



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
NEW YORK STATE PROCUREMENT
PIGGYBACK CONTRACT FOR SERVICES

New York State Contract #

[Redacted box]

Master Contract #

NASPO Value Point 00212

DESIGNATED CONTACTS:

Primary Contact: Neilene Rabideau
E-mail address:
neilene.rabideau@ogs.ny.gov

Secondary Contact: Joseph Better
E-mail address: joseph.better@ogs.ny.gov

THIS CONTRACT for establishment of a "piggyback" contract is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163(10)(e), and [Redacted] (hereinafter "Contractor" or "Vendor" or "Offerer"), with its principal place of business at [Redacted]. OGS and Contractor are hereby individually referred to as a "Party" and collectively referred to as "Parties".

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

Whereas, OGS, on behalf of the Commissioner, finds it necessary and desirable to enter into such a contract (hereinafter "Piggyback Contract" or "Contract"), with Contractor for the purchase of specified products or services under the terms and conditions established pursuant to NASPO Value Point Contract #00212 (hereinafter "Master Contract"); and

Whereas, OGS provided notification of its intention to enter into a single source contract with Contractor by placing a notice in the March 25, 2015 edition of the New York State Contract Reporter.

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

1. PIGGYBACK CONTRACT SCOPE

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

This contract is for purchases by Authorized Users only as defined by Appendix B. Purchases made by non-Authorized Users, including participants in offender-funded monitoring or probation programs, is prohibited.

The Master Contract is expressly amended as noted in Section 4, Merger of Appendices/Conflict of Clauses, below.

## 2. TERM

The term of this Piggyback Contract shall be the last date of execution by the Parties through December 31, 2021. Should the Master Contract be extended or renewed, this Piggyback Contract may also be extended or renewed for up to the same term(s) upon the mutual written agreement of the Parties.

## 3. CONTRACT MODIFICATIONS AND RENEWALS

Any modifications to this Piggyback Contract must be made by an instrument in writing executed by the Parties hereto. Contractor shall submit copies of any modifications to or renewals of the Master Contract, including new products, terms, or price changes, to OGS for review prior to enactment. OGS may accept a modification to or renewal of the Master Contract in full. If a modification is not fully acceptable to OGS, either the Contractor or OGS may terminate the Piggyback Contract in accordance with its terms or amend the Piggyback Contract to accept the modification to the Master Contract in part.

However, in accordance with Appendix B, Section 26, *Modification of Contract Terms*, an Authorized User shall have the authority to accept an offer from Contractor for more advantageous terms and pricing than those under this Piggyback Contract. An Authorized User shall not have the authority to accept any other requests for modifications to the Piggyback Contract, which must be handled as outlined herein.

## 4. ADDITIONAL DEFINITIONS

In addition to the definitions found in Appendix A and B, the following definitions shall be applicable to this Piggyback Contract:

1. Analytic Derivatives shall mean the outcome from data mining or other aggregated Data analysis techniques.
2. Authorized User Agreement shall mean the Purchase Order and/or such other documents memorializing the Contractor's obligations with respect to a given transaction resulting from the selection of the Contractor by an Authorized User.
3. Cloud Service shall mean any service in which Authorized User Data is transmitted, stored, or acted upon on non-Authorized User equipment.
4. Continental United States (CONUS) shall mean the 48 contiguous States, and the District of Columbia.
5. Data shall mean any information, Analytic Derivatives, formula, algorithms, or other content that the Authorized User may provide to the Contractor pursuant to this Contract. Data includes, but is not limited to, any of the foregoing that the Authorized User and/or Contractor (i) uploads to the Cloud Service, and/or (ii) creates and/or modifies using the Cloud Service. See also Analytic Derivatives.
6. Data Breach shall mean unauthorized access by any person, including employees, officers, partners or subcontractors of Contractor, who have not been authorized to access such Data.
7. Data Center shall mean all facilities which Authorized User Data is processed or stored.
8. Device shall mean a piece of electronic equipment (such as a laptop, server, hard drive, or USB drive) adapted for a particular purpose.
9. Encryption shall mean a technique used to protect the confidentiality of information. The process transforms ("encrypts") readable information into unintelligible text through an algorithm and associated cryptographic key(s).
10. Follow the Sun shall mean a type of workflow in which tasks are passed around daily between work sites that are in different time zones.
11. Information Technology Services (ITS) shall mean the New York State Office of Information Technology Services (<http://www.its.ny.gov/>). It is the responsibility of ITS to provide centralized IT services to the State and its governmental entities with the awareness that our citizens are reliant on those services.
12. Security Incident shall mean a violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices. A Security Incident is also defined as any event that adversely affects

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the confidentiality, integrity, or availability of system and its Data. See also NYS ITS Policy NYS-S13-005 or its successor for additional information.

13. State Executive Agencies shall have the same meaning as in the New York Technology Law and shall mean a department, board, bureau, commission, division, office, council, committee or officer of the state.
14. Statement of Work (SOW) shall mean a document that captures and defines the work activities, deliverables, and timeline an Authorized User seeks from a vendor. The SOW usually includes detailed requirements, with standard regulatory and governance terms and conditions

## 5. MERGER OF APPENDICES/CONFLICT OF CLAUSES

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

- I. Appendix A, *Standard Clauses for NYS Contracts*
- II. Piggyback Contract (This Document)
- III. Appendix B, *OGS General Specifications*
- IV. Statement of Work/Authorized User Agreement
- V. Master Contract, NASPO Value Point Contract #00212

## 6. APPLICABLE LAW

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

## 7. AUTHORIZED USERS

“Authorized User” shall have the meaning set forth in the State Finance Law section 163(1)(k). This Piggyback Contract is for use by Authorized Users, which includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, Section 2(a), *Definitions*.

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

## 8. USE OF CONTRACT

All Authorized Users shall ensure that any and all purchases made pursuant to all applicable laws and procurement policies and procedures. Additional details and requirements, including contact information for OGS Contract Management, are available on the Contract Award Notification website. In accordance with Appendix B, Section 26, an Authorized User may include additional terms and conditions in the Authorized User Agreement that do not conflict with this Piggyback Contract and are more advantageous to the Authorized User. Examples of such additional terms may include reduced prices or an expedited delivery timeframe.

### *State Executive Agencies*

State Executive Agencies shall ensure that all purchases are in accordance with the State Finance Law and all New York State Office of Information Technology Services (ITS) policies, including, but not limited to, Data Classification and Plan to Procure agency submission requirements. State Executive Agencies shall solicit quotes from all vendors with contracts in Group 38235 – Electronic Monitoring of Offenders. The solicitation shall include, at a minimum, the scope of services needed, specific deliverables, data classification (but not specific data), data retention requirements, data breach requirements, insurance requirements, and any additional requirements or needs. Vendors may be required to provide a

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Statement of Work that addresses the specific Authorized User requirements. In accordance with State Finance Law section 163(10)(c), the State Executive Agency Authorized User shall ensure that the selection of the vendor is the most practical and economical and is in the best interests of the State.

After selecting a vendor, the Authorized User and vendor shall enter into a formal Authorized User Agreement that specifies the Contractor's and Authorized User's specific requirements and needs. The Authorized User agreement may not add any additional products, services, or material requirements not included in the Statement of Work and solicitation process. Such Authorized User Agreement and Statement of Work shall be incorporated into this Piggyback Contract as described above.

### *Non-State Executive Agencies*

Non-State Executive Agencies shall ensure that all purchases are in accordance with applicable procurement laws and any required information technology policies. Authorized Users should solicit quotes from all vendors with contracts in Group 38235 – Electronic Monitoring of Offenders. The solicitation shall include, at a minimum, the scope of services needed, specific deliverables, data classification (but not specific data), data retention requirements, data breach requirements, insurance requirements, and any additional requirements or needs. Vendors may be required to provide a Statement of Work that addresses the specific Authorized User requirements. The Authorized User shall ensure that the selection of the vendor is the most practical and economical and is in the best interests of the State.

After selecting a vendor, the Authorized User and vendor shall enter into a formal Authorized User Agreement that specifies the Contractor's and Authorized User's specific requirements and needs. The Authorized User agreement may not add any additional products, services, or material requirements not included in the Statement of Work and solicitation process. Such Authorized User Agreement and Statement of work shall be incorporated into this Piggyback Contract as described above.

## **9. PREFERRED SOURCES PRODUCTS**

New York State Finance Law §162 mandates that a New York State agency, public authority, political subdivision or public benefit corporation obtain certain commodities and services from preferred sources, such as Correctional Industries (Corcraft), the blind and the disabled, when such products or services meet the form, function and utility of the entity. Some products or services under this Piggyback Contract may be available from one or more preferred sources. Contractor understands and agrees that such products and services must be purchased from a preferred source in accordance with New York State Law.

## **10. NOTICES**

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

## **11. MINIMUM ORDER**

There is no minimum order for this Contract.

## **12. PROCESSING CONTRACT PAYMENTS**

The Contractor acknowledges that a contract payment cannot be processed by an Authorized User until the contracted for Services have been provided.

## **13. CONTRACT BILLINGS AND PAYMENTS**

Appendix B, Section 45, *Contract Invoicing*, applies to this Piggyback Contract.

#### 14. PAYMENTS OF INTEREST

Appendix B, Section 47, *Prompt Payments*, applies to this Piggyback Contract.

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

#### 15. REPORT OF CONTRACT PURCHASES

Contractor agrees it shall furnish a report of purchases made from this Piggyback Contract by the fifteenth of the month following the end of each six-month period. The State reserves the right to seek alternate data and reporting elements and will work with Contractor if necessary, to change. The report shall be in the following format:

Purchaser Name	Product or Catalog Number	Product/Service Description	Total Quantity Shipped	Total \$ Value (List)	Total \$ Value (Invoiced)
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The report is to be submitted to OGS in accordance with the notice provisions of this Piggyback Contract and shall reference the Group Number, New York State Contract Number, sales period, and Contractor's name.

Failure to submit the required report may constitute breach of this Piggyback Contract.

#### 16. PRICE AND DISCOUNT

Price shall include all customs duties and charges. Delivery for such any physical components acquired under this Contract shall be net, F.O.B. destination any point in New York State as designated by the Authorized User. Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Master Contract will also be included in this Piggyback Contract.

#### 17. USE OF SUBCONTRACTORS/DEALERS/DISTRIBUTORS/RESELLERS

Contractor shall be fully liable for any and all Subcontractor, Dealer, Distributor and/or Reseller performance under this Piggyback Contract, and their compliance with all Piggyback Contract terms and conditions.

#### 18. OVERLAPPING CONTRACT ITEMS

Products/services available under this Piggyback 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 document the basis for this selection in the procurement record.

#### 19. CONTRACTOR'S INSURANCE REQUIREMENTS

The Offerer/Contractor shall be required to procure, at its sole cost and expense, all insurance required by this document.

The Offerer/Contractor shall be required to provide proof of compliance with the requirements of this document, as follows:

- Proof of Workers' Compensation and Disability Benefits Insurance shall be provided before this Piggyback Contract can be executed by the Commissioner;
- Proof of all other insurance shall be provided in accordance with Section B below;
- After award of this Piggyback Contract, the Contractor shall be required to provide proof of all insurance after renewal or upon request according to the timelines set forth in Section A.13 below.

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Piggyback Contract policies of insurance as herein below set forth, written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Section should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, in its sole discretion, accept policies of insurance written by a non-

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authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

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

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

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

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

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

**3. Certificates of Insurance/Notices.** Contractors shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, prior to this Piggyback Contract being executed by OGS. Certificates shall reference the award number and shall name The New York State Office of General Services, Procurement Services, 38<sup>th</sup> Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

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

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

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

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

- 5. Breach for Lack of Proof of Coverage.** The failure to comply with the requirements herein any time during the term of this Piggyback Contract shall be considered a breach of the terms of this Piggyback Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Piggyback Contract and their officers, agents, and employees to avail themselves of all remedies available under this Piggyback Contract or at law or in equity.
- 6. Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
- 7. Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this document and maintain the same in force during the term of any work performed by that Subcontractor.
- 8. Waiver of Subrogation.** For all liability policies and the workers' compensation insurance required below, the Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Piggyback Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Piggyback Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Piggyback Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
- 9. Additional Insured.** The Contractor shall cause to be included in each of the liability policies required below, ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage), naming as additional insureds: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Piggyback Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section B below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant herein had the Contractor obtained such insurance policies.
- 10. Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.
- 11. Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements herein.
- 12. Policy Renewal/Expiration** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Piggyback Contract shall be delivered to OGS. If, at any time during the term of this Piggyback Contract, the coverage provisions and limits of the policies

required herein do not meet the provisions and limits set forth in this Piggyback Contract or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.

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

- For certificates of insurance: 5 business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For other requested documentation evidencing coverage: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days

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

**B. Insurance Requirements**

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

Insurance Type		Proof of Coverage is Due
<b>Commercial General Liability</b>	Not less than \$2,000,000 each occurrence	Prior to this Piggyback Contract being executed by OGS, and updated in accordance with this Piggyback Contract
General Aggregate	\$2,000,000	
Products – Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Medical Expenses Limit	\$5,000	
<b>Business Automobile Liability Insurance</b>	Not less than \$2,000,000 each occurrence	
<b>Data Breach/Cyber Liability (Including Technology Errors &amp; Omissions)</b>	\$1,000,000	
<b>Crime Insurance</b>	\$50,000	
<b>Workers' Compensation</b>		
<b>Disability Benefits</b>		

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

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

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



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

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this Piggyback Contract;
- Cross liability for additional insureds; and
- Products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by this Piggyback Contract.

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

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

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

**3. Data Breach/Cyber Liability (Including Technology Errors & Omissions):** Contractors are required to maintain during the term of this Piggyback Contract and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the Authorized Users' systems due to the actions of the Contractor which results in unauthorized access to the Authorized User(s) or their data.

Said insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property, including but not limited to money and securities.

If the policy is written on a claims made basis, the Contractor must submit to OGS an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

The Contractor shall maintain, during the term of this Piggyback Contract, Technology Errors and Omissions Insurance for claims for damages arising from computer related services including, but not limited to, the

following: consulting, data processing, programming, system integration, software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold. If the policy is written on a claim made basis, the Contractor must provide to OGS proof that the policy provides the option to purchase an Extended Reporting Period (“tail coverage”) providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

**4. Crime Insurance:** The Contractor shall maintain, during the term of this Piggyback Contract, Crime Insurance on a “loss sustained form” or “loss discovered form,” and coverage must include the following:

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

**5. Workers’ Compensation Insurance and Disability Benefits Requirements**

Sections 57 and 220 of the New York State Workers’ Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers’ compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals.

**Failure to provide proper proof of workers’ compensation and disability insurance or a legal exemption to OGS will result in Contractor not being considered for this Piggyback Contract or renewal of same.** Proof of workers’ compensation and disability benefits coverage, or proof of exemption must be submitted to OGS before this Piggyback Contract can be executed by the Commissioner. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers’ Compensation Board. **An ACORD form is not acceptable proof of New York State workers’ compensation or disability benefits insurance coverage.**

Proof of Compliance with Workers’ Compensation Coverage Requirements:

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

Proof of Compliance with Disability Benefits Coverage Requirements:

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

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

## 20. PURCHASE ORDERS

Purchase Orders shall be effective and binding upon Contractor when placed in the mail or electronically transmitted during this Piggyback Contract period addressed to the Contractor at the address for receipt of orders designated in the Master Contract or Contract Award Notification. Any discrepancies between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Piggyback Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. If an Authorized User of the Piggyback Contract adds written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Piggyback Contract, the Contractor may reject the Purchase Order within five (5) business days of its receipt or fulfill the Purchase Order. Prior to rejection of any additional terms and conditions to the Purchase Order, the Contractor has an obligation to attempt to negotiate the additional written terms and conditions in good faith with the Authorized User. For more details on these provisions, See Appendix B, Section 30, *Purchase Orders*.

## 21. INDEFINITE DELIVERY, INDEFINITE QUANTITY CONTRACT

This Piggyback Contract will be an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. Numerous factors could cause the actual volume of services purchased under the Piggyback Contract to vary substantially from any estimated or previously purchased volume. Such factors include, but are not limited to, the following:

- Such Piggyback Contracts will be nonexclusive contracts;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of each Piggyback Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the contract period; and,
- The State reserves the right to terminate any Piggyback Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Piggyback Contract.

Depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, any estimated volumes. Specifically, if actual contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. By execution of this Piggyback Contract, Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Piggyback Contracts could vary substantially from the estimates provided in this Piggyback Contract or applicable Participation Agreement.

## 22. CATALOGS AND PRICE SHEETS

Catalogs and price lists shall be provided in accordance with the terms of the Master Contract. Upon request, Contractor shall also assist Authorized Users in the use of such documents.

## 23. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §§139-j and 139-k, this Piggyback Contract includes and imposes certain restrictions on communications between OGS and an offerer/bidder during the procurement process. An offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the procurement contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page of this Piggyback Contract. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and, in the event of two findings within a four-year period, the offerer/bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website: <http://www.ogs.ny.gov/acpl/>

## 24. NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT BUSINESS ENTITY

- I. OGS conducts a review of prospective contractors ("offerers") to provide reasonable assurances that an offerer is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for

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non-construction contracts and is designed to provide information to assess an offerer's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. If interested in contracting with New York State, an offerer must agree and hereby agrees to fully and accurately complete the Questionnaire. The offerer acknowledges that the State's execution of a contract will be contingent upon the State's determination that the offerer is responsible and that the State will be relying upon the offerer's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

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

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the NYS Vendor File Registration section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm). In order to assist the State in determining the responsibility of the offerer prior to contract award, the offerer must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to OGS' transmittal to you of this Piggyback Contract. An offerer's Questionnaire cannot be viewed by OGS until the offerer has certified the Questionnaire. It is recommended that all offerers become familiar with all of the requirements of the Questionnaire and complete as soon as possible to allow sufficient time for OGS review prior to Piggyback Contract execution.

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

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

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

In no case shall such termination of the Piggyback 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.

## 25. NEW YORK STATE TAX LAW SECTION 5-A

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

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whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The ST-220-TD can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Form ST-220-CA must be filed as soon as possible upon OGS' transmittal to Contractor of this Piggyback Contract and submitted to the procuring covered Agency certifying that the contractor filed the ST-220-TD with DTF. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned prior to such request). Failure to make either of these filings may render a contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <http://www.tax.ny.gov/> for additional information.

## **26. NEW YORK STATE VENDOR FILE REGISTRATION**

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

If the contractor is already registered in the New York State Vendor File, the contractor must enter its ten-digit Vendor ID on this Piggyback Contract.

If the contractor is not currently registered in the Vendor File, the contractor must request assignment of a Vendor ID number from OGS. Complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf)) and submit the form to OGS. Please send this document to a Designated Contact for this Contract. In addition, if an authorized dealer/distributor/reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each designated authorized dealer/distributor/reseller and submitted to OGS. OGS will initiate the vendor registration process for all contractors and their authorized dealers/distributors/resellers. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application. For more information on the Vendor File please visit the following website: [http://www.osc.state.ny.us/vendor\\_management/](http://www.osc.state.ny.us/vendor_management/).

## **27. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4**

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

## **28. USE OF RECYCLED OR REMANUFACTURED MATERIALS**

New York State supports and encourages contractors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be

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restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Piggyback Contract. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

### 29. SURPLUS/TAKE-BACK/RECYCLING

- I. A State agency is reminded of its obligation to comply with the NY State Finance Law §§ 167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.

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

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

### 30. BULK DELIVERY AND ALTERNATE PACKAGING

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

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

#### I. New York State Law

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

#### II. General Provisions

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

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

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

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)
  - 1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
  - 2. Separate forms shall be completed by Contractor and all subcontractors.
  - 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or

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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.newycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

### B. Good Faith Efforts

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

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

### V. Fraud

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

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

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## 32. CONSUMER PRODUCTS CONTAINING MERCURY



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

### **33. NEW YORK STATE REQUIRED CERTIFICATIONS**

An Offerer must complete and submit the NYS Required Certifications form in order to be considered for award under this Piggyback Contract.

### **34. STATE SECURITY POLICIES**

The Contractor and its personnel shall review and comply with all State security policies, procedures and directives currently existing or implemented during the term of the Piggyback Contract, including ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)). The Contractor and its personnel shall also review and comply with any additional policies, procedures, or directives provided in the Authorized User Agreement. Authorized Users shall provide the Contractor will any updated policies when available.

### **35. REPORTING SECURITY INCIDENTS**

Unless otherwise specified in the Authorized User Agreement, Contractor shall report any Security Incidents to the Authorized User in the manner prescribed in ITS Policy NYS-P03-002 Information Security Policy and associated standards ITS Policy NYS-S13-005 Cyber Incident Response Standard (or successor policy(ies)).

### **36. DATA BREACH – REQUIRED CONTRACTOR ACTIONS**

Unless otherwise provided by law or in the Authorized User Agreement, in the event of an actual or potential Data Breach, the Contractor shall:

- i. notify the ITS Enterprise Information Security Office and any potentially affected Authorized User(s), or their designated contact person(s), by telephone as soon as possible, but in no event more than four (4) hours from the time the Contractor either has knowledge of a Data Breach, or has knowledge of a potential Data Breach;
- ii. consult with and receive authorization from the Authorized User(s) as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by the Authorized User;
- iii. coordinate all communication regarding the Data Breach with the ITS EISO and Authorized User(s);
- iv. cooperate with the Authorized User and ITS EISO in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and
- v. take corrective action in the timeframe required by the Authorized User. If Contractor is unable complete the corrective action within the required timeframe, in addition to the remedies provided in Appendix B, Section 48, Remedies for Breach, the Authorized User may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the Authorized User, or until the Authorized User has completed a new procurement for a replacement service system. The Contractor will be responsible for the cost of these services during this period.

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

### **37. DATA OWNERSHIP**

The Authorized User shall own all right, title, and interest in Data provided and/or created during the provided services.

The Authorized User shall have access to its Data at all times, including when an account is suspended or terminated. The Authorized User shall have the ability to import or export Data in piecemeal or in its entirety at the Authorized User's

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discretion, without interference from the Contractor. This includes the ability for the Authorized User to import or export Data to/from other Contractors

The Contractor shall not copy or transfer Data unless authorized by the Authorized User. In such an event, the Data shall be copied and/or transferred in accordance with the provisions of this Section. Contractor shall not access any Data for any purpose other than fulfilling the service. At no time shall any Data or processes (e.g. workflow, applications, etc.), which either are owned or used by the Authorized User be copied, disclosed, or retained by the Contractor or any party related to the Contractor.

### **38. DATA LOCATION AND RELATED RESTRICTIONS**

All Data shall remain in the Continental United States (CONUS). Any Data transmitted, stored, or acted upon, must be located solely in Data Centers in CONUS. Services which directly or indirectly access Data may only be performed from locations within CONUS.

All helpdesk, online, and support services which access any Data must be performed from within CONUS. At no time will any Follow the Sun support (workflow being done by staff in different time zones) be allowed to access Data directly or indirectly from outside CONUS.

### **39. TRANSFERING OF DATA**

The Contractor shall not transfer Data unless directed to do so in writing by the Authorized User.

