



**PT66623**

**FIRST AMENDMENT**

**between**

**NEW YORK STATE**

**OFFICE OF GENERAL SERVICES**

**And**

**CARASOFT TECHNOLOGY CORPORATION**

**STATE OF NEW YORK**

**OFFICE OF GENERAL SERVICES**

**FIRST AMENDMENT TO AGREEMENT #PT66623**

**PIGGYBACK CONTRACT FOR THE ACQUISITION OF  
DRUPAL WEB CONTENT MANAGEMENT SERVICES**

**THIS FIRST AMENDMENT** (hereinafter the “First Amendment”) by and between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (OGS), whose office is on the 41st Floor, Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the “State” or “OGS”) acting pursuant to authority granted under State Finance Law §163(10)(e), and Carahsoft Technology Corporation, having its principal place of business at 12369 Sunrise Valley Drive, Reston, VA 20191 (hereinafter referred to as the “Contractor”). OGS and the Contractor are collectively referred to as the “Parties.”

**WHEREAS**, the Parties heretofore entered into Contract # PT66623 (hereinafter the “Contract”) effective July 25, 2014 for Drupal Web Content Management Services as Piggyback contract off of GSA contract GS-35F-0119Y; and

**WHEREAS**, the Parties have agreed to enter this First Amendment to extend the Contract to additional Authorized Users and to clarify certain obligations under the Contract; and

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

**SECTION 1.** Section 4 of the Contract, Contract Modifications, is deleted in its entirety and replaced with the following:

**4. CONTRACT MODIFICATIONS**

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

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

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

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

E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §40.

**SECTION 2.** Section 5 of the Contract, Merger of Appendices/Conflict of Clauses, is deleted in its entirety and replaced with the following:

## **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, which supersedes the order of precedence stated in Appendix B.

- I. Appendix A, *Standard Clauses for NYS Contracts*
- II. Piggyback Contract (This Document)
- III. Appendix B, *OGS General Specifications*
- IV. Appendix C – *Minority and Women-Owned Business Enterprises and Equal Opportunity Policy Statement*
- V. Appendix D – *Order / Acceptance Form*
- VI. Appendix E – *Price Sheets*
- VII. Appendix F- *Contract Modification Procedure*
- VIII. Appendix G – *Contractor Information*
- IX. Appendix H – *Sales Report Template*
- X. Master Contract, GSA GS-35F-0119Y

Appendix A, Standard Clauses For New York State Contracts, dated December 2012, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

Appendix B, Office of General Services General Specifications, dated July 2006, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A.

Appendix C – Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

Appendix D – Order/Acceptance Form, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

Appendix E – Price Sheets, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

Appendix F – Contract Modification Procedures, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

Appendix G – Contractor Information, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

Appendix H – Sales Report, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

**SECTION 3.** The definitions of “Authorized User” and “State User” in Section 7 of the Contract, Definitions, are deleted in their entirety and replaced with the following:

“Authorized user” means the (i) the New York State Office of Information Services; (ii) any officer, body or agency of a political subdivision or a district therein, or fire company or volunteer ambulance service as such are defined in section one hundred of the general municipal law, to make purchases of commodities, services and technology through the office of general services' centralized contracts, pursuant to the provisions of section one hundred four of the general municipal law; (iii) any county extension service association as authorized under subdivision eight of section two hundred twenty-four of the county law; (iv) any association or other entity as specified in and in accordance with section one hundred nine-a of the general municipal law; (v) any association, consortium or group of privately owned or municipal, federal or state owned or operated hospitals, medical schools, other health related facilities or voluntary ambulance services, which have entered into a contract and made mutual arrangements for the joint purchase of commodities, services and technology pursuant to section twenty-eight hundred three-a of the public health law; (vi) any institution for the instruction of the deaf or of the blind listed in section forty-two hundred one of the education law; (vii) any qualified non-profit-making agency for the blind approved by the commissioner of the office of children and family services or the office of temporary and disability assistance; (viii) any qualified charitable non-profit-making agency for the severely disabled approved by the commissioner of education; (ix) any hospital or residential health care facility as defined in section twenty-eight hundred one of the public health law; (x) any private not-for-profit mental hygiene facility as defined in section 1.03 of the mental hygiene law; (xi) any public authority or public benefit corporation of the state, including the port authority of New York and New Jersey and the interstate environmental commission; (xii) any public library, association library, library system, cooperative library system, the New York Library Association, and the New York State Association of Library Boards or any other library except those which are operated by for profit entities; (xiii) any other association or entity as specified in state law, to make purchases of commodities, services and technology through the office of general services' centralized contracts. Such qualified non-profit-making agencies for the blind and severely disabled may make purchases from the correctional industries program of the department of corrections and community supervision subject to rules pursuant to the correction law.

“State User” shall mean a member of an Authorized User’s website support teams.

**SECTION 4.** Section 9 of the Contract, Processing Contract Payments, is deleted in its entirety and replaced with the following:

#### 9. PROCESSING CONTRACT PAYMENTS

The Contractor acknowledges that a contract payment cannot be processed by an Authorized User until the contract Products have been delivered and accepted. Authorized User shall complete Appendix D: Order / Acceptance Form for each order placed under the Contract. Contractor shall bill Authorized Users quarterly for all Product provided under the Contract, with the exception of professional services which shall be billed monthly.

**SECTION 5.** Paragraphs (B) and (F) of Section 10 of the Contract, Appendix B Amendments, is deleted in its entirety and replaced with the following:

B. Section 5 (Definitions) “Authorized User” is deleted and replaced with the following language:

“Authorized user” means the (i) the New York State Office of Information Services; (ii) any officer, body or agency of a political subdivision or a district therein, or fire company or volunteer ambulance service as such are

defined in section one hundred of the general municipal law, to make purchases of commodities, services and technology through the office of general services' centralized contracts, pursuant to the provisions of section one hundred four of the general municipal law; (iii) any county extension service association as authorized under subdivision eight of section two hundred twenty-four of the county law; (iv) any association or other entity as specified in and in accordance with section one hundred nine-a of the general municipal law; (v) any association, consortium or group of privately owned or municipal, federal or state owned or operated hospitals, medical schools, other health related facilities or voluntary ambulance services, which have entered into a contract and made mutual arrangements for the joint purchase of commodities, services and technology pursuant to section twenty-eight hundred three-a of the public health law; (vi) any institution for the instruction of the deaf or of the blind listed in section forty-two hundred one of the education law; (vii) any qualified non-profit-making agency for the blind approved by the commissioner of the office of children and family services or the office of temporary and disability assistance; (viii) any qualified charitable non-profit-making agency for the severely disabled approved by the commissioner of education; (ix) any hospital or residential health care facility as defined in section twenty-eight hundred one of the public health law; (x) any private not-for-profit mental hygiene facility as defined in section 1.03 of the mental hygiene law; (xi) any public authority or public benefit corporation of the state, including the port authority of New York and New Jersey and the interstate environmental commission; (xii) any public library, association library, library system, cooperative library system, the New York Library Association, and the New York State Association of Library Boards or any other library except those which are operated by for profit entities; (xiii) any other association or entity as specified in state law, to make purchases of commodities, services and technology through the office of general services' centralized contracts. Such qualified non-profit-making agencies for the blind and severely disabled may make purchases from the correctional industries program of the department of corrections and community supervision subject to rules pursuant to the correction law.

F. Appendix B, Section 62, Contract Billings, is hereby deleted and replaced with the following:

- I. Billings. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Piggyback Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of this Piggyback Contract or where the billing was inaccurate.  
Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Piggyback Contract.
- II. Payment of Piggyback Contract purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at <http://www.osc.state.ny.us/epay/index.htm> or by e-mail at [epayments@osc.state.ny.us](mailto:epayments@osc.state.ny.us). Contractor acknowledges that it will not receive payment on any invoices submitted under this Piggyback Contract that

are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above. Inquiries relating to OSC's Electronic Payments program should be directed to:

NYS Office of the State Comptroller Vendor Management Unit  
110 State Street Mail Drop 10-4  
Albany, NY 12236  
Telephone: (855) 233-8363  
E-Mail: helpdesk@sfs.ny.gov

- III. Payment of Contract purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment. The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

**SECTION 6.** Section 11 of the Contract, Report of Contract Purchases, is deleted in its entirety and replaced with the following:

#### **11. REPORT OF CONTRACT PURCHASES**

The Contractor shall furnish annual reports forty five (45) days prior to the end of the term and any renewal thereof, using the format specified in Appendix H, containing total sales to all Authorized Users no later than thirty (30) business days after the close of each calendar quarter. The report is to be submitted electronically in Microsoft Excel 2007 or higher format to the attention of the primary designated contact identified on the first page of this agreement.. Additional related Contract purchase information may be required and must be supplied upon request.

If any of the sales involved the use of a subcontractor, the Contractor shall both identify and verify if each subcontractor is a MBE, WBE, or is a New York State Certified Minority and Women Owned Business (M/WBE). Contractors shall verify such status through the Empire State Development Minority- and Women-Owned Businesses Database web site at: <http://www.esd.ny.gov/MWBE/directorySearch.html>.

The State reserves the right to modify the individual(s) and/or State governmental entity designated to receive these quarterly reports.

**SECTION 7.** Section 20 of the Contract, Export of Authorized User Content Upon Conclusion or Termination of the Contract, is deleted in its entirety and replaced with the following:

#### **20. EXPORT OF AUTHORIZED USER CONTENT UPON CONCLUSION OR TERMINATION OF CONTRACT**

Upon conclusion or termination of the Contract, Contractor shall provide all Authorized Users Content to the applicable Authorized User in the format required by the Authorized User at no cost to the Authorized User.

**SECTION 8.** Paragraph (C) of Subdivision (II) of Section 23 of the Contract, Participation by Minority Group Members and Women with Respect to State Contracts, is deleted in its entirety and replaced with the following language:

- C. Pursuant to 5 NYCRR § 142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and ensure that the MWBEs utilized under the Contract perform commercially useful functions. Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. OGS will assess whether a MWBE is performing a commercially useful function by considering the following:
- (1) the amount of work subcontracted;
  - (2) industry practices;
  - (3) whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;
  - (4) the credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and
  - (5) any other relevant factors.

**SECTION 9.** Subdivision (IV) of Section 23 of the Contract, Participation by Minority Group Members and Women with Respect to State Contracts, is amended by adding a new Paragraph (C) to read as follows:

- C. Contractor further certifies that the MWBEs included in its Utilization Plan will perform commercially useful functions under the Contract. Contractor understands that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Contractor further understands and agrees that MWBEs that do not perform commercially useful functions may not be counted as meeting the MWBE goals of this Contract.

**SECTION 10.** Section 26 of the Contract, Lot I, is deleted in its entirety and replaced with the following:

**26. LOT I**

Service Offering I shall be utilized for the Lot I websites. Lot I shall only be available to the NYS Office of Information Technology Services. Lot I shall not be available to any other Authorized User.

**SECTION 11.** Section 27 of the Contract, Procurement Instructions for Lot II, is deleted in its entirety and replaced with the following:

**27. PROCUREMENT INSTRUCTIONS FOR LOT II**

For State agencies, Lot II shall only be available to the NYS Office for Information Technology Services who will authorize and coordinate State agency needs. (Refer to Authorized User definition)

- A. For purchases under Lot II Authorized Users, as that term is defined in Section 7, Definitions, shall procure services that best meet their form, function and utility requirements.
- B. Authorized User will issue purchase order(s) directly to the Contractor for purchases under Lot II specifying the items with respect to services and delivery requirements and referencing statements of work (as applicable) for services. Authorized User shall specify the following in a purchase order for purchases under Lot II for each website using the criteria set forth in Section 28(C), Lot I and Lot II Website Characteristics and Performance Criteria:
  - a. Website size: small, medium, or large;
  - b. Instance: single or multi-instance; and
  - c. Option: Service Offering 1, Service Offering 2, or Service Offering 3.
- C. Upon Authorized User acceptance of services itemized on the purchase order, Contractor will invoice Authorized User for any portion services accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all services.

**SECTION 12.** Section 28 of the Contract, PaaS Terms and Conditions, is deleted in its entirety and replaced with the following:

**28. PaaS TERMS AND CONDITIONS**

**A. Data Center Locations**

At the beginning of this Contract, Contractor and OGS agree that the Authorized User’s Data will be housed in the Amazon Web Services (AWS) East data centers owned and operated by Amazon, Inc. which are located in the state of Virginia. If either the location of the Authorized User’s Data changes from the AWS East. data centers to other data centers owned and/or operated by Amazon, Inc., or the Contractor seeks to change the provider of the data centers from Amazon, Inc. to another data center provider, the Contractor shall give written notice in accordance with § 8, Notices, to OGS sixty Business Days prior to such change. Contractor agrees that under no circumstances shall the data center(s) hosting the Authorized User Data be located outside the continental United States.

**Lot I and Lot II Website Characteristics and Performance Criteria Individual Website Instance**

**Individual Website Instance**

CONDITION	Small	Medium	Large
Total number of yearly page views	12,000,000	60,000,000	120,000,000
Seasonal/Incidental Increases (~10%)	3x average	3x average	3x average
Average web page size (in KB)	500kb	500kb	500kb
Cached pages size	100kb	100kb	100kb

**Multiple Website Products Individual Website Instance**

CONDITION	Small	Medium	Large
Total number of yearly page views	12,000,000	60,000,000	120,000,000
Seasonal/Incidental Increases (~10%)	3x average	3x average	3x average
Average web page size (in KB)	500kb	500kb	500kb
Cached pages size	100kb	100kb	100kb

C. Service Offering Requirements

	Elite Subscription		
Service Offering (SO) Requirements	Elite Subscription SO1	Elite Subscription SO2	Elite Subscription SO3
Uptime %	99.95	99.95	99.95
Incident/Help Desk Support	24/7	24/7	24/7
Incident Response time: Accept/Resolve	<b>Accept/Resolve</b>	<b>Accept/Resolve</b>	<b>Accept/Resolve</b>
Resolve Period SLA %	80%	85%	90%
Critical	45 min/6 hours	30 min/5 Hours	30 min/4 Hours
High	4Hrs/3 days	4Hrs/2 days	4Hrs/2 days
Medium	12hrs/7 days	8hrs/ 5 days	8hrs/5 days
Low	40hrs/10 days	48hrs/8 days	24hrs/8 days
Recovery Time Objective (RTO)	12 hours primary data center/24 hours disaster recovery site	12 hours primary data center/24 hours disaster recovery site	12 hours primary data center/24 hours disaster recovery site
Recovery Point Objective	2hrs	2hrs	60 minutes
Provisioning Time Objective	1 day	2 day	2 day
Technical Account Manager requirements:			
Dedicated Resource	Yes	Yes	Yes
Periodic Onsite Visits	No	Yes	Yes
Periods of support	Monthly	Weekly	Daily
Attend status meetings	Yes	Yes	Yes
Advisory Hours (annual)	12	40	56
Provide Report on Site Health	Quarterly	Monthly	Monthly
Site Performance Reviews	Annual	Quarterly	Monthly
Access to Provider Tools	Yes	Yes	Yes
Access to Provider Knowledge base (State Users)	10	10	10

Uptime for the solution as measured as the total external availability for the provisioned Drupal PaaS solution during the billing period of one month (n days/month \* 24hrs/day). Responses time measurement will start at the day and time the ticket is submitted.

