**Exhibit B – Preliminary Base Contract**

**THIS AGREEMENT** made this XX day of XXX by and between the New York State Department of Taxation and Finance, located at Building 9, W.A. Harriman State Office Campus, Albany, New York 12227 (hereinafter referred to as “DTF” or the “Department”) and xxxxx, with its principal place of business located at xxxxx (hereinafter referred to as the “Contractor”). The Department and Contractor are collectively referred to herein as “the parties.”

**WHEREAS,** the Department issued Invitation for Bids (IFB) 16-200 Printed Tax Law Handbooks and Electronic Online Tax and Accounting Research Database Service on September 22, 2016 for the provision of 2 services, as follows: Lot 1-- provision of various tax law handbooks and Lot 2-- provision of an electronic online tax and accounting research database service, both Lots to be utilized by DTF personnel, including but not limited to, collection agents, auditors, lawyers and tax policy analysts in the course of performing tax administration activities; and

**WHEREAS,** the Contractor timely submitted a responsive proposal to provide the service(s) set forth in IFB 16-200, Lot XXX and the Department has determined the Contractor is responsible; and

**WHEREAS,** pursuant to **Section VI, Proposal Evaluation,** of said IFB, the Contractor was determined to have the lowest cost proposal and has been determined capable of providing the required service(s).

**WHEREAS,** the Contractor is prepared to provide the service(s) solicited in [Lot 1] [Lot 2] of IFB 16-200 in accordance with the terms of this Agreement.

**NOW, THEREFORE,** in consideration of the mutual covenants and conditions herein set forth, the parties hereto agree as follows:

**Article I. Definitions**

The following terms when used herein shall have the specified meanings:

**Agreement-** this Contract C4007xx, relating to [Lot 1] [Lot 2], which includes all documents identified in **Article II: Entirety of Agreement**

**Attorney General or AG** - the New York State Office of the Attorney General, or designee.

**Base Contract** -that portion of the Agreement preceding the signatures of the parties.

**Commissioner** - the Commissioner of the New York State Department of Taxation and Finance, or his/her designee.

**Contractor** - xxxx.

**Department and/or DTF** -the New York State Department of Taxation and Finance.

**Dispute Resolution** - a procedure set forth in **Article VII., Dispute Resolution,** for resolving disputes arising under this Agreement.

**Invitation for Bids (IFB)** - the printed Tax Law Handbooks and Electronic Online Tax and Accounting Research Database Service Invitation for Bids 16-200 issued by the Department on September 22, 2016 including all appendices, attachments and exhibits contained therein, and any written clarifications or amendments thereto made by the Department.

**OGS** - the New York State Office of General Services.

**OSC** - the New York State Office of the State Comptroller.

**Proposal** - the bid submitted by Contractor in response to IFB 16-200, Lot(s) XX.

**Services** - as used herein, all functions required to be performed by Contractor in accordance with IFB 16-200, [Lot 1] [Lot 2], and this Agreement.

**Subcontractor** - any individual or other legal entity including, but not limited to, sole proprietor, partnership, limited liability company, firm or corporation who is engaged by the Contractor or another Subcontractor to perform a portion of the Contractor’s obligation under this Agreement.

**Article II. Entirety of Agreement**

The entire Agreement shall consist of the documents listed below. Conflicts between these documents shall be resolved in the following order of precedence:

Appendix A of the IFB, “Standard Clauses for New York State Contracts,” dated January 2014;

[With respect to Lot 2, Attachment 12, DTF-202;]

Any written amendments and/or changes to the Agreement agreed to by the parties and approved, where necessary, by the Attorney General and the Office of the State Comptroller;

Base Contract (that portion of the Agreement preceding the signatures of the parties in execution);

All Amendments and Clarifications to the IFB, including Questions and Answers issued by DTF, as follows: [LIST by Title and/or Date];

IFB 16-200 (including Attachments to the IFB), excluding: Appendix A, all Amendments and Clarifications, and all Questions and Answers;

Contractor’s Proposal Clarifications, as follows: [List by Title and/or Date]; and

Contractor’s Proposal, excluding Clarifications.

