

## STATE TERM CONTRACT

THIS CONTRACT ("Contract") is between the State of Ohio ("State"), through its Department of Administrative Services, Office of Information Technology, at 30 East Broad Street, 40<sup>th</sup> Floor, Columbus, Ohio, 43215 and International Business Machines Corporation ("Contractor"), with offices at 4600 Lakehurst Court, Dublin, OH 43016 (each a "party" or collectively "parties").

### BACKGROUND

The State recognizes that it is sometimes advantageous to do business with some manufacturers under a State term contract rather than through a competitive bidding or proposal process. In such cases, the State may enter into a contract with the manufacturer provided that the manufacturer offers its products and ancillary services at the same prices that the manufacturer offers those products and services to the US Government under the GSA's Multiple Award Schedule program.

The State also recognizes that some manufacturers work primarily through dealers for various reasons, including offering customers better support through dealers that have a local presence in a service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers.

This Contract establishes terms and conditions under which State agencies (including any board, instrumentality, commission, or other political body) and Ohio political subdivisions, such as counties, municipalities, and townships, may acquire the Contractor's products or services at the pricing identified below. This Contract, however, only permits such; it is not a requirements contract and does not obligate any State agency or political subdivision to acquire the Contractor's products or services.

### TERMS AND CONDITIONS

**COMPOSITION OF CONTRACT.** This Contract consists of the terms of the Contractor's Federal Schedule Contract, Number GS-35F-110DA (the "Federal Schedule Contract" or "Schedule Contract"), as amended by this Contract (see Entire Agreement Section below), attached below as Exhibit IV: IBM Federal GSA Contract – GS-35F-110DA . The Contractor's Schedule Contract consists of all the documents and materials incorporated in that agreement with the Federal Government.

**EXCLUDED SECTIONS OF FEDERAL SCHEDULE CONTRACT.** Notwithstanding anything to the contrary in this Contract, the parties agree that the following Federal Schedule Contract sections are not applicable to this Contract: (i) Chapter 1 General Information, Section 1.4 Liability for Injury Or Damage; Section 1.15 Purchase Of Open Market Items; Section 1.18 Contractor Team Arrangements; Section 1.19 Installation, Deinstallation, Reinstallation; Section 1.21 Federal Contractors or Prime Contractor Ordering from Federal Supply Schedules; Section 1.22 Privacy Act; 1.24 On-Line Information; Section 1.26 Trade Agreement Act; Section 1.31 patent and Copyright Indemnity; Section 1.32 Limitation Of Liability; Section 1.33 Complete Agreement;; (ii) Chapter 2 Leasing; (ii) Chapter 8 Authentication Products and Services; (iv) Chapter 9 Electronic Commerce; (v) Chapter 10 Softlayer Federal Cloud Services; (vi) Chapter 11 Highly Adaptive Cybersecurity Services; (vii) Chapter 12 Health IT; and (viii) Appendix T Federal Cloud Services Agreement.

For purposes of clarification, any remaining references in the Federal Schedule Contract to Appliances, Fixed-Term Licenses, or Cloud Services are not applicable and will not be sold under this Agreement.

**PARTIES TO THE CONTRACT.** For purposes of this Contract, all references to "Government," "Federal Government," "GSA," or similar terms meaning the Federal Government in the Contractor's Schedule Contract will mean the "State." Any references to the "Contracting Officer" will mean the State representative, or their successor or designee, who signed this Contract on behalf of the State. Additionally, for purposes of this Contract, all rights and obligations of the Contractor and the Federal Government under the Contractor's Schedule Contract, except to the extent that such would create an absurdity, or are otherwise clearly inappropriate, or would violate state or federal law, will be rights and obligations between the Contractor and the State.

### 1 - TERM

- 1.1 **TERM.** This Contract is effective when executed by both parties on the date the State's duly authorized representative executes it, as evidenced by the date appearing with the representative's signature, below. Unless this Contract is terminated or expires without renewal, it will remain in effect until December 20, 2020. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to orders, products or services that the State paid for before termination or limit the State's rights in such.
- 1.2 **CONTRACT RENEWAL.** In the State's sole discretion, it may renew this Contract for a period of one month at the end of each biennium during which this Contract remains in place. Any further renewals will be only by written agreement between the State and the Contractor. Such renewals may be for any number of times for any period not to exceed the time remaining in the State's then-current biennium. Notwithstanding any language reference in the Federal Schedule Contract, there will be no automatic renewals of this Contract or orders under this Contract.

## 2 - PRICING AND PAYMENT

**2.1 CERTIFICATION OF ACCURACY.** By checking the following item, the Contractor certifies that the Contractor's prices under this Contract are:

- The prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule program;

The Contractor further certifies that the above representations will apply and be true with respect to all future pricing information submitted to revise this Contract.

**2.2 PRICE ADJUSTMENTS.** If the Contractor has relied on its GSA Multiple Award Schedule pricing, the State will be entitled to any price decreases that the Contractor offers to the GSA for any of its products and services during the term of this Contract. The Contractor must notify the State of any reduction in its GSA Multiple Award Schedule pricing within 30 days of its occurrence and promptly reduce the price of the affected products or services to the State under this Contract.

