

**AGREEMENT FOR**  
**STEM/STEAM AND SCIENCE LABORATORY**  
**EDUCATIONAL SUPPLIES AND EQUIPMENT**

**BY AND BETWEEN**

**NEW YORK STATE**

**OFFICE OF GENERAL SERVICES**

**AND**

**Modular Robotics, Inc.**

**CONTRACT NUMBER PC69194**



**Office of  
General Services**

**Procurement  
Services**

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- ATTACHMENT 6 – Request for Product Review (RFPR) Template**

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**STATE OF NEW YORK  
OFFICE OF GENERAL SERVICES  
AGREEMENT # PC69194  
CENTRALIZED CONTRACT FOR THE ACQUISITION OF  
STEM/STEAM AND SCIENCE LABORATORY EDUCATIONAL SUPPLIES AND EQUIPMENT (STATEWIDE)**

THIS AGREEMENT (hereinafter the “Contract” or the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the People of the State of New York, acting by and through the **Commissioner of the Office of General Services** (OGS), whose office is on the 36<sup>th</sup> Floor, Corning Tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the “State” or “OGS”) and **Modular Robotics, Inc.** having its principal place of business at **1860 38th Street, Boulder, CO 80301** (hereinafter referred to as the “Contractor”). OGS and the Contractor are collectively referred to as the “Parties.”

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

WHEREAS, OGS has identified a need by New York State agencies and other Authorized Users for STEM/STEAM and Science Laboratory Educational Supplies and Equipment, as further described herein;

WHEREAS, OGS conducted a non-competitive procurement to identify the bidder(s) which could provide the STEM/STEAM and Science Laboratory Educational Supplies and Equipment, referred to as IFB #23185 (hereinafter the “IFB” or the “Solicitation”), which was advertised on February 4<sup>th</sup>, 2020 in the New York State Contract Reporter, as required by New York State Economic Development Law;

WHEREAS, awards were made as non-competitive, multiple-award contracts to Contractors for purchase by Authorized Users of the STEM/Steam and Science Laboratory Educational Supplies and Equipment that met the requirements of the Solicitation; and

WHEREAS, the State has determined: that the Contractor submitted a responsive proposal; that the Contractor is a responsible vendor; that the Contractor passed a Reasonableness of Price evaluation as required by the Solicitation, and that the Contractor is willing to provide the commodities under the terms and conditions contained herein.

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

## **1. INTRODUCTION**

### **1.1 Overview**

The purpose of this Contract is to allow for purchase of STEM/STEAM and Science Laboratory Educational Supplies and Equipment as specified herein for all Authorized Users eligible to purchase through this Contract.

### **1.2 Scope**

The scope of this Contract is to provide Authorized Users the ability to purchase STEM/STEAM and Science Laboratory Educational Supplies and Equipment. Products offered through this Contract are for use in a K-12 or college level educational setting. All product categories may include assembly, configuration, installation, and networking services which are not considered Public Works pursuant to Section 2.35 *Assembly/Configuration/Installation/Networking Services*.

The scope of this Contract does not include stand-alone equipment and products such as computers and peripherals, printers or copiers, furniture, industrial tools and supplies, audio visual products, medical

equipment, assistive technology products, books, serials or arts and craft supplies unless those products are part of Contractor’s general product offering and are to be utilized in conjunction with Contractor’s STEM/STEAM or Science Laboratory Educational Supplies and Equipment. Industrial or commercial grade 3D printing equipment, robotics or drones that are not intended for an educational setting are also excluded. Installation services which are considered Public Works in accordance with New York State Labor Law are not permitted (see Section 2.35, *Assembly/Configuration/Installation/Networking Services*).

This Contract may include the Lots and product categories listed below.

**Lot 1 – Non-Information Technology based STEM/STEAM or Science Laboratory Products**

Products that **do not** have the ability to collect Data, examples of which include but are not limited to parts, tools, consumables, supplies, safety equipment, hands-on project materials and hard copy printed materials.