A credit will be applied for failure to meet a SLA for the Service Offering selected as provided in Section 32, Credits. Scheduled downtime must be during 11PM to 7AM ET.

Provide 48hr notice to State for patch management appropriate to all components within the provider's boundary.

## **D. Drupal PaaS Requirements**

Contractor shall deliver a turn-key Drupal Web Content Management System (WCMS) PaaS offering for the on-demand deployment of the Lot I websites only to the NYS Office of Information Technology Services and provide the option for Authorized Users to deploy additional websites under Lot II. The Drupal PaaS offering shall consist of the entire application stack required to support the Drupal WCMS.

The Drupal PaaS solution will be based on current and evolving industry standards and best practices over the course of the contract duration. The Drupal PaaS solution shall meet all requirements set forth in the Contract. When NYS Office of Information Technology Services is the Authorized User, support for Drupal version 7 (current dot release), and planned immediate availability of Drupal version 8 when it is released (upgrades to v8 of existing v7 sites would be in coordination with NYS project team when deemed appropriate).

Services will be provided from locations located within the Continental United States (CONUS) in accordance with Paragraph (A) of this Section with the option of on-site support and consultation services as requested and approved by the Authorized User.

### **1.1. Drupal PaaS Solution Requirements**

#### **1.1.1. Drupal PaaS Infrastructure**

- 1) Provide all Drupal PaaS hardware and software infrastructure including servers, storage, and network as part of the service offering.

#### **1.1.2. The Drupal PaaS sites will be used to support the following environments:**

- 1) A Development & Test environment that is logically isolated from the QA/Staging, and Production environments.
- 2) A QA/Staging (pre-production) environment that is logically isolated from the end user and other environments, but representative of the Production environment.
- 3) A Production environment that is logically isolated from the Development/Test, QA/Staging environments.
- 4) An interface for transition of code, files, configuration, and content between the aforementioned environments.
- 5) Additional capabilities of multi-site instances
  - i) Administrative Interface to
    - (1) 1-click creation and duplication of sites
    - (2) Create and regulate shared assets across sites (templates, plugins, etc.)
    - (3) Manage user/group roles and permissions across sites

#### **1.1.3. The Drupal PaaS solution shall provide the following content management capabilities:**

- 1) Theme customization
- 2) Module customization
- 3) Git source control integration

### **1.2. Drupal Operations and Support Requirements**

### 1.2.1. Platform Support

Provide application support for the Drupal PaaS platform including:

- 1) Platform Upgrades – coordinated with development teams
- 2) Monitoring for both infrastructure and platform (database, webserver, caching, search, etc.) layers
- 3) Provide an expert technical operations and management team which can advise the Authorized User on optimal operational practices, recommend deployment architectures for cloud infrastructures, design and implement automated scaling processes, day-to-day and emergency procedures, deploy and monitor applications, performance reporting and metrics, and ensure the overall reliability and responsive operation of the applications through both proactive planning and rapid situational response.
- 4) Notification of any issues with website's performance, security, and code.
- 5) Support for Authorized Users, including, but not limited to, system owners, developers and managers, as required, related to Drupal content management and maintenance.

### 1.2.2. Systems Management Support

- 1) Provide systems management support for all software servers (database, web servers, and application enablers), operating systems, hypervisors, hardware, network infrastructure and patch management that are included in the Contractor/subcontractor boundary.
  - a) Provide have patch management capability

### 1.2.3. Operations Management

- 1) Provide Operations Management and operations of the Drupal PaaS environment to be inclusive of all the infrastructure components (**Section 1.1.1**) and their respective integration.

### 1.2.4. Delivery Optimization

- 1) Configure, manage, deploy, and scale, the system on the deployed infrastructures
  - a) Including support for scaling of both infrastructure and platform components.
- 2) Provide **integration** support for a content delivery network (CDN) and/or support for third party providers.
- 3) Provide support for caching of pages, database queries and other standard platform optimization practices.

### 1.2.5. Support

- 1) Provide an effective solution that utilizes industry standards and best practices that meets or exceeds the performance criteria detailed in the Contract. Manage and operate the solution in accordance with the Contract,
- 2) Provide end-to-end monitoring capability and reporting for website rendering, content query, content delivery, and file download services that enable root-cause analysis and the resolution of performance issues

### 1.2.6. Implementation and Support for Lot I and II websites

- 1) Lot I websites implementation shall be as follows:
  - a) The Drupal PaaS subscription for each the respective websites (NY.Gov, Governor, NY.GOV, LicenseCenter.NY.Gov) will be provisioned no later than 5 days upon receipt of the purchase order

from the State.

- b) Production use on September 30, 2014.
- 2) Lot I and II websites:  
Jointly develop an implementation plan with the Authorized User for the implementation of any website.

Provide an expert review of each website's architecture and performance, providing a written recommendation for improvements and upgrades 30 days from sites production launch date.

#### 1.2.7. **Infrastructure scalability, capacity and evolution**

- 1) Solutions shall meet or exceed the minimum capacity of the required Website and Performance criteria defined for Lot I websites that serve the needs of the State of New York content management community as well as provide web server delivery capacity to Internet consumers of the State's content.
- 2) Contractor shall continue to develop and refine infrastructure in accordance with emerging requirements and evolving technology specifications as required.

#### 1.2.8. **Technical Account Manager Support**

- 1) Engage with Authorized User website team in accordance with Section 28(D) of the Contract.
  - a) Provide a periodic performance review of each website's architecture and performance, providing a written recommendation for improvements and upgrades. All periodic performance reviews shall be due 30 days prior to the Option Year renewal.
- 2) Upon request, provide copy of contingency plan for data center provider identified in Section 28(A), data center where Authorized User data is stored and provide timely updates to the Authorized User when the plan is changed.

#### 1.2.9. **Customer Incident support**

- 1) Provide service and support for the Authorized User Drupal PaaS solution 24 x 7 x 365 days in base period to include Tier 1, 2, 3 help desk support / service center functions defined as:
  - a) Tier 1 (Incident response catch/dispatch)
  - b) Tier 2 (Platform Solution Engineer)
  - c) Tier 3 (Platform Technology Engineer)
  - d) Provide trouble ticketing via customizable online portal/interface with integrated email notifications.

#### 1.2.10. **Usage reporting**

- 1) Provide a mechanism to track system usage of bandwidth, storage, etc. so that usage by designated account holders can see and track costs corresponding with their usage.
- 2) Provide on-line reporting capability that will allow designated account holders to see the status of their usage; updated at least weekly.

#### 1.2.11. **Administration capabilities**

- 1) Provide network storage, server and virtualization layer management to include performance of internal technology and refresh cycles applicable to the environment.
- 2) Provide automated monitoring of performance, resource utilization and other events such as failure of service, degraded service, availability of the network, storage, database systems, operating Systems, applications, including API.
- 3) Provide tools for analyzing usage specific trends as it relates to the public users of the system.

- 4) Provide a change control process to secure the functionality of the environment without hindering the ability of the Authorized User content developers/managers to efficiently add new functionality, integration and or content delivery mechanisms.
- 5) Provide a test environment for the Authorized User Applications and Development staff to test code for all environments that may receive iterative patches and/or refreshes.
- 6) Provide a published procedure for exiting the service arrangement, including assurance to sanitize all computing resources of tenant data once a customer has exited your environment or has vacated a resource.
- 7) Contractor should have an established process for revoking system access by disabling accounts immediately upon termination of an employee or contractor. Disabling instead of deleting accounts allows preservation of audit trails.
- 8) Profile each Authorized User's typical account usage by determining normal time-of-day access and access duration. Reports should be generated that indicate users who have logged in during unusual hours or have exceeded their normal login duration.

#### 1.2.12. **Comprehensive backup**

- 1) Provide restoration of an individual file or folder on request as outlined below.
- 2) Provide a backup procedure and process that supports the following objectives:
  - a) Recovery Point Objective (RPO) – Contractor shall be able to recover files or folders for any specific day within a rolling six month period.
  - b) Recovery Time Objective (RTO) – Contractor shall recover files or folders within 24 hours of request.
- 3) Data Backup Location – Data backups shall be maintained or replicated at a site geographically disparate from the production site, (but located in CONUS), such that the loss of one data center does not prohibit recovery of data within the prescribed RTO.
- 4) Specific Snapshot Objective – At the Authorized User's request, Contractor/Subcontractor shall create a full snapshot for the platform, content and related data, to be retrieved at Authorized User request within 24 hours up to a period to be determined by the Authorized User.

#### 1.2.13. **Data archival**

- 1) Provide tiered storage solution (different types of storage media in order to reduce total storage cost) to move data through multiple tiers as the data ages.
- 2) Provide archive data retention mechanism as well as data disposal.
- 3) Manage the logs and data consistent with best practice approaches.

#### 1.2.14. **Technology refresh**

- 1) Hardware within the Contractor's Boundary will never be at "End of Support Life" for the vendor that provided the hardware product.
- 2) Software within the Contractor's Boundary will never be more than two versions behind.

#### 1.2.15. **Migration Support to State or Third Party Provider**

- 1) Upon request and at no additional fee, Contractor shall provide to the Authorized User all data, scripts, software, virtual machine images, and migration assistance to a Authorized User data center or other third party data center.

### **1.3. Drupal PaaS Information Security Policy Compliance**

- 1.3.1. **Independent reviews and assessments shall be performed at least annually to ensure the Contractor is compliant with policies, procedures, standards and applicable regulatory requirements (i.e., internal/external audits, certifications, vulnerability and penetration**

**testing). Such review findings will be shared with the Authorized User upon request.**

- 1) Annual external third party vulnerability and penetrations testing of all infrastructure and environments.
- 2) Annual internal audit results
- 3) Annual assessment via the Cloud Security Alliance's Consensus Assessment Initiative Questionnaire (CAIQ)
- 4) Current Federal Information Security Management Act (FISMA) Authorization to Operate (ATO).
- 5) Develop and provide NYS a security plan, within thirty (30) calendar days of the effective date of the Contract and implement the plan within thirty (30) calendar days of approval by NYS EISO. Failure to comply with this timeline will result in a credit due to the State of 25% of Contract value for Lot I.

**SECTION 13.** Section 30 of the Contract, Authorized User Content, is deleted in its entirety and replaced with the following:

### **30. Authorized User Content**

The Authorized User owns all the Content provided by the Authorized User to the Contractor, including any intellectual property rights therein. The Authorized User grants Contractor a nonexclusive, royalty-free right to use, reproduce, modify and adapt formats of data, publish, translate, distribute, analyze, perform and display such Content for the sole purpose of fulfilling Contractor's obligations under this Contract.

The Authorized User is solely responsible for the posting and content of Authorized User Content to the Website by the Authorized User. By posting any Authorized User Content to an Instance, the Authorized User represents that it has the lawful right to distribute and reproduce such Authorized User Content. The Authorized User agrees not to knowingly post, upload to, transmit, distribute, store, create or otherwise publish through the Site (including in its datasets) any of the following:

1. Content that is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, or fraudulent;
2. Content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law, including, without limitation, the regulations of the U.S. Securities and Exchange Commission or any rules of a securities exchange such as the New York Stock Exchange, the American Stock Exchange or the NASDAQ;
3. Content that may infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party.
4. Content that impersonates any person or entity or otherwise misrepresents the State's affiliation with a person or entity;
5. Content that is subject to any export control laws or regulations;
6. Unsolicited promotions, political campaigning, advertising or solicitations;
7. Private information of any third party, including, without limitation, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers; and
8. Viruses, corrupted data or other harmful, disruptive or destructive files.

Contractor takes no responsibility and assumes no liability for the content of the Authorized User Content or User Content posted, stored or uploaded on an Instance or links to Web pages and content of any other party or entity ("Third Party Links") that the Authorized User or Users may post on an Instance. The Authorized User may remove Authorized User Content or User Content from the Site at any time. Contractor shall not remove Authorized User Content or User content from an Instance without the Authorized User's written consent. The Authorized User shall respond to Contractor within one business day of receipt of request.

**SECTION 14.** Section 31 of the Contract, Support; Operation of Websites and Services, is deleted in its entirety and replaced with the following:

**31. Support; Operation of Website and Services.**

Contractor will provide support to the Authorized User in accordance with the selected Service Level Agreement (SLA). Authorized Users may acquire professional services at the quote rates.

**SECTION 15.** Section 32 of the Contract, Credits, is deleted in its entirety and replaced with the following:

**32. Credits.**

The services shall be available as specified as Uptime % in the respective Service Offerings in SOW §7.7, Minimum Service Offering Requirements, measured quarterly. Availability shall not include scheduled or emergency maintenance. Emergency maintenance shall mean maintenance provided for any unplanned or unforeseen circumstance that could cause a material adverse impact to the Platform or Authorized User's websites.

Contractor's failure to satisfy performance standards, requirements or other service levels set forth in the piggyback contract shall result in a credit as follows:

The **Incident Resolve Time** represents the percentage of time the contracted service offering is required to meet the stated requirements and is applicable to issues affecting the Contractor Platform only. As example, for Service Offering 1 it is required that critical incidents be resolved within 6 hours 80% of the time. If the service offering fails to meet this requirement, a credit will be applied. The credit will be determined and applied for each month of service by contracted Service Offering.

**Incident Resolve Time Credit Minutes Calculation**

- The TAM will provide a report from the provider Incident Reporting System each month for all Incident Tickets by Service Offering and provide:
  - The Incident Number
  - The date and time the Ticket was Submitted
  - The date and time the Ticket was accepted
  - The date and time the Ticket was resolved
  - The percent of time the Resolve time was within service offering requirement
    - Service Offering 1 – 6 hrs 80% of the time
    - Service Offering 2 – 5 hrs 85% of the time
    - Service Offering 3 – 4 hrs 90% of the time
  - Determine if SLA percentage for the respective Service Offering is met as follows
    - Total number of tickets for the month / number of ticket that met SLA Resolve time
    - If less than SLA percentage for the respective Service Offering Resolve time then:
      - For the tickets that exceeded the resolve time sum the total minutes over the required resolve time. This is the total number of minutes to be used for the credit calculation:
    - Examples:
      - SO 1: Resolve time per ticket is 6 hrs or 360 minutes. This must be met 80% of the time
        - 50 tickets submitted in a month, 45 met the Resolve time or 90% of the time. No credit calculation is required.
        - 50 tickets submitted and 38 tickets met the Resolve time period or 76% of the time. A Credit calculation is required.
          - For the 12 tickets that did not meet the resolve time period of 360 minutes per ticket, total the amount of time of over 360 minutes for each ticket. For example, each ticket took 365 minutes or 5 extra minutes. This would result in 60 minutes (12\*5) to be used in the credit calculation.