**Article III. Contractor Responsibilities**

1. The Contractor hereby agrees to provide all services as set forth herein, in IFB 16-200 [Lot 1][Lot 2], and the Contractor’s Proposal in response to said IFB for [Lot 1] [Lot 2].
2. [With respect to Lot 2, The Contractor will comply with the Secrecy requirements set forth in Article XII, Secrecy Provisions, herein.]

[With respect to Lot 1, the Contractor must make any corrections to the handbooks when errors are identified by the Department and reprint the order in its entirety at no additional charge to the Department.]

1. The Contractor shall comply with **Section IV. B.9, Workers’ Compensation and Disability Benefits Certifications,** of IFB 16-200.
2. The Contractor shall pay, at its sole expense, all applicable permits, licenses, tariffs, tolls, and fees and give all notices and comply with all Federal, state, and local laws, ordinances, rules, and regulations of any governmental entity in conjunction with the performance of obligations under the Contract.
3. The Contractor shall ensure Subcontractor compliance with all responsibilities under this Agreement, as applicable.
4. [With respect to Lot 1, the Contractor shall meet Minority and Women Owned Business Enterprise goals as outlined in **Article VIII., Continuing Administrative Requirements,** of this Agreement.]

 **Article IV. Department Responsibilities**

In addition to the Department’s responsibilities set forth elsewhere in this Agreement, the Department shall:

1. Make diligent efforts to provide the Contractor with direction, assistance, procedures, and contact persons necessary to perform in accordance with the requirements herein;
2. Cooperate with the Contractor to utilize, where necessary, informal Dispute Resolution as well as the formal Dispute Resolution process to facilitate the timely resolution of disputes that arise;
3. Be responsible for the performance of the Department’s employees and agents;

**Article V. Contract Term**

The Contract term will be for a two (2) year period commencing upon approval by the Attorney General (AG) and the Comptroller (OSC).  The Contract may be renewed by mutual agreement of the parties for (3) additional one (1) year periods.  Renewals shall be accomplished through written amendment.  This Contract, and any renewal, requires the approval of the AG and OSC.

**Article VI. Fees and Payment**

1. Fees and Payments

The fees for [Lot 1] [Lot 2] will be in accordance with the IFB 16-200, Section III., Financial Requirements, which are incorporated herein by reference.

1. Electronic Payment

Payment 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 payment 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’s website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at helpdesk@sfs.ny.gov , or by telephone at (855)-233-8363. The Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller’s electronic procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

1. Properly Submitted Invoices

Payment will be made only upon submission of proper invoices by the Contractor, and in accordance with Article 11-A of New York State Finance Law.

Required Information on properly submitted invoices:

* Contractor's SFS Vendor Number;
* Invoice or account number;
* Name of NYS Agency to which goods or services related to the invoice were provided;
* A valid NYS Purchase Order (PO) Number and/or Contract number associated with the invoice; and
* Line item details that match the corresponding PO line item.

Submission:

* Preferred Method: Email invoices to the OGS-BSC at: accountspayable@ogs.ny.gov including the invoice number and the name of the agency being billed in the subject field. (Note: Do not send a paper copy, in addition to the electronic invoice.)
* Alternate method: Mail invoices to OGS-BSC at the following U.S. postal address:

New York State Department of Taxation and Finance

c/o NYS OGS Business Services Center

1220 Washington Avenue

Building 5, 5th Floor

Albany, NY 12226-1900

**Article VII. Dispute Resolution**

In the event of a dispute arising from this Agreement, the Department shall continue to be able to use the product(s) under the terms and conditions herein while the dispute is resolved. The Contractor and the Department agree that it is important to resolve any disputes regarding the performance of services, or otherwise arising under the Agreement, expeditiously.

The first step of Dispute Resolution will be through conference between the Department and the Contractor. The party initiating the process shall notify the other party in writing and set forth the issues for resolution and provide all necessary documentation. The parties shall review each other’s position and attempt to reach a resolution. Unresolved disputes will be resolved by the Commissioner, or his/her designee, whose decision is final and binding. During this period all work required hereunder shall continue to be performed. If the Contractor pursues any legal remedy outside this process, the Contractor will continue to perform work in accordance with the Agreement and the direction of the Department until such proceedings may be concluded and Contractor will continue to be paid, less an amount determined by the State to be attributable to the disputed work. Disputes that go to litigation must be pursued in a court of competent jurisdiction within the State of New York. New York law (without regard to conflicts of law provisions) will govern the dispute. Nothing in this paragraph shall diminish the State’s right to terminate the Agreement.

