix C is subject to change at the sole discretion of OGS.

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

3.35 DRUG AND ALCOHOL USE PROHIBITED.

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

3.36 TRAFFIC INFRACTIONS.

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

3.37 INSTRUCTION MANUALS.

If requested by the Authorized User, at the time of delivery, Contractor shall provide a complete instruction manual for the Product and for each component supplied, as applicable, to the Authorized User.

3.38 EMBEDDED SOFTWARE/FIRMWARE; UPDATES.

Contractor shall provide at no charge all updates to any embedded Software or firmware in the Product offered to customers generally.

3.39 TRAVEL.

When provided for in the Authorized User Agreement or Purchase Order, the Authorized Users may reimburse travel expenses. Travel costs are limited to NYS rates approved by the NYS Office of the State Comptroller (OSC). All rules and regulations associated with this travel can be found at <http://osc.state.ny.us/agencies/travel/travel.htm>. In no case will any travel reimbursement be paid for charges that exceeds the per diem rates provided at the above link. All travel will be paid only as specified within the Authorized User Agreement or Purchase Order and must be billed with the associated services on the same invoice with receipts attached.

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

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

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

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

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

3.40 POOR PERFORMANCE.

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

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

SECTION 4 E-POLL BOOK SYSTEM SPECIFIC TERMS AND CONDITIONS.

4.1 E-POLL BOOK SYSTEM.

Any E-Poll Book System is subject to SBOE and/or CBOE acceptance. Acceptance shall be in accordance with SBOE or CBOE policy. The SBOE or CBOE may publish such acceptance policy which may include the E-Poll Book System being subject to audit by the SBOE or CBOE. If no acceptance policy has been outlined by the SBOE or CBOE, acceptance shall be in accordance with Appendix B, Section 61, *Product Acceptance*.

For the duration of an Authorized User Agreement or Purchase Order, the E-Poll Book System shall meet and maintain compliance with all functional, security and challenge report requirements as approved by the SBOE and conform to the E-Poll Book System manufacturer's

specifications, Documentation, performance standards (including applicable license duration, warranties, guarantees, Service Level Agreements, service commitments, and credits).

OGS reserves the right to suspend sales of any E-Poll Book System following a change in approval status of the E-Poll Book System by SBOE. Further, OGS reserves the right to remove any E-Poll Book System from a Contractor's NYS Contract Price List following SBOE's removal of a Contractor's E-Poll Book System from the list of approved systems.

The SBOE or CBOE reserve the right to audit any E-Poll Book System sold under the Contract at any time to ensure compliance with all functional, security and challenge report requirements as approved by the SBOE.

In accordance with Election Law Section 1-104, subsection 38, the SBOE shall approve and certify that the network or system to which the E-Poll Book System is connected is compliant with the minimum security standards. Authorized Users should be familiar with such minimum security standards as set forth in Attachment 1, *Board of Elections Application for Approval*. Authorized Users shall not implement any E-Poll Book System until approval of compliance has been obtained from the SBOE.

Authorized User will notify Contractor of its approved connectivity strategy prior to implementation and work with Contractor to ensure that minimum security standards are met.

4.2 PROTECTION OF DATA, INFRASTRUCTURE AND SOFTWARE.

Contractor is responsible for providing physical and logical security for all User Data, infrastructure (e.g. Hardware, Network, physical Devices), and Software related to the services the Contractor is providing under the Authorized User Agreement or Purchase Order.

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

4.3 SECURITY POLICIES AND NOTIFICATIONS.

4.3.1 Security Policies and Procedures.

New York State considers the protection of sensitive and confidential information and business systems to be of the utmost importance. The information collected and maintained by SBOE and CBOEs is protected by a myriad of Federal, State and local laws and regulations. Access to and use of sensitive and confidential information is limited to authorized government employees and legally designated agents, for authorized purposes only.

The Contractor and its personnel shall review and be familiar with all Authorized User's security requirements (e.g. laws, policies, procedures and directives) currently existing or implemented during the term of the Contract. If required within the Authorized User Agreement or Purchase

Order, Contractor will provide verification of compliance with Authorized User security requirements.

4.3.2 Security Incidents.

Upon identification and classification of a Security Incident affecting SBOE and/or CBOE User Data in the Contractor's possession, the Contractor shall immediately notify the SBOE and any potentially affected CBOE. The CBOE and/or SBOE will handle the incident in accordance with established SBOE Cybersecurity Incident Notification Reporting procedures.

