



**Office of General Services
Procurement Services**

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | customer.services@ogs.ny.gov | 518-474-6717

**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES

FIRST CONTRACT AMENDMENT
TO
CONTRACT NO. PT68904, AWARD 23189

WITH
T-MOBILE USA, INC.**

THIS FIRST CONTRACT AMENDMENT (“First Amendment”) is made to Contract PT68904 (“Contract”) by and between the **People of the State of New York, acting by and through the Commissioner of General Services** (“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 **T-Mobile USA, Inc.** (“Contractor”), with its principal place of business at 12920 SE 38th Street, Bellevue, Washington 98006. OGS and Contractor are hereby individually referred to as a “Party” and collectively referred to as the “Parties.”

W I T N E S S E T H:

WHEREAS, the Parties entered into the Contract, effective December 31, 2019 through and including June 20, 2024, for the acquisition of Electronic Poll Book i-Pads and applicable connectivity services components for an Electronic Poll Book System;

WHEREAS, OGS wishes to amend the Contract Scope to include all NYS Board of Elections approved i-Pads under NYS Electronic Poll Book Systems centralized contract (Group 76000, Award 23167), to amend certain other terms of the Contract and to add certain new terms to the Contract; and

WHEREAS, the Contractor agrees to such amendments to the Contract.

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

SECTION 1: CONTRACT SCOPE

Section 1, Contract Scope, of the Contract is hereby deleted in its entirety and replaced with the following new Section 1:

1. Contract Scope

OGS identified qualified contractors to provide Electronic Poll Book i-Pads and connectivity service using the Master Contract. A qualified contractor is a Contractor that has an executed contract under the OGS Centralized Telecommunication Connectivity Services (TCS) Contract (Group 77017, Award 23100), and that offers the required products and services for this Contract on their respective NASPO contract pricelist.

This Contract allows Authorized Users to obtain approved Electronic Poll Book i-Pads and connectivity service for an Electronic Poll Book System (“E-Poll Book System”), as defined in the NYS Electronic Poll Book Systems centralized contract (Group 76000, Award 23167). Attachment 1, *NYS Price List* of this Contract lists the Electronic Poll Book i-Pads and connectivity service approved by the NYS Board of Elections (SBOE). This Contract supplements the NYS Electronic Poll Book Systems centralized contract (Group 76000, Award 23167), which allows for the purchase of complete E-Poll Book Systems.

Electronic Poll Book i-Pads and connectivity service purchased from this Contract shall only be used by Authorized Users as part of a SBOE approved E-Poll Book System.

This document sets forth the terms and conditions governing acquisitions under this Contract for use by Authorized Users. All the terms, conditions, covenants and representations contained herein and in the Master Contract, except as modified by this Contract, are hereby incorporated by reference and deemed to be a part of this Contract as if fully set forth at length herein. The terms and conditions of this Contract shall supersede any conflicting terms and conditions set forth in the Master Contract.

Notwithstanding the broader scope of the Master Contract, Contractor is only authorized to sell and eligible Authorized Users are only authorized to purchase:

- i-Pad models approved by SBOE for use as part of an approved E-Poll Book System and approved by OGS for sale by a contractor under NYS Electronic Poll Book Systems centralized contract (Group 76000, Award 23167); and
- Monthly connectivity service (2gb pooled or better).

Products furnished under this Contract 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. The 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.

SECTION 2: APPENDIX A

- a. Appendix A, Standard Clauses for New York State Contracts, dated January 2014, attached to the Contract, is hereby deleted in its entirety and replaced with the attached revised Appendix A, Standard Clauses for New York State Contracts, dated October 2019.
- b. All references to "Appendix A," "Appendix A (Standard Clauses for New York State Contracts)" and "Appendix A, Standard Clauses for NYS Contracts (January 2014)," in the Contract shall no longer refer to Appendix A, Standard Clauses for New York State Contracts, dated January 2014, but shall be deemed henceforth to refer to Appendix A, Standard Clauses for New York State Contracts, dated October 2019.

SECTION 3: APPENDIX E

The Contract is amended to add a new Appendix E, Federal Funding Agency Mandatory Terms and Conditions, which is attached hereto and expressly made a part of the Contract as fully as if set forth at length therein.

SECTION 4: Attachment 1, NYS Price List

All references to “the price list for this Contract,” “the NYS Price List,” and “Attachment 1 - Contractor Pricelist” in the Contract are deemed henceforth to refer to Attachment 1, *NYS Price List* as approved by OGS and posted on the OGS website.

