

FIRST AMENDMENT TO CONTRACT NUMBER «PXXXXXX»**«CONTRACTOR_BUSINESS_NAME»****GROUP 77200, AWARD 23141****Public Safety Communications Equipment and Services (Two-Way Radios
and Satellite Phones)**

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 «FULL_LEGAL_BUSINESS_NAME_OF_CONTRACTOR» (hereinafter “Contractor”), with its principal place of business at «CONTRACTOR_BUSINESS_ADDRESS». The foregoing are collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, OGS entered into a Centralized Contract for the acquisition of Public Safety Communications Equipment and Services (Two-Way Radios and Satellite Phones), (hereinafter referred to as the “Contract” or “Contract No. «PXXXXXX»”) with «FULL_LEGAL_BUSINESS_NAME_OF_CONTRACTOR» on August 27, 2019; and

WHEREAS, Contract No. «PXXXXXX» provided for an initial term from August 27, 2019 through and including August 26, 2024, and an option for an extension of the initial term was provided for in the following Section:

- Section 3.1 *Contract Terms and Extensions* (“At the State’s option, the Contract may be extended for up to 5 years, in increments as deemed to be in the best interest of the State.”)

WHEREAS, the Parties now wish to amend the Contract to extend the Contract term through and including August 26, 2029 pursuant to Contract Section 3.1 *Contract Terms 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 Terms and Extensions*, the term of the Contract is extended for five (5) years through and including August 26, 2029.

2. PRICELIST UPDATES

Section 3.15 *Price List Updates* is deleted in its entirety and replaced with the following new Section 3.15 *Price List Updates*, to read as follows:

3.15 PRICELIST UPDATES

Contractor may update their Price List as follows:

1. **Scheduled Price List Updates:** Commencing with the first anniversary date of the Bid Opening (June 4, 2019) and annually thereafter, the Contractor may request an update to their price list to reflect Contractor price changes and the addition/deletion of Products. These submissions for price adjustment requests will be accepted during a two-week period (calendar week), which will be determined solely by OGS; for example, from September 25th through October 9th.

Contractors will be notified via email by the OGS Contract Management Specialist in advance of the two-week period for submission of Price List updates, and be provided with the current information and template(s) for the update. Contractors shall adhere to the information in the provided Appendix D - *Contract Modification Form and Procedures* for all price adjustment requests.

OGS reserves the right to give first consideration to substantially complete Price List update submissions, as determined solely by OGS, as well as to deny price adjustments to Contractors that are delinquent regarding administrative requirements, including, but not limited to, the submission of Attachment 6 - *Report of Contract Usage*, and/or proof of insurance requirements.

2. **Non-Scheduled Price List Updates:** Contractors may also, at their discretion, at any time following the commencement date of their Contract, submit up to two nonscheduled price list update requests per year outside of the scheduled two-week period determined by OGS. These nonscheduled price list updates may only be used to add or delete Products; Contractor price changes cannot be requested during a nonscheduled price list update. Should a Contractor choose to submit these nonscheduled price list updates, they must use the provided Appendix D – *Contract Modification Form and Procedures*.

Contractors shall be permitted to increase their discount rates, and/or decrease total hourly rates and percent markups any time during the Contract Term.

The discount offered on any new Products added to price lists shall be no lower than the minimum established Product category discount. Contractors shall submit their updated price list to the OGS Contract Management Specialist pursuant to the requirements of this section for review and Written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts or price lists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

All approved 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 escalation cap as set forth in Section 3.15.1 - *Escalation Cap / Maximum Price Increase*. All percentage discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract.

3. OGS reserves the right to deny price adjustment requests for any reason, including Contractor's failure to adhere to administrative requirements.

3.15.1 ESCALATION CAP / 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 Not Seasonally Adjusted Producer Price Index – Industry Data (PPI) for "Broadcast and wireless communications equipment mfg" (Series ID: PCU334220334220) as published by the US Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212.

The following example illustrates the computation of percent change:

PPI for current period	99.061
Less PPI for previous period	96.344
Equals index point change	2.717
Divided by previous period PPI	96.344
Equals	0.0282
<u>Result multiplied by 100</u>	<u>0.0282 x 100</u>

Equals percent change 2.82

The "PPI for current period" shall be the index in effect at the time of the Contract Price List Update request is received; "PPI 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.

PPI indices are available through the internet at the Bureau of Labor Statistics (BLS) website at www.bls.gov. If at any time a Series ID is discontinued or unavailable, the State reserves the right to utilize the next higher-level series available.