If the State believes it is appropriate, the State may ask to renegotiate the Contract price for the products and services affected by the general reduction in price. If the Contractor and the State cannot agree on a renegotiated price, then on written notice to the Contractor, the State may immediately remove the affected products and services from this Contract.

**2.3 PRICELIST.** The Contractor's pricelist for the products and services that the Contractor may provide to the State under this Contract is available at the following: <https://procure.ohio.gov>, STS Contract number: 534593, the current version of which is attached as Exhibit I. For purposes of this Contract, "Product" means any IBM Machine or ICA Program. "Machine" means a hardware device, its features, conversions, upgrades, elements, or accessories, or any combination of them. "ICA Program" has the meaning ascribed to it in the Federal Schedule Contract, and does not include "Other IBM Programs" (as such term is defined in the Federal Schedule Contract). "Deliverable" (also sometimes referred to as "Materials") means literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that Contractor may deliver to the State as part of a service, but does not include programs, machine code, or other items available under their own license terms or agreements. The Contractor may not provide any other products or services under this Contract without a prior written amendment to this Contract that both the State and the Contractor have signed. Exhibit I is identified as the following pricelist:

[IBM GSA based STS Price List, 11/15/2018](#)

The Contractor will not sell to the State any notebook computers with less than a 1.60 GHz internal clock speed. . Additionally, the Contractor will not sell to the State any term software licenses. And except in the case of operating systems licensed in conjunction with desktop PCs, notebook computers, PDAs, and similar personal computing devices that the OEM does not distribute without an operating system, the Contractor will not sell or license any Microsoft software to the State. If any of the foregoing items are listed in the Contractor's pricelist, they are deleted for purposes of this Contract.

**2.4 NOTIFICATION OF PRICE INCREASES.** If this Contract permits any price increases, the Contractor must notify the State of the increase at least 30 days before the effective date of the price increase. The Contractor must notify the State Department of Administrative Services ("DAS") by updating the applicable DAS Vendor Portal.

**2.5 Payment Due Date.** Payments will be due on the 30th day after the later of:

- (a) The date the State actually receives a proper invoice at the office designated in the applicable purchase order to receive it; or
- (b) The date the State accepts the products or services, as further described in this Contract where applicable.

The date the State issues a warrant (the State's equivalent to a check) in payment of an invoice will be considered the date payment is made. Without diminishing the Contractor's right to timely payment, the payment will be overdue only if it is not received by the 30th day after the payment's due date. If the State has not issued payment by then, interest will begin to accrue under Ohio Revised Code (the "Code") § 126.30.

**2.6 Invoice Requirements.** The Contractor must submit an original invoice to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:

- (a) Name and address of the Contractor as designated in this Contract;
- (b) The Contractor's federal tax identification number as designated in this Contract;

- (c) The Contractor's invoice remittance address as designated in this Contract;
- (d) The purchase order number authorizing the delivery of the Deliverables;
- (e) A description of the Deliverables, including, as applicable, the time period, serial number, unit price, quantity, and total price of the Deliverables;
- (f) If the invoice is for a lease, the Contractor also must include the payment number (e.g., 1 of 36); and
- (g) For time and material services, the invoice must reflect labor hours actually worked and if applicable supplies used;

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. If an invoice does not meet this section's requirements, or if the Contractor fails to give proper notice of a price increase (see the next section), the State will send the Contractor written notice. The State will send the notice, along with the improper invoice, to the Contractor's address designated for receipt of purchase orders within 15 days. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice. If such notification has been sent, the payment due date will be 30 days after the State receives a proper invoice and has accepted the Contractor's Deliverable.

- 2.7 NON-APPROPRIATION OF FUNDS.** The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for any payments due hereunder, the order or orders under this Contract that are affected by the lack of funding will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments with respect to the affected order or orders, provided the State will be liable for charges accrued but unpaid as of the termination date. The State will strive to provide notice to Contractor within a reasonable period of time, upon its determination that funds will not be appropriated.
- 2.8 OBM CERTIFICATION.** This Contract is subject to Code § 126.07. Any orders under this Contract are void until the Director of the OBM certifies that there is a balance in the appropriation available to pay for the order.
- 2.9 CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board continuing to authorize the State's use of its term contracts program. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate immediately, and the Contractor may not take any more orders under it.
- 2.10 TRAVEL EXPENSES.** Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with OBM's travel policy in Rule126-1-02 of the Ohio Administrative Code (the "Administrative Code").
- 2.11 TAXES.** The State is exempt from all sales, use, excise, and property taxes and will not pay any such taxes. To the extent sales, use, excise, or any similar taxes are imposed on the Contractor in connection with any Deliverable, the Contractor must pay those taxes together with any interest and penalties not successfully disputed with the taxing authority.
- 2.12 OFFSET.** The State may set off any amounts the Contractor owes to the State under this Contract against any payments due from the State to the Contractor under this Contract with the State.

### 3 - CONTRACT ADMINISTRATION

#### 3.1 [Reserved]

The state encourages the Contractor to purchase goods and services from Ohio certified Minority Business Enterprises (MBE) and Encouraging Diversity, Growth and Equity (EDGE) vendors.