**Article VIII. Continuing Administrative Requirements**

* + - 1. **Vendor Responsibility**

**General Responsibility -**

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of DTF or his 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.

**Suspension of Work -**

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

**Termination** -

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate DTF officials or staff, the Contract may be terminated by the Commissioner of DTF or his or her designee at the Contractor’s expense where the Contractor is determined by the Commissioner of DTF or his or her designee to be non-responsible. In such event, the Commissioner of DTF or his 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.

* + - 1. **Sales and Compensating Use Tax**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than $100,000 to certify, to the Department, that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors’ sales delivered into New York State are in excess of $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law also imposes upon certain Contractors the obligation to certify whether or not the Contractor, its affiliates, and its Subcontractors are required to register to collect state sales and compensating use taxes and Contractors must certify to the Department that each affiliate and Subcontractor exceeding the $300,000 sales threshold referenced above is registered with the Department to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a Contract awarded to a Contractor meeting the registration requirements but who has not registered in accordance with the law.

* + - 1. **Procurement Lobbying**

Pursuant to State Finance Law §§139-j and 139-k, there are certain restrictions on communications between a Governmental Entity and an Offeror/Bidder during the procurement process. An Offeror/Bidder is restricted from making contacts during the restricted period to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a).

If this Agreement is renewed or amended, Contractor shall be subject to the Procurement Lobbying requirements set forth herein and shall submit such updated Procurement Lobbying forms, as required by the Department.

* + - 1. **Participation By Minority Group Members and Women With Respect To State Contracts:**

**Requirements and Procedures**

**a. General Provisions**

i. The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

ii. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department of Taxation and Finance (the “Department”), to fully comply and cooperate with the Department 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 certified minority and women-owned business enterprises (“MWBEs”). The 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.

iii. 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 G of this Article or enforcement proceedings as allowed by the Contract.

**b. Contract Goals**

i. [With respect to Lot 1, for purposes of this procurement, the Department hereby establishes an overall goal of 30% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 12% for New York State certified minority-owned business enterprises (“MBE”) participation and 18% for New York State certified women-owned business enterprises (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of qualified MBEs and WBEs.]

 [With respect to Lot 2, for purposes of this procurement, the Department hereby establishes an overall goal of 0% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 0% for New York State certified minority-owned business enterprises (“MBE”) participation and 0% for New York State certified women-owned business enterprises (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of qualified MBEs and WBEs.]

ii. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section B.i hereof, the Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the 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.

iii. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR §142.8, the 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 the Department for liquidated or other appropriate damages, as set forth herein.

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

i. The 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.

ii. The Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and Subcontractor performing work on the Contract (“Subcontractor”) 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 submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by Department to award the Contract to the Contractor.

3. If the Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement (see **IFB** **Exhibit D – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement**).

4. The Contractor’s EEO policy statement shall include the following language:

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 (i) through (iii) of this Subsection d and Paragraph “5” of this Section C, 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.

iii. **Attachment 4 of the IFB - 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. The Contractor shall complete the Staffing plan form and submit it as part of their bid or Proposal or within a reasonable time, but no later than the time of award of the Contract.

iv. **Exhibit E of the IFB – Work Force Employment Utilization**  (“Workforce Report”)

1. The Contractor shall submit a Workforce Report, and shall require each of its Subcontractors to submit a Workforce Report, in such format as shall be required by the Department on a **quarterly basis** during the term of the Contract.

2. Separate forms shall be completed by Contractor and any Subcontractor.

3. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

v. The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The 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.

**d. [With respect to Lot 1, Attachment 3 of the IFB – MWBE Utilization Plan**

i. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan, by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at https://ny.newnycontracts.com, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to the Department, either prior to, or at the time of, the execution of the Contract.

ii. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section B. 1 of this Subsection.

iii. The 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, the Department shall be entitled to any remedy provided herein, including, but not limited to, a finding of the Contractor non-responsiveness.]

**e. [With respect to Lot 1, Exhibit F of the IFB – Request for Waiver Form**

i. For Waiver Requests, the Contractor should use the NYSCS and submit **Exhibit F, Request for Waiver Form,** provided, however, that Contractor may arrange to provide such evidence via a non-electronic method to the Department.

ii. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

iii. If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Department 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.]

