



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES

New York State Contract #

PS66689

(for State use only)

**CENTRALIZED CONTRACT FOR THE ACQUISITION OF
Fleet Maintenance Services (Statewide)**

BETWEEN

THE NEW YORK STATE OFFICE OF GENERAL SERVICES

AND

AUTOMOTIVE RENTALS INC. DBA ARI

THIS AGREEMENT (hereinafter the “Contract” or the “Agreement”) is made by and between the People of the State of New York, acting by and through the Commissioner of General Services, whose office is on the 41st Floor, Corning Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the “State” or the Office of General Services (“OGS”)) and Automotive Rentals Inc. DBA ARI, having its principal place of business at 4001 Leadenhall Road, Mount Laurel, NJ (hereinafter referred to as the “Contractor”). OGS and the Contractor are collectively referred to as the “Parties.”

WHEREAS, OGS is statutorily authorized to enter into centralized procurement contracts for services for use by New York State agencies and departments, public authorities, political subdivisions and others authorized by statute to utilize its contracts (hereinafter “Authorized Users”),

WHEREAS, OGS has identified a need by New York State agencies and Authorized Users for Fleet Maintenance Services, as further described herein,

WHEREAS, OGS issued a solicitation for Fleet Maintenance Services to create a centralized contract for use by New York State agencies and Authorized Users that focuses on implementing best practices and identifying opportunities for savings, and is consistent with the administration’s policy goals of encouraging the participation of small businesses and certified minority and women-owned business enterprises,

WHEREAS, OGS conducted a competitive process to identify the Bidder(s) which could provide the Fleet Maintenance Services at the best value, referred to as RFP #22752 (hereinafter the “RFP”), which was advertised on July 8, 2014 in the New York State Contract Reporter, as required by New York State Economic Development Law,

WHEREAS, the State has determined that the Contractor submitted the best-value responsive proposal, that the Contractor is a responsible vendor; and that the Contractor is willing to provide the Fleet Maintenance Services set forth herein under the terms and conditions contained herein, and,

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

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SECTION I: INTRODUCTION AND GENERAL INFORMATION

I.1 SCOPE

This Contract sets forth the terms and conditions for provision of Fleet Maintenance Services, as defined in Section I.2 *Definitions*, by Contractor, for Vehicles operated in New York State, and nationwide. The objectives of this Contract are to provide Authorized Users with Fleet Maintenance Services, including, but not limited to:

- The administration and systematized tracking of Light Duty Vehicle and Medium to Heavy Duty Vehicle maintenance, repairs, roadside assistance and towing, using Automotive Repair Shops (to include both National Account Vendors and Independent Vendors), to ensure that proper maintenance and warranty repairs are being performed, control authorizations for unscheduled maintenance, ensure cost is competitive and reasonable, and avoid duplicate or unnecessary repairs;
- Monthly Enrollment Plans and Per Occurrence Plans for Fleet Maintenance Services, available to Authorized Users;
- Consolidated monthly billing to each Authorized User, for Vehicle maintenance and repair from a network of reliable and reputable Automotive Repair Shops located in New York State, and nationwide;
- A tiered pricing structure for Monthly Enrollment Plans and Per Occurrence Plans for Fleet Maintenance Services, calculated by statewide New York State Authorized User monthly volume. The Contractor shall apply the tiered pricing as specified in Section II.9 *Billing and Payments*, Paragraph B *Tiered Pricing Structure*;
- Cost negotiation with Automotive Repair Shops;
- Deduction of all applicable federal, state and local government taxes, due to the government's tax-exempt nature, from the Fleet Maintenance Services prior to invoicing/billing the Authorized User, as specified in Section II.9 *Billing and Payments*, Paragraph A *Taxes*;
- Comprehensive Fleet Maintenance Services reporting capabilities, as specified in Section II.6 *Reporting*; and
- A Vehicle expense management process that includes a procedure to contain Vehicle repair costs without compromising effectiveness, including, but not limited to, negotiating the cost of repairs with Independent Vendors, implementing National Account Vendor discounts, authorizing services that are necessary for Preventive Maintenance and Vehicle repairs, and ensuring that authorization procedures for repairs are followed.