SECTION 5: MERGER OF APPENDICES/CONFLICT OF CLAUSES

Section 3, Merger of Appendices/Conflict of Clauses, of the Contract is hereby deleted in its entirety and replaced with the following new Section 3:

3. Merger of Appendices/Conflict of Clauses

This Contract shall incorporate the following appendices as if set forth herein at length. Only documents expressly enumerated below shall be deemed a part of this Contract, and references contained in those documents to additional Contractor documents not enumerated below shall be of no force and effect. Conflicts between these documents shall be resolved in the following descending order of precedence:

1. Appendix A, *Standard Clauses for New York State Contracts (October 2019)*;
2. This Contract (This Document) and the following attachments:
 - a. Attachment 1, *NYS Price List* as approved by OGS and posted on the OGS website; and
 - b. *How to Use the Electronic Poll Book Equipment and Connectivity Contract*, which may be unilaterally revised, without a formal Contract amendment and/or modification, from time to time by OGS and posted on the OGS website;
3. Appendix B, *OGS General Specifications (April 2016)*;
4. Appendix C, *Report of Contract Usage*;
5. Appendix D, *Contract Modification Procedures*;
6. Appendix E, *Federal Funding Agency Mandatory Terms and Conditions*;
7. Master Contract, Utah Contract MA-176-1 for Wireless Data, Voice, and Accessories.

SECTION 6: 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.

SECTION 7:

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

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IN WITNESS THEREOF, the Parties have executed this First Contract 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 by OGS, to exact copies of this First Contract Amendment being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts (October 2019)), 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 procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

T-MOBILE USA, INC.

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

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

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

Federal Tax ID: 911983600
NYS Vendor ID: 1000053202

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF _____ }
: SS.:
COUNTY OF _____ }

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

[Check One]

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

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



Office of General Services Procurement Services

CONTRACT LET PURSUANT TO STATE FINANCE LAW SECTION 163(10)(e)

New York State Contract #

PT68904

Master Contract #

MA-176-1 (State of Utah)

DESIGNATED CONTACTS:

Primary Contact: Margaret Armenia
E-mail address: margaret.armenia@ogs.ny.gov

Secondary Contact: Maureen Younkin
E-mail address: maureen.younkin@ogs.ny.gov

For **INSURANCE** Questions Only: Leighann Brown, Email: ogs.sm.insrev@ogs.ny.gov

THIS CONTRACT 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, pursuant to authority granted under New York State Finance Law §163(10)(e), and **T-Mobile, USA, Inc.** (hereinafter “Contractor” or “Vendor” or “Offerer”), with its principal place of business at 12920 SE 38th Street, Bellevue, WA 98006. OGS and Contractor are hereby individually referred to as a “Party” and collectively referred to as “Parties.”

Whereas, in accordance with New York State Finance Law §163(10)(e), the Commissioner of OGS (hereinafter “Commissioner”) may authorize purchases required by New York State agencies or other authorized purchasers by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states (hereinafter “Issuing Agency”); and

Whereas, the State of Utah, acting through its Utah Division of Purchasing, and the participating members of the NASPO Cooperative Purchasing Program, d/b/a “NASPO ValuePoint” (formerly known as “WSCA” or “WSCA-NASPO”) has let a certain Contract Number MA-176-1 with Contractor for Wireless Data, Voice, IoT, and Accessories (hereinafter the “Master Contract”); and

Whereas, OGS Procurement Services, on behalf of the Commissioner, finds it necessary and desirable to enter into this Contract with Contractor for the purchase of Wireless Communication & Equipment under the terms and conditions established herein and pursuant to Contract Number MA-176-1 with Contractor; and

Whereas, OGS provided notification of its intention to enter into this Contract with Contractor by placing a notice in the 09/24/2019 edition of the New York State Contract Reporter.

Whereas, OGS has sought contracts with qualified contractors (Contractors that have executed contracts under the OGS Centralized Telecommunication Connectivity Services (TCS) Contract (Group 77017, Award 23100), and that offer the required products and services for this Contract on their respective NASPO contract pricelists.

Therefore, by completing and signing this Contract, Contractor is willing and able to enter into a contract and authorizes OGS to process the Contract and provide notification to Authorized Users regarding the availability of this Contract.