**Credit Financial Calculation**

**Incident Resolve Time Credit**

The following financial credit will be charged for each minute of unavailability outside the required SLA% for **Resolve Time**. **The credit will be applied against the next bill based on the prior month’s actual result. In the event the amount of the credit(s) due and owing the Authorized User exceed the next bill the balance of the credit(s) due and owing the Authorized User shall be applied to the successive bill(s) until the amount of the credit due and owing the Authorized User is zero.**

*Table 2 – Incident Resolve Time Credit*

Site	Credit Per Minute		
	Credit SO 1	Credit SO 2	Credit SO 3
Per Minute Critical	\$5.38	\$9.42	\$19.46
High	\$3.38	\$7.42	\$15.46
Medium	\$1.38	\$5.42	\$10.46
Low	\$0.38	\$3.42	\$5.46

- The Incident Resolve time credit for Critical issues will be capped at \$5000 per 12 month term commencing with the contract start date.
- The Incident Resolve time credit for High issues will be capped at \$3,000 per 12 month term commencing with the contract start date.
- The Incident Resolve time credit for Medium issues will be capped at \$1,000 per 12 month term commencing with the contract start date.
- The Incident Resolve time credit for Low issues will be capped at \$500 per 12 month term commencing with the contract start date.

**Recovery Time Objective Credit**

The following financial credit will be charged for each hour of unavailability outside the required SLA percentage for the respective Service Offering for Recovery Time Objective (RTO). The credit will be applied against the next bill based on the prior month’s actual result. In the event the amount of the credit(s) due and owing the Authorized User exceed the next bill the balance of the credit(s) due and owing the Authorized User shall be applied to the successive bill(s) until the amount of the credit due and owing the Authorized User is zero.

*Table 3 – Recovery Time Objective (RTO) Credit*

Site	Credit Per Hour		
	Credit SO 1	Credit SO 2	Credit SO 3
Per Hours	\$322.95	\$565.21	\$1,167.59

For the purposes of RTO credits:

1. The credit for the **first** occurrence in a given contract year will not be enforced unless the outage period extends beyond 72 consecutive hours and will be capped at \$5000.
2. The credit for the **second** occurrence will be capped at \$5000
3. The credit for outages **beyond** 2 occurrences will not be capped.
4. For periods less than 30 minutes no credit applied. For periods of 30 minutes to one hour a credit of one hour will be applied. For periods exceeding one hour or portions of an hour, a credit in the amount of the next higher hour will be applied.
  - a. Example using SO1
    - i. If outage is 6 hrs and 29 minutes no credit will be required.
    - ii. If outage is 6 hrs and 30 minutes a one hour credit will be applied
    - iii. If outage is 7 hrs and 25 minutes a two hour credit will be applied.

The credit(s) will be applied against the next bill based on the prior actual result. In the event the amount of the credit(s) due and owing the Authorized User exceed the next bill the balance of the credit(s) due and owing the Authorized User shall be applied to the successive bill(s) until the amount of the credit due and owing the Authorized User is zero.

Additionally, a 25% credit will be deducted from any invoices for implementation timeline delays and delays for any other deliverables including submission of reports and meeting attendance. The state reserves the right to terminate the contract should the time line delays result in adjustment by the State to the September 30, 2014 go live date for Lot I.

**SECTION 16.** The Contract is amended by adding Appendices F, G, and H which are attached to, and incorporated into this Amendment, as if fully set forth herein:

Appendix F. Contract Modification Procedure

Appendix G – Contractor Information

Appendix H – Sales Report Template

**SECTION 17.** Except as herein modified, all terms of Contract # PT66623, as amended shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties have caused this First Amendment to be executed on the date set forth below, effective on the date set forth above, and the persons signing represent and warrant that they are duly authorized to sign on behalf of the respective parties.

Contract Number: PT66623

Agency Certification

"In addition to the acceptance of this First Amendment, I also certify that original copies of this signature page will be attached to all other exact copies of this First Amendment."

CARAHSOFT TECHNOLOGY CORPORATION

THE PEOPLE OF THE STATE OF NEW YORK

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Federal I.D. No: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Office of General Services  
New York State Procurement  
\_\_\_\_\_

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

STATE OF \_\_\_\_\_ }

: \_\_\_\_\_ SS.:

COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2014 , 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 on 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.

\_\_\_\_\_

**Notary Public**

**Registration No.**

## **CONTRACT MODIFICATION PROCEDURE**

The following guidelines are subject to change at the discretion of OGS. A Contract Amendment requires a formally executed document by mutual agreement of the Parties, to be provided by OGS Contract Administrator, after submission and approval of the Contract Modification Form.

- 1) **TYPES OF CONTRACT MODIFICATIONS:** In order to expedite processing of a contract modification, where proposed changes involve more than one category below, each change should be submitted to OGS as a separate request.
  - a) **UPDATES:** “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. Updates may include: Centralized Contract changes and updates made in accordance with the previously approved pricing formula (e.g. discount from list price); adding new products or services within the established, previously approved pricing structure; lowering pricing of products or services already on Contract, deleting products or services available through the Centralized Contract, adding product or service that do not fall under the previously established price structure or discounts under the Contract, re-bundled products, and other updates not listed above that are deemed to be in the best interest of the State and do not result in a change to the established Centralized Contract terms and conditions. Updates must be submitted to OGS for review, and must be accompanied by a justification of reasonableness of price if the change results in a change in pricing methodology. OGS will notify Contractor in writing if approved.
  - b) **AMENDMENTS:** “Amendments” are changes that are not specifically covered by the terms and conditions of the Centralized Contract but inclusion is found to be in the best interest of the State. Requests for product changes and other requests that would require changes to the terms and conditions of the Centralized Contract would fall into the Amendments category. Contractor must provide a written justification of reasonableness of the price levels offered in the applicable Program Agreement and a statement explaining why it is in the best interest of the State to approve the requested amendment. Amendments typically require negotiation between OGS and the Contractor. OGS will work directly with the Contractor to obtain the required documentation for each requested amendment and notify Contractor in writing if approved.
- 2) **CONTRACTOR’S SUBMISSION OF CONTRACT MODIFICATIONS:** In connection with any Contract modification, OGS reserves the right to:
  - request additional information
  - reject Contract modifications
  - remove Products from Contract modification requests
  - request additional discounts for new or existing Products
- 3) **PRICE LEVEL JUSTIFICATION – FORMAT:** Contractor is required to submit the Product and price level information for the update in an Excel spreadsheet format electronically via e-mail (and in hard copy if requested by OGS) to the OGS Contract Administrator. The list must be dated. The Product and price level information should include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):
  - Price level increases
  - Price level decreases
  - Products being added

- 4) **SUPPORTING DOCUMENTATION:** Each modification request must include the current contract pricing discount relevant to the Products included in the update.
  
- 5) **SUBMITTAL OF MODIFICATION REQUESTS:** A Contract modification request must be accompanied by a completed Contract Modification Form. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, to restructure the price level to its customers generally, and/or for new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS). The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.



STATE OF NEW YORK  
EXECUTIVE DEPARTMENT - OFFICE OF GENERAL SERVICES  
Corning Tower – 38<sup>th</sup> Floor  
Empire State Plaza  
Albany, New York 12242

**CONTRACT MODIFICATION FORM**

<b>DATE OF THIS SUBMISSION:</b>	<b>DATE DOCUMENTATION EMAILED:</b>
<b>CONTRACTOR NAME:</b> <a href="#">Click here to enter text.</a> <b>OGS GROUP #:</b> <a href="#">Click here to enter text.</a> <b>OGS AWARD #:</b> <a href="#">Click here to enter text.</a> <b>OGS CONTRACT #:</b> <a href="#">Click here to enter text.</a>	<b>CONTRACTOR CONTACT:</b> <b>Name:</b> <a href="#">Click here to enter text.</a> <b>Phone #:</b> <a href="#">Click here to enter text.</a> <b>Email:</b> <a href="#">Click here to enter text.</a>

**NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).**

**INSTRUCTIONS:**

1. This form is to be used for all Contract modifications. The form is to be completed in full, signed and submitted to OGS for final approval. Any submission that is not complete and signed will be rejected.
2. Contractor is required to submit the Product and price level information for the update electronically via e-mail in either an Excel spreadsheet (and in hardcopy if requested by OGS) to the OGS Contract Administrator for this Contract.
3. Price level increase requests must be submitted in accordance with the Centralized Contract.
4. If more than one type of modification is being requested, each type should be submitted as a separate request.
5. The Contract modification request must be accompanied by the relevant current contract pricing discount information.

**COMPLETE STATEMENTS 1 THROUGH 5 BELOW:**

<p>1. This request is for an:</p> <p><input type="checkbox"/> Update</p> <p><input type="checkbox"/> Amendment</p> <p>See Contract Modification Procedure for an explanation of these terms.</p>	<p>2. The intent of this submittal is to request:</p> <p><input type="checkbox"/> Addition of new products or services</p> <p><input type="checkbox"/> Deletion of products or services</p> <p><input type="checkbox"/> Change in pricing level</p> <p><input type="checkbox"/> Other Update</p> <p><input type="checkbox"/> Other Amendment</p>
<p>3. All discounts are:</p> <p><input type="checkbox"/> GSA</p> <p><input type="checkbox"/> Most Favored Nation*</p> <p><input type="checkbox"/> Other (provide explanation) <a href="#">Click here to enter text.</a></p> <p>*Prices offered are the lowest offered to any similarly situated entity.</p>	<p>4. Attached documentation includes:</p> <p><input type="checkbox"/> Current approved GSA (labeled "For information only")</p> <p><input type="checkbox"/> Current relevant Price List (labeled "For information only")</p> <p><input type="checkbox"/> Revised NYS Net Price List in same format as found in the Pricing Appendix for this Contract</p> <p><input type="checkbox"/> Current copy of the "National Consumer Price Index for All Urban Consumers (CPI-U) Northeast region" (for price increases only)</p>



**Contractor Information – July 2014**

<b>Contract #</b>	<b>Contractor &amp; Address</b>	<b>Contact Information</b>	<b>Federal ID NYS Vendor ID</b>
<b>PT66623</b>	Carahsoft Technology Corp. 12369 Sunrise Valley Drive Reston, VA 20191	Rich Savage Toll free: 888-662-2724 Phone: 703-871-8629, ext 8629 Fax: 703-871-8505 Email: <a href="mailto:Rich.Savage@carahsoft.com">Rich.Savage@carahsoft.com</a> Website: <a href="http://www.carahsoft.com">www.carahsoft.com</a>	<b>Federal ID</b> 52-2189693  <b>NYS Vendor ID</b> 1000009462





**STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
OFFICE OF GENERAL SERVICES  
NEW YORK STATE PROCUREMENT  
PIGGYBACK CONTRACT FOR  
DRUPAL WEB CONTENT MANAGEMENT SERVICES**

**New York State Contract #**

**PT66623**

**Master Contract #**

**GS-35F-0119Y**

**DESIGNATED CONTACTS:**

<b>Primary Contact: Michelle St. Jock</b> <b>E-mail address: Michelle.StJock@ogs.ny.gov</b>	<b>Secondary Contact: Sheila Long</b> <b>E-mail address: Sheila.Long@ogs.ny.gov</b>
<b>Tertiary Contact: Kathy McAuley</b> <b>E-mail address: Kathleen.McAuley@ogs.ny.gov</b>	<b>MWBE Contact: Anuola Surgick</b> <b>E-mail address: Anuola.Surgick@ogs.ny.gov</b>

**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 Carahsoft (hereinafter “Contractor” or “Vendor” or “Offerer”), with its principal place of business at 12369 Sunrise Valley Drive, Reston, VA 20191. 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 New York State Procurement (hereinafter “NYSPRO”), 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 GSA GS-35F-0119Y (hereinafter “Master Contract”); and

Whereas, OGS provided notification of its intention to enter into a piggyback contract with Contractor by placing a notice in the May 22, 2014 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 User. 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

## GROUP 76000 – Software (Statewide Piggyback)

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 Drupal Web Content Management Services (Services) to be provided on Platform-as-a-Service (PaaS) basis.

The Contract is divided into the following two lots:

**Lot I Websites, Specific:** Hosting of the following three re-designed NYS websites: 1) NY.gov, 2)

Governor.ny.gov, and 3) LicenseCenter.ny.gov.

**Lot II Websites, Indefinite Delivery Indefinite Quantity:** Additional NYS websites as described in **Section 28(B)** as needed by the Authorized User.

The websites in both **Lot I** and **Lot II** will only contain public data; the websites shall not include personally identifiable information.

The **Lot I** websites are to be deployed into production **on or before September 30, 2014**.

## 2. TERM

The term of this Piggyback Contract shall one year from the last date of execution by the Parties (Initial Term). At the sole discretion of the State the Contract may be renewed under the same terms and conditions for up to three (3) additional one (1) year terms, provided that the Master Contract is still in effect. If at any time the Contract is canceled, terminated or expires, the Contractor has the affirmative obligation to extend appropriate and reasonable cooperation to assure the orderly transition of contract services to the subsequent Contractor.

## 3. USE OF SUBCONTRACTORS/DEALERS/REDISTRIBUTORS/RESELLERS

Contractor is solely responsible for meeting the requirements of this Piggyback Contract and any purchases made hereunder, and shall ensure that sufficient resources are available to meet its obligations, either directly or through the use of subcontractors, dealers, distributors, or resellers. Contractor shall be fully liable for Subcontractor, Dealer, Distributor and/or Reseller performance under this Piggyback Contract, and their compliance with all Piggyback Contract terms and conditions. OGS reserves the right to reject any proposed Subcontractor or to require replacement of any Subcontractor pursuant to paragraph 57 of Appendix B.

Contractor will be providing the Drupal PaaS services set forth in the Contract, with the exception of data center services, through and by the following subcontractor: Acquia (hereinafter “Subcontractor”) with its principal place of business at 25 Corporate Drive, 4th Floor, Burlington, MA 01803.

Contractor cannot change or replace the above named Subcontractor without the State’s written permission. Any proposed replacement for the above named Subcontractor must have the same expertise and experience with the services being provided under the Contract as the above named Subcontractor.

Contractor shall be the sole contact with regard to all provisions of the Contract, including but not limited to full responsibility for delivery and maintenance of services. All invoices to the State shall be submitted by the Contractor. All payments by the State shall be made to the Contractor. All orders for Lot II websites shall be placed with the Contractor.

Contractor shall include in its subcontract related to the Contract, in such a manner that they are binding upon the subcontractor with respect to work performed in connection with the Contract, provisions specifying that:

- the work performed by the subcontractor must be in accordance with the terms of the Contract including, but not limited to, Appendix A and Appendix B;
- nothing contained in such subcontract shall impair the rights of the State;
- nothing contained herein shall create any contractual relation between any subcontractor and the State;
- subcontractor shall maintain all records with respect to work performed under the subcontract in the same manner as required of the Contractor; and

## GROUP 76000 – Software (Statewide Piggyback)

- the State shall have the same authority to audit the records of all subcontractors as it does those of the Contractor.