- 3.2 AUDITS.** Except as provided below, during the term of this Contract and for three year after termination, not more than once each calendar year on reasonable notice and during customary business hours, the State may audit the Contractor's records and supporting documents that relate to the products and services provided to the State under this Contract and to the pricing representations that the Contractor has made to acquire this Contract for the purposes of verifying (i) the accuracy of the charges, including compliance with Section 2.2 above; (ii) complying with security requirements under this Contract; and (iii) Contractor is in compliance with laws applicable to Contractor's delivery of the services under this Contract. Notwithstanding anything to the contrary, the State does not have a right to access Contractor's costs, except where invoiced charges are expressly stated to be Contractor's costs or costs plus, or information of Contractor's other clients. Provided that any such audit by the State shall be no more than once per year unless (a) a Governmental entity or regulations require an additional audit, or (b) there is a confirmed security breach. This audit right also will apply to the State's duly authorized representatives and any organization providing funding for any product or service.

The State will be entitled to seek to recover its damages if any audit reveals any material misrepresentation or material violation of the terms of this Agreement, or in the event of an undercharge or overcharge to the State, then

upon mutual agreement of the Parties Contractor will promptly credit the State the amount of any paid overcharge, or the State will promptly pay Contractor the amount of any undercharge, as applicable.

**3.3 INSURANCE.** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise out of Contractor's Negligence from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. Contractor shall procure and maintain for the duration of the contract insurance for claims arising out of their professional Errors & Omissions services and including, but not limited to loss, damage, theft or other misuse of data, invasion of privacy and breach of data.

#### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage includes:

1. Commercial General Liability (CGL): written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limit.
2. Automobile Liability: covering Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits not less than \$2,000,000 per claim, \$2,000,000 aggregate. Coverage shall respond to the duties and obligations as is undertaken by Contractor in this agreement and shall cover all applicable Contractor personnel who perform professional services related to this agreement.

The Insurance obligations under this agreement shall be the minimum Insurance coverage requirements and/or limits shown in this agreement. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits stated in this Contract, as specifically committed by Contractor and evidenced by a certificate of insurance provided by Contractor to the State, which are applicable to a given loss, shall be available to the State of Ohio. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Commercial General Liability Insurance and Automobile Liability , insurance for the State of Ohio, its officers, officials and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. Additional insured coverage is provided in the form of an endorsement to the Contractor's insurance. Contractor's Commercial General Liability and Automobile Liability Insurance is primary and non-contributory only with respect to Contractor's negligence and liability arising out of this Contract over any other insurance coverage.

Should any of the described policies in this Contract be cancelled before the expiration date, notice will be delivered to the State in accordance with the policy provisions. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

Contractor hereby grants to State of Ohio a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State of Ohio by virtue of the payment of any loss under such insurance, but only specific to the General Liability and Automobile Liability policies, and with respect to Workers' Compensation, waiver of subrogation does not apply in instances of gross negligence on the part of the State of Ohio, where gross negligence is defined to mean carelessness that is reckless disregard for the safety of others and/or a failure to use the slightest degree of care. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State of Ohio has received a waiver of subrogation endorsement from the insurer.

If any of the required policies provide coverage on a claims-made basis (i.e., Professional Errors & Omissions Liability):

1. A certificate evidencing the insurance policy will be made upon the State's request.
2. Insurance must be maintained for the duration of the Contract as long as this type of insurance continues to be available in the insurance industry, and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of two (2) years after completion of contract work. The Discovery Period must be active during the Extended Reporting Period.

Contractor shall furnish the State of Ohio with original certificates and General Liability and Automobile Additional Insured and Waiver of Subrogation endorsements. All certificates and endorsements are to be received and approved by the State of Ohio before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them.

Contractor subcontractors used in the performance of this contract shall maintain insurance coverages of the types and in the amounts customary for businesses of similar size and in accordance with industry practice.

- 3.4 CONTRACT COMPLIANCE.** Any State agency that uses this Contract will be responsible for the administration of this Contract with respect to the orders that it places and may monitor the Contractor's performance and compliance with this Contract. If an agency becomes aware of any noncompliance with the terms of this Contract or the specifications of an order, the agency may document the noncompliance and give the Contractor written notice of the noncompliance for prompt correction. If the Contractor fails to cure the noncompliance, the agency may notify the State through the Department of Administrative Services, Office of State Purchasing, by executing a Complaint to Vendor form to help resolve the issue.
- 3.5 POLITICAL SUBDIVISIONS.** Ohio political subdivisions, such as Ohio cities, counties, and townships ("Political Subdivisions"), may rely on this Contract. Whenever a Political Subdivision relies on this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract for purposes of its order, and, as to the Political Subdivision's order, this Contract will be between the Contractor and the Political Subdivision. The Contractor must look solely to the Political Subdivision for performance, including but not limited to payment, and must hold the State harmless with regard to such orders and the Political Subdivision's performance. But the State will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Political Subdivision. Nothing in this Contract requires the Contractor to accept an order from a Political Subdivision, if the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.
- 3.6 [Reserved]**
- 3.7 TERMINATION.** The State may terminate this Contract or any order under this Contract for cause if the Contractor materially defaults in meeting its obligations and fails to timely cure such default. The State also may terminate this Contract or any order under it if a petition in bankruptcy is filed by or against the Contractor in a court of competent jurisdiction and not dismissed within 60 days. And the State may terminate this Contract or any order under it if the Contractor violates any law or regulation applicable to Contractor and its performance under this Contract.