1. CONTRACT SCOPE

OGS identified qualified contractors to provide Electronic Poll Book I-Pads and applicable connectivity service using the NASPO ValuePoint Contract No. MA-176-1. A qualified contractor is a Contractor that has an executed contract under the OGS Centralized Telecommunication Connectivity Services (TCS) Contract (Group 77017, Award 23100), and that offers the required products and services for this Contract on their respective NASPO contract pricelist.

This Contract allows Authorized Users to obtain approved Electronic Poll Book I-Pads and applicable connectivity service components for an Electronic Poll Book System ("E-Poll Book Systems") as defined in the NYS Electronic Poll Book Systems centralized contract (Group 76000, Award 23167). The price list for this Contract lists the I-Pads and connectivity plans that were approved by NYS Board of Elections (SBOE). This Contract supplements the NYS Electronic Poll Book Systems centralized contract (Group 76000, Award 23167), which allows for the purchase of complete E-Poll Book Systems.

Equipment and connectivity purchased from this contract shall only be used by Authorized Users as part of a SBOE approved E-Poll Book System.

This document sets forth the terms and conditions governing acquisitions under this Contract for use by Authorized Users. All the terms, conditions, covenants and representations contained herein and in the Master Contract, except as modified by this Contract, are hereby incorporated by reference and deemed to be a part of this Contract as if fully set forth at length herein. The terms and conditions of this Contract shall supersede any conflicting terms and conditions set forth in the Master Contract.

Notwithstanding the broader scope of the Master Contract, Contractor is only authorized to sell and eligible Authorized Users are only authorized to purchase, the following from this Contract:

- A1954 (iPad 6th Gen WiFi + Cellular)
- A1893 (iPad 6th Gen WiFi)
- Monthly Connectivity (2gb pooled or better)

Products furnished under this Contract 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.

2. ESTIMATED QUANTITIES

This Contract shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The individual value of this Contract is indeterminate and will depend upon the number of E-Poll Book I-Pads ordered 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, Section 28, *Estimated/Specific Quantity Contracts* and Section 25, *Participation in Centralized Contracts*.

NYS anticipates that full implementation would entail between 12,000 and 20,000 E-Poll Book Systems across 62 County Boards Of Elections (CBOES) and across 15,005 election districts. Please note that while this is the entire possible universe, 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.

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

- This Contract will be a nonexclusive contract;
- 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 this Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the contract period; and,
- The State reserves the right to terminate this Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of this 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.

By execution of this Contract, Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contract could vary substantially from any estimates provided in this Contract or previous purchase.

3. MERGER OF APPENDICES/CONFLICT OF CLAUSES

This Contract shall incorporate the following appendices as if set forth herein at length. Only documents expressly enumerated below shall be deemed a part of this Contract, and references contained in those documents to additional Contractor documents not enumerated below shall be of no force and effect. Conflicts between these documents shall be resolved in the following descending order of precedence.

- I. Appendix A, *Standard Clauses for NYS Contracts (January 2014)*
- II. This Contract (This Document) and the pricelist for this Contract as approved by OGS and posted on the OGS website
- III. Appendix B, *OGS General Specifications (April 2016)*
- IV. Appendix C, *Report of Contract Usage*
- V. Appendix D, *Contract Modification Procedure and Forms*
- VI. Utah Contract MA-176-1 for Wireless Data, Voice, IoT, and Accessories (“the Master Contract”)

4. APPENDIX B AMENDMENTS

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

- I. The following sections of Appendix B are hereby deleted: 3 (*International Bidding*), 4 (*Bid Opening*), 5 (*Late Bids Rejected*), 10 (*Product References*), 14 (*Site Inspection*), 17 (*Tie Bids*), 18 (*Quantity Changes Prior To Award*), and 19 (*Timeframe for Offers*).
- II. Appendix B, Section 31, *Product Delivery*, has been modified in accordance with Section 17, *Product Delivery*, below.

5. APPLICABLE LAW

This Contract shall be governed by and construed in accordance with the laws of the State of New York. Any claims or actions brought by Contractor against the State for monetary damages shall be brought in the New York State Court of Claims. See Section 14, *Governing Law*, in Appendix A.