Contractor shall be fully responsible to the State for the acts and omissions, in the performance of Services under the Contract, of the Subcontractor and/or persons either directly or indirectly employed by it or by the Subcontractor, as it is for the acts and omissions, in the performance of services under the Contract, or persons directly employed by the Contractor. Contractor shall not in any way be relieved of any programmatic or financial responsibility under the Contract by its agreement with the Subcontractor.

### 4. CONTRACT MODIFICATIONS

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

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

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

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

E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §40.

### 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, which supersedes the order of precedence stated in Appendix B.

- I. Appendix A, *Standard Clauses for NYS Contracts*
- II. Piggyback Contract (This Document)
- III. Appendix B, *OGS General Specifications*
- IV. Appendix C – *Minority and Women-Owned Business Enterprises and Equal Opportunity Policy Statement*
- V. Appendix D – *Order / Acceptance Form*
- VI. Appendix E – *Price Sheets*
- VII. Master Contract, GSA GS-35F-0119Y

Appendix A, Standard Clauses For New York State Contracts, dated December 2012, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

Appendix B, Office of General Services General Specifications, dated July 2006, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A.

Appendix C – Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

## **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. DEFINITIONS**

Terms used in this document that are capitalized shall be defined in accordance with Appendix B, §5, Definitions, of this Contract, which is hereby incorporated by reference. In addition, the following definitions set forth below, shall apply.

“Authorized User” shall mean the New York State Office of Information Technology Services, or any successor entity.

“Critical” shall mean an incident that results in a full service outage.

“High” shall mean an incident that impacts all user’s ability to do work but a workaround is available.

“Medium” shall mean an incident that partially impacts a user’s ability to do work but a workaround is available.

“Low” shall mean an incident that has no impact on user’s ability to do work.

“Platform : The cloud environment developed by the Contractor and provided to the State as a managed service and does not include levels of the environment configured by the State.”

“Provision Time Objective” (PTO) shall mean how long it takes to make a new website available for application configuration.

“Recovery Time Objective” (RTO) shall mean how long it takes to restore service for a website.

“Recovery Point Objective” (RPO) shall mean the period of time where data loss could occur.

“Resolve(d)” shall mean the point in time that Contractor closes a ticket.

“Resolve Time” shall mean the time period between when the incident is accepted by the Contractor to the time the ticket is closed by the Contractor.

“Site Health Report” shall mean a report that describes the overall health of the website, updated deployed, patched installed and summary of incidents by category: Critical, High, Medium, Low.

“Tools” shall mean access to provider Drupal tools such as Search or Search Engine Optimization (SEO).

“Knowledge Base” shall mean access to Providers knowledge base related to Drupal distribution.

“Performance Review” shall mean a performance report generated from website performance monitoring tools.

“State User” shall mean a member of the State’s website support teams.

“Technical Account Manager” shall mean the individual that is the single point of contact for the State.

“Periodic Visits” shall mean an onsite visit to a State office to interact with the State Management team at the request of the State.

“Advisory Hours Technical Account Manager” shall mean general consulting hours above and beyond normal account management duties such as attending status meetings, creating reports, monitoring reported incidents.

## 8. 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 Contract Administrator 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.

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

TO STATE:

Kathy McAuley

New York State Office of General Services

New York State Procurement

Corning Tower Building, 38<sup>th</sup> Floor

Empire State Plaza

Albany, New York 12242

Telephone: (518) 474-1994

E-Mail: [Kathleen.McAuley@ogs.ny.gov](mailto:Kathleen.McAuley@ogs.ny.gov)

TO CONTRACTOR:

## 9. PROCESSING CONTRACT PAYMENTS

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

## 10. APPENDIX B AMENDMENTS

The following Appendix B clauses are hereby amended as follows:

- A. Section 4 (Conflict of Terms) is deleted.
- B. Section 5 (Definitions) "Authorized User" is deleted and replaced with the following language:  
"Authorized User" shall mean the New York State Office of Information Technology Services, or any successor entity.
- C. Section 39 (Participation in Centralize Contracts) is deleted in its entirety.
- D. Section 42 (Estimated/Specific Quantity Contracts) is deleted and replaced with the following language:

Estimated/Specific Quantity Contracts

a. Estimated quantity contracts, also referred to as indefinite delivery/indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity(s) is implied or given.

b. With respect to any specific quantity stated in the contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

E. Section 56 (Assignment) is deleted and replaced with the following language:

**Assignment**

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable). The Commissioner's or Authorized User's consent shall not be unreasonably withheld. Failure to obtain consent to assignment from the Authorized User shall revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. The Commissioner reserves the right to reject any proposed assignee in his/her discretion.

F. Appendix B, Section 62, Contract Billings, is hereby deleted and replaced with the following:

I. Billings. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Piggyback Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of this Piggyback Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Piggyback Contract.

II. Payment of Piggyback Contract purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at <http://www.osc.state.ny.us/epay/index.htm> or by e-mail at [epayments@osc.state.ny.us](mailto:epayments@osc.state.ny.us). Contractor acknowledges that it will not receive payment on any invoices submitted under this Piggyback Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above. Inquiries relating to OSC's Electronic Payments program should be directed to:

NYS Office of the State Comptroller  
Vendor Management Unit  
110 State Street Mail Drop 10-4  
Albany, NY 12236  
Telephone: (855) 233-8363  
E-Mail: [helpdesk@sfs.ny.gov](mailto:helpdesk@sfs.ny.gov)

G. Appendix B, Section 64, Interest on Late Payments, is hereby deleted and replaced with the following:

- a. **Authorized User** Upon acceptance of product or as otherwise provided by this Piggyback Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by Agency may be made in accordance with State Finance Law §§179-d et. seq. and the implementing regulations (2 NYCRR §18.1 et seq.).
- b. **By Contractor** Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

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.

H. Appendix B, Section 72, Additional Warranties, is hereby deleted and replaced with the following:

#### Additional Warranties

##### Services Warranty:

Contractor warrants that: (i) the Services will function as described in the Contract; and (ii) Contractor owns or otherwise has the right to provide the Services to the State under this Contract.

Contractor warrants that all services will be performed with professional care and skill. Should OGS or Authorized User make a determination that Contractor is in breach of this services warranty, Contractor shall make corrections, cure material defects or deficiencies, or re-perform services to make them conforming to the standard set forth herein, and Contractor agrees to return the effected system to original workmanlike manner.

##### 2. Security Compliance Warranty.

Contractor warrants that the system used to provide the Subscription Services under this Contract has and will maintain a valid FISMA certification and accreditation consistent with the minimum security requirements assigned against a low-impact information system (per Federal Information Processing Standards Publications 199, "Standards for Security Categorization of Federal Information and Information Systems" and 200, "Minimum Security Requirements for Federal Information and Information Systems").

The State reserves the right to independently evaluate, audit, and verify such FISMA certification and accreditation.

##### 3. Workmanship Warranty

Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

##### 4. Contractor Compliance

Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid/Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker's compensation, and shall provide such proof as required by the

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Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT, THE SERVICES (INCLUDING SOFTWARE AND DOCUMENTATION) ARE PROVIDED WITH NO OTHER WARRANTIES OF ANY KIND, AND CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### **11. REPORT OF CONTRACT PURCHASES**

The Contractor shall furnish annual reports forty five (45) days prior to the end of the term and any renewal thereof, using the format specified in Attachment 3, containing total sales to the Authorized User no later than thirty (30) business days after the close of each calendar quarter. The report is to be submitted electronically in Microsoft Excel 2007 or higher format to the attention of the individual shown on the front page of the Contract Award Notification. Additional related Contract purchase information may be required and must be supplied upon request.

If any of the sales involved the use of a subcontractor, the Contractor shall both identify and verify if each subcontractor is a MBE, WBE, or is a New York State Certified Minority and Women Owned Business (M/WBE). Contractors shall verify such status through the Empire State Development Minority- and Women-Owned Businesses Database web site at: <http://www.esd.ny.gov/MWBE/directorySearch.html>.

The State reserves the right to modify the individual(s) and/or State governmental entity designated to receive these quarterly reports.

### **12. PRICE AND DISCOUNT.**

If the Master Contract contains minimum order quantities or values, Contractor may elect to honor orders for less than the minimum order. For all orders less than the minimum order, at the Contractor's option, shipping costs from the shipping point may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by Contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the order by the Authorized User.

Price shall include all customs duties and charges and 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.

### **13. PROCESSING CONTRACT PAYMENTS**

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

### **14. PRICE INCREASES**

There shall be no increase in pricing during the term of the agreement or any renewal thereof.

### **15. CONTRACTOR'S INSURANCE REQUIREMENTS**

The Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance as herein below set forth, written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-" Class "VII" or better. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the New York State Office of General Services ("OGS") and rated at least "A-" Class "VII" or better in the most recently published Best's Insurance Report.

The Contractor shall deliver to OGS evidence of such policies in a form acceptable to OGS. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS

does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

*General Conditions*

- A. Conditions Applicable to Insurance.** All policies of insurance required by this Contract must meet the following requirements:
- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Paragraph B *Insurance Requirements* below.
  - 2. Policy Forms.** Except as may be otherwise specifically provided herein or agreed to in writing by OGS, policies must be written on an occurrence basis.
  - 3. Certificates of Insurance/Notices.** Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OGS, upon tentative award, and thereafter within three (3) business days of request. Certificates shall reference the Contract Number. As applicable, the requested forms must name the New York State Office of General Services, New York State Procurement, 38<sup>th</sup> Floor, Corning Tower, Albany, New York 12242 as the entity requesting proof of coverage (the entity being listed as the Certificate Holder). Certificates shall be submitted to the Office of General Services, New York State Procurement, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except in cases of cancellation for non-payment, in the event of which notice shall be provided as required by law to OGS. 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 period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply OGS updated replacement Certificates of Insurance, and amendatory endorsements.

Certificates of Insurance shall:

- Be in the form approved by OGS;
- Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Contract;
- Be accompanied by an Additional Insured and a Waiver of Subrogation Endorsement as required herein;
- Refer to this Contract by number and any other attachments on the face of the certificate; and
- Be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance and other attachments) will be accepted.

- 4. Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Contractor's insurance.
- 5. Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to OGS than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph A.3., *Certificates of Insurance/Notices*, above. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the 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. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of the same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OGS or the Authorized Users may withhold further contract payments, treat such failure as a breach or default of the contract.

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- 6. Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Deductibles or self-insured retentions above \$100,000 are subject to approval from OGS, which shall not be unreasonably withheld or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
- 7. Subcontractors.** Should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of this Contract the insurance requirements of this document on the Subcontractor, as applicable. Proof thereof shall be supplied to OGS.

As applicable, insurance required by the Contract shall name The People of the State of New York, its officers, agents, and employees as additional insureds hereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or the equivalent). Specifically, the additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

**B. Insurance Requirements**

The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- a) Commercial General Liability Insurance** with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01 01 96, or a substitute form providing equivalent coverages 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 a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
1. Policy shall include bodily injury, property damage and broad form contractual liability coverage.
- General Aggregate \$2,000,000
  - Products – Completed Operations Aggregate \$2,000,000
  - Personal and Advertising Injury \$1,000,000
  - Each Occurrence \$2,000,000

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

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

The following ISO forms must be endorsed to the policy:

- a. CG 00 01 01 96 or an equivalent Commercial General Liability Coverage Form;
- b. CG 20 10 11 85 or an equivalent- Additional Insured-Owner, Lessees or Contractors (Form B); and
- c. Waiver of Subrogation Endorsement.

Limits may be provided through a combination of primary and umbrella/excess liability policies.

- b) Comprehensive Business Automobile Liability Insurance** with a limit of not less than \$2,000,000.00 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

Waiver of Subrogation. Contractor shall cause to be include in each of the above referenced policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS. A Waiver of Subrogation Endorsement shall be provided upon tentative award, and thereafter, within three (3) days of request.

**c) Professional Liability:** The Contractor shall maintain errors and omissions liability insurance with a limit of not less than \$2,000,000 per loss.

1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract.
2. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to OGS prior to the policy's expiration or cancellation.
3. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

**d) Technology Errors and Omissions:**

Professional Liability insurance in the amount of \$2,000,000.00 for damages arising from computer related services including 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 hardware or software developed, manufactured, distributed, licensed, marketed or sold.

**C. Workers' Compensation Insurance and Disability Benefits Requirements**

Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts, document that they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of a bid or renewal.

**1. Proof of Compliance with Workers' Compensation Coverage Requirements:**

**An ACORD form (certificate of insurance) is NOT acceptable proof of workers' compensation coverage.** In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

- A) Be legally exempt from obtaining Workers' Compensation insurance coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to OGS at the time of bid submission or within three (3) days of request:

- A) 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.state.ny.us](http://www.wcb.state.ny.us)); (Reference applicable RFP and Group #s on the form.);
- B) Certificate of Workers' Compensation Insurance:
  - 1) Form C-105.2 (9/07) if coverage is provided by the Contractor's insurance carrier, Contractor must request its carrier to send this form to OGS, or

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- 2) Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to OGS;
- C) Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office; or
- D) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

### 2. Proof of Compliance with Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall:

- A) Be legally exempt from obtaining disability benefits coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to OGS at the time of bid submission or within three (3) days of request:

- A) 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.state.ny.us](http://www.wcb.state.ny.us)); (Reference applicable RFP and Group #s on the form.);
- B) Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to OGS; or
- C) Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

Proof of coverage or an exemption shall be submitted to the Office of General Services, New York State Procurement, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

## 16. 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 44, *Purchase Orders*.

## 17. INDEFINITE DELIVERY, INDEFINITE QUANTITY CONTRACT

Lot II Websites are Indefinite Delivery, Indefinite Quantity (IDIQ).

Although NYSPRO did not provide any estimates as to anticipated purchases of Lot II websites, Contractor acknowledges that numerous factors could cause the actual volume of Lot II websites purchased under this Contract to vary. 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.

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In NYSPro's experience, depending on the price of a particular item, the actual volume of purchases for that item can vary substantially. Specifically, if actual contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower. 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.

### **18. PRICE SHEETS**

The prices for the Service Offerings is set forth in Appendix E.

### **19. DISPUTE RESOLUTION POLICY**

It is the policy of NYSPro to provide the Contractor with an opportunity to administratively resolve disputes, complaints or inquiries related to the Piggyback Contract. NYSPro encourages the Contractor to seek resolution of disputes through consultation with NYSPro staff. All such matters will be accorded impartial and timely consideration. A copy of NYSPro Dispute Resolution Procedures for Vendors may be obtained by contacting OGS or through the OGS website at <http://www.ogs.ny.gov/BU/PC/Docs/VendorDisputePolicy.pdf>.

### **20. EXPORT OF STATE CONTENT UPON CONCLUSION OR TERMINATION OF CONTRACT**

Upon conclusion or termination of the Contract, Contractor shall provide all State Content to the Authorized User in the format required by the Authorized User at no cost to the Authorized User.

### **21. NEW YORK STATE VENDOR RESPONSIBILITY**

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.

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.

### **22. TOLL-FREE NUMBER**

Contractor shall provide all telephone support by means of a toll-free number, set forth in Appendix G, Contractor Information.