Contractor has reviewed and agrees to the following:

- Vehicle ownership and management are decentralized and are located throughout the State. Each participating Authorized User will have its own Fleet Manager and may have differing authorization levels for various services;
- Payments shall be made by individual Authorized Users. OGS shall not receive centralized billings and shall not make centralized payments on behalf of Authorized Users;
- The State has existing contracts for automotive parts, tires, and towing for selected highways, (e.g., The New York State Thruway, Bridge Authorities (MTA), and Long Island Parkway); and
- The State has an existing fuel card services contract. This is a separate contract that is not part of the Fleet Maintenance Services contract.

I.2 DEFINITIONS

Terms used in this Contract that have a capitalized first letter shall be defined in accordance with Appendix B, §2 *Definitions*, which is hereby incorporated by reference. In addition, the following definitions shall apply:

“**Aftermarket Product Additions**” shall mean the installation of non-OEM equipment (e.g., law enforcement Vehicle accessories, lighting systems, computers, radios, storage systems, and wheelchair lifts) to a Vehicle by a business other than the Vehicle OEM.

“**ASE**” shall mean the National Institute for Automotive Service Excellence.

“**ATA**” shall mean the American Trucking Association.

“**Authorized User(s)**” as defined in Appendix B.

“**Automotive Repair Shop(s)**” shall mean a business that is registered with the State, and licensed, if applicable, that provides: (1) diagnosis and repair of Vehicle malfunctions or damage; (2) maintenance of Vehicles; (3) repair to Vehicle bodies; (4) Vehicle glass replacement and repair; (5) Aftermarket Product Additions, or (6) Vehicle roadside assistance and towing. Automotive Repair Shops performing repair and maintenance services under the Contract are independent contractors and are neither contractors, subcontractors nor agents of Contractor.

“**Contract**” as defined in Appendix B.

“**Contractor**” shall refer to Automotive Rentals, Inc. DBA ARI.

“**Executive Agency**” shall mean all State departments, offices or institutions but, for the purposes of this RFP, excludes the State University of New York and City University of New York. Furthermore, such term shall not include the legislature and the judiciary. For the sake of clarity, the term “Executive Agency” does not include any public benefit corporation, public authority, or local government entity.

“**Fleet Maintenance Services (FMS)**” shall mean the administration and systematized tracking of Light Duty Vehicle and Medium to Heavy Duty Vehicle maintenance, repairs, roadside assistance and towing, using Automotive Repair Shops (to include both National Account Vendors and Independent Vendors), to ensure that proper maintenance and warranty repairs are being performed, control authorizations for unscheduled maintenance, and avoid duplicate or unnecessary repairs.

“**Fleet Manager**” shall mean a designated Authorized User employee who is the point person for the Authorized User’s fleet maintenance and shall be consulted first for approvals of repairs over a designated value, and for service, accident repair and general maintenance service concerns.

“**GVWR**” shall refer to Gross Vehicle Weight Rating, which means the maximum total vehicle weight, measured at the tire-ground interfaces, for which the Vehicle possesses components adequately rated to safely carry.

“**Independent Vendor**” shall mean an Automotive Repair Shop that has either a single location or multiple locations in New York, and possibly in other states, with which the Contractor has a formal business relationship, and does not meet the definition of National Account Vendor. Independent Vendors performing repair and maintenance services under the Contract are independent contractors and are neither contractors, subcontractors nor agents of Contractor.

“**Light Duty Vehicle(s)**” shall mean an Authorized User Vehicle with a GVWR less than or equal to 16,000 pounds, (i.e., Class 1 through Class 4 Vehicles, as designated by the U.S. Department of Transportation), that is primarily meant for passenger transport.

“**Medium to Heavy Duty Vehicle(s)**” shall mean an Authorized User Vehicle with a GVWR equal to or greater than 16,001 pounds, (i.e., Class 5 through Class 8 Vehicles, as designated by the U.S. Department of Transportation), that is primarily meant for transporting materials. For the purposes of this RFP, “Medium to Heavy Duty Vehicle(s)” shall include Off Road Equipment.