**Table 1: Lot 1 Examples**

<b>Product Category</b>	<b>Examples (Products that do not have the ability to collect Data)</b>
3D Printing	3D printing tools, supplies and accessories used in educational programs: <ul style="list-style-type: none"> <li>• 3D drawing pens or tools</li> <li>• Replacement parts</li> <li>• Consumables</li> <li>• Related accessories</li> </ul>
Science Laboratory and Teaching Supplies	Science laboratory and teaching supplies used in grade, middle, high school or college level science laboratories: <ul style="list-style-type: none"> <li>• Laboratory equipment</li> <li>• Laboratory tools</li> <li>• Supplies for experiments</li> <li>• Safety equipment</li> <li>• Related accessories</li> </ul>
Robotics Kits and Parts	<ul style="list-style-type: none"> <li>• Robotics parts</li> <li>• Robotic kits</li> <li>• Related tools and accessories</li> </ul>
Drone Kits and Parts	<ul style="list-style-type: none"> <li>• Drone parts</li> <li>• Drone kits</li> <li>• Related tools and accessories</li> </ul>
STEM/STEAM and Science Laboratory Educational Materials	Packaged lesson plans, experiment sets or model kits that teach STEM/STEAM or science laboratory subject matter such as: <ul style="list-style-type: none"> <li>• 3D Printing</li> <li>• Robotics or Drones</li> <li>• Virtual or Augmented Reality</li> <li>• Programming/coding/electronics</li> <li>• Building or engineering design</li> <li>• Physics, math, biology or chemistry</li> <li>• Environmental science</li> <li>• Renewable energy</li> </ul>
Virtual and Augmented Reality Equipment and Supplies	Accessories or parts that are used in high school or college level virtual or augmented reality laboratories
Packaged Virtual Reality Products and Simulation Equipment	Accessories or parts used for either a virtual reality program or for simulation equipment

**Lot 2 – Information Technology Based STEM/STEAM or Science Laboratory Products**

Products that **do** have the ability to collect Data or that require the acceptance of product terms and conditions, examples of which include, but are not limited to, technology products that come with software or apps, technology products that collect Data, on-line or downloadable apps, stand-alone software, subscription based software products, cloud based technology products and products that require user registration.

**Table 2: Lot 2 Examples**

<b>Product Category</b>	<b>Examples (Products that <u>do</u> have the ability to collect Data)</b>
3D Printing	3D printing equipment and related software used in educational programs: <ul style="list-style-type: none"> <li>• 3D Printers or scanners</li> <li>• 3D drawing pens or tools</li> <li>• Related software</li> <li>• Service plans</li> <li>• Extended warranties</li> </ul>
Science Laboratory and Teaching Supplies	Science laboratory and teaching supplies used in grade, middle, high school or college level science laboratories
Robotics Kits and Parts	Robotic kits and related software used in educational programs: <ul style="list-style-type: none"> <li>• Preassembled, programmable robotic kits</li> <li>• Related software</li> </ul>
Drone Kits and Parts	Drone kits and related software used in educational programs: <ul style="list-style-type: none"> <li>• Preassembled, programmable drone kits</li> <li>• Related software</li> </ul>
STEM/STEAM and Science Laboratory Educational Materials	Packaged lesson plans, experiment sets or model kits that collect User Data and teach STEM/STEAM or science laboratory subject matter such as: <ul style="list-style-type: none"> <li>• 3D Printing</li> <li>• Robotics or Drones</li> <li>• Virtual or Augmented Reality</li> <li>• Programming/coding/electronics</li> <li>• Building or engineering design</li> <li>• Physics, math, biology or chemistry</li> <li>• Environmental science</li> <li>• Renewable energy</li> </ul>
Virtual and Augmented Reality Equipment and Supplies	Equipment and supplies, accessories and related software used in high school or college level virtual or augmented reality laboratories: <ul style="list-style-type: none"> <li>• Virtual reality headsets</li> <li>• Hand, body, motion or voice controllers or trackers</li> <li>• Projection equipment</li> <li>• Cameras</li> <li>• Greenscreen equipment</li> <li>• Podcasting equipment</li> <li>• Related software</li> </ul>
Packaged Virtual Reality Products and Simulation Equipment	Software or web-based virtual reality programs or simulation equipment that include a STEM/STEAM or science based educational component: <ul style="list-style-type: none"> <li>• Virtual laboratories</li> <li>• Virtual learning platforms and classrooms</li> <li>• Flight or other simulation equipment that includes a STEM/STEAM educational component</li> <li>• Related software</li> </ul>

Lot 2 Data Security and Privacy Mandates: Authorized User use of Lot 2 products or services offered by STEM/STEAM and science laboratory supply companies may be subject to various statutes and/or policies

relating to the collection, use, and disposition of personally identifiable information. See Appendix D – ‘Data Security and Privacy Mandates’. As a result of such statutes and/or policies, Authorized User use of STEM/STEAM products or services may require vendors of Lot 2 products or services to comply with additional terms and conditions relating to the collection, use, and disposition of personally identifiable information. Authorized Users will advise vendors of any such applicable statutes and/or policies prior to making a purchase under this Contract, and Contractor must comply with such statutes and/or policies as a condition of providing such products or services to the Authorized User.