### **23. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS:**

#### **PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

## **I. General Provisions**

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“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. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State Certified minority and women-owned business enterprises (“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, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

## **II. Contract Goals**

- A. OGS hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). The total contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/mwbe.html>  
Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.

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

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women’s Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
  - 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.
  - 2. The Contractor shall:
    - a. Submit an EEO policy statement to OGS with the bid, or
    - b. If Contractor does not have an existing EEO policy statement, the Contractor shall sign and submit Appendix C, Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement annexed hereto; or
    - c. Contractor shall certify and affirm 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.
  - 3. The Contractor’s EEO policy statement shall include the following language:

## GROUP 76000 – Software (Statewide Piggyback)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 3 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- C. Form EEO 100 - Staffing Plan  
To ensure compliance with this Section, the Contractor shall submit a staffing plan 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. Contractors shall complete the Staffing plan form and submit it as part of their contract.
- D. Form EEO 102 - Workforce Employment Utilization Report ("Workforce Report")  
Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

## IV. MWBE Utilization Plan

- A. Contractor certifies that it has submitted a MWBE Utilization Plan to OGS and will follow such Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- B. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

## V. Waivers

- A. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form (BDC 333) documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- B. If the OGS, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

## VI. Monthly MWBE Contractor Compliance Report

Contractor is required to submit a Monthly MWBE Contractor Compliance Report (Form MWBE 102) to OGS by the 10<sup>th</sup> day of the month during the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

## VII. Liquidated Damages - MWBE Participation

- A. Where OGS determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the OGS liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made, after Contractor has been afforded the process that it is due, which requires the payment of liquidated damages and such identified sums have not been withheld by the OGS, Contractor shall pay such liquidated damages to the OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the OGS.

## 24. NO DRUGS OR ALCOHOL

For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

## 25. TRAFFIC INFRACTIONS

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

## 26. LOT I

Service Offering I shall be utilized for the Lot I websites.

## 27. PROCUREMENT INSTRUCTIONS FOR LOT II

A. For purchases under Lot II Authorized User, as that term is defined in Section 7, Definitions, , shall procure services that best meet their form, function and utility requirements.

B. Authorized User will issue purchase order(s) directly to the Contractor for purchases under Lot II specifying the items with respect to services and delivery requirements and referencing statements of work (as applicable) for services.

Authorized User shall specify the following in a purchase order for purchases under Lot II for each additional website using the criteria set forth in Section 28(C), Lot I and Lot II Website Characteristics and Performance Criteria:

- a. Website size: small, medium, or large;
- b. Instance: single or multi-instance; and
- c. Option: Service Offering 1, Service Offering 2, or Service Offering 3.

C. Upon Authorized User acceptance of services itemized on the purchase order, Contractor will invoice Authorized User for any portion services accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all services.

## 28. PaaS TERMS AND CONDITIONS

### A. Data Center Locations

At the beginning of this Contract, Contractor and OGS agree that the State's Data will be housed in the Amazon Web Services (AWS) East data centers owned and operated by Amazon, Inc. which are located in the state of Virginia. If

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either the location of the State's Data changes from the AWS East. data centers to other data centers owned and/or operated by Amazon, Inc., or the Contractor seeks to change the provider of the data centers from Amazon, Inc. to another data center provider, the Contractor shall give written notice in accordance with § 8, Notices, to OGS sixty Business Days prior to such change. Contractor agrees that under no circumstances shall the data center(s) hosting the State Data be located outside the continental United States.

**B. Lot I and Lot II Website Characteristics and Performance Criteria**

**Individual Website Instance**

**Individual Website Instance**

CONDITION	Small	Medium	Large
Total number of yearly page views	12,000,000	60,000,000	120,000,000
Seasonal/Incidental Increases (~10%)	3x average	3x average	3x average
Average web page size (in KB)	500kb	500kb	500kb
Cached pages size	100kb	100kb	100kb

**Multiple Website Products**

**Individual Website Instance**

CONDITION	Small	Medium	Large
Total number of yearly page views	12,000,000	60,000,000	120,000,000
Seasonal/Incidental Increases (~10%)	3x average	3x average	3x average
Average web page size (in KB)	500kb	500kb	500kb
Cached pages size	100kb	100kb	100kb

**C. Service Offering Requirements**

	Elite Subscription		
Service Offering (SO) Requirements	Elite Subscription SO1	Elite Subscription SO2	Elite Subscription SO3
Uptime %	99.95	99.95	99.95
Incident/Help Desk Support	24/7	24/7	24/7
Incident Response time: Accept/Resolve	<b>Accept/Resolve</b>	<b>Accept/Resolve</b>	<b>Accept/Resolve</b>
Resolve Period SLA %	80%	85%	90%
Critical	45 min/6 hours	30 min/5 Hours	30 min/4 Hours
High	4Hrs/3 days	4Hrs/2 days	4Hrs/2 days
Medium	12hrs/7 days	8hrs/ 5 days	8hrs/5 days
Low	40hrs/10 days	48hrs/8 days	24hrs/8 days
Recovery Time Objective (RTO)	12 hours primary data center/24 hours disaster recovery site	12 hours primary data center/24 hours disaster recovery site	12 hours primary data center/24 hours disaster recovery site
Recovery Point Objective	2hrs	2hrs	60 minutes
Provisioning Time Objective	1 day	2 day	2 day

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Technical Account Manager requirements:			
Dedicated Resource	Yes	Yes	Yes
Periodic Onsite Visits	No	Yes	Yes
Periods of support	Monthly	Weekly	Daily
Attend status meetings	Yes	Yes	Yes
Advisory Hours (annual)	12	40	56
Provide Report on Site Health	Quarterly	Monthly	Monthly
Site Performance Reviews	Annual	Quarterly	Monthly
Access to Provider Tools	Yes	Yes	Yes
Access to Provider Knowledge base (State Users)	10	10	10

Uptime for the solution as measured as the total external availability for the provisioned Drupal PaaS solution during the billing period of one month (n days/month \* 24hrs/day). Responses time measurement will start at the day and time the ticket is submitted.

A credit will be applied for failure to meet a SLA for the Service Offering selected as provided in Section 32, Credits .

Scheduled downtime must be during 11PM to 7AM ET.

Provide 48hr notice to State for patch management appropriate to all components within the provider's boundary.

**D. Drupal PaaS Requirements**

Contractor shall deliver a turn-key Drupal Web Content Management System (WCMS) PaaS offering for the on-demand deployment of the Lot I websites and provide the option for the State to deploy additional websites under Lot II. The Drupal PaaS offering shall consist of the entire application stack required to support the Drupal WCMS.

The Drupal PaaS solution will be based on current and evolving industry standards and best practices over the course of the contract duration. The Drupal PaaS solution shall meet all requirements set forth in the Contract. Support for Drupal version 7 (current dot release), and planned immediate availability of Drupal version 8 when it is released (upgrades to v8 of existing v7 sites would be in coordination with NYS project team when deemed appropriate).

Services will be provided from the Contractor/Subcontractor locations located within the Continental United States (CONUS) with the option of on-site support and consultation services as requested and approved by the State.

**1.1. Drupal PaaS Solution Requirements**

**1.1.1. Drupal PaaS Infrastructure**

- 1) Provide all Drupal PaaS hardware and software infrastructure including servers, storage, and network as part of the service offering.

**1.1.2. The Drupal PaaS sites will be used to support the following environments:**

- 1) A Development & Test environment that is logically isolated from the QA/Staging, and Production environments.
- 2) A QA/Staging (pre-production) environment that is logically isolated from the end user and other environments, but representative of the Production environment.

- 3) A Production environment that is logically isolated from the Development/Test, QA/Staging environments.
- 4) An interface for transition of code, files, configuration, and content between the aforementioned environments.
5. Additional capabilities of multi-site instances
  - i) Administrative Interface to
    - (1) 1-click creation and duplication of sites
    - (2) Create and regulate shared assets across sites (templates, plugins, etc.)
    - (3) Manage user/group roles and permissions across sites

**1.1.3. The Drupal PaaS solution shall provide the following content management capabilities:**

- 1) Theme customization
- 2) Module customization
- 3) Git source control integration

**1.2. Drupal Operations and Support Requirements**

**1.2.1. Platform Support**

Provide application support for the Drupal PaaS platform including:

- 1) Platform Upgrades – coordinated with development teams
- 2) Monitoring for both infrastructure and platform (database, webserver, caching, search, etc.) layers
- 3) Provide an expert technical operations and management team which can advise the State on optimal operational practices, recommend deployment architectures for cloud infrastructures, design and implement automated scaling processes, day-to-day and emergency procedures, deploy and monitor applications, performance reporting and metrics, and ensure the overall reliability and responsive operation of the applications through both proactive planning and rapid situational response.
- 4) Notification of any issues with website's performance, security, and code.
- 5) Support for State Users, including, but not limited to, system owners, developers and managers, as required, related to Drupal content management and maintenance.

**1.2.2. Systems Management Support**

- 1) Provide systems management support for all software servers (database, web servers, and application enablers), operating systems, hypervisors, hardware, network infrastructure and patch management that are included in the Contractor/subcontractor boundary.
  - a) Provide have patch management capability

**1.2.3. Operations Management**

- 1) Provide Operations Management and operations of the Drupal PaaS environment to be inclusive of all the infrastructure components (**Section 1.1.1**) and their respective integration.

**1.2.4. Delivery Optimization**

- 1) Configure, manage, deploy, and scale, the system on the deployed infrastructures
  - a) Including support for scaling of both infrastructure and platform components.
- 2) Provide **integration** support for a content delivery network (CDN) and/or support for third party providers.
- 3) Provide support for caching of pages, database queries and other standard platform optimization practices.

#### 1.2.5. Support

- 1) Provide an effective solution that utilizes industry standards and best practices that meets or exceeds the performance criteria detailed in the Contract. Manage and operate the solution in accordance with the Contract,
- 2) Provide end-to-end monitoring capability and reporting for website rendering, content query, content delivery, and file download services that enable root-cause analysis and the resolution of performance issues

#### 1.2.6. Implementation and Support for Lot I and II websites

- 1) Lot 1 websites implementation shall be as follows:
  - a) The Drupal PaaS subscription for each the respective websites (NY.Gov, Governor, NY.GOV, LicenseCenter.NY.Gov) will be provisioned no later than 5 days upon receipt of the purchase order from the State.
  - b) Production use on September 30, 2014.
- 2) Lot I and II websites:  
Jointly develop an implementation plan with the State for the implementation of any website.

Provide an expert review of each website's architecture and performance, providing a written recommendation for improvements and upgrades 30 days from sites production launch date.

#### 1.2.7. Infrastructure scalability, capacity and evolution

- 1) Solutions shall meet or exceed the minimum capacity of the required Website and Performance criteria defined for Lot I websites that serve the needs of the State of New York content management community as well as provide web server delivery capacity to Internet consumers of the State's content.
- 2) Contractor shall continue to develop and refine infrastructure in accordance with emerging requirements and evolving technology specifications as required.

#### 1.2.8. Technical Account Manager Support

- 1) Engage with State website team in accordance with Section 28(D) of the Contract.
  - a) Provide a periodic performance review of each website's architecture and performance, providing a written recommendation for improvements and upgrades. All periodic performance reviews shall be due 30 days prior to the Option Year renewal.
- 2) Upon request, provide copy of contingency plan for data center provider identified in Section 28(A), data center where State data is stored and provide timely updates to the State when the plan is changed.

#### 1.2.9. Customer Incident support

- 1) Provide service and support for the State of New York Drupal PaaS solution 24 x 7 x 365 days in base period to include Tier 1, 2, 3 help desk support / service center functions defined as:
  - a) Tier 1 (Incident response catch/dispatch)
  - b) Tier 2 (Platform Solution Engineer)
  - c) Tier 3 (Platform Technology Engineer)
  - d) Provide trouble ticketing via customizable online portal/interface with integrated email notifications.

#### 1.2.10. Usage reporting

- 1) Provide a mechanism to track system usage of bandwidth, storage, etc. so that usage by designated account holders can see and track costs corresponding with their usage.

- 2) Provide on-line reporting capability that will allow designated account holders to see the status of their usage; updated at least weekly.

#### 1.2.11. Administration capabilities

- 1) Provide network storage, server and virtualization layer management to include performance of internal technology and refresh cycles applicable to the environment.
- 2) Provide automated monitoring of performance, resource utilization and other events such as failure of service, degraded service, availability of the network, storage, database systems, operating Systems, applications, including API.
- 3) Provide tools for analyzing usage specific trends as it relates to the public users of the system.
- 4) Provide a change control process to secure the functionality of the environment without hindering the ability of the State of New York content developers/managers to efficiently add new functionality, integration and or content delivery mechanisms.
- 5) Provide a test environment for the State of New York Applications and Development staff to test code for all environments that may receive iterative patches and/or refreshes.
- 6) Provide a published procedure for exiting the service arrangement, including assurance to sanitize all computing resources of tenant data once a customer has exited your environment or has vacated a resource.
- 7) Contractor should have an established process for revoking system access by disabling accounts immediately upon termination of an employee or contractor. Disabling instead of deleting accounts allows preservation of audit trails.
- 8) Profile each State user's typical account usage by determining normal time-of-day access and access duration. Reports should be generated that indicate users who have logged in during unusual hours or have exceeded their normal login duration.

#### 1.2.12. Comprehensive backup

- 1) Provide restoration of an individual file or folder on request as outlined below.
- 2) Provide a backup procedure and process that supports the following objectives:
  - a) Recovery Point Objective (RPO) – Contractor shall be able to recover files or folders for any specific day within a rolling six month period.
  - b) Recovery Time Objective (RTO) – Contractor shall recover files or folders within 24 hours of request.
- 3) Data Backup Location – Data backups shall be maintained or replicated at a site geographically disparate from the production site, (but located in CONUS), such that the loss of one data center does not prohibit recovery of data within the prescribed RTO.
- 4) Specific Snapshot Objective – At the State's request, Contractor/Subcontractor shall create a full snapshot for the platform, content and related data, to be retrieved at NYS request within 24 hours up to a period to be determined by the State.

#### 1.2.13. Data archival

- 1) Provide tiered storage solution (different types of storage media in order to reduce total storage cost) to move data through multiple tiers as the data ages.
- 2) Provide archive data retention mechanism as well as data disposal.
- 3) Manage the logs and data consistent with best practice approaches.

#### 1.2.14. Technology refresh

- 1) Hardware within the Contractor's Boundary will never be at "End of Support Life" for the vendor that provided the hardware product.
- 2) Software within the Contractor's Boundary will never be more than two versions behind.

### 1.2.15. Migration Support to State or Third Party Provider

- 1) Upon request and at no additional fee, Contractor shall provide to the State all data, scripts, software, virtual machine images, and migration assistance to a State data center or other third party data center.

### 1.3. Drupal PaaS Information Security Policy Compliance

#### 1.3.1. Independent reviews and assessments shall be performed at least annually to ensure the Contractor is compliant with policies, procedures, standards and applicable regulatory requirements (i.e., internal/external audits, certifications, vulnerability and penetration testing). Such review findings will be shared with the State upon request.