“**M/WBE**” shall refer to a business certified with the NYS Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.

“**May**” denotes the permissive in a Contract clause or specification. “May” does not mean “required.”

“**Monthly Enrollment Plan**” shall refer to a plan for Fleet Maintenance Services pursuant to which one flat administrative fee is charged for each monthly period (e.g., calendar month or other thirty day period), that an Authorized User Light Duty Vehicle or Medium to Heavy Duty Vehicle is enrolled. This flat administrative fee is in addition to the actual charges for the repair, maintenance, roadside assistance or towing.

“**Must**” denotes the imperative in a Contract clause or specification. “Must” is synonymous with “required.” Also see “Shall.”

“**N/A**” is a common abbreviation for *not applicable* or *not available*, used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.

“**National Account Vendor**” shall mean an Automotive Repair Shop that operates facilities throughout the United States or in multi-state region(s) with which the Contractor has established a formal business relationship involving discounted and/or standardized fees or other arrangements that benefit the Contractor’s customers. Examples of such vendors include Goodyear®, Firestone®, and Pep Boys. National Account Vendors performing repair and maintenance services under the Contract are independent contractors and are neither contractors, subcontractors nor agents of Contractor.

“**New York State Procurement (NYSPro)**” (formerly known as Procurement Services Group (PSG)) shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such contracts.

“**NYS Contract Price**” shall mean the fee charged to the Authorized User for a Fleet Maintenance Service.

“**NYS Vendor ID**” shall refer to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

“**OEM**” shall mean Original Equipment Manufacturer.

“**Off Road Equipment**” shall mean non-vehicular assets that do not operate on public roadways, as defined by NYS Motor Vehicle Law, and which are not required to be licensed by the NYS Department of Motor Vehicles. Such equipment may include, but is not limited to, those assets commonly referred to as manlifts, forklifts, backhoes, front end loaders, and golf carts.

“**Per Occurrence Plan**” shall refer to a plan for Fleet Maintenance Services pursuant to which one flat administrative fee is charged each time the Authorized User uses a Fleet Maintenance Service for a Light Duty Vehicle or Medium to Heavy Duty Vehicle. This flat administrative fee is in addition to the actual charges for the repair, maintenance, roadside assistance or towing.

“**Preventive Maintenance**” shall mean maintenance performed on a Vehicle component when it has exceeded its wear limits, or when it has exceeded its life expectancy, in order to prevent the failure of equipment before it actually occurs. Preventive Maintenance activities include, but are not limited to, equipment checks, partial or complete overhauls at specified periods, oil changes, lubrication and replacing worn parts.

“**SFTP**” shall mean Secure File Transfer Protocol, a network protocol that provides file access, file transfer, and file management functionalities over any reliable data stream.

“**Shall**” denotes the imperative in a Contract clause or specification. “Shall” is synonymous with “required.” Also see “Must”.

“**Small Business**” as defined in Executive Law Section 310(20).

“**State Agency(ies)**” shall refer to all New York State departments, offices or institutions, including Executive Agencies.

“**Varchar**” shall mean a variable character field in a database management system which may hold letters and/or numbers.

“**Vehicle(s)**” shall mean a mobile machine that may be used to transport passengers or cargo (e.g., cars, vans, SUVs, pickup trucks, chassis cab trucks and associated bodies, and Off Road Equipment). Light Duty Vehicles and Medium to Heavy Duty Vehicles are collectively referred to as “Vehicles” in this RFP.

“**VMRS**” shall mean Vehicle Maintenance Reporting Standards, developed by and for equipment users under the auspices of the ATA.

I.3 ESTIMATED QUANTITIES

This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. All quantities or dollar values listed within this Contract are estimates. Estimates are used for evaluation purposes only.

Numerous factors could cause the actual volume of product purchased under this Contract to vary substantially from those estimates in the Contract. Such factors include, but are not limited to, the following:

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

In NYSPro's experience, depending on the price of a particular service, the actual volume of purchases for that service could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contract could vary substantially from the estimates provided in the Contract.