### 1.3 Estimated Quantities

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

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

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

### 1.4 Definitions

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

**“Analytic Derivatives”** The outcome from Data Mining or other aggregated Data analysis techniques.

**“Business Day”** shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

**“Business Entity”** Any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.

**“Data”** Any information, Analytic Derivatives, formula, algorithms, or other data collected by the Product(s). Data includes, but is not limited to, any of the foregoing that the Authorized User and/or Contractor (i) uploads to the Product, and/or (ii) creates and/or modifies using the Product. See also Analytic Derivatives.

**“Data Categorization Study”** shall refer to the process of risk assessment of Data. See also “High Risk Data”, “Moderate Risk Data” and “Low Risk Data”.

**“Deeper Discount”** means to offer an additional discount on items in Contractor’s catalog for various reasons. Deeper Discounts can also be used for Contractor to achieve multiple discount levels in its catalog pricing.

**“High Risk Data”** Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“High Impact Data”).

**“Low Risk Data”** Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“Low Impact Data”).

**“Manufacturer”** An organization or Business Entity that creates, makes, programs, processes, or fabricates a Product that is branded, warranted, supported and maintained by that organization or Business Entity and which holds all IP rights of the Product.

**“MWBE”** shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.

**“Moderate Risk Data”** Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“Moderate Impact Data”).

**“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; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

**“NYS Vendor ID”** is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

**“Preferred Source Products”** shall refer to those Products that have been approved in accordance with New York State Finance Law § 162.

**“Preferred Source Program”** shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to a state agencies, political subdivisions and public benefit corporations (including most public authorities).

**“Procurement Services”** shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSP”) and Procurement Services Group (“PSG”).

**“Request for Product Review (RFPR)”** A process used to review a Product that collects Data in order to conduct a Data Categorization Study, determine insurance requirements, incorporate additional Authorized User terms and conditions and request the Contractor’s most competitive pricing.

**“SDVOB”** shall refer to a NYS-certified Service-Disabled Veteran-Owned Business

**“STEM/STEAM”** shall refer to an educational approach to learning that uses science, technology, engineering, the arts and mathematics as access points for guiding student inquiry, dialogue and critical thinking.

## 1.5 Appendices and Attachments



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

Appendix A – Standard Clauses for NYS Contracts (October 2019)  
Appendix B – General Specifications (April 2016)  
Appendix C – Contract Modification Procedure  
Appendix D – Data Security and Privacy Mandates  
Appendix E – Federal Emergency Management Agency (FEMA) Terms and Conditions

Attachment 1 – Pricing  
Attachment 2 – Insurance Requirements  
Attachment 3 – Report of Contract Usage  
Attachment 4 – How to Use  
Attachment 5 – Contractor and Reseller/Distributor Information Form  
Attachment 6 – Request for Product Review (RFPR) Template

## 1.6 Conflict of Terms

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

1. Appendix A, Standard Clauses for New York State Contracts (October 2019);
2. Appendix E – Federal Emergency Management Agency (FEMA) Terms and Conditions
3. This Contract;
4. Appendix B, General Specifications (April 2016);
5. All other appendices and attachments to this Contract;

## 1.7 Performance and Bid Bonds

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

## 1.8 Periodic Recruitment

The Solicitation allowed for periodic recruitment of additional Contractors during the term of this Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. A bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under the Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Contractor may not resubmit a Bid for future consideration for categories covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

## 1.9 Procurement Instructions for Authorized Users

Authorized Users should refer to Attachment 4 *How to Use* and Attachment 6 *Request for Product Review (RFPR) Template* for specific procurement instructions. OGS reserves the right to unilaterally make revisions, changes, additions and/or updates to the 'How to Use' and 'Request for Product Review (RFPR) Template' without processing a formal amendment and/or modification.

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## 2. TERMS AND CONDITIONS

### 2.1 Contract Term and Extensions

The Contract will be in effect for a term of five years. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*).

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

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

### 2.2 Short term Extension

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

### 2.3 Price

#### 2.3.1 Price

Contract pricing is set forth in Attachment 1 – Pricing.

Price includes all customs, tariffs, delivery charges and is F.O.B. destination any point in New York State, for orders, as designated by the ordering agency. (see Section 2.11 *Product Delivery*)

In addition, upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause (see Section 2.28 *Extension of Use*). Contractor's pricing will be posted to the OGS website.