- 1) Annual external third party vulnerability and penetrations testing of all infrastructure and environments.
- 2) Annual internal audit results
- 3) Annual assessment via the Cloud Security Alliance's Consensus Assessment Initiative Questionnaire (CAIQ)
- 4) Current Federal Information Security Management Act (FISMA) Authorization to Operate (ATO).
- 5) Develop and provide NYS a security plan, within thirty (30) calendar days of the effective date of the Contract and implement the plan within thirty (30) calendar days of approval by NYS EISO. Failure to comply with this timeline will result in a credit due to the State of 25% of Contract value for Lot I.

## 29. CUSTOM WORK

There is no custom work available under the Contract.

## 30. State Content

The State owns all the State Content provided by the State to the contractor, including any intellectual property rights therein. The State grants Contractor a nonexclusive, royalty-free right to use, reproduce, modify and adapt formats of data, publish, translate, distribute, analyze, perform and display such State Content for the sole purpose of fulfilling Contractor's obligations under this Contract.

The State is solely responsible for the posting and content of State Content to the Website by the State. By posting any State Content to an Instance, the State represents that it has the lawful right to distribute and reproduce such State Content. The State agrees not to knowingly post, upload to, transmit, distribute, store, create or otherwise publish through the Site (including in its datasets) any of the following:

1. Content that is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, or fraudulent;
2. Content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law, including, without limitation, the regulations of the U.S. Securities and Exchange Commission or any rules of a securities exchange such as the New York Stock Exchange, the American Stock Exchange or the NASDAQ;
3. Content that may infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party.
4. Content that impersonates any person or entity or otherwise misrepresents the State's affiliation with a person or entity;
5. Content that is subject to any export control laws or regulations;
6. Unsolicited promotions, political campaigning, advertising or solicitations;
7. Private information of any third party, including, without limitation, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers; and
8. Viruses, corrupted data or other harmful, disruptive or destructive files.

Contractor takes no responsibility and assumes no liability for the content of the State Content or User Content posted, stored or uploaded on an Instance or links to Web pages and content of any other party or entity ("Third Party Links") that the State or Users may post on an Instance. The State may remove State Content or User Content from the Site at any time. Contractor shall not remove State Content or User content from an Instance without the Authorized User's written consent. The Authorized User shall respond to Contractor within one business day of receipt of request.

### 31. Support; Operation of Website and Services.

Contractor will provide support to the State in accordance with the selected Service Level Agreement (SLA). Authorized Users may acquire professional services at the quote rates.

### 32. Credits.

The services shall be available as specified as Uptime % in the respective Service Offerings in SOW §7.7, Minimum Service Offering Requirements, measured quarterly. Availability shall not include scheduled or emergency maintenance. Emergency maintenance shall mean maintenance provided for any unplanned or unforeseen circumstance that could cause a material adverse impact to the Platform or State's websites.

Contractor's failure to satisfy performance standards, requirements or other service levels set forth in the piggyback contract shall result in a credit as follows:

The **Incident Resolve Time** represents the percentage of time the contracted service offering is required to meet the stated requirements and is applicable to issues affecting the Contractor Platform only. As example, for Service Offering 1 it is required that critical incidents be resolved within 6 hours 80% of the time. If the service offering fails to meet this requirement, a credit will be applied. The credit will be determined and applied for each month of service by contracted Service Offering.

#### Incident Resolve Time Credit Minutes Calculation

- The TAM will provide a report from the provider Incident Reporting System each month for all Incident Tickets by Service Offering and provide:
  - The Incident Number
  - The date and time the Ticket was Submitted
  - The date and time the Ticket was accepted
  - The date and time the Ticket was resolved
  - The percent of time the Resolve time was within service offering requirement
    - Service Offering 1 – 6 hrs 80% of the time
    - Service Offering 2 – 5 hrs 85% of the time
    - Service Offering 3 – 4 hrs 90% of the time
  - Determine if SLA percentage for the respective Service Offering is met as follows
    - Total number of tickets for the month / number of ticket that met SLA Resolve time
    - If less than SLA percentage for the respective Service Offering Resolve time then:
      - For the tickets that exceeded the resolve time sum the total minutes over the required resolve time. This is the total number of minutes to be used for the credit calculation:
    - Examples:
      - SO 1: Resolve time per ticket is 6 hrs or 360 minutes. This must be met 80% of the time
        - 50 tickets submitted in a month, 45 met the Resolve time or 90% of the time. No credit calculation is required.
        - 50 tickets submitted and 38 tickets met the Resolve time period or 76% of the time. A Credit calculation is required.
          - For the 12 tickets that did not meet the resolve time period of 360 minutes per ticket, total the amount of time of over 360 minutes for each ticket. For example, each ticket took 365 minutes or 5 extra minutes. This would result in 60 minutes (12\*5) to be used in the credit calculation.

#### Credit Financial Calculation

##### Incident Resolve Time Credit

The following financial credit will be charged for each minute of unavailability outside the required SLA% for **Resolve Time**. **The credit will be applied against the next monthly bill based on the prior month's actual result. In the event the amount of the credit(s) due and owing the State exceed the next monthly bill the balance of the credit(s) due and owing the State shall be applied to the successive monthly bill(s) until the amount of the credit due and owing the State is zero.**

**Table 2 – Incident Resolve Time Credit**

Site	Credit Per Minute		
	Credit SO 1	Credit SO 2	Credit SO 3
Per Minute Critical	\$5.38	\$9.42	\$19.46
High	\$3.38	\$7.42	\$15.46
Medium	\$1.38	\$5.42	\$10.46
Low	\$0.38	\$3.42	\$5.46

The Incident Resolve time credit for Critical issues will be capped at \$5000 per 12 month term commencing with the contract start date.

The Incident Resolve time credit for High issues will be capped at \$3,000 per 12 month term commencing with the contract start date.

The Incident Resolve time credit for Medium issues will be capped at \$1,000 per 12 month term commencing with the contract start date.

The Incident Resolve time credit for Low issues will be capped at \$500 per 12 month term commencing with the contract start date.

**Recovery Time Objective Credit**

The following financial credit will be charged for each hour of unavailability outside the required SLA percentage for the respective Service Offering for Recovery Time Objective (RTO). The credit will be applied against the next monthly bill based on the prior month’s actual result. In the event the amount of the credit(s) due and owing the State exceed the next monthly bill the balance of the credit(s) due and owing the State shall be applied to the successive monthly bill(s) until the amount of the credit due and owing the State is zero.

**Table 3 – Recovery Time Objective (RTO)Credit**

Site	Credit Per Hour					
	Credit 1	SO	Credit 2	SO	Credit 3	SO
Per Hours	\$322.95		\$565.21		\$1,167.59	

For the purposes of RTO credits:

1. The credit for the **first** occurrence in a given contract year will not be enforced unless the outage period extends beyond 72 consecutive hours and will be capped at \$5000.
2. The credit for the **second** occurrence will be capped at \$5000
3. The credit for outages **beyond** 2 occurrences will not be capped.
4. For periods less than 30 minutes no credit applied. For periods of 30 minutes to one hour a credit of one hour will be applied. For periods exceeding one hour or portions of an hour, a credit in the amount of the next higher hour will be applied.
  - a. Example using SO1
    - i. If outage is 6 hrs and 29 minutes no credit will be required.
    - ii. If outage is 6 hrs and 30 minutes a one hour credit will be applied
    - iii. If outage is 7 hrs and 25 minutes a two hour credit will be applied.

The credit(s) will be applied against the next monthly bill based on the prior month’s actual result. In the event the amount of the credit(s) due and owing the State exceed the next monthly bill the balance of the credit(s) due and owing the State shall be applied to the successive monthly bill(s) until the amount of the credit due and owing the State is zero.

Additionally, a 25% credit will be deducted from any invoices for implementation timeline delays and delays for any other deliverables including submission of reports and meeting attendance. The state reserves the right to terminate the contract should the time line delays result in adjustment by the State to the September 30, 2014 go live date for Lot I.

**33. Infringer Policy.**

In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable law, Contractor has adopted a policy of terminating, in appropriate circumstances and at Contractor's sole discretion, users, subscribers or account holders who are deemed to be repeat infringers.

**34. Accessibility**

To the extent applicable to Contractor's services, any web-based information and applications development, or programming delivered pursuant to the contract or procurement and as set forth in the applicable SOW, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Any such additional development or programming services shall be specified in the applicable request for quotation and relevant SOW. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by (state agency name, contractor or other) and the results of such testing must be satisfactory to (state agency name) before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

**35. PERFORMANCE AND BID BONDS**

There are no BONDS for this contract. In accordance with Appendix B, Clause 58 "Performance/Bid Bond," the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the Initial Term, or any renewal term, for this Contract.

**36. EMPLOYEE INFORMATION REQUIRED TO BE REPORTED FOR CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS**

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning Contract Employees working under State Agency service and consulting Contracts. State Agency consultant Contracts are defined as "Contracts entered into by a state Agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*" ("covered consultant Contract" or "covered consultant services"). The amendments also require that certain Contract Employee information be provided to the state Agency awarding such Contracts, OSC, DOB and CS. The effective date of these amendments is June 19, 2006. The requirements will apply to covered Contracts awarded on and after such date.

To meet these new requirements, the Contractor agrees to complete:

Form A - Contractor's Planned Employment Form, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information as part of its bid response.

Form B - Contractor's Annual Employment Report. Throughout the term of the Contract by May 15<sup>th</sup> of each year the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant Contract in effect at any time between the preceding April 1<sup>st</sup> through March 31<sup>st</sup> fiscal year or for the period of time such Contract was in effect during such prior State fiscal year Contractor reports the:

1. Total number of Employees employed to provide the consultant services, by employment category.
2. Total number of hours worked by such Employees.
3. Total compensation paid to all Employees that performed consultant services under such Contract.\*

\*NOTE: The information to be reported is applicable only to those Employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to Employees of Subcontractors who perform any part of the service Contract or any part of the covered consultant Contract. This

## GROUP 76000 – Software (Statewide Piggyback)

information does not have to be collected and reported in circumstances where there is ancillary involvement of an Employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to CS and OSC as designated below:

**Department of Civil Service**

Alfred E. Smith State Office Building  
Albany, NY 12239

**Office of the State Comptroller - Bureau of Contracts**

110 State St., 11<sup>th</sup> Floor  
Albany, New York  
Attn: Consultant Reporting

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual Employee names or social security numbers are set forth on a document, the State Agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

Further information is available in the Office of the State Comptroller's Bulletin G-226 regarding the Contractor Consultant Law requirements and report Forms A and B at <http://osc.state.ny.us/agencies/guide/MyWebHelp/>

### INSTRUCTIONS FOR COMPLETING FORM A AND B:

Form A and Form B should be completed for Contracts for consulting services in accordance with OSC's policy and the following:

**Form A** - Contractor's Planned Employment Form (available from and submitted to the using Agency, if necessary.)

**Form B** - Contractor's Annual Employment Report (to be completed by May 15th of each year for each consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the CS, OSC and procuring Agency.)

**Scope of Contract:** choose a general classification of the single category that best fits the predominate nature of the services provided under the Contract.

**Employment Category:** enter the specific occupation(s), as listed in the O\*NET occupational classification system, which best describes the Employees providing services under the Contract.

*(Note: Access the O\*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at [online.onetcenter.org](http://online.onetcenter.org) to find a list of occupations.)*

**Number of Employees:** enter the total number of Employees in the employment category employed to provide services under the Contract during the report period, including part time Employees and Employees of subcontractors.

**Number of Hours:** enter the total number of hours worked during the report period by the Employees in the employment category.

**Amount Payable under the Contract:** enter the total amount paid by the State to the State Contractor under the Contract, for work by the Employees in the employment category, for services provided during the report period.

## 37. 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.

## 38. 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.

**39. 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 76000 – Software (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 38 of Appendix B. 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).

**CONTRACTOR**

**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: \_\_\_\_\_

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

**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

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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**STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life

of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from

public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess

of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.**

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in

such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.**

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.**

To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX**

**BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at:  
<http://www.ogs.ny.gov/about/regis/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at

the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

## **APPENDIX B**

### **GENERAL SPECIFICATIONS**



**1. APPLICABILITY** The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to the resulting procurement contracts let by the Office of General Services Procurement Services Group, or let by any other Authorized User where incorporated by reference in its Bid Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

**2. GOVERNING LAW** This procurement, the resulting contract and any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the contract shall be heard in a court of competent jurisdiction in the State of New York.

**3. ETHICS COMPLIANCE** All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

**4. CONFLICT OF TERMS** Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- a. Appendix A (Standard Clauses for NYS Contracts)
- b. Mini-Bid Project Definition if applicable and in accordance with the terms and conditions of the Back-Drop Contract.
- c. Contract and other writing(s) setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.
- d. Bid Documents (Other than Appendix A).
  - i. Bid Specifications prepared by the Authorized User.
  - ii. Appendix B (General Specifications).
  - iii. Incorporated Contract Appendices, if any, following the order of precedence as stated for Contract above.
- e. Contractor's Bid or Mini-Bid Proposal.
- f. Unincorporated Appendices (if any).

**5. DEFINITIONS** Terms used in this Appendix B shall have the following meanings:

**AFFILIATE** Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than 50% of the ownership; or (b) any individual or other legal entity which owns more than 50% of the ownership of the Bidder. In addition, if a Bidder owns less than 50% of the ownership of another legal entity, but directs or has the right to direct such entity's daily operations, that entity will be an Affiliate.

**AGENCY OR AGENCIES** The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

**ATTORNEY GENERAL** Attorney General of the State of New York.

**AUTHORIZED USER(S)** Agencies, or any other entity authorized by the laws of the State of New York to participate in NYS centralized contracts (including but not limited to political subdivisions, public authorities, public benefit corporations and certain other entities set forth in law), or the State of New York acting on behalf of one or more such Agencies or other entities, provided that each such Agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation.

**BID OR BID PROPOSAL** An offer or proposal submitted by a Bidder to furnish a described product or a solution, perform services or means of achieving a practical end, at a stated price for the stated Contract term. As required by the Bid Documents, the Bid or proposal may be subject to modification through the solicitation by the Agency of best and final offers during the evaluation process prior to recommendation for award of the Contract.

**BIDDER/OFFERER** Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) which submits a Bid in response to a Bid Solicitation. The term Bidder shall also include the term "offeror." In the case of negotiated Contracts, "Bidder" shall refer to the "Contractor."

**BID DOCUMENTS** Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, including but not limited to, Appendix A (Standard Clauses for NYS Contracts), Appendix B, (General Specifications). Where these General Specifications are incorporated in negotiated Contracts that have not been competitively Bid, the term "Bid Documents" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

**BID SPECIFICATION** A written description drafted by the Authorized User setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a commodity or construction item, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where these General Specifications are incorporated in negotiated Contracts that have not been competitively Bid, the term "Bid Specifications" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

**COMMISSIONER** Commissioner of OGS, or in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or their authorized representative.

**COMPTROLLER** Comptroller of the State of New York.

**CONTRACT** The writing(s) which contain the agreement of the Commissioner and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

- a. **Agency Specific Contracts** Contracts where the specifications for a Product or a particular scope of work are described and defined to meet the needs of one or more Authorized User(s).