I.4 QUALIFICATIONS OF CONTRACTOR

A Contractor shall meet the following minimum qualification requirements during the Contract term:

- A. **Staffing Plan for Contract.** Upon OGS request, the Contractor shall provide a notarized statement from the head of Contractor's human resources department, or equivalent, certifying the total number of employees currently in the titles identified by Contractor in its staffing plan, and that the employees currently meet or exceed the minimum qualifications for each of the titles; and

The Contractor must maintain adequate staffing throughout the Contract term, and shall notify NYSPro of substantive staffing changes to Appendix C: Number 6: *Staffing Plan for Contract*. The Contractor must maintain or improve the described level of experience and expertise of the titles that interact directly with the Authorized Users and/or Automotive Repair Shops as required by the Contract, and that service any other technical, financial and customer service related needs of the Contract.

- B. **Insurance.** Contractor must maintain insurance coverage as required in Appendix C: Number 2: *Insurance Requirements*. Contractor must provide proof of current insurance, certifications, licensing, etc. throughout the Contract term, if requested by NYSPro.
- C. **NYS DOS Registration.** Contractor shall be registered with the NYS Department of State as an entity authorized to conduct business in New York State.

SECTION II: FLEET MAINTENANCE SERVICES

II.1 AUTOMOTIVE REPAIR SHOPS

A Contractor must provide, for the life of the Contract, Automotive Repair Shops that participate in the Contract that allow Authorized Users to receive: (1) diagnosis and repair of Vehicle malfunctions or damage; (2) maintenance of Vehicles; (3) repair to Vehicle bodies; (4) Vehicle glass replacement and repair; (5) Aftermarket Product Additions; and (6) Vehicle roadside assistance and towing, for Light Duty Vehicles and Medium to Heavy Duty Vehicles in all counties in New York State, and locations nationwide. It is understood and agreed by the Parties that National Account Vendors, Automotive Repair Shops, Independent Vendors, Automotive Dealerships and other vendors

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performing repair and maintenance services under the Contract are independent contractors and are neither contractors, subcontractors, nor agents of Contractor. Fleet Maintenance Services provided in relation to Automotive Repair Shops shall include:

- A. A list of Automotive Repair Shops in New York State available for use with the Contract, to be maintained by the Contractor and available on the Contractor's website in a database searchable by ZIP code, and available to Authorized Users via download in Excel format (Microsoft Excel 2003, or newer), and/or via email from the Contractor when requested. At a minimum, the list shall be updated monthly, and shall include the following data fields for each Automotive Repair Shop:
 1. Business name;
 2. Business address (physical location);
 3. County where the business is located;
 4. Phone number;
 5. Type of Automotive Repair Shop (i.e., National Account or Independent Vendor) and
 6. Type of service available (i.e., inspection, general maintenance and repair, body repair, glass repair, emergency vehicle repair, and roadside assistance/towing).
- B. A process for the Authorized User to request an addition to the list of Automotive Repair Shops available for use with the Contract.
- C. A process for the Authorized User to report an Automotive Repair Shop that is not performing work that is considered satisfactory by the Authorized User, and a response process to such reports;
- D. A process for collecting a valid odometer reading for each Vehicle at the time of service with an Automotive Repair Shop, and for verifying that the odometer reading is obtained by the Automotive Repair Shop through a visual check of the Vehicle rather than one reported by the vehicle driver.
- E. The processing and payment for all charges associated with Automotive Repair Shops performing maintenance and repair of participating Authorized User Vehicles, and billing the Authorized User in accordance with Section II.9 *Billing and Payments*. Services provided shall include, but not be limited to:
 1. A process to minimize Authorized User Vehicle repair costs that includes the review of all Automotive Repair Shop invoices to ensure cost is consistent with approved repair estimates, and that price is competitive and reasonable;
 2. Negotiation with Automotive Repair Shops, to provide the lowest rate possible on individual repairs and for overall labor and parts rates on behalf of New York State, prior to authorizing a service;
 3. An audit process to review Automotive Repair Shop costs utilizing a nationally recognized guide, (e.g., Chilton Labor Time Guide Manual and Mitchell Mechanical Labor Estimating Guide), and verification that all Automotive Repair Shops are using a nationally recognized guide in estimating repair costs. The Contractor shall have a process for accepting exceptions to nationally recognized guide(s);
 4. Automotive Repair Shop rebates, discounts or rewards that shall be applied to Authorized User costs, as found in Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contractor and Pricing Information*; however, the application of rebates, discounts or rewards by Contractor to Authorized User costs shall not be limited by Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contractor and Pricing Information* (See Appendix B, § 17(g), *Pricing* and Section III.18, *Price Changes*); and
 5. Contractor processes that do not include "short paying" of Automotive Repair Shops for their services, merchant function charges, fees, percentage rebates and/or bank fees for EFT payments related to Fleet Maintenance Services provided under the Contract. These processes shall not be endorsed or accepted by the State.
- F. A process for coordinating the resolution of any disputes related to the Contract that occur between the Automotive Repair Shops and Authorized Users, and shall implement this process if requested by an Authorized User.