Discounts quoted are to be firm for the entire period of the Contract, and no discount reductions will be allowed at any time. Discount increases are permitted at any time (see Section 2.4 *Pricelist Updates*).

Contractor may negotiate better pricing with customers either on an individual or statewide basis at any time throughout the Contract period. (See "BEST PRICING OFFER" Section which follows).

### 2.3.2 Best Pricing Offer

Price decreases shall take effect automatically during the Contract term and apply to orders submitted subsequent to the effective dates of applicable price decreases as follows:

1. Commercial Price List reductions: Per Section 2.4 *Pricelist Updates* where the NYS Net Prices are based on a discount from the Contractor's list prices and the Contractor reduces its pricing to its customers or to similarly situated government customers during the Contract term; or
2. Special Offers/Promotions - General: Where the Contractor generally offers more advantageous special price promotions, or special discount pricing to customers during the Contract term, and the maximum price or discount associated with such offer or promotion is better than the discount or price otherwise available under this Contract, such better price or discount shall apply for similar quantity transaction for the life of the general offer or promotion.
3. Special Offers/ Promotions-Specific: Contractor may offer an Authorized User competitive pricing which is lower than the Net NYS Price set forth herein at any time during the Contract period and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph.

### 2.3.3 Volume Discounts

Contractor may offer volume discounts. Volume discounts may be applied per order. Volume discounts shall be defined and applied as follows: Volume discounts shall be additional discounts applied to individual orders over a specified dollar amount.

## 2.4 Pricelist Updates

Contractor may update its pricelist as follows:

The Contractor shall hold pricing for one year from the effective date of the Contract pursuant to Section 2.1. Contract prices may be changed on the first anniversary of the Contract start date and annually thereafter. OGS, at its discretion, may request price changes at any time, if it is in the best interest of the State. It is the State's intent to publish on the OGS website each Contractor's price list.

Requests for price adjustments and new items shall be submitted 30 calendar days prior to the anniversary date of the Bid Opening of the Solicitation and annually thereafter. Requests from Contractor for price increases at any other time will not be granted unless approved by OGS. The Contractor shall provide OGS with one electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under the Contract.

The discount offered on any new Products added to pricelists shall be no lower than the minimum established product category discount. Contractor shall submit its updated pricelist to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts, price lists or invoices to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

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

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

In addition, OGS reserves the right to remove products from the Contractor's pricelist at any time.

All approved pricelist updates shall apply prospectively upon approval by OGS. All percentage discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract.

## 2.5 Pricelist Format

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

- Price increases;
- Price decreases;
- Products being added; and
- Products being deleted.

## 2.6 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure*.

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.

## 2.7 Ordering

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

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

## 2.8 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.

## 2.9 Minimum Order

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Shipped Products will have a minimum order of \$50.00 and shall be ordered in the Contractor's standard unit of measure packaging unless noted otherwise in each Contractor's Information page. Contractor may elect to honor orders for less than the minimum order, however no additional charges shall be allowed.

## 2.10 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/nys-vendors>

## 2.11 Product Delivery

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

## 2.12 Product Returns and Exchanges

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

Products shall be replaced within 10 business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product

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returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

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

### 2.13 Contract Administration

Contractor shall maintain a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Contractor shall also maintain an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five Business Days if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

### 2.14 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

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

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

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

### 2.15 Ordering

Contractor shall be capable of accepting orders manually, via facsimile, and, electronically via email. As an option, Contractor may also accept orders electronically via the Internet through a web-based ordering system. Contractor shall be required to provide written quotes to Authorized Users who request them prior to placing an order, which quote details the SKU corresponding with the approved product list, List Price, discount, and Net Price, as applicable.

The web-based ordering system, if offered, shall allow Authorized Users to enter orders and have full order inquiry capabilities. All orders (manual, fax, electronic) shall reference requisition and/or purchase order number as required. If offering a web-based ordering system, Contractor represents and warrants that it is the sole owner of the software product used for its ordering system, or, if not the owner, has received all proper authorizations from the owner to license the software product, and has the full right and power to grant the

rights contained in the Contract and as described further in Appendix B. Contractor further warrants and represents that the software product is of original development, and/or that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person/company.