6. CONTRACT TERM AND EXTENSIONS

The term of this Contract shall begin on the date of execution by OGS and shall end upon the expiration or termination of the Master Contract, subject to OGS' right to terminate this Contract as provided herein. It is the intent of the Parties that the term of this Contract be coterminous with the term of the Master Contract; accordingly, the term of this Contract shall be deemed extended whenever the term of the Master Contract is extended, without the need for the Parties to execute an extension or amendment to this Contract.

7. AUTHORIZED USERS

"Authorized User" shall have the meaning set forth in the New York State Finance Law, Section 163(1)(k). This Contract is for use by Authorized Users, which includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

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

8. PREFERRED SOURCE PRODUCTS

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

9. PRICE AND DISCOUNTS

The price listed on the NYS Price List for each Product shall be a not-to-exceed price. Contractor may offer more favorable pricing to Authorized Users for particular transactions.

Price shall include all customs duties and charges and be net, F.O.B. destination any point in the continental United States as designated by the ordering Authorized User. Taxes, surcharges, fees, and other charges that may be billed to Authorized Users are limited to such charges listed on the Contractor's Telecommunication Connectivity Services (TCS) contract, Pass-through Charges tab of Attachment 1 - Contractor Pricelist.

Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Master Contract will also be included in this Contract.

10. SERVICE LEVELS

Contractor agrees to provide connectivity services under this Contract at standards and service levels which meet or exceed those standards and service levels set forth in Contractor's Telecommunication Connectivity Services (TCS) contract with OGS. Contractor must monitor all connectivity services that it provides to Authorized Users. At a minimum, Contractor must provide the following service levels for network uptime and upgrades. Authorized Users may request additional service levels.

Unless otherwise agreed to in the Authorized User agreement/Purchase Order, Contractor's Service must have a minimum network uptime of 99.99% and be available 24 hours a day, 7 days a week. Network uptime shall be calculated using the following formula:

$$U=O/(M-P)*100$$

U is Uptime, O is the amount of minutes that the service is operational during the month, M is the number of minutes

in the month, and P is the number of minutes of actual planned downtime during the month.

Any downtime that may be required for network maintenance, upgrade, or changes must be completed during low usage volume times, such as during the Authorized User's non-business hours.

11. NET NEUTRALITY

In accordance with the requirements of Executive Order No. 175, Contractor will be expected to adhere to net neutrality principles in the provision of broadband internet access services under this Contract, regardless of delivery method unless the Commissioner, or her designee, determines that adherence to net neutrality principles for a particular purpose is not in the best interests of the State. Nothing in this provision supersedes any obligation or authorization a provider of broadband Internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so. As used herein, "net neutrality" means that Contractor will not block, throttle, or prioritize internet content or applications or require that end users pay different or higher rates to access specific types of content or application. For the purposes of this Contract, the prohibition against blocking, throttling, or prioritization (other than paid prioritization) of internet content or applications does not apply to reasonable network management practices.

12. ORDERING

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

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

13. PURCHASING CARD ORDERS

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

14. MINIMUM ORDER

There are no minimum order quantities under this Contract.

15. INVOICING AND PAYMENT

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

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

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number

- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

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

16. PROCESSING CONTRACT PAYMENTS

The Contractor acknowledges that a contract payment cannot be processed by an Authorized User until the contract Products have been delivered and accepted.

17. PROMPT PAYMENTS

Appendix B, Section 47, *Prompt Payments*, applies to this Contract. The parties acknowledge that Article 11-A of the State Finance Law requires payments to small businesses to be made within 15 days if the conditions set forth therein are met.

The Federal Prompt Payment Act (or any other law governing payment terms incorporated in the Master Contract) does not apply to the Contract regardless of customer.

18. PRODUCT DELIVERY

Appendix B, Section 31, *Product Delivery*, is hereby deleted and replaced with the following:

Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Unless otherwise agreed to by the Authorized User and Contractor, delivery shall be made within five (5) calendar days after receipt of a Purchase Order by the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. If compliance with the delivery time schedule is a material term of the Contract, failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

19. PRODUCT RETURNS AND EXCHANGES

In addition to the provisions of Appendix B, Section 61, *Product Acceptance*, Section 35, *Product Substitution*, and Section 36, *Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within five (5) business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot

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exceed the net price of the returned or exchanged Product.

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

20. USE OF SUBCONTRACTORS/DEALERS/DISTRIBUTORS/RESELLERS

Contractor shall be fully liable for Subcontractor performance under this Contract, and their compliance with all Contract terms and conditions.

21. 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.