**b. Centralized Contracts** Single or multiple award Contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency or competitive basis. Once established, procurements may be made from the selected Contractor(s) without further competition or Mini-Bid unless otherwise required by the Bid Specifications or Contract Award Notification.

**c. Back-Drop Contracts** Multiple award Centralized Contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

**d. Piggyback Contract** A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.

**e. Contract Letter** A letter to the successful Bidder(s) indicating acceptance of its Bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a Contract but is not an order for Product, and Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized User(s).

**CONTRACT AWARD NOTIFICATION** An announcement to Authorized Users that a Contract has been established.

**CONTRACTOR** Any successful Bidder(s) to whom a Contract has been awarded by the Commissioner.

**DOCUMENTATION** The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, which are necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product.

**EMERGENCY** An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

**ENTERPRISE** The total business operations in the United States of Authorized User (s) without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Authorized User.

**ENTERPRISE LICENSE** A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

**ERROR CORRECTIONS** Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

**GROUP** A classification of Product, services or technology which is designated by OGS.

**INVITATION FOR BIDS (IFB)** A type of Bid Document which is most typically used where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder(s).

**LICENSED SOFTWARE** Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

**LICENSEE** One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

**LICENSE EFFECTIVE DATE** The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

**LICENSOR** A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.

**MINI-BID PROJECT DEFINITION** A Bid Document containing project specific Bid Specifications developed by or for an Authorized User which solicits Bids from Contractors previously qualified under a Back-Drop Contract.

**MULTIPLE AWARD** A determination and award of a Contract in the discretion of the Commissioner to more than one responsive and responsible Bidder who meets the requirements of a specification, where the multiple award is made on the grounds set forth in the Bid Document in order to satisfy multiple factors and needs of Authorized Users (e.g., complexity of items, various manufacturers, differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, geographic location or other pertinent factors).

**NEW PRODUCT RELEASES (Product Revisions)** Any commercially released revisions to the licensed version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

**OGS** The New York State Office of General Services.

**PROCUREMENT RECORD** Documentation by the Authorized User of the decisions made and approach taken during the procurement process and during the contract term.

**PRODUCT** A deliverable under any Bid or Contract which may include commodities, services and/or technology. The term "Product" includes Licensed Software.

**PROPRIETARY** Protected by secrecy, patent, copyright or trademark against commercial competition.

**PURCHASE ORDER** The Authorized User's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, electronic Purchase Order, or other authorized instrument).

**REQUEST FOR PROPOSALS (RFP)** A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value," as defined by the State Finance Law.

**REQUEST FOR QUOTATION (RFQ)** A type of Bid Document that can be used when a formal Bid opening is not required (e.g., discretionary, sole source, single source or emergency purchases).

**RESPONSIBLE BIDDER** A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

**RESPONSIVE BIDDER** A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the OGS Commissioner.

**SINGLE SOURCE** A procurement where two or more Bidders can supply the required Product, and the Commissioner may award the contract to one Bidder over the other.

**SITE** The location (street address) where Product will be executed or services delivered.

**SOLE SOURCE** A procurement where only one Bidder is capable of supplying the required Product.

**SOURCE CODE** The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine Object Code.

**STATE** State of New York.

**SUBCONTRACTOR** Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

**TERMS OF LICENSE** The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

**VIRUS** Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

**6. INTERNATIONAL BIDDING** All offers (tenders), and all information and Product required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

**7. BID OPENING** Bids may, as applicable, be opened publicly. The Commissioner reserves the right at any time to postpone or cancel a scheduled Bid opening.

**8. BID SUBMISSION** All Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their Bids to the location set forth in the Bid Specifications prior to the stated Bid opening date/time.

A Bid return envelope, if provided with the Bid Specifications, should be used with the Bid sealed inside. If the Bid response does not fit into the envelope, the Bid envelope should be attached to the outside of the sealed box or package with the Bid inside. If using a commercial delivery company that requires use of their shipping package or envelope, Bidder's sealed Bid, labeled as detailed below, should be placed within the shipper's sealed envelope to ensure that the Bid is not prematurely opened.

All Bids must have a label on the outside of the package or shipping container outlining the following information:

**"BID ENCLOSED** (bold print, all capitals)

- Group Number
- IFB or RFP Number
- Bid Submission date and time"

In the event that a Bidder fails to provide such information on the return Bid envelope or shipping material, the receiving entity reserves the right to open the shipping package or envelope to determine the proper Bid number or Product group, and the date and time of Bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the Bid or the procurement.

Notwithstanding the receiving agency's right to open a Bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

All Bids must be signed by a person authorized to commit the Bidder to the terms of the Bid Documents and the content of the Bid (offer).

**9. FACSIMILE SUBMISSIONS** Unless specifically prohibited by the terms of the Bid Specifications, facsimile Bids may be SUBMITTED AT THE SOLE OPTION AND RISK OF THE BIDDER. Only the FAX number(s) indicated in the Bid Specifications may be used. Access to the facsimile machine(s) is on a "first come, first serve" basis, and the Commissioner bears no liability or responsibility and makes no guarantee whatsoever with respect to the Bidder's access to such equipment at any specific time. Bidders are solely responsible for submission and receipt of the entire facsimile Bid by the Authorized User prior to Bid opening and must include on the first page of the transmission the total number of pages transmitted in the facsimile, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Commissioner. Facsimile Bids are fully

governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the format required in the Bid Specifications, including the executed signature page and acknowledgment.

**10. AUTHENTICATION OF FACSIMILE BIDS** The act of submitting a Bid by facsimile transmission, including an executed signature page or as otherwise specified in the Bid Documents, shall be deemed a confirming act by Bidder which authenticates the signing of the Bid.

**11. LATE BIDS** For purposes of Bid openings held and conducted by OGS, a Bid must be received in such place as may be designated in the Bid Documents or if no place is specified in the OGS Mailroom located in the Empire State Plaza, Albany, New York 12242, at or before the date and time established in the Bid Specifications for the Bid opening. For purposes of Bid openings held and conducted by Authorized Users other than OGS, the term late Bid is defined as a Bid not received in the location established in the Bid Specifications at or before the date and time specified for the Bid opening.

Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of the Authorized Users. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with their specifications. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Authorized User shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of the Commissioner.

**12. BID CONTENTS** Bids must be complete and legible. All Bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Commissioner or may be grounds for rejection of the Bid. Changes, corrections and/or use of white-out in the Bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by the Commissioner after the time specified for the Bid opening, may not be considered.

**13. EXTRANEOUS TERMS** Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:

- a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
- b. The writing must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and the Commissioner or Authorized User expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

#### **14. CONFIDENTIAL/TRADE SECRET MATERIALS**

**a. Contractor** Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

**b. Commissioner or Authorized User** Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take appropriate steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

**15. RELEASE OF BID EVALUATION MATERIALS** Requests concerning the evaluation of Bids may be submitted under the Freedom of Information Law. Information, other than statistical or factual tabulations or data such as the Bid Tabulation, shall only be released as required by law after Contract award. Bid Tabulations are not maintained for all procurements. Names of Bidders may be disclosed after Bid opening upon request. Written requests should be directed to the Commissioner.

**16. FREEDOM OF INFORMATION LAW** During the evaluation process, the content of each Bid will be held in confidence and details of any Bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the Bid contains any such trade secret or other confidential or proprietary information, it must be accompanied in the Bid with a written request to the Commissioner to not disclose such information. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the Bid. Notations in the header, footer or watermark of the Bid Document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information. Where a Freedom of Information request is made for trademark or other confidential or proprietary information, the Commissioner reserves the right to determine upon written notice to the Bidder whether such information qualifies for the exemption for disclosure under the law. Notwithstanding the above, where a Bid tabulation is prepared and Bids publicly opened, such Bid tabulation shall be available upon request.

**17. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS** If any portion of work being Bid is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

**a. "Public Works" and "Building Services" - Definitions**

**i. Public Works** Labor Law Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a "public works" project (distinguished from public "procurement" or "service" contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the Contract. The wage and hours provision applies to any work performed by Contractor or Subcontractors.

**ii. Building Services** Labor Law Article 9 applies to Contracts for building service work over \$1,500 with a public agency, that: (i) involve the care or maintenance of an existing building, or (ii) involve the transportation of office furniture or equipment to or from such building, or (iii) involve the transportation and delivery of fossil fuel to such building, and (iv) the principal purpose of which is to furnish services through use of building service employees.

**b. Prevailing Wage Rate Applicable to Bid Submissions** A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

**c. Wage Rate Payments / Changes During Contract Term** The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor

Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.

**d. Public Posting & Certified Payroll Records** In compliance with Article 8, Section 220 of the New York State Labor Law:

**i. Posting** The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

**ii. Payroll Records** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

**iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only** Contractors and Subcontractors on public works projects must submit monthly payroll transcripts to the Authorized User that has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For Mini-Bid solicitations, the payroll records must be submitted to the entity preparing the agency Mini-Bid project specification. For "agency specific" Bids, the payroll records should be submitted to the entity issuing the purchase order. For all other OGS Centralized Contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and the Authorized User, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: 1) the Contractor/Subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the Contractor or Subcontractor attesting to the truth and accuracy of the records accompanies the disk. This provision does not apply to Article 9 of the Labor Law building services contracts.

**iv. Records Retention** Contractors and Subcontractors must preserve such certified transcripts for a period of three years from the date of completion of work on the awarded contract.

**Day's Labor** Eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law.

No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

**18. TAXES**

a. Unless otherwise specified in the Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

b. Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. Non-State Authorized Users must offer their own proof of exemption upon request. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

c. Pursuant to Revised Tax Law 5-a, Contractor will be required to furnish sales tax certification on its behalf and for its affiliates, and subcontractors for Contracts with a value greater than \$100,000 in accordance with provisions of the law.

d. Purchases by Authorized Users other than the State of New York may be subject to certain taxes which were not included in the Bid price, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such payment.

**19. EXPENSES PRIOR TO CONTRACT EXECUTION** The Commissioner and any Authorized User(s) are not liable for any costs incurred by a Vendor, Bidder or Contractor in the preparation and production of a Bid, Mini-Bid or best and final offers or for any work performed prior to Contract execution.

**20. ADVERTISING RESULTS** The prior written approval of the Commissioner is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of the Commissioner relative to the Bid or Contract for press or other media releases.

**21. PRODUCT REFERENCES**

a. **“Or Equal”** In all Bid Specifications the words “or equal” are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner’s decision as to acceptance of the Product as equal shall be final.

b. **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

**22. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS** Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable 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, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and unless such use is precluded due to health, welfare, safety

requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the “Warranties” set forth below.

Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

**23. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS** Bids offering Products that are manufactured or produced in public institutions will be rejected.

**24. PRICING**

a. **Unit Pricing** If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item unless otherwise specified, in the Bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Commissioner, such unit pricing is obviously

b. **Net Pricing** Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.

c. **“No Charge” Bid** When Bids are requested on a number of Products as a Group or Lot, a Bidder desiring to Bid “no charge” on a Product in the Group or Lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

d. **Educational Pricing** All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

e. **Third Party Financing** If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract Award to agree to the terms and conditions of a “Consent & Acknowledgment Agreement” in a form acceptable to the Commissioner.

f. **Best Pricing Offer** During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

Price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after:

(i) **GSA Changes:** Where NYS Net Prices are based on an approved GSA Schedule, the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) **Commercial Price List Reductions:** Where NYS Net Prices are based on a discount from Contractor’s list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

(iii) **Special Offers/Promotions Generally:** Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or Net Price otherwise available under this Contract, such better price or discount

shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) **Special Offers/Promotions to Authorized Users:** Contractor may offer Authorized Users, under either this Contract or any other Contracting vehicle, competitive pricing which is lower than the NYS Net Price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Bid Specifications, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order(s) from any Authorized User without being in conflict with, or obligation to comply on a global basis, with the terms of this clause.

g. **Best and Final Prices** As specified in the Bid Documents and Contract, a Contractor may be solicited at the time of issuance of a Purchase Order or Mini-Bid award for best and final pricing for the Product or service to be delivered to the Authorized User. Contractors are encouraged to reduce their pricing upon receipt of such request.

## 25. DRAWINGS

a. **Drawings Submitted With Bid** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

b. **Drawings Submitted During the Contract Term** Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User's representative.

c. **Accuracy of Drawings Submitted** All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.

26. **SITE INSPECTION** Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions for pre-existing deficiencies that may affect the installed Product, equipment, or environment or services to be provided and, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.

27. **PROCUREMENT CARD** The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing a Purchase Orders or Purchase

Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased products have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty Product in accordance with other Contract requirements, the Contractor shall immediately credit a cardholder's account for products returned as defective or faulty.

## 28. SAMPLES

a. **Standard Samples** Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the Commissioner and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Specifications.

b. **Bidder Supplied Samples** The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Bid or Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

c. **Enhanced Samples** When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

d. **Conformance with Sample(s)** Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Bid Specifications. If in the judgment of the Commissioner the sample or product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Specifications, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.

e. **Testing** All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder

samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fails to meet Contract requirements may be at the expense of the Contractor.

**f. Requests For Samples By Authorized Users** Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

**29. BID EVALUATION** The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his/her sole discretion, may accept or reject illegible, incomplete or vague Bids and his/her decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the offer.

**30. CONDITIONAL BID** Unless the Bid Specifications provides otherwise, a Bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the specification. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.

**31. CLARIFICATIONS / REVISIONS** Prior to award, the Commissioner reserves the right to seek clarifications, request Bid revisions, or to request any information deemed necessary for proper evaluation of Bids from all Bidders deemed to be eligible for Contract award. Failure to provide requested information may result in rejection of the Bid.

**32. PROMPT PAYMENT DISCOUNTS** While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. However, any notation indicating that the price is net, (e.g., net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges, except pursuant to the provisions of Article 11-A of the State Finance Law, which are applicable in any case, may render the Bid non-responsive and may be cause for its rejection.

**33. EQUIVALENT OR IDENTICAL BIDS** In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

**34. PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS** The Commissioner reserves the right to investigate or inspect at any time whether or not the Product, services, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Specifications/Contract or as set forth during Contract negotiations. Contractor shall at all times during the Contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Commissioner, to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing

of the Product offered/Bid. If the Commissioner determines that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, the Commissioner may reject such Bid or terminate the Contract.

**35. DISQUALIFICATION FOR PAST PERFORMANCE AND FINDINGS OF NON-RESPONSIBILITY** Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public Bidding or contracts or is deemed non-responsive.

**36. QUANTITY CHANGES PRIOR TO AWARD** The Commissioner reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Bid Specifications. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

**37. TIMEFRAME FOR OFFERS** The Commissioner reserves the right to make awards within sixty (60) days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Pursuant to Section 163(9)(e) of the State Finance Law and Section 2-205 of the Uniform Commercial Code when applicable, where an award is not made within the sixty (60) day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid. Any Bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner, be accepted or rejected.