4.4 DATA BREACH.

4.4.1 Required Contractor Actions.

Unless otherwise provided by law, in the event of a Data Breach, the Contractor shall:

- i. notify the SBOE and any potentially affected CBOE(s), or their designated contact person for SBOE and any potentially affected CBOE, by telephone as soon as possible, but in no event more than 24 hours from the time the Contractor confirms Data Breach;
- ii. consult with and receive authorization from the SBOE and, where applicable, CBOE as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by the SBOE, CBOE or statute;
- iii. coordinate all communication regarding the Data Breach with the SBOE and, where applicable, CBOE (including possible communications with third parties);
- iv. cooperate with the SBOE and where applicable, CBOE and any Contractor working on behalf of the SBOE and/or CBOE in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches;
- v. take such corrective actions that the Contractor deems necessary to contain the Data Breach. Contractor shall provide Written notice to the SBOE and, where applicable, CBOE as to all such corrective actions taken by the Contractor to remedy the Data Breach. If Contractor is unable to complete the corrective action within the required timeframe, the remedies provided in Appendix B, Section 52, *Remedies for Breach* shall apply and (i) the SBOE and/or CBOE may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the SBOE and/or CBOE, or until the SBOE or CBOE has completed a new procurement for a replacement service System; (ii) and the Contractor will be responsible for the reasonable cost of these services during this period; and

- vi. provide Written documentation to the SBOE and, where applicable, CBOE, as to all such corrective actions taken by the Contractor to remedy the cause of the Data Breach and mitigate against a repeat of the Data Breach.

Nothing herein shall in any way (a) impair the authority of the OAG to bring an action against Contractor to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Contractor's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

4.5 DATA OWNERSHIP, ACCESS AND LOCATION.

4.5.1 Data Ownership.

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

4.5.2 Authorized User Access to Data.

The Authorized User shall have access to its User Data at all times, through the term of the Authorized User Agreement or Purchase Order, plus the applicable period as specified in Section 4.8, *Expiration, Termination or Suspension of Services*.

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

4.5.3 Contractor Access to Data.

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

4.5.4 Source Code Escrow for Licensed Product.

At the request of the Authorized User, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the Authorized User, and

who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the Authorized User; or (iii) will certify to the Authorized User that the Product manufacturer/developer has named the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the Authorized User and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the Authorized User in writing. Contractor shall identify the escrow agent upon commencement of the Contract Term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause.

The Authorized User may release the Source Code to Licensees under this Contract or any Authorized User Agreement or Purchase Order who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

4.6 TRANSFERRING OF DATA.

4.6.1 General.

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

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

4.6.2 Transfer of Data at End of Contract and/or Authorized User Agreement/Purchase Order Term.

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

4.6.3 Transfer of Data; Charges.

Contractor must include pricing for the transfer of User Data in the Authorized User Agreement or Purchase Order.

4.6.4 Transfer of Data; Contract Breach or Termination.

Notwithstanding Section 4.6.3, in the case of Contract breach or termination for cause of the Contract, all expenses for the transfer of User Data shall be the responsibility of the Contractor.

4.6.5 Transfer Format.

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

4.7 REQUESTS FOR DATA BY THIRD PARTIES.

Unless prohibited by law, Contractor shall notify the Authorized User in Writing within 24 hours of any request for User Data (including requestor, nature of User Data requested and timeframe of response) by a person or entity other than the Authorized User, and the Contractor shall secure Written acknowledgement of such notification from the Authorized User before responding to the request for User Data.

Unless compelled by law, the Contractor shall not release User Data without the Authorized User's prior Written approval.

4.8 EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES.

4.8.1 Return of Data.

The Contractor shall return User Data in a format agreed upon within the Authorized User Agreement or Purchase Order or as agreed to with the Authorized User. The Contractor must certify all User Data has been removed from its System and removed from backups within timeframes established in the Authorized User Agreement or Purchase Order or as agreed to with the Authorized User.

4.8.2 Suspension of Services.

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

4.8.3 Expiration or Termination of Services.

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

4.9 ACCESS TO SECURITY LOGS AND REPORTS.

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

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

Except as otherwise provided for in this Section 4, Contractor may offer an API or self-service electronic portal for such purposes as allowing the Authorized User to access security logs, reports, and audit information, to import or export User Data, and for such other purposes as agreed to in the Authorized User Agreement or Purchase Order.

4.11 MODIFICATION TO APPROVED E-POLL BOOK SYSTEM.

Changes of any size or scope to an approved E-Poll Book System require SBOE approval prior to implementation. Proposed changes must first be provided to SBOE in the manner prescribed by the SBOE.

SECTION 5 GENERAL PROVISIONS.

5.1 NOTICES.

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address set forth below, and (ii) if to Contractor, addressed to Contract Administrator at the address set forth below.

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

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

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

5.2 CAPTIONS.

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

5.3 SEVERABILITY.

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

5.4 COUNTERPARTS.

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

5.5 ENTIRE AGREEMENT.

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

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties as set forth in Appendix B, Section 22, *Contract Creation/Execution*. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Contract, the approved signature page(s) will be affixed by the State, upon receipt of all necessary approvals, to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

CONTRACTOR

THE PEOPLE OF THE STATE OF NEW YORK

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

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

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

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 ___ maintains an office at _____, and further that:

[Check One]

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

Notary Public
Registration No.