The web-based ordering system\*, if offered, shall be capable of processing, controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Agency/Facility/Political Subdivision, etc.
- Contract Number • Purchase Order/Requisition Numbers
- Contact (individual placing order) • SKU/PN & Product Description
- Net Price
- Extended and Total Amounts

\*Comparable systems meeting the intent of the specifications may be considered. If offering a web-based ordering system, the Contractor shall provide any necessary software (excluding communication software) and training guides/manuals or online support in the use of the web-based ordering system at no additional cost to all Authorized Users capable of placing orders electronically. Samples of software and training guides/manuals may be required. If requested, Contractor must demonstrate its system at an Albany, NY area location designated by the State.

## 2.16 Accessibility of Web-Based Information and Applications Policy

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

Any web-based information and applications development, or programming delivered pursuant to the Contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005. Quality assurance testing may be conducted by the State and the results of such testing, if performed, must be satisfactory to the State before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

## 2.17 Americans with Disabilities Act (ADA)

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

## 2.18 Mandatory Participation in the eMarketplace

The State has implemented an eProcurement application that supports the requisitioning process for Authorized Users including State Agencies to procure Products. This application provides catalog capabilities. All Lot 1 Contractors and all Lot 2 Contractors shall participate in the NYS eMarketplace, a website where all Authorized Users of New York State centralized contracts can shop for products from centralized contracts and Preferred Sources. Additional information may be found at:

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<https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>.

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

In addition to catalog development and management, Contractors will have the option to integrate their purchasing systems with Proactis, the eMarketplace vendor. Integration will be at the sole expense of the Contractor.

The eMarketplace can be used by all Authorized Users of NYS centralized contracts. It can be accessed through the Statewide Financial System or directly through Proactis by Authorized Users who do not use SFS.

## 2.19 Insurance

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 2 – *Insurance Requirements*.

## 2.20 Report of Contract Usage

Contractor shall submit Attachment 3 – *Report of Contract Usage* twice each year for the periods covering November 1<sup>st</sup> through April 30<sup>th</sup> and May 1<sup>st</sup> through October 30<sup>th</sup>. The report shall include total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, and shall be submitted no later than May 15<sup>th</sup> for the period of November 1<sup>st</sup> through April 30<sup>th</sup> and November 15<sup>th</sup> for the period of May 1<sup>st</sup> through October 30<sup>th</sup>. 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 report.

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 to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 3 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

## 2.21 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 ("MWBs") and the employment of minority group members and women in the performance of OGS contracts.



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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 [Staffing Plans are only required if the Contract has a value in excess of \$250,000.00. If less than \$250,000.00, remove the below text and replace with “RESERVED” and you must delete this note!]

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

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

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

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

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

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

#### IV. Contract Goals

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

#### B. Good Faith Efforts

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

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

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

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

#### V. Fraud

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

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

## 2.22 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, Contractor is 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/>

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](mailto: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/>

## 2.23 Overlapping Contract Products

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

## 2.24 Preferred Source Products

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in the 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.

## 2.25 NYS Vendor Responsibility

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

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

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

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

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

## 2.26 NYS Tax Law Section 5-a

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

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](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](https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission) Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a

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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.

## 2.27 Non-State Agencies Participation in Centralized Contracts

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

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

## 2.28 Extension of Use

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

## 2.29 Resellers

### A. Definitions

Reseller is a company or individual (merchant) that purchases goods or services with the intention of selling them rather than consuming or using them. Also known as Value Added Reseller (VAR) or channel partner. Resellers must be eligible to quote statewide, independently and lower than manufacturer (Contract) pricing for procurements under this Contract. Reseller must also be able to accept orders, invoice and receive payment for Products.

### B. Conditions of Reseller Participation

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

1. such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;

3. those qualifying criteria met by the Reseller must be identified in Reseller designations (See Attachment 5 *Contractor and Reseller/Distributor Information Form*) at the time that Reseller approval is requested; and,
4. immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.

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

#### C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 5 *Contractor and Reseller/Distributor Information Form*. Contractor shall also specify whether orders must be placed directly with Contractor, or may be placed directly with designated Resellers.

#### D. Responsibility for Reporting/Performance

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

#### E. Applicability of Contract Terms

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

### 2.30 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.

### 2.31 Centralized Contract Modifications

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

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

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

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

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

## 2.32 Compliance with Federal, State and Local Regulations

The Contractor shall comply with all State and Authorized User policies regarding compliance with various confidentiality and privacy laws, rules and regulations. As part of such compliance, Contractor shall execute written confidentiality/non-disclosure agreements as requested by the State or an Authorized User. Upon request by the Authorized User, Contractor will provide verification of compliance with specific Federal, State and local regulations, laws and IT standards with which the Authorized User is required to comply. See, Appendix D Data Security and Privacy Mandates.