On written notice, the Contractor will have 30 days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 days after written notice or if the breach is not one that is curable, the State will have the right to terminate this Contract, the applicable orders, or both immediately upon written notice to the Contractor. If a particular section does not state what the cure period will be, this provision will govern.

The State also may terminate this Contract in the case of breaches that are cured within 30 days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligation three times. After the third such notice, the State may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three defaults do not have to relate to the same obligation or type of failure.

The State also may terminate this Contract or any order under this Contract for its convenience and without cause. And the State may terminate this Contract or any order under it if the Ohio General Assembly fails to appropriate funds for any order under this Contract. Further, if a third party is providing funding for an order, the State also may

terminate this Contract or any order under it should that third party fail to release any funds related to this Contract or an order under it.

Any notice of termination will be effective as soon as the Contractor receives it. On receipt of the notice of termination, the Contractor will promptly cease all work on any Deliverables affected by the termination and take all steps necessary to minimize any costs the Contractor will incur related to the affected orders. The Contractor also must promptly prepare a report and deliver it to the State. The report must detail all open orders at the time of termination.

If the State terminates this Contract or any order for cause, it will be entitled to cover for the affected orders by using another vendor or vendors on such commercially reasonable terms and conditions as it and the covering vendors may agree. Subject to Section 7.5 (Limitation of Liability) of this Contract, the Contractor will be liable to the State for all costs related to covering for the affected orders to the extent that such costs exceed the costs that the State would have incurred under this Contract for those orders. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other event leading to termination for cause.

If the termination is for the convenience of the State, the Contractor will be entitled to (i) compensation for any products, services, or Deliverable that the Contractor has delivered before the termination and that the State has accepted in accordance with this Contract; (ii) reimbursable expenses that are mutually agreed upon and identified in the applicable SOW and/or order that Contractor incurs through termination; Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount agreed by the parties that is owed to the Contractor.

### **3.8 INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT**

3.8.1 It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from DAS to any public employee retirement system.

3.8.2 Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code.

**3.9 Excusable Delay.** Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed party must notify the other promptly of any material delay in performance and must specify in writing the proposed revised performance date as soon as practicable after notice of delay. In the event of any such excusable delay, the date of performance or of delivery may be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it is taking to remove the cause. The delayed party must not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Contractor's subcontractors will be considered controllable by the Contractor, except for third-party manufacturers supplying commercial items and over whom the Contractor has no legal control.

**3.10 LOCATION OF SERVICES AND DATA.** As part of any services provided under this Contract, the Contractor must disclose the following upon the State's written request:

- (a) Worldwide locations where any services will be performed;
- (b) Locations where any State data made available to Contractor during the provision of services will be maintained or made available; and
- (c) The principal place of business for the Contractor and all its subcontractors providing services under this Contract.

The Parties agree that the Executive Order provisions of Section 11.8 of this Contract do not apply to services that are supported through the "Follow the Sun" model which is an information technology business model for customer support that uses a strategically placed group of worldwide support centers so that there is always a support center open during business hours anywhere on the globe where, through automatic phone and data routing systems, customers can obtain support services from qualified technicians who are intended to be available to the customer 24 hours a day, 7 days a week.

## **4 - DELIVERY AND ACCEPTANCE**

- 4.1 **ACCEPTANCE.** The acceptance procedure for products and services vary depending on the nature of the offering and are described in the Federal Schedule Contract under each Chapter as applicable. For purposes of reference, note the following from the Federal Schedule Contract:
- (a) Machine acceptance – Chapter 3, Section 3.5 (see also Chapter 3, Section 3.6 warranty and return process)
  - (b) Machine maintenance – Chapter 4, Sections 4.13.5 and 4.14.1
  - (c) Software acceptance – Chapter 5, Sections 5.1, 5.14.5, 5.15.4, and Appendix S, Section 4.7
  - (d) IT Professional Services acceptance – Chapter 7, Section 7.23
- 4.2 **TITLE.** Title to any Machine will pass to the State upon delivery of the Machine, and all risk of loss will remain with the Contractor until the time it is delivered to the Contractor-designated carrier for shipment to you or your designated location. Each Machine will be covered by insurance, arranged and paid for by Contractor for you, covering the period until it is delivered to you or your designated location. For any loss or damage, you must (1) report the loss or damage in writing to Contractor within 10 business days of delivery and (2) follow the applicable claim procedures.
- 4.3 **DELIVERIES.** The Contractor must make all deliveries F.O.B. destination.

## 5 - INTELLECTUAL PROPERTY

- 5.1 **Ownership of Deliverables.** The ownership of Deliverables is as stated in the terms of Federal Schedule Contract Chapter 7. For purposes of reference, see Chapter 7, Section 7.22 of the Federal Schedule Contract is included here for reference:

An Attachment or Transaction Document will specify Materials to be delivered to the Government and identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

The Government will own the copyright in Materials created as part of a Service that are identified as "Type I Materials" and each such Material will constitute a "work made for hire" to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to the Government. The Government grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants the Government an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (for the specific Government Contract, unless otherwise agreed to by IBM) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM's or its suppliers' works that pre-exist or were developed outside of the Government Agreement and any modifications or enhancements of such works that may be made under the Government's Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to the Government, if any, or otherwise as Type II Materials.