**f. [With respect to Lot 1, Exhibit G of the IFB - Quarterly MWBE Contractor Compliance Report**

The Contractor is required to submit a Quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract. See Exhibit A of this Contract for the MWBE Quarterly Report form.]

**g. [With respect to Lot 1, Liquidated Damages – MWBE Participation**

i. Where the Department determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the Department liquidated damages.

ii. 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.

iii. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, the Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department 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 Department.]

**Article IX. Termination**

1. **Termination for Cause (Material Breach)**

The Department, in its sole discretion, may terminate the Agreement in the event of a Material Breach. Such termination shall not give rise to any cause of action against the Department for damages, breach of contract, loss of profits, expenses, or other remuneration of any kind. The Contractor shall be fully liable for the Department’s damages resulting from such Material Breach, and shall be responsible, without limitation, for all additional costs the Department incurs should the Department have to terminate the Contract.

**Examples of Material Breach include, but are not limited to, the following:**

1. Significant and/or repeated failure of Contractor to comply with its obligations under the Agreement.
2. Breach of a material term or condition of any subcontract by the Contractor or the Subcontractor, if such breach materially impairs Contractor's performance under this Agreement.
3. Failure of Contractor to correct an infringement of an Intellectual Property right, and such failure materially impairs Contractor's ability to perform in accordance with the terms of this Agreement.
4. Failure of Contractor to cooperate fully with the Department, its agents, OSC and/or the AG, to the extent required under this Agreement.
5. Failure of Contractor to remain a responsible Contractor consistent with applicable New York State Law, regulations and/or Executive policy.
6. A finding that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law was intentionally false or intentionally incomplete.
7. A finding that the certification filed by the Contractor in accordance with Procurement Lobbying law was intentionally false or intentionally incomplete.
8. A finding that the information filed by the Contractor in accordance with the requirements for Vendor Responsibility is incomplete, untrue or inaccurate or that the Contractor has failed to comply with the Vendor Responsibility provisions of the Agreement.
9. [With respect to Lot 2, Failure of Contractor to maintain the confidentiality and/or security of taxpayer data or tax administration policies and procedures as set forth in the Agreement.]

If it is subsequently determined for any reason that the Contractor was not in Material Breach or that the Contractor’s failure to perform or make progress in performance was due to causes beyond the control and without the fault or negligence of the Contractor, the Department shall have the option, at its sole discretion, to either deem the Termination for Cause to have been issued as a Termination for Convenience, or to allow the Contractor to resume performance under the Agreement.

1. **Termination for Convenience**

The Department may terminate this Agreement in whole or in part without reason at any time for convenience upon 30 days’ written notice to the Contractor, without penalty or other early termination charges due. This provision should not be understood as waiving the Department’s right to terminate the Agreement for Cause, but is supplementary to that provision.

1. **Procedure for Termination**

In the event of termination of the Agreement by the Department, the Department will issue a written Notice of Termination, addressed to the person and in a manner provided for in the Notices section of the Agreement. The parties agree to cooperate in a manner to effect an orderly termination of the Agreement. In the event of termination for any reason, the Contractor will be reimbursed for all services, not in dispute, performed up to the date of termination.

**Article X.**  **Indemnification and Limitation of Liability**

**A. Indemnification**

Contractor shall be fully liable for the actions of its agents, employees, partners or Ssubcontractors and shall fully indemnify, defend, and save harmless the Department/State 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 Ssubcontractors, 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 Department.

**B. Indemnification Relating to Infringement**

The Contractor will fully indemnify, defend and save harmless the Department and its officers, commissioners, employees, representatives, and agents without monetary limitation from and against any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses), arising out of or related to any claim of, or action for, infringement of a United States Letter Patent, copyright, trademark, trade secret or other third party intellectually proprietary rights in each case to the extent caused by any Services provided by Contractor hereunder, provided that the Department shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, promptness of which shall be established by the Department upon the furnishing of written notice and verified receipt, (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, claim or suit at the expense of Contractor.

 Where a dispute or claim arises relative to a real or anticipated infringement, the Department may require the Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Department shall require. Notwithstanding the foregoing, the Department reserves the right to join such action, at its sole expense when it determines there is an issue involving a significant public interest.