## 2.33 Instruction Manuals

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

## 2.34 Licensing Terms and Conditions

An Authorized User looking to acquire Products under this Contract must review the contractual terms and conditions. The Authorized User must ask the Contractor if “click through”, “shrink wrap” or other pass-through or licensing/subscription terms and conditions are present, and if so, the Authorized User is responsible for reviewing and approving such terms and conditions prior to ordering the Products and services. If the terms and conditions are not acceptable to the Authorized User, it is the responsibility of such Authorized User to negotiate any needed amendments. **Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, Appendix E, the Solicitation, the Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.**

## 2.35 Assembly/Configuration/Installation/Networking Services

Assembly/Configuration/Installation Services may include moving materials and equipment to its final location, uncrating, assembling, adjusting, connecting to the network and leaving free-standing equipment ready to operate to the full extent of its design capabilities. These services do not include any installation that is considered Public Works under the New York State Labor Law. See Appendix B, §37, *Installation*, for terms applicable to installation. These services may include, but are not limited to, the following:

1. System setup (e.g., key operator orientation, system parameters);
2. System enhancement (e.g., memory upgrades, network interfaces);
3. Network set up, including but not limited to, applying network settings, and verification of network functionality;
4. Software installation; and

5. Hardware verification (including appropriate tests and diagnostics to ensure proper Product operation).

Installation work which is considered Public Works in accordance with the New York State Labor Law is **excluded** from purchase under this Contract. Historically, the New York State Bureau of Public Works has maintained that installation, maintenance and repair of equipment attached to any wall, ceiling or floor or affixed by hard wiring or plumbing is Public Work. In contrast, installation of a piece of equipment which is portable or a “plug-in” free-standing unit would not be considered Public Work. Thus, this Contract does not authorize installation where the equipment becomes a permanent part of the building structure, or is otherwise incorporated into the fabric of the building (e.g., installation on a wall, ceiling or floor in a fixed location, or affixed by hard-wiring or plumbing). See Appendix B, *Prevailing Wage Rates - Public Works and Building Services Contracts*. For questions about whether a proposed installation constitutes public work, please contact the New York State Department of Labor’s Bureau of Public Work District Office in your area. A listing of district offices and contact information is available at: [www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm](http://www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm).

### 2.36 Removal of Records from Premises

Contractor shall not remove any documents, papers, files, or Data (records), whether in hard copy or electronic form, from the premises of an Authorized User or from electronic storage media used by the Authorized User without prior written approval of the Authorized User. In addition, Contractor shall not, remotely or otherwise, access, modify, copy, destroy, or delete such records without prior written approval of the Authorized User.

### 2.37 Notices

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

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

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

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

### 2.38 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.

### 2.39 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.



#### 2.40 Counterparts

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

#### 2.41 Entire Agreement

This Contract and the referenced Appendices and Attachments constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein. In accordance with the terms set forth in Appendix B, Section 26, *Modification of Contract Terms*, and Section 30, *Purchase Orders*, no alteration or modification shall be made by including terms or conditions on a Purchase Order, order form or other document which seek to vary the terms of this Contract or impose new duties or obligations on the Contractor or Authorized User, and no such terms shall have any force and effect.

## CONTRACT SIGNATURE PAGE

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

**CONTRACTOR**

Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Company Name: \_\_\_\_\_  
 Federal ID: \_\_\_\_\_  
 NYS Vendor ID: \_\_\_\_\_  
 Date: \_\_\_\_\_

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

Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 \_\_\_\_\_  
 Date: \_\_\_\_\_

**The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts (October 2019)), Appendix B (General Specifications (April 2016)), Appendix E (Federal Emergency Management (FEMA) Terms and Conditions), 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).**

**CORPORATE ACKNOWLEDGMENT**

STATE OF                                    }  
  :  
COUNTY OF                                }     **ss.:**

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20 \_\_\_\_, before me personally came:  
\_\_\_\_\_, to me known, who, being by me duly  
sworn, did depose and say that he/she/they reside(s) in  
\_\_\_\_\_; that he/she/they is (are)  
\_\_\_\_\_ (the President or  
other officer or director or attorney in fact duly appointed) of \_\_\_\_\_  
\_\_\_\_\_, the corporation described in and  
which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of  
the board of directors of said corporation.

\_\_\_\_\_  
**Notary Public Signature**