Each party agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.

- 5.2 **[Reserved]**

- 5.3 **CONFIDENTIALITY.** The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as confidential if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor may not disclose any Confidential Information to third parties and must use it solely to perform under this Contract.

If any products or services provided or owned by Contractor contain data, documentation, or other written information that is confidential in nature and properly labeled as such, then it also will be Confidential Information for purposes of this section. The State will keep all such Confidential Information in confidence and will not use it other than as authorized under this Contract. Nor will the State disclose any such Confidential Information to any third party without first obligating the third party to maintain the secrecy of the Confidential Information.

If one party discloses Confidential Information ("Disclosing Party") to the other party to this Contract ("Receiving Party"), the Receiving Party's obligation to maintain the confidentiality of the Confidential Information will not apply where such:

- (1) Was already in the possession of the Receiving Party without an obligation of confidentiality;
- (2) Is independently developed by the Receiving Party;
- (3) Except as provided in the next paragraph, is or becomes publicly available without a breach of this Contract;
- (4) Is rightfully received by the Receiving Party from a third party without an obligation of confidence;
- (5) Is disclosed by the Receiving Party with the written consent of the Disclosing Party; or
- (6) Is released under a valid order of a court or governmental agency, provided that the Receiving Party:
  - (a) Notifies the Disclosing Party of the order promptly upon receipt of it; and
  - (b) Makes a reasonable effort to assist the Disclosing Party in obtaining a protective order from the issuing court or agency limiting the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things are nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Contract. Therefore, item (3) in the preceding paragraph does not apply, and the Contractor must treat such information as Confidential Information whether it is available elsewhere or not.

Except for Confidential Information that the Contractor delivers to the State and that is part of a Deliverable or necessary for the proper use or maintenance of a Deliverable, the Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party will be entitled to seek temporary and permanent injunctive relief to enforce the provisions of this Contract. However, this provision does not diminish or alter any right to claim and recover damages.

#### 5.4 CONFIDENTIALITY AGREEMENTS.

When the Contractor performs services under this Contract that require the Contractor's and its subcontractors' personnel to access facilities, data, or systems that the State in its sole discretion deems sensitive, the State may require the Contractor and its subcontractors with such access to sign confidential agreement and policy acknowledgements, and have a background check performed before accessing those facilities, data, or systems. Each State agency, board, and commission may require a different confidentiality agreement or acknowledgement, and the Contractor and its subcontractors may be required to sign a different confidentiality agreement or acknowledgement for each agency. The Contractor must immediately replace any of its or its subcontractors who refuse to sign a required confidentiality agreement or acknowledgement or have a background check performed, if applicable.

- 5.5 **USE OF NAME.** The Contractor may not publicize that it is doing business with the State or use this Contract or the Contractor's relationship with the State as a marketing or sales tool, unless the State agrees otherwise in writing. The State has no obligation to agree to any such advertising, publicity, sales, or marketing activities.

### 6 – TRANSACTION REPORTING

- 6.1 **Contractor's SALES REPORT.** The Contractor must report the quarterly dollar value (in US currency rounded to the nearest whole dollar) of the sales under this Contract each calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sales reported must equal the price paid by all State agencies and Political Subdivisions for Deliverables under this Contract during the reporting period.

The Contractor must report the quarterly dollar value of sales to the State via the Internet using the Web form at the Department of Administrative Services, OIT vendor portal, <https://cm.ohio.gov>. If no sales occur, the Contractor must show zero sales on the report. The report must be submitted 30 days after the completion of the reporting period.

The Contractor also must submit a closeout report within 120 days after the expiration of this Contract. The Contract expires on the physical completion of the last, outstanding task or delivery order of the Contract. The closeout report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all Contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero sales in the closeout report.

If the Contractor fails to submit any sales report in a timely manner or falsifies any sales report, the State may terminate this Contract for cause.

- 6.2 Contractor's REVENUE SHARE.** The Contractor must pay the State a share of the sales transacted under this Contract. The Contractor must remit the revenue share in US dollars within 30 days after the end of the quarterly reporting period. The revenue share that the Contractor must pay equals .0075 of the total quarterly sales reported. The revenue share is included in the prices reflected on Exhibit I and reflected in the total amount charged to ordering activities, and the Contractor may not add a surcharge to orders under this Contract to cover the cost of the revenue share.

The Contractor must remit any amount due as the result of a quarterly or closeout report at the time the quarterly or closeout report is submitted to the Department of Administrative Services, Office of State Purchasing. The Contractor also must pay the revenue share by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the applicable State Term Contract Number, total report amount, and reporting period covered.

The Contractor must make each check payable to "Treasurer, State of Ohio", and forward it to the following address:

Department of Administrative Services  
L-3686

Columbus, OH 43260-3686

If the full amount of the revenue share is not paid within 30 days after the end of the applicable reporting period, the non-payment will constitute a contract debt to the State. The State may setoff any unpaid revenue share from any amount owed to the Contractor under this Contract and employ all other remedies available to it under Ohio law for the non-payment of the revenue share. Additionally, if the Contractor fails to pay the revenue share in a timely manner, the failure will be a breach of this Contract, and the State may terminate this Contract in accordance with Section 3.7 (Termination).

## 7 - WARRANTIES AND LIABILITIES

- 7.1 WARRANTIES.** The Contractor warrants that the performance of the Contractor and all products and services under this Contract will:

- (a) Be performed using commercially reasonable care and skill in accordance with industry standards and the requirements of this Contract and any physical media is without any material defects, provided the State's exclusive remedy for any such defect is replacement of such product by Supplier at Supplier's expense;
- (b) Not infringe on the intellectual property rights of any third party, provided the State's sole and exclusive remedy in the event Contractor violates this warranty shall be Contractor's indemnification obligations as stated in Section 7.4 (Indemnity) of this Contract;
- (c) Be the work solely of the Contractor (or its permitted subcontractors) or Contractor has all rights necessary to provide the products and services; and
- (d) be performed in accordance with the official published specifications in all material respects

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that:

- (a) The Contractor has the right to enter into this Contract;
- (b) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract;
- (c) The Contractor will observe and abide by all applicable laws and regulations applicable to Contractor as a provider of IT products and services;
- (d) The Contractor has good and marketable title to any products delivered under this Contract where it is intended that title passes to the State, provided the State's sole and exclusive remedy in the event Contractor violates this warranty shall be Contractor's indemnification obligations as stated in Section 7.4 (Indemnity) of this Contract;

In addition, for purposes of reference, note the following from the Federal Schedule Contract:

- (a) IT Professional Services warranty – Chapter 7, Section 7.24

For purposes of clarity, these warranties are in addition to any warranties as stated in the Federal Schedule Contract.

- 7.2 SOFTWARE WARRANTY.** The warranty for software is as stated under the terms of Federal Schedule Contract Chapter 5. For purposes of reference, see Chapter 5, Sections 5.2, 5.14.6, 5.15.5, and Appendix S, Section 2 of the Federal Schedule Contract.

- 7.3 EQUIPMENT WARRANTY.** The warranty for machines is as stated under the terms of the Federal Schedule Contract Chapter 3. For purposes of reference, note the following from the Federal Schedule Contract:
- (a) Machine warranty – Chapter 3, Section 3.6
  - (b) Maintenance warranty – Chapter 4, Sections 4.11, 4.13.1 and 4.13.4

- 7.4 INDEMNITY.** The Contractor must indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to real property and tangible personal property arising out of its performance under this Contract, by paying all liability or expenses finally awarded by a court against the State, all provided such bodily injury or property damage is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors.

Contractor will release, protect, indemnify, defend, and hold the State harmless from and against any third party claims that a Contractor product or service acquired under this Agreement infringes or misappropriates a patent, copyright, trade mark, or trade secret (“IP Infringement”) of any such third parties by defending the State against such claims and paying amounts finally awarded by a court against the State or included in a settlement approved by Contractor. Any defense of the State requires and is subject to the approval and consent of the Ohio Attorney General. Any such defense will be at the Contractor’s sole cost and expense. Without the State’s consent, Contractor will not enter a settlement that (a) requires the State to make any payments to a third party that are not funded or reimbursed by Contractor or (b) imposes on the State any material obligations additional to those described in this Section.

This obligation of defense and indemnification will not apply, and Contractor shall have no responsibility for claims based, in whole or in part, on items not provided by Contractor, non-Contractor products and service, any violation of law or third party rights caused by the State’s materials, designs, specifications, content, or data, or where the State (or a third party on behalf of the State), has modified or misused the product or service and the claim or the suit is based, in whole or in part, on the modification or misuse. The State agrees to (i) give Contractor written notice of any such claim requiring indemnification as soon as reasonably practicable, (ii) supply information requested by Contractor, and (iii) to allow Contractor to control, and reasonably cooperates in, the defense of any such claim, upon the approval and consent of the Office of the State’s Attorney General. Any delay or failure by the State to notify Contractor in accordance with this Section will not excuse Contractor’s obligations under this Section, except to the extent that Contractor is prejudiced by such delay or failure.

If a claim of IP Infringement is made, or if Contractor believes that such a claim is likely to be made, the Contractor will, at Contractor’s discretion, do one of the following four things:

- i. Modify the product or service so that it is no longer infringing but provides substantially the same functionality as before the modification;
- ii. Replace the offending product or service with an equivalent or better offering;
- iii. Acquire the right for the State to use the product or service as it was intended for the State to use under this Agreement; or
- iv. Upon Contractor’s written request, the State will promptly return and/or discontinue the use of the applicable product or service, and Contractor will refund the pro rated fee the State paid for the applicable product or service that remain unused, or the amount the State paid Contractor for the Machine, less applicable depreciation.

- 7.5 LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT OR ANYTHING INCORPORATED BY REFERENCE INTO THIS CONTRACT, THE PARTIES AGREE AS FOLLOWS:

- (a) NEITHER PARTY, ITS AFFILIATES, SUPPLIERS, OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, BUSINESS, VALUE, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) THE CONTRACTOR’S ENTIRE LIABILITY FOR ALL CLAIMS, LOSSES AND DAMAGES ARISING OUT OF THE PERFORMANCE OF THIS CONTRACT WILL NOT EXCEED THE AMOUNT OF ACTUAL DIRECT DAMAGES INCURRED BY THE STATE UP TO TWO TIMES THE VALUE OF THE TRANSACTION OR TWO MILLION DOLLARS (\$2,000,000.00) WHICHEVER IS GREATER. FOR PURPOSES OF THIS PARAGRAPH, THE PARTIES AGREE THAT THE TERM “TRANSACTION” MEANS A PURCHASE ORDER.

THIS SECTION 7.5 LIMITATION OF LIABILITY SHALL NOT APPLY TO (i) DAMAGES FOR BODILY INJURY (INCLUDING DEATH); (ii) DAMAGES TO REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY; (iii) CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7.4 INDEMNITY; (iv) THE STATE'S INFRINGEMENT OR VIOLATION OF CONTRACTOR'S OR A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; (v) AMOUNTS PAYABLE FOR PRODUCTS OR SERVICES PROVIDED UNDER THIS CONTRACT; AND (vi) DAMAGES THAT CANNOT BE LIMITED UNDER APPLICABLE LAW.

## 8 - MAINTENANCE

- 8.1 **SOFTWARE MAINTENANCE.** Software Maintenance and S&S is as stated under the terms the Federal Schedule Contract Chapter 5 and Appendix S. For purposes of reference, see Chapter 5, Sections 5.4, 5.14.9, 5.15.12, Section 7.29, and Appendix S, Sections 3 and 4 of the Federal Schedule Contract.
- 8.2 **SOFTWARE UPGRADES.** Software upgrades are addressed under the terms of the Federal Schedule Contract Chapter 5 and Appendix S. For purposes of reference, see Chapter 5, Sections 5.4, 5.15.2(b), 5.15.12, and Appendix S, Section 4.5 of the Federal Schedule Contract.
- 8.3 **EQUIPMENT MAINTENANCE.** Machine maintenance is as stated under the terms of the Federal Schedule Contract Chapter 4.
- 8.4 **IT Consulting Support Services.** Additional IT Consulting Support Services are available under the terms of the Federal Schedule Contract Chapter 7.

## 9 - ASSIGNMENT AND SUBCONTRACTING

- 9.1 **ASSIGNMENT.** The Contractor may not assign this Contract without the written consent of the State, which the State will not be obligated to provide.
- 9.2 **SUBCONTRACTING.** The State recognizes that it may be necessary for the Contractor to use subcontractors to perform portions of the work under this Contract. Notwithstanding anything to the contrary, Contractor shall remain responsible for the acts and omissions of such subcontractors to the same extent Contractor would have been responsible had it not utilized such subcontractors. IBM shall provide a list of subcontractors as may be required under solicitations issued under this Contract.

## 10 – CONSTRUCTION

- 10.1 **HEADINGS.** The headings used in this Contract are for convenience only and may not be used in interpreting this Contract.
- 10.2 **ENTIRE DOCUMENT.** This Contract, which includes the Contractor's Schedule Contract (see Composition of Contract Section above) and the Contractor's pricelist attached as Exhibit I and all documents referred to in this Contract, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any previous agreements, whether oral or written. If there are any conflicts between the State Term Contract and the Contractor's Schedule Contract, the State Term Contract will prevail.
- 10.3 **BINDING EFFECT.** This Contract will be binding on and benefit the respective successors and assigns of the State and the Contractor.
- 10.4 **AMENDMENTS – WAIVER.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms or conditions of this Contract may not be construed as a waiver of any those terms or conditions, and either party may at any time demand strict and complete performance by the other party.
- 10.5 **SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Contract to be unenforceable, the remaining provisions of this Contract will remain in full force and affect.
- 10.6 **CONSTRUCTION.** This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.
- 10.7 **NOTICES.** For any notice under this Contract to be effective, the noticing party must make it in writing and sent it to the address of the other party first appearing above, unless that party has notified the other party, in writing and in accordance with the provisions of this section, of a new mailing address for the receipt of notices. This notice requirement will not apply to any notices that this Contract expressly authorizes to be made orally.
- 10.8 **CONTINUING OBLIGATIONS.** Any terms, conditions, representations, or warranties contained in this Contract that must survive termination or expiration of this Contract to be fully effective will survive the termination or expiration of the Contract. Additionally, termination (excluding termination by Contractor for cause) or expiration of this Contract will

not affect the State's right to continue to use any Deliverable for which it has paid, including licensed material. And no termination or expiration of the Contract will affect the State's right to receive maintenance, warranty work, or other services for which the State has paid.

- 10.9 **PRIORITY.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.
- 10.10 **DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

## 11 - LAW AND COURTS

- 11.1 **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the Department of Administrative Services Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Ohio Business Gateway at: <http://business.ohio.gov/efiling/>

- 11.2 **DRUG FREE WORKPLACE.** The Contractor must comply with all Ohio laws regarding maintaining a drug-free workplace and make a good faith effort to ensure that all its employees do not possess and are not under influence of illegal drugs or alcohol or abuse prescription drugs while working on State property.
- 11.3 **OHIO ETHICS LAW AND LIMITS ON POLITICAL CONTRIBUTIONS.** The Contractor certifies that, to the extent applicable to Contractor, it is currently in compliance and will continue to adhere to the requirements of Chapter 102 of the Ohio Revised Code. ethics laws. The Contractor hereby certifies that all applicable parties listed in Ohio Revised Code Section 3517.13 are in full compliance with Ohio Revised Code Section 3517.13.
- 11.4 **SECURITY & SAFETY RULES.** IBM policies define the requirements and implementation guidelines for process, procedures, and use of technology in areas such as data loss prevention, intrusion detection and prevention, identity and access management, segregation of duties, cryptography, privileged user monitoring and auditing, asset management, configuration management, secure data transmission, secure engineering practices, incident management, business continuity, and change management, and IBM agrees to follow such policies where applicable. IBM's security procedures and processes for support are further described in the IBM Software Support Handbook, (<https://www14.software.ibm.com/support/customercare/sas/f/handbook/home.html>) including but not limited to practices such as providing hardware and software security patches and maintenance, as further described in the support handbook, during the period the State has acquired support from IBM for any such hardware and software, and IBM will comply with such security procedures and processes for support. In addition, when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises, provided the State must provide such rules in writing in advance.
- 11.5 **LAW AND VENUE.** This Contract is governed by and will be construed under Ohio law, and venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio.
- 11.6 **UNRESOLVED FINDINGS.** The Contractor represents that it is not subject to an unresolved finding for recovery under Code § 9.24. If this warranty proves false when the parties sign this Contract, the Contract will be void. Additionally, if this representation proves false on the date of any renewal or extension of the Contract, the renewal or extension will be void.
- 11.7 **ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.
- 11.8 **Governing the Expenditure of Public Funds on Offshore Services (EO 2011-12K).** The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract for services for which Contractor did not receive a waiver. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the

United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

The Contractor agrees to complete the attached Executive Order 2011-12K Affirmation and Disclosure Form, Exhibit III which is incorporated and becomes a part of this Agreement.

**11.9 REGISTRATION WITH THE SECRETARY OF STATE.** By providing a Charter Number and signature within the Certification Offer Letter, the Contractor attests that the Contractor is:

An Ohio corporation that is properly registered with the Ohio Secretary of State; or

A foreign corporation, not incorporated under the laws of the state of Ohio, but is registered with the Ohio Secretary of State pursuant to Ohio Revised Code Sections 1703.01 to 1703.31, as applicable.

Any foreign corporation required to be licensed under O.R.C. § 1703.01-1703.31, which transacts business in the state of Ohio, without being so licensed, or when its license has expired or been canceled, shall forfeit not less than \$250.00 nor more than ten thousand dollars. No officer of a foreign corporation (<http://codes.ohio.gov/orc/1703.01>) shall transact business in the state of Ohio, if such corporation is required by O.R.C. § 1703.01-1803.31 to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree. Questions regarding registration should be directed to (614) 466-3910, or visit <http://www.sos.state.oh.us>

**11.10 [Reserved]**

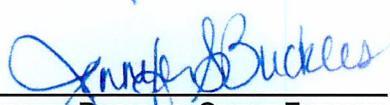
**11.11 BOYCOTTING**

Pursuant to Ohio Revised Code 9.76 (B) Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.

To **SHOW THEIR AGREEMENT**, the parties have executed this Contract on the date(s) identified below, and this Contract will be effective as of the date it is signed on behalf of the State.

**CONTRACTOR**

**STATE OF OHIO,  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
OFFICE OF STATE PURCHASING**

BY:   
\_\_\_\_\_  
JENNIFER BUCKLES, CLIENT EXECUTIVE  
INTERNATIONAL BUSINESS MACHINES

BY:   
\_\_\_\_\_  
ROBERT BLAIR, DIRECTOR,  
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE: 11/16/2018

DATE: 11.27.18

**Exhibit I**



STS Price File  
11-15-2018 FINAL

**Exhibit II**

**IBM FEDERAL GSA CONTRACT – GS-35F-110DA**

Exhibit III

**STANDARD AFFIRMATION AND DISCLOSURE FORM**  
**EXECUTIVE ORDER 2011-12K**

Governing the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations, and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

---

By the signature affixed hereto, the Contractor affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Contractor to sanctions. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

1 New Orchard Rd Armonk, NY 10504  
(Address) (City, State, Zip)

Name/Principal location of business of subcontractor(s):

Worldwide \_\_\_\_\_  
(Name) (Address, City, State, Zip)

\_\_\_\_\_  
(Name) (Address, City, State, Zip)

2. Location where services will be performed by Contractor:

Worldwide \_\_\_\_\_  
(Address) (City, State, Zip)

Name/Location where services will be performed by subcontractor(s):

Worldwide \_\_\_\_\_  
(Name) (Address, City, State, Zip)

\_\_\_\_\_  
(Name) (Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

N/A \_\_\_\_\_  
(Address) (Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

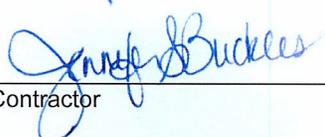
N/A \_\_\_\_\_  
(Name) (Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any Contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By:   
\_\_\_\_\_  
Contractor

Print Name: Jennifer Buckles

Title: IBM Client Executive

Date: 11/16/2018