If any claim is brought against the Department for the unauthorized use of such product, information, service or thing, the Contractor will indemnify the Department for any expense due to such claim and will cooperate with the Department and the Attorney General in the defense of that claim.

1. **Limitation of Liability**

Except as otherwise set forth in the Indemnification and Indemnification Relating to Infringement paragraphs above, Contractor’s liability for any claim, loss of liability arising out of, or connected with the Services, 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 the amount of five hundred thousand dollars ($500,000) per year; provided however, that such dollar limitations shall not apply to damages resulting from contractor’s (i) willful, malicious, intentional misconduct, (ii) intentional tortious conduct, or (iii) gross negligence.

NOTWITHSTANDING THE FOREGOING, CONTRACTOR REMAINS LIABLE WITHOUT MONETARY LIMITATION, FOR DIRECT DAMAGES FOR PERSONAL INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY OR INTELLECTUAL PROPERTY ATTRIBUTABLE TO THE NEGLIGENCE OR OTHER TORT OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS.

1. **Force Majeure**

Neither party shall be responsible to the other for a delay resulting from its failure to perform if neither the fault nor negligence of the Department or the Contractor, it officers, employees, agents or Subcontractors contributed to such delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fire or floods, or other similar causes beyond the control of either party, or for any of the foregoing which affects Subcontractors or suppliers and no alternate source of supply is available to the Contractor. In such event, the aggrieved party shall notify the other party, by certified or registered mail, of the delay or potential delay and the cause(s) thereof either (a) within ten (10) calendar days after the cause which creates or will create the delay first arose if the aggrieved party could reasonably foresee that a delay could occur by reason thereof, or (b) if the delay is not reasonably foreseeable, within five (5) calendar days after the date the aggrieved party first had reason to believe that a delay could result. The foregoing shall constitute the aggrieved party’s sole remedy or excuse with respect to such delay. In the event performance is suspended or delayed in whole or in part, by reason of any of the aforesaid causes or occurrences and proper notification is given to the other party, any performance so suspended or delayed shall be performed by the Contractor at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of the Department that the delay will significantly impair the value of the Contract to the Department. In the event of such determination, the Department may immediately terminate the Contract with written notice.

**Article XI: General Terms and Conditions**

1. **Americans with Disabilities Act**

The Contractor’s and Subcontractor’s processing and operations sites must be in compliance with applicable building codes and the Americans with Disabilities Act.

1. **Appendix A**

The Contractor has read and agrees to **Appendix A (Standard Clauses for NYS Contracts),** which is incorporated as part of the Agreement without revision.

1. **Assignment of Rights and Duties**

The Contractor may not assign the Agreement except in accordance with Section 138 of the State Finance Law and Appendix A. The State may assign this Agreement to any New York State Agency provided that the assignee agrees in writing to be bound by the terms and conditions of this Agreement. The State agrees to provide the Contractor 30 day prior written notice of any such assignment.

1. **Authorized Representatives**

The following individuals are authorized representatives of the parties and by signing documents do bind their respective party:

On behalf of the Department:

- Commissioner

- Executive Deputy Commissioner

- Chief Financial Officer

- Director, Procurement Services

On behalf of the Contractor:

\_\_\_[To be provided]\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Conflict of Interest**

The Contractor will be responsible for establishing procedures to identify potential conflicts of interest. If during the term of this Agreement, and any extensions thereof, the Contractor becomes aware of an actual or potential relationship which may be considered a conflict of interest, the Contractor shall notify the Department in writing immediately and disclose the nature of the potential conflict of interest in the manner prescribed by the Department. The Department will have sole discretion in evaluating the nature of the identified conflict of interest and will make the final decision regarding its resolution.

1. **Continuity of the Agreement**

The terms and conditions of this Agreement shall remain in full force and effect for the term of this Agreement and the Contractor agrees to provide all services for such term, regardless of any reorganizations, consolidations or mergers to which the Contractor is, or may become, a party.

Notwithstanding the foregoing, **Appendix A** and **Article X (Indemnification and Limitation of Liability)** shall survive the term of this Contract. [With respect to Lot 2, the Tax Secrecy Provisions set forth in Article XII shall also survive.}

1. **Contractor and Subcontractors**

**1. Contractor**

 The Contractor is acting as the prime Contractor under this Agreement and shall be:

* 1. Responsible for, and liable to, the Department for performing in accordance with this Agreement. Contractor shall not in any way be relieved of any financial, programmatic or service responsibility under the Agreement by its agreement with any Subcontractor or by the Department’s approval of such an agreement with a Subcontractor.
	2. Responsible for supervising the work of its Subcontractors performing any Services under the Agreement consistent with industry standards applicable to such work.
	3. As fully responsible for the acts and omissions of its Subcontractors and employees as it is for acts and omissions of its own employees and agents.
	4. Responsible for payment of all Subcontractors and suppliers engaged by or through the Contractor in performance of this Agreement.

**2. Subcontractors**

The Department reserves the right to reject any proposed Subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to: that the proposed Subcontractor is on the Department of Labor’s list of companies with which New York State cannot do business; or the Department determines that the Subcontractor is not qualified; or unsatisfactory contract performance or service has been previously provided by such Subcontractor.

Contractor may subcontract to Subcontractors selected by Contractor for Services performed in connection with this Agreement, subject to the Department’s prior written approval. A Subcontractor shall be defined as any firm or person who is not a full time employee of the Contractor, engaged or assigned to perform work under the Agreement. All agreements between the Contractor and its Subcontractors shall be by bona fide written contract.

Contractor shall include in all subcontracts for the Services performed in connection with this Contract binding provisions consistent with those found in the Agreement, including, but not limited to:

* 1. That the work performed by the Subcontractor must be in accordance with the terms of the Agreement including, but not limited to, Appendix A;
	2. That Subcontractor shall comply with the provisions of section 5-a of the Tax Law and all Secrecy provisions;
	3. That nothing contained in such subcontract shall impair the rights of the Department;
	4. That nothing contained herein shall create any contractual relation between any Subcontractor and the Department;
	5. That Subcontractor shall maintain all records with respect to work performed under the Subcontractor in the same manner as required of the Contractor; and
	6. That the Department shall have the same authority to audit the records of all Subcontractors as it does those of the Contractor.
1. **Cooperation with Department, State and/or Federal Investigations**

The Contractor must agree to cooperate fully with any investigation conducted by the State or its designee acting on its behalf, including but not limited to, the Inspector General’s Office, the Office of Internal Affairs, the New York State Police or any local, state or federal law enforcement agency. If the State determines it necessary to investigate relative to a possible or actual (1) crime, or (2) breach of confidentiality or security, in either case related to the Services provided under this Agreement, Contractor and its Subcontractors shall cooperate fully with the State’s efforts to investigate and identify the responsible individuals. Upon written notification from the State, Contractor and its Subcontractors shall make their employees and all relevant records, including personnel records and employee photographs, available to investigators. The Contractor must allow the State to interview Contractor’s employees and/or agents on matters related to the Agreement during normal business hours.  Contractor representatives may be disallowed from being present when the State determines (at its sole discretion) that such presence would present a potential conflict or impede an investigation or review.  The Contractor shall provide immediate and unfettered access to the State to all records deemed necessary by the State for the conduct of an investigation. In the case of criminal investigations, an out of state Contractor or out of state Subcontractor performing any of the Services, must accept a subpoena served upon one of its New York State branches/offices or the Secretary of State designated for this purpose.

1. **Cooperation with Third Parties**

The Contractor shall cooperate with all persons engaged in performing services for the Department, whether or not related to this Agreement, including, without limitation, Department officers and employees and third-party vendors engaged by the Department.

1. **Dual Employment Provision**

Contractor shall implement and administer a “dual employment policy” under the Code of Ethics in Government Act. Contractor will not knowingly or recklessly employ a State employee in the provision of the Services under this Agreement. Further, if Contractor discovers that an employee is also an employee of the State, Contractor shall immediately notify the Department and take appropriate action to remove such employee from the provision of Services under this Agreement. Contractor agrees that all of Contractor’s personnel, whether permanent or temporary, involved in providing Services pursuant to this Agreement, shall be required to sign a document at the time of employment attesting that they are not employed by the State.

1. **Ethics Provision**

The Contractor shall comply will all applicable requirements of Public Officers Law Sections 73 and 74, the Procurement Lobbying Reform Act of 2005, and other New York State statutes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with those provisions may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

1. **Extension of Use**

The terms and conditions of this Agreement may be extended to any other New York State agency, political subdivision, governmental jurisdiction or other authorized entity, through the use of a formally executed agreement between the Contractor and the state agency, political subdivision, governmental jurisdiction, or other authorized entity, subject to review and approval of the Office of the New York State Attorney General and the Office of the New York State Comptroller, if applicable. New York State reserves the right to negotiate pricing discounts based on any increased volume generated by such extensions.

1. **Funding**

In accordance with Section 41 of the State Finance Law, the State shall have no liability under this Agreement to the Contractor or to anyone else beyond funds appropriated and available for this Agreement. Accordingly, this Agreement will be performed only as long as the New York State legislature appropriates funds and the Governor allocates such funds to the State. Failure of New York State to enact a timely Budget may result in the State being unable to reimburse the Contractor for Services provided in the new fiscal year. All work approved and accepted by the State will subsequently be reimbursed when the Budget has been signed into law.

1. **Governing Law and Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to its principles of conflict of laws. Venue must be laid in a court of competent jurisdiction in New York.

1. **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 Department, and therefore are not entitled to any of the benefits associated with such employment. The Contactor agrees, during the term of the Agreement, 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, including worker's compensation, disability and unemployment insurance, and to provide the State with certification of such insurance upon request. The Contractor remains responsible for all applicable Federal, state and local taxes, and all FICA contributions.

1. **Mergers, Acquisitions or Consolidation**

In the event of any merger, acquisition, or consolidation involving the Contractor which affects this Agreement, the Contractor agrees to transfer all responsibilities for the performance of this Agreement to the successor entity with the approval of the Department, which approval will not be unreasonably withheld.

1. **Notices**

All notices provided hereunder shall be in writing and transmitted either:

* 1. via certified or registered United States mail, return receipt requested;
	2. by facsimile transmission;
	3. by personal delivery;
	4. by expedited delivery service; or
	5. by e-mail.

Unless otherwise provided herein, such notices shall be addressed to the individuals designated below or to others as the parties may from time to time designate:

**Notices to the Department from the Contractor:**

Ms. Catherine Golden

Director, Procurement Services

New York State Department of Taxation and Finance

Office of Budget and Management Analysis

W.A. Harriman Campus

Albany, NY 12227

Email: bfs.contracts@tax.ny.gov

**Notices to the Contractor from the Department:**

\_\_\_[To be provided]\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address provided herein or in the case of facsimile transmission or email, upon completed transmission.

The parties may, from time to time, specify any new or different address in the United States as the address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

1. **Payment Records**

The Contractor must maintain adequate records as prescribed by the Department to substantiate all claims for payment and must make those records available in New York State for examination and copying.

1. **Publicity**

Neither the Contractor nor any of its officers, directors, employees, affiliates, agents or subcontractors shall, at any time, during or after termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the Services performed or data collected under this Agreement without the prior written approval of the Department.

Neither party grants the other the right to use any of its trademarks, trade names, logos, seals, or other designations, whether in any promotion, publication, or otherwise, without the other party's prior written consent.

1. **Required Approval**

This Agreement and any amendments will not be effective until approved in writing by the Department, the Office of the New York State Attorney General, and the Office of the New York State Comptroller.

1. **Severability**

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding such provision, the remainder of this Agreement shall remain in full force and effect, and such term or provision shall be deemed null and void. In addition, if any provision of the Agreement, for any reason, is declared to be unenforceable, the parties shall make a reasonable effort to substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.

1. **Tax Liabilities**

All outstanding tax liabilities, due to the State of New York from the Contractor, or Contractor’s partners, agents and Subcontractors engaged in providing services under this Agreement, other than tax liabilities being contested by any such party, must be satisfied prior to the execution of this Agreement, or a payment schedule arranged for their speedy satisfaction.

1. **Unauthorized Use of Information**

Contractor, its officers, employees, Subcontractors, or agents shall not use information, confidential or otherwise, obtained in the course of providing the Services to the State, to obtain benefits, financial or otherwise, for themselves or anyone else. Neither can Contractor or its officers, employees, Subcontractors, or agents use or disclose such information to cause embarrassment or injury to others.

**X. Waiver of Breach**

No Waiver of breach or failure to exercise any option, right, or privilege under the terms of this Agreement or any order on any occasion or occasions shall be construed to be a waiver of the same or any other option, right, or privilege on any other occasion. All waivers must be in writing and a waiver of one provision does not constitute a waiver of any other provision. The failure to act or a delay in acting shall not constitute a waiver of any right or remedy.

**Article XII. Additional Contract Provision(s) Applicable to Lot 2 – Electronic Online Tax and Accounting Research Database Service**

1. **Tax Secrecy-Required Forms**

The Contractor will require each employee and/or subcontractor assigned to this Agreement to sign form **DTF-202 Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code** as set forth in **Attachment 11** of the IFB. The form will be retained by the Contractor and a copy provided to the Department. The Contractor shall complete the Department’s Annual Security Awareness Training on the Department’s website at <https://www.tax.ny.gov/about/procure>.

1. **New York State Tax Secrecy Provisions**

The various secrecy provisions of the Tax Law (e.g., Tax Law § 697 (e) and 1825) prohibit independent Contractors from disclosing tax information in any manner and provide for misdemeanor prosecution for violations. The secrecy provisions of the Internal Revenue Code (26 USC § 6103) provide for felony prosecution for unauthorized disclosure of Federal tax information in the possession of the Department.

All other information about the Department's operations not covered by the preceding provisions of law must be kept confidential as if it were so covered. Contractor representatives must comply with the administrative procedures enforcing these rules.

The Contractor, all staff members and subcontractors shall agree to view, access and use only that confidential information relevant and necessary to provide services to the State under the Agreement; and to subscribe to the provisions of § 73 and 74 the Public Officers Law.

1. **Information Security Breach and Notification Act**

Contractor agrees to be responsible for the Department’s obligation to comply with the provisions of Section 208 of the State Technology Law,, commonly known as the Information Security Breach and Notification Act (the “ISBNA” or “Act”), and any future amendments thereto, to the extent an information security breach occurs as a result of the acts or omissions of the Contractor, including being responsible to pay all costs associated with and/or incurred because of the breach.. Contractor shall comply with all obligations imposed by the Act on the Department with respect to any breach of “private information” (as defined in the Act) used, received, handled, processed, uploaded, stored, or maintained by Contractor on behalf of the Department under this Agreement (“Department Information”). In the event of a “breach of the security of the system” (as defined by the Act), Contractor shall immediately notify the Department upon Contractor’s discovery or receipt of notification of such breach. Such notice to the Department shall be made by contacting the Information Security Office by email to: ISO.Mail@tax.ny.gov. Contractor shall immediately commence an investigation, in cooperation with the Department, to determine the scope of the breach and to restore the security of the system. To the extent the Department determines that further notifications are required to be sent out pursuant to the Act, Contractor shall be responsible for providing such notifications to all required recipients including, in accordance with New York State policy NYS-PO3-002, non-New York State residents whose private information is reasonably believed to have been exposed as a result of the breach. All costs associated with providing breach notifications shall be borne by the Contractor. It is expressly agreed that Contractor shall be obligated to receive authorization from the Department prior to making additional notifications hereunder to any individuals, the State Office of Information Technology Services, the State Consumer Protection Board, the Attorney General’s Office or any consumer reporting agencies of a breach of the security of the system, or concerning making any determination to delay notifications due to law enforcement investigations. Contractor agrees that the Department shall have final approval over the form, content, mode of transmission, and timing of any notice to be provided concerning a breach of the security of the Department Information. Nothing contained herein shall be interpreted as reducing or altering Contractor’s own obligations under section 899-aa of the General Business Law if such breach also involves other private information unrelated to this Agreement.

**4. Breach of Confidentiality**

The Contractor shall be liable for breach of the confidentiality provisions of this Agreement in an amount not to exceed the amount allowed by applicable Federal or New York State law (including any damages construed as incidental, consequential or indirect).

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first written above.

**Contractor Name New York State Department of Taxation and Finance**

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Signature Signature

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Date Date

CORPORATION

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

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_ CORPORATION

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

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

On this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me known, who being duly sworn, did depose and state that he/she resides in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; that he/she is the\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the Corporation described in and which executed the foregoing instrument; that he/she knows the seal of said Corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by the order of the Board of Directors of said Corporation, and that he/she signed his/her name thereto by like order.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

NOTARY PUBLIC

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Attorney General Office of the State Comptroller