3. REPORT OF CONTRACT USAGE

Section 3.26 *Report of Contract Usage* is deleted in its entirety and replaced with the following new Section 3.26 *Report of Contract Usage*, to read as follows:

3.26 REPORT OF CONTRACT USAGE

Contractor shall submit Attachment 6 – Report of Contract Usage including total sales to Authorized Users of this Contract by Contractor, and all Resellers, if any, no later than 30 days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

Contractors shall specify if any Resellers are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBES), Small Business Enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

The report in Attachment 6 – Report of Contract Usage contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

4. NYS COMPTROLLER APPROVAL

The Contract is amended to add the following new Section, 3.56 *NYS Comptroller Approval*, to read as follows:

3.56 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 under this Contract(s) may also be subject to OSC approval.

5. CONFLICT OF TERMS

Section 1.8 *Conflict of Terms* of the Contract is deleted in its entirety and replaced with the following new Section 1.8 *Conflict of Terms*, to read as follows:

1.8 CONFLICT OF TERMS

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

1. Appendix A (June 2023), Standard Clauses for New York State Contracts;
2. Appendix C *Federal Funding Agency Mandatory Terms and Conditions*;
3. The First Amendment;
4. The Contract;
5. Appendix B (April 2016), *General Specifications*; and
6. All other appendices and attachments to the Contract.

6. 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

Section 3.28 *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*, of the Contract is deleted in its entirety and replaced with the following new Section 3.28 *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*, to read as follows:

3.28 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

3.28.1 NEW YORK STATE LAW

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

3.28.2 GENERAL PROVISIONS

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

3.28.3 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.
 - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
 - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. FORM EEO 100 – STAFFING PLAN

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

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

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 during the previous quarter 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>.

The Workforce Audits must be completed electronically in the NYS Contract System Workforce Audit Module. Separate audits shall be completed by Contractor and all subcontractors, and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors. 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, 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.

3.28.4 CONTRACT GOALS

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Business Diversity. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200 to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

3.28.5 MWBE UTILIZATION PLAN

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the

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

- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333.1. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an MWBE Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

3.28.6 REQUEST FOR WAIVER

- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333.1, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.

- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

3.28.7 REQUIRED GOOD FAITH EFFORTS

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

- 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.

3.28.8 MONTHLY MWBE CONTRACTOR COMPLIANCE REPORT

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

- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: **“Introduction to the System - Vendor training”** and **“Contract Compliance Reporting - Vendor Training”** to become familiar with the NYSCS. To view the training schedule and to register visit:
<https://ny.newnycontracts.com/FrontEnd/TrainingList.asp>.
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on **“Vendor Account Lookup”** to identify the Contractor’s account by company name. Contact information should be reviewed and updated if necessary by choosing **“Change Info.”** It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through **“Request New User.”** When identifying the person responsible, please add **“- MWBE Contact”** after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for **“Contact Us & Support”** then **“Technical Support”** on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month’s activity to: OGS OBD Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor’s responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

3.28.9 BREACH OF CONTRACT AND LIQUIDATED DAMAGES

- A. Where OGS determines that the Contractor is not in compliance with the MWBE requirements of this Section, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

3.28.10 FRAUD

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

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

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

7. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Section 3.29 *Participation Opportunities For New York State Certified Service-disabled Veteran Owned Businesses*, of the Contract is deleted in its entirety and replaced with the following new Section 3.29 *Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses*, to read as follows:

3.29 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("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/>

8. ENVIRONMENTAL SUSTAINABILITY AND NYS EXECUTIVE ORDER NUMBER 22

Section 3.33 *Environmental Attributes and NYS Executive Order Number 4* of the Contract is deleted in its entirety and replaced with the following new Section 3.33 *Environmental Sustainability and NYS Executive Order Number 22*, to read as follows:

3.33 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.

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

The Contract is amended to add the following new Section, 3.57 *Prohibition On Contracting for Certain Telecommunications and Video Surveillance or Equipment*, to read as follows:

3.57 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.

10. CONTRACT DOCUMENTS; ELECTRONIC FORMAT

The Contract is amended to add the following new Section, 3.58 *Contract Documents; Electronic Format*, to read as follows:

3.58 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.

11. 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).

12. 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 D *Contract Modification Procedure*, within the Appendix and in any references to the *Contract Modification Procedure* within the Contract.

13. ATTACHMENT 5 – GLOSSARY OF TERMS

Attachment 5 – *Glossary of Terms* is amended to delete the definition for “NYS Holidays” in its entirety and replace it with the following new definition:

ATTACHMENT 5 – GLOSSARY OF TERMS

“NYS Holidays” refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. 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.

14. 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.

15. Except as herein modified, all other terms of Contract «PXXXXXX» 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: _____

Printed Name: _____

Title: _____

Date: _____

Company Name: _____

Federal ID: _____

NYS Vendor ID: _____

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

Signature: _____

Printed Name: _____

Title: _____

Date: _____

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.

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 _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** _____