**38. CONTRACT CREATION / EXECUTION** Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Bid Specifications a Contract shall be deemed executed and created with the successful Bidder(s), upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

**39. PARTICIPATION IN CENTRALIZED CONTRACTS** The following shall not limit or inhibit the OGS Commissioner's authority under State Finance Law, Section 163 (10) (e) (Piggybacking):

**a. Agencies** All State Agencies may utilize and purchase under any state Centralized Contract let by the Commissioner, unless the Bid Documents limit purchases to specific State Agencies.

**b. Non-State Agency Authorized Users** Authorized Users other than State Agencies are permitted to make purchases through state Centralized Contracts where permitted by law, the Contract or the Commissioner.

**c. Voluntary Extension** Purchase Orders issued against a State Centralized Contract by any Authorized User not provided for in the Bid Specifications shall be honored by the Contractor at its discretion

and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163 (3) (iv) of the State Finance Law.

**d. Responsibility for Performance** Participation in state Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-state agency Authorized User and Contractor guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by their failure to perform in accordance with its obligations under the Contract.

**e. Contract Migration** Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products or services shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

**40. MODIFICATION OF CONTRACT TERMS** The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor may, however, offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User(s) and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

**41. SCOPE CHANGES** The Commissioner reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. The Commissioner may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable

adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

**42. ESTIMATED / SPECIFIC QUANTITY CONTRACTS**

Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity(s) is implied or given. Purchases by Authorized Users from Contracts for services and technology are voluntary.

With respect to any specific quantity stated in the contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

**43. EMERGENCY CONTRACTS**

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or the Commissioner determines pursuant to his/her authority under Section 163 (10) (b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract(s), as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for Product procured from other sources pursuant to this paragraph. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

**44. PURCHASE ORDERS**

Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the vendor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

If, with respect to an Agency Specific Contract let by the OGS Commissioner, a Purchase Order is not received by the Contractor

within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify in writing the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and without cost to the State, result in the cancellation of such requirement by the OGS Commissioner with a corresponding reduction in the Contract quantity and price.

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

**46. WEEKEND AND HOLIDAY DELIVERIES** Unless otherwise specified in the Bid Specifications or by an Authorized User, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Authorized User shall govern.

**47. SHIPPING/RECEIPT OF PRODUCT**

**a. Packaging** Tangible Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

**b. Shipping Charges** Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

**c. Receipt of Product** The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authorized User. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

**48. TITLE AND RISK OF LOSS** Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass

from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

**49. RE-WEIGHING PRODUCT** Deliveries are subject to re-weighing at the point of destination by the Authorized User. If shrinkage occurs which exceeds that normally allowable in the trade, the Authorized User shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the Authorized User.

**50. PRODUCT SUBSTITUTION** In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause) a Product deemed in writing by the Commissioner to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for cancellation of Contract.

**51. REJECTED PRODUCT** When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar day period.

**52. INSTALLATION** Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the Product or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

**53. REPAIRED OR REPLACED PARTS / COMPONENTS** Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms

and conditions for new parts and components set forth in the Contract including Warranties, as set forth in the Additional Warranties Clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturer's installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

**54. ON-SITE STORAGE** With the written approval of the Authorized User, materials, equipment or supplies may be stored at the Authorized User's site at the Contractor's sole risk.

**55. EMPLOYEES, SUBCONTRACTORS & AGENTS** All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Specifications or the Bid Documents, whichever is more restrictive, and must comply with all security and administrative requirements of the Authorized User. The Commissioner reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner reserves the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor.

**56. ASSIGNMENT** The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable). Failure to obtain consent to assignment from the Authorized User shall revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. The Commissioner reserves the right to reject any proposed assignee in his/her discretion.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

**57. SUBCONTRACTORS AND SUPPLIERS** The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the Department of Labor's list of companies with which New York State cannot do business; the Commissioner determines that the company is not qualified; the Commissioner determines that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit minority

and women's business enterprises (M/WBE) Bidders as required by prior Contracts.

**58. PERFORMANCE / BID BOND** The Commissioner reserves the right to require a Bidder or Contractor to furnish without additional cost, a performance, payment or Bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

**59. SUSPENSION OF WORK** The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction on State spending, declaration of emergency, contract compliance issues or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner.

**60. TERMINATION**

**a. For Cause:** For a material breach that remains uncured for more than thirty (30) days or after specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

**b. For Convenience:** By written notice, this Contract may be terminated at any time by the State for convenience upon sixty (60) days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

**c. For Violation of Executive Order Number 127 or any subsequent law or Executive Order that supersedes it:** The Commissioner reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State Executive Order Number 127 was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms in the Contract.

**d. For Violation of the Sections 139-j and 139-k of the State Finance Law:** The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the

Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

**e. For Violation of Revised Tax Law 5a:** The Commissioner reserves the right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with §5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise its termination right by providing written notification to the Contractor.

**61. SAVINGS/FORCE MAJEURE** A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide the Commissioner with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may:

- a.** Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Authorized Users with respect to Product subjected to allocation; and/or
- b.** Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State; or
- c.** Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

**62. CONTRACT BILLINGS** Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billings for Authorized Users must contain all information required by the Contract and the State Comptroller. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices. Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User.

Submission of an invoice and payment thereof shall not preclude the Commissioner from reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

**63. DEFAULT – AUTHORIZED USER**

**a.** Breach of Authorized User Not Breach of Centralized Contract. An Authorized User's breach shall not be deemed a breach of the Centralized Contract, rather it shall be deemed a breach of the Authorized User's performance under the terms and conditions of the Centralized Contract.

**b.** Failure to Make Payment. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

**c.** Notice of Breach. Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

**d.** It is understood, however, that if the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User shall constitute a breach of its Contract and the Authorized User may thereafter seek any remedy available at law or equity.

**64. INTEREST ON LATE PAYMENTS**

**a. State Agencies** The payment of interest on certain payments due and owed by Agency may be made in accordance with Article 11-A of the State Finance Law (SFL §179-d et. Seq.) and Title 2 of the New York Code of Rules and Regulations, Part 18 (Implementation of Prompt Payment Legislation -2 NYCRR §18.1 et seq.).

**b. By Non-State Agencies** The terms of Article 11-A apply only to procurements by and the consequent payment obligations of Agencies.

Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

**c. By Contractor** Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

**65. REMEDIES FOR BREACH** It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

**a. Cover/Substitute Performance** In the event of Contractor's material breach, the Commissioner may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner is unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product of equal or comparable quality, the Commissioner may acquire acceptable replacement Product of lesser or greater quality.

Such purchases may, in the discretion of the Commissioner, be deducted from the Contract quantity and payments due Contractor.

**b. Withhold Payment** In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

**c. Bankruptcy** In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the Authorized User the amounts owed by the Contractor arising out of the same transactions.

**d. Reimbursement of Costs Incurred** The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the Authorized User in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction.

**e. Deduction/Credit** Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any

rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

**66. ASSIGNMENT OF CLAIM** Contractor hereby assigns to the State any and all its claims for overcharges associated with this Contract which may arise under the antitrust laws of the United States, 15 USC Section 1, et. seq. and the antitrust laws of the State of New York, General Business Law Section 340, et. seq.

**67. TOXIC SUBSTANCES** Each Contractor furnishing a toxic substance as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than two copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Authorized User agency representative.

**68. INDEPENDENT CONTRACTOR** It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

**69. SECURITY** Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

**70. COOPERATION WITH THIRD PARTIES** The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery of Product or coordination of performance of services.

**71. CONTRACT TERM - RENEWAL** In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by the Commissioner may be extended by the Commissioner for an additional period(s) of up to one year with the written concurrence of the Contractor and Comptroller. Such extension may be exercised on a month to month basis or in other stated periods of time during the one year extension.

**72. ADDITIONAL WARRANTIES** Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users. Contractor hereby warrants and represents:

**a. Product Performance** Contractor warrants and represents that Products delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

**b. Title and Ownership Warranty** Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Products transferred to Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

**c. Contractor Compliance** Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid/Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker's compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

**d. Product Warranty** Unless recycled or recovered materials are available in accordance with the "Recycled or Recovered Materials" clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period"). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

Where Contractor, the Independent Software Vendor "ISV," or other third party manufacturer markets any Project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third party manufacturer's Product.

Where Contractor, ISV or other third party manufacturer markets any Project Deliverable with a standard commercial warranty which goes beyond the Project warranty or extended warranty period(s),

Contractor shall notify the Authorized User and pass through the manufacturer's standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the third party extended warranty after expiration of the Project warranty and extended warranty period(s).

**e. Replacement Parts Warranty** If during the regular or extended warranty period's faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Any part of component replaced by the Contractor under the Contract warranty shall be replaced at no cost to the Authorized User and guaranteed for the greater of: a) the warranty period under paragraph (d) above; or b) if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

**f. Virus Warranty** The Contractor represents and warrants that Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

**g. Date/Time Warranty** Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

**h. Workmanship Warranty** Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

**i. Survival of Warranties** All warranties contained in this Contract shall survive the termination of this Contract.

**73. LEGAL COMPLIANCE** Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Executive Order No. 127 and Sections 139-j and 139-k of the State Finance Law.

**74. INDEMNIFICATION** Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Authorized Users.

**75. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS** The Contractor will also indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against the Authorized Users in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the Authorized Users gross negligence or willful misconduct, provided that the State shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

If usage shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue Usage (ii) to modify the service or Product so that Usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace said service or Product or part(s) thereof, as applicable, with non-infringing service or Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided the Authorized User is given a refund for any amounts paid for the period during which Usage was not feasible.

The foregoing provisions as to protection from third party rights shall not apply to any infringement occasioned by modification by the Authorized User of any Product without Contractor's approval.

In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the service or Product under the Contract infringes any patent, copyright or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the

Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract. Contractor shall in such event protect the interests of the Authorized User and secure a continuance to permit the Authorized User to appear and defend its interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

**76. LIMITATION OF LIABILITY** Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

**a.** Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) one million dollars (\$1,000,000), whichever is greater.

**b.** The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

**c.** Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

**77. INSURANCE** Contractor shall secure and maintain insurance coverage as specified in the Bid Documents and shall promptly provide documentation of specified coverages to the Authorized User. If specified, the Contractor may be required to add the Authorized User as an additional insured.

#### **THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS**

**78. SOFTWARE LICENSE GRANT** Where Product is acquired on a licensed basis the following shall constitute the license grant:

**a. License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or

interest in any trademark, trade name, or service mark is granted hereunder.

**b. License Term** The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the License Term shall be extended by the time period for testing, acceptance or trial.

**c. Licensed Documentation** If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) based on hard copy instructions for access by downloading from the Internet (iii) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - one (1) copy per License
- Concurrent Users - 10 copies per site
- Processing Capacity - 10 copies per site

Software media must be in a format specified by the Authorized User, without requiring any type of conversion.

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license.

**d. Product Technical Support & Maintenance** Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (ii) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the Products in accordance with the Product documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Authorized User does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

**e. Permitted License Transfers** As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional license or other transfer fees due Contractor, provided that: i) the

maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

**f. Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties** Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.

**g. Archival Back-Up and Disaster Recovery** Licensee may use and copy the Product and related Documentation in connection with: i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

**h. Confidentiality Restrictions** The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

**i. Restricted Use by Licensee** Except as expressly authorized by the terms of license, Licensee shall not:

- (i) Copy the Product;
- (ii) Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
- (iii) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

**79. PRODUCT ACCEPTANCE** Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

If the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor.

**80. AUDIT OF LICENSED PRODUCT USAGE** Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any site where a copy

of the Product resides provided that: (i) Contractor gives Licensee(s) at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the NYS Net Price in effect at time of audit, or if none, then at the Contractor's U.S. Commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

## **81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES**

### **a. Definitions**

(i) For purposes of this paragraph, "Products." A deliverable furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

(ii) For purposes of this paragraph, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

(iii) For purposes of this paragraph, "Custom Products." Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for Authorized User under the Contract.

**b. Title to Project Deliverables** Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

#### **(i) Existing Products:**

**1. Hardware** - Title and ownership of Existing Hardware Product shall pass to Authorized User upon Acceptance.

**2. Software** - Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software

vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

(ii.) **Custom Products:** Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

**c. Transfers or Assignments to a Third Party Financing Agent** It is understood and agreed by the parties that a condition precedent to the consummation of the purchase (s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

**d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS)** The Authorized User's sale or other transfer of Custom Products which were acquired by

the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this paragraph.

**e. Contractor's Obligation with Regard to ISV (Third Party) Product** Where Contractor furnishes Existing Licensed Product(s) as a Project Deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

**82. PROOF OF LICENSE** The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the Proprietary owner accepting Product invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

**83. PRODUCT VERSION** Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by Authorized User and Contractor is willing to provide such version.

**84. CHANGES TO PRODUCT OR SERVICE OFFERINGS**

**a. Product or Service Discontinuance** Where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner, each Licensee and each Authorized User then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: provide the Authorized User with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to state approval, to an alternate Subcontractor.

**b. Product or Service Re-Bundling** In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers (“date of notice”) that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and each Authorized User in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

**85. NO HARDSTOP/PASSIVE LICENSE MONITORING**

Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

**86. SOURCE CODE ESCROW FOR LICENSED PRODUCT**

If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) will certify to the State that the Product manufacturer/developer has named the State, acting by and through the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

**FOR NEGOTIATED CONTRACTS THE FOLLOWING CLAUSES ARE RESERVED BECAUSE BIDDING DOES NOT APPLY:**

**Clauses: 7, 8, 9, 10, 11, 12, 13, 16, 15, 21, 25, 26, 28, 29, 30, 31, 32, 33, 36, 49, 50, 52, 54 and 37**



Appendix C

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES  
EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

I, \_\_\_\_\_, the \_\_\_\_\_ (title) of Carahsoft (Contractor) agree that Carahsoft (Contractor) has adopted the following policies with respect to Contract Number PT66623.

**M/WBE**

Contractor will make good faith

efforts to achieve the M/WBE contract participations goals set by OGS for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively soliciting bids for subcontracts from qualified State certified MBEs or WBEs, including solicitations to MWBE contractor associations.
- (2) Request a list of State-certified MWBEs from OGS and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by MWBEs and encourage the formation of joint venture and other partnerships among MWBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to MWBEs and the results thereof.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided and provide appropriate support, including waiving bonding and other credit requirements where permissible, to encourage MWBE participation.

**EEO**

- (a) Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) Contractor shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of the contracting agency, Contractor shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of Contractor's obligations herein.
- (d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) Contractor will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2014

By \_\_\_\_\_

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

March 2012

Website Content Management Services

**Appendix D: Order / Acceptance Form**

The Authorized User agrees to be bound by the terms and conditions of OGS Contract PT66623.

Authorized User Name:

Purchase Order#:

**Part 1: Order**

Brief Summary of Deliverable:

Technical Support Information:

Technical Primary Contact:

Backup Contact:

Email Address:

(if applicable)

Telephone #:

Telephone #:

Deliverable Effective Date:

/ /

Printed Name:

Signature:

Email Address:

Telephone #:

**Part 2: Acceptance**

Authorized User Acceptance Date:

/ /

Printed Name:

Signature:

Email Address:

Telephone #: