

**Attachment 11 – How to Use****Introduction**

OGS Procurement Services is providing this document to assist both Contractors and Authorized Users (AUs) on how to correctly use the STEM/STEAM and Science Laboratory Education Supplies and Equipment Contracts. These guidelines do not relieve the Contractors and AUs from complying with the terms and conditions of the awarded contracts or with all applicable statutes, regulations, AU internal procurement guidelines, policies and procedures as well as control agency requirements. This document is a living document that may be revised by OGS Procurement Services at any time.

Authorized User use of 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 of students and staff. 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 to comply with additional terms and conditions relating to the collection, use, and disposition of personally identifiable information of students and staff. Authorized Users will advise vendors of any such terms and conditions prior to making a purchase under any contracts resulting from this Solicitation, and Vendor must accept such terms and conditions as a condition of providing such products or services to the Authorized User.

**Scope**

The scope of the Contracts is to provide Authorized Users the ability to purchase STEM/STEAM and science laboratory educational supplies and equipment. Products offered through the resulting contracts 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 *Assembly/Configuration/Installation/Networking Services*.

The scope of this Solicitation 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 a contractor’s general product offering and are to be utilized in conjunction with a contractor’s STEM/STEAM or science laboratory based learning systems and curriculum. 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 *Assembly/Configuration/Installation/Networking Services*).

**Lots and Product Categories**

This Contract includes 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.

<b><i>Product Category</i></b>	<b><i>Examples (products that <u>do not</u> have the ability to collect Data)</i></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>

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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.

<b>Product Category</b>	<b>Examples (Products that do 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 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> </ul>

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	<ul style="list-style-type: none"> <li>• Related software</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	Equipment 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>

**Overlapping Contract Products**

Products available under the resulting 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.

**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 resultant 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.

**Procurement Instructions**

The Contracts resulting from this Solicitation will be centralized Contracts issued under a multiple award structure. Products offered under the Contracts, pricing, and other Contract information will be posted to the OGS website or the awarded Contractors' dedicated NYS websites. Authorized Users shall procure Products that best meet their form, function and utility requirements.

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Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities of Preferred Source suppliers such as Correctional Industries (Corcraft), NYS Preferred Source Program for People Who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities meet the form, function and utility of the Authorized User.

Where commodities are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded herein. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users are strongly encouraged to obtain quotes from at least three (3) Contractors prior to issuing a purchase order, in order to ensure that the Authorized User is receiving the best possible pricing.

When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible.

Authorized Users have the responsibility to document purchases which should include:

- statement of need and associated requirements;
- obtaining all necessary prior approvals;
- a summary of the Contract alternatives considered for the purchase; and
- the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

Authorized Users will issue purchase orders directly to the Contractor or the Contractor's authorized Reseller (if applicable), as specified by the Contractor, and specify any shipping/delivery requirements and/or statements of work for services (if applicable).

Upon Authorized User acceptance of Products itemized on the purchase order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products. Note: Contractor must disclose any forms or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions must receive pre-approval by OGS for use under the Contract. Additional terms or conditions that were not pre-approved by the Authorized User or which conflict with the Contract terms and conditions are void and unenforceable at the sole discretion of the State.

The Authorized User shall use the following procedures when purchasing from this contract:

**Lot 1 – Non-Information Technology based STEM/STEAM or Science Laboratory Products (Products that do not collect data)**

For products in Lot 1, the Authorized User (AU) may purchase the product by issuing a Purchase Order to the Contractor without conducting a 'Request for Product Review'. Where multiple products meet the AU's form, function and utility, it is recommended that the AU obtain at least three quotes to obtain the most competitive pricing.

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For products in Lot 2, The Authorized Users (AU) must conduct a 'Request for Product Review (RFPR)', in accordance with the following procedure, prior to making a purchase:

1. The AU determines its required form, function and utility;
2. The AU Identifies products from the Contractor's price lists that meet the required form, function and utility. Where multiple products meet the AU's form, function and utility, it is recommended that the AU obtain at least three quotes to obtain the most competitive pricing.
3. The AU obtains preliminary internal organizational approval for the product in order to conduct a 'Request for Product Review';
4. The AU Issues a 'Request for Product Review' to the Contractor(s) offering the identified products in order to request information on the product's data security and privacy characteristics and to provide the Contractor with additional Authorized User terms and conditions (see the 'Request for Product Review Template').

The types of information requested may include but is not limited to:

- a. The product's terms and conditions (T&Cs);
- b. The product's privacy plan;
- c. The types of Data collected by the product;
- d. The Contractor's most competitive pricing

The RFPR is also used to outline additional Authorized User T&Cs that will either need to be incorporated into the product's T&Cs or accepted as a separate rider agreement. Additional T&Cs may include but are not limited to a parent's bill of rights, data protection requirements, privacy requirements, cybersecurity requirements required training, etc.

5. The AU receives the Contractor(s) responses;
6. The AU reviews the Contractor(s) responses and selects a product. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State.
7. Based on the types of Data collected by the selected product, the AU conducts a Data Categorization Study and assigns a risk level (Low, Medium or High);

**Data Categorization Study**

For products in Lot 2, it is REQUIRED that the Authorized User complete a Data Categorization study, consistent with NYS-S14-002 'Information Classification Standard' (or successor standard) available at: <http://www.its.ny.gov/tables/technologypolicyindex.htm> that applies to ITS, all State Agencies that receive services from ITS, staff and affiliates of same which have access to or manage information and serves as recommended practice for the State University of New York, the City University of New York, non-Executive branch agencies, authorities, NYS local governments and third parties acting on behalf of the same to determine the following:

- The level of data risk;
- Whether the insurance requirements for Data Breach Privacy/Cyber Liability Insurance should be increased based on the level of Data risk;
- Whether the product's terms and conditions need to be modified in order to be in compliance with all applicable laws governing the collection and protection of personally identifiable information;

Authorized User must make a business decision, based on their Data Categorization results, as to the appropriateness of purchasing the product. The Authorized User must include, as part of the procurement record:

- the Data categorization elements (not actual Data);

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- the overall risk determination; and
- applicable statutory requirements

Based on the results of the Data Categorization Study the AU determines the insurance requirements for 'Data Breach and Privacy/Cyber Liability' insurance in accordance with the following requirements and obtains proof of coverage from the Contractor. Contractor must provide proof of such coverage to both the Authorized user and to the Office of General Services for verification purposes. It is the responsibility of the Authorized User to verify the Contractor obtains and maintains the applicable Data Breach and Privacy/Cyber Liability Insurance limits for Moderate Risk and High Risk data prior to use of the product.

8.

**Data Breach/Cyber Liability\*:** The Contractor shall maintain, or verify subcontractors' insurance, during the term of any Contract resulting from this Solicitation and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, who would have exposure for claims and damages 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.

Data Breach and Privacy/Cyber Liability	
Risk	Minimum Insurance Coverage
Low Risk	\$2,000,000
Moderate Risk	\$5,000,000
High Risk	\$10,000,000
<p>* See NYS-S14-002 Information Classification Standard or successor available at <a href="http://www.its.ny.gov/tables/technologypolicyindex.htm">http://www.its.ny.gov/tables/technologypolicyindex.htm</a> for additional information relating to risk categories.</p>	

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9. The AU negotiates modified T&C's or a rider agreement with the manufacturer of the product;
10. The AU obtains proof of coverage for 'Data Breach and Privacy/Cyber Liability' insurance;
11. The AU obtains final internal organizational approval for the product in order to purchase it;
12. The AU purchases the product by issuing a Purchase Order to the Contractor and executes the modified T&C's or original T&C's with rider agreement.

**Price**

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 *Product Delivery*)

In addition, upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause (see *Extension of Use*).

Contractor's pricing is posted on the OGS website.

**Discounts**

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. This contract includes the following discounts:

**Product Category Discount** – The Contractor shall offer a single category discount percentage (must be greater than 0%) from their regularly published commercial price list which shall apply to all items within the product category.

**Deeper Discount** – The Contractor may offer an additional discount on items in their catalog for various reasons. Deeper Discounts can also be used to achieve multiple discount levels in their catalog pricing.

The Contractor may also offer the following discounts in addition to those listed above. To find out if a Contractor offers these discounts, please check the 'Contractor and Reseller's Information' on the 'Contractor's Information Page'.

- **Volume Discounts** – The Contractor may offer volume discounts. Volume discounts may be applied per order, and are additional discounts applied to individual orders over a specified dollar amount. See the Contractor's Information Page for
- **Procurement Card Discount** – The Contractor may offer an additional discount for purchases made with the NYS Purchasing Card.
- **Prompt Payment Discount** – The Contractor may offer a prompt payment discount for payments made in less than 30 days after receipt of a proper invoice.

**Minimum Order**

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.

**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. Contractors 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.

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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, the Bidder 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 any Contract resulting from this Invitation for Bids and as described further in Appendix B. Bidder 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, Bidder must demonstrate its system at an Albany, NY area location designated by the State.

**eMarketplace Ordering**

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:

<https://ogs.ny.gov/procurement/emarketplace>

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.

**Invoicing and Payment**

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



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

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

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

**Product Delivery**

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

**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.

**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);

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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 Solicitation and any resulting Contracts do 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).

**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.

**Licensing Terms and Conditions**

An Authorized User looking to acquire Products under a Contract resulting from this Solicitation 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, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.***

**Extension of Use**

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