At the request of the Authorized User and at no additional cost to the Authorized User, the Contractor will provide the services required to transfer Data from existing Databases to physical storage devices or other forms of storage as required by the Authorized User.

The Authorized User may require several Cloud providers to share or transfer Data for a period of time. This requirement will be provided for in the Authorized User Agreement or shall be assumed to be limited to a six month duration.

At the end of this Piggyback Contract and/or Authorized User Agreement, Contractor may be required to transfer Data to a new Contractor. This transfer must be carried out as specified by the Authorized User Agreement. This transfer may include, but is not limited to, conversion of all Data into or from an industry standard format(s) including comma/delimited files, txt files, or Microsoft standard file formats. Such transfer of data shall be done at no charge to the Authorized User.

In the event of a breach or termination for breach of this Piggyback Contract or any purchases made under it, costs of all transfers of Data shall be borne by the Contractor.

### **40. ENCRYPTION**

All Data must be encrypted at all times unless specifically outlined otherwise in the Authorized User Agreement. At a minimum, encryption must be carried out at the most current Federal Information Processing Standards (FIPS) 46-1, with key access restricted to the Authorized User only, unless with the express written permission of the Authorized User. The Authorized User Agreement shall specify any additional encryption requirements and the respective duties of the Contractor and Authorized User.

### **41. REQUESTS FOR DATA BY THIRD PARTIES**

Unless prohibited by law, Contractor shall notify the Authorized User in writing within 12 hours of any request for Data (including requestor, nature of Data requested and timeframe of response) by a person or entity other than the Authorized User, and the Contractor shall secure written acknowledgement of such notification from the Authorized User before responding to the request for Data.

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

### **42. UPGRADES, SYSTEM MAINTENANCE, AND CHANGES**

The Contractor shall give a minimum of five (5) business days advance written notice to the designated Authorized User(s) contact of any upgrades or system changes that will impact services as provided pursuant to this Piggyback Contract.

#### **43. TERMINATION OR SUSPENSION OF SERVICE**

During any period of suspension of service, the Contractor shall not take any action to destroy and/or withhold any Data.

In the event of termination of this Piggyback Contract or Authorized User Agreement, in whole or in part, the Contractor shall implement an orderly return of Data in a format and timeframe agreed upon by the Authorized User. The Contractor must certify all Data has been removed from its system and removed from backups within any agreed upon timeframes.

At a minimum, Contractor shall not take any action to destroy and/or withhold any Authorized User Data for a period of:

- 30 calendar days after the effective date of termination, if the termination is for convenience; or
- 60 calendar days after the effective date of termination, if the termination is for cause.

Additional time prior to erasure may be agreed upon in writing by the Authorized User and Contractor.

#### **44. SECURE DATA DISPOSAL**

When requested by the Authorized User for any reason, the Contractor shall destroy Data in all of its forms, including all back-ups or storage media containing the data. Data shall be permanently deleted and shall not be recoverable, according to ITS Policy S13-003 Sanitization/Secure Disposal or successor and S14-003 Information Security Controls or successor or other relevant policies and procedures per the Authorized User Agreement. Certificates of destruction, in a form acceptable to the Authorized User, shall be provided by the Contractor to the Authorized User.

#### **45. ENTIRE AGREEMENT**

This Piggyback Contract and the referenced appendices constitute the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Piggyback Contract shall not be changed, modified or altered in any manner except as provided in Section 3 of this Piggyback Contract.

#### **46. CAPTIONS**

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

#### **47. SEVERABILITY**

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

**GROUP 38235 - Electronic Monitoring of Offenders (Statewide Piggyback)**

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

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

\_\_\_\_\_

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

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

NYS Office of General Services

Federal Tax ID: \_\_\_\_\_

Date: \_\_\_\_\_

NYS Vendor ID \_\_\_\_\_

Date: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ }  
: Sworn Statement:

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

Town of \_\_\_\_\_

County of \_\_\_\_\_, State of \_\_\_\_\_; 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