22. NYS FINANCIAL SYSTEM (SFS)

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

The State may 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/>.

23. CONTRACT ADMINISTRATION

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

The Contractor shall provide a dedicated contract administrator to support the updating and management of this Contract on a timely basis. Information regarding the customer service, emergency contact, and contract administrator shall be set forth in the Procurement Services contract page for this Contract. Contractor must notify OGS within five Business Days if its contract administrator, emergency contact, or customer service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist identified on the OGS Contract webpage.

24. CONTRACTOR'S INSURANCE REQUIREMENTS

The Contractor shall be required to procure, at its sole cost and expense, and provide proof of compliance of all insurance required by this Section.

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

The Contractor shall provide proof of compliance with the requirements set forth in this Section prior to Contract execution, for Contract renewal and upon request.

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

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

A. General Conditions Applicable to Insurance. All policies of insurance required by this section shall comply with the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Section B *Insurance Requirements* below.
2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in the Contract, all policies of insurance required by this section shall be written on an occurrence basis.
3. **Certificates of Insurance/Notices.** The Contractor shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section A (13) below. Certificates shall name The New York State Office of General Services, Bureau of Risk and Insurance Management, 32nd Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

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

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

OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractors should refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. **Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.
5. **Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this section at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the

People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.

6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
7. **Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.
8. **Waiver of Subrogation.** For all liability policies and workers' compensation insurance required below, the Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of its right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
9. **Additional Insured.** The Contractor shall cause to be included in each of its liability policies required below of coverage for on-going work and operations, naming as additional insureds (via ISO coverage forms CG 20 10 04 13 or 20 38 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section A (13) below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability, Comprehensive Business Automobile Liability, and Garage Liability Insurance in the same manner that Contractor would have been required to pursuant to this section had Contractor obtained such insurance policies.
10. **Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided after renewal and/or upon request.
11. **Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice

of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Contract.

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

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

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

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

B. Insurance Requirements

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

Insurance Type	Required Limit	Proof of Coverage is Due
Commercial General Liability	Not less than \$1,000,000 each occurrence	Prior to Contract execution and updated in accordance with the awarded Contract.
General Aggregate	\$2,000,000	
Products – Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Medical Expenses Limit	\$5,000	
Business Automobile Liability	Not less than \$2,000,000 each occurrence	
Workers' Compensation		
Disability Benefits		

1. Commercial General Liability: Such liability shall be written on the current edition of ISO occurrence form

CG 00 01 or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, and liability assumed in a contract (including the tort liability of another assumed in a contract).

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

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

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

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this Contract; and
- Cross liability for additional insureds.

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

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

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

Proof of Compliance with Workers' Compensation Coverage Requirements:

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

Workers' Compensation Board's Self-Insurance Office, or

- Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

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

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

25. REPORT OF CONTRACT USAGE

Contractor shall submit Appendix C - *Report of Contract Usage* including total sales of all Products provided under the Contract to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, during each quarterly period, no later than the 15th of the month following the close of each quarter. Quarterly periods will end on March 31st, June 30th, September 30th and December 31st. Purchases by Non- state agencies, political subdivisions and others authorized by law shall be reported in the same report and be indicated as required.

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

The report is to be submitted electronically via e-mail in Microsoft Excel 2003, or newer (or as otherwise directed by OGS), to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the New York State Contract Number, Sales Period, and Contractor's (or other authorized agent) name, and all other fields required.

OGS reserves the right to amend the report template during the Contract term. The report in Appendix C – *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. Contractor shall also make the report or the information therein available to NASPO upon request.

By using this Contract, an Authorized User consents to OGS receiving the information listed in Appendix C- *Report of Contract Usage*.

26. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law § 139-j and § 139-k, this Contract includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter of intent to solicit offers/Bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page of this Contract. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to State Finance Law §139-j and §139-k. Certain findings of non-responsibility can

result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: <https://www.ogs.ny.gov/acpl/>

27. NEW YORK STATE VENDOR RESPONSIBILITY

- I. OGS conducts a review of prospective contractors (“offerers”) to provide reasonable assurances that an offerer is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter “Questionnaire”) is used for non-construction Contracts and is designed to provide information to assess an offerer’s responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. If interested in contracting with New York State, an offerer must agree and hereby agrees to fully and accurately complete the Questionnaire. The offerer acknowledges that the State’s execution of a contract will be contingent upon the State’s determination that the offerer is responsible and that the State will be relying upon the offerer’s responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each offerer file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller’s (OSC) website at <http://www.osc.state.ny.us/vendors/index.htm> or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the *NYS Vendor File Registration section*. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Offerers opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the offerer prior to contract award, the offerer must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to OGS’ transmittal to you of this Contract. An offerer’s Questionnaire cannot be viewed by OGS until the offerer has certified the Questionnaire. It is recommended that all offerers become familiar with all of the requirements of the Questionnaire and complete as soon as possible to allow sufficient time for OGS review prior to Contract execution.

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

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

The Contractor agrees that if it is found by the State that the Contractor’s responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor’s expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable

remedies for breach.

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

28. NEW YORK STATE TAX LAW SECTION 5-A

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

A Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned prior to such request). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors. Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

29. NEW YORK STATE VENDOR FILE REGISTRATION

Prior to being awarded a contract, the Contractor and any designated authorized dealers/distributors/resellers who accept payment directly from the State must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and to each of your authorized dealers/distributors/resellers (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York.

If the Contractor is already registered in the Vendor File, the Contractor must enter its ten-digit Vendor ID on this Contract. Authorized dealers/distributors/resellers already registered should list the Vendor ID number along with the authorized dealers/distributors/reseller information. (The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

If the Contractor is not currently registered in the Vendor File, it must request assignment of a Vendor ID number from OGS. Contractor must complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) and submit the form to OGS. Please send this document to a Designated Contact for this Contract. In addition, if an authorized dealer/distributor/reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized dealer/distributor/reseller and submitted to OGS. The OGS will initiate the vendor registration process for all companies and their authorized dealers/distributors/resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application. For more information on the Vendor File, please visit the following website: http://www.osc.state.ny.us/vendor_management

30. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4

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

31. USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, Section 11, *Remanufactured, Recycled, Recyclable, or Recovered Materials*.

32. MERCURY-ADDED CONSUMER PRODUCTS

The 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.

33. 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.

34. 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.

35. SURPLUS/TAKE-BACK/RECYCLING

- I. A State Agency is reminded of its obligation to comply with the New York 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.

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

I. New York State Law

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

II. General Provisions

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

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.
1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 – Staffing Plan
- To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")
1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov 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>

37. 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, 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, 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
Last Updated: October 8, 2019

Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>

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

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

38. NEW YORK STATE REQUIRED CERTIFICATIONS

A Contractor is required to submit the New York State Required Certifications form prior to execution of this Contract.

39. CONTRACT MODIFICATIONS AND RENEWALS

With the exception of term extensions addressed in Section 6, *Contract Term and Extensions*, any modifications to this Contract must be made by an instrument in writing executed by the Parties. Contractor shall submit copies of any proposed modifications to this Contract, including new products, terms, or price changes, to OGS for review in accordance with Appendix D, *Contract Modification Procedure and Form* prior to enactment.

40. NOTICES

All notices, demands, designations, certifications, requests, reports, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered, certified or overnight mail, or hand delivered. The Parties mutually agree to designate individuals in their respective organizations for purposes of receiving such communications pursuant to this Contract, and the addresses to which such communications are to be sent. The representatives for the State and the Contractor, and their addresses, will be identified and updated on the Contract Award Notification page associated with this Contract. A Party may, from time to time, specify any address in the United States as its address for purposes of notices under this Contract by giving fifteen (15) days written notice to the other Party.

41. 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.

42. 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.

43. ENTIRE AGREEMENT

This Contract and the referenced appendices 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 as provided in Section 39 of this Contract.

IN WITNESS WHEREOF, the Parties therefore hereby execute their mutual agreement to the terms of this Contract. This Piggyback Contract shall be a binding agreement between the Parties when executed and created as set forth in Section 22 of Appendix B, *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 to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

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 Piggyback Contract, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and New York 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 New York State Finance Law §139-j(3) and §139-j(6)(b).

CONTRACTOR

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

THE PEOPLE OF THE STATE OF NEW YORK

Signature: _____
Printed Name: _____
Title: _____
Date: _____
Office of General Services

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF _____ }

: ss:

COUNTY OF _____ }

On the _____ day of _____ in the year 2019, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he maintains an office at _____

and further that:

[Check One]

If an individual: _he executed the foregoing instrument in his/her name and on his/her own behalf.

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

If a partnership: _he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

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

Signature of Notary Public

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