II.2 MONTHLY ENROLLMENT PLANS

The Contractor shall offer a minimum of two (2) Monthly Enrollment Plans for Fleet Maintenance Services: one (1) plan for Light Duty Vehicles; and one (1) plan for Medium to Heavy Duty Vehicles. All services listed under Section II.1 *Automotive Repair Shops* shall be applicable to all Monthly Enrollment Plans offered under the Contract.

A Vehicle's enrollment in a Monthly Enrollment Plan does not preclude usage of a Per Occurrence Plan by an Authorized User for that same Vehicle, or other Authorized User Vehicles (see Section II.3 *Per Occurrence Plans*). An Authorized User may independently obtain and be invoiced for a service, (e.g., body repair, roadside assistance, and towing), for a Vehicle that is enrolled in a Monthly Enrollment Plan, from an Automotive Repair Shop that participates in the Contract, and be invoiced only for the services provided and not incur a Per Occurrence Plan administrative fee. See Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contractor and Pricing Information* for applicable pricing information for the Monthly Enrollment Plans.

The Contractor shall further provide the following additional services with each Monthly Enrollment Plan:

- A. Ongoing Fleet Maintenance Services, for each Vehicle enrolled, for one (1) flat administrative fee, invoiced monthly. Pass through fees shall be invoiced in arrears; administrative fees shall be invoiced for the current month. There shall be one (1) flat administrative fee for Light Duty Vehicles and one (1) for Medium to Heavy Duty Vehicles. Authorized Users shall not be invoiced a monthly fee that has not been specified on Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contractor and Pricing Information* (e.g., Independent Vendor fee) for the Monthly Enrollment Plans;
- B. Service technicians to review and pre-approve each Vehicle maintenance and repair service twenty-four (24) hours a day, seven (7) days a week, and 365 days a year. The Authorized User shall have the ability to designate a dollar amount limit for Vehicle maintenance and repair costs that require prior approval from the Authorized User before work may begin. The Contractor shall obtain written, (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), approval from the Fleet Manager for all services estimated to exceed the designated dollar amount limit prior to authorizing the service. If an Authorized User has not pre-designated a dollar amount limit for Vehicle maintenance and repair costs that require prior written approval before work may begin, then the dollar amount shall be \$750. If the Fleet Manager is not immediately available to give approval, Contractor shall obtain approval from the designated alternate contact and provide email notification to the Fleet Manager;
- C. Respond to an Authorized User request for routine and emergency services within one (1) hour of the request, via telephone and/or email exchange, as specified by the Authorized User;
- D. A process to monitor Vehicle repairs to ensure the repairs are completed quickly, and that includes notification of an expected repair completion date/time to the Authorized User;
- E. A process for tracking and auditing performance standards and requirements for Automotive Repair Shops. These performance standards and requirements, established by the Contractor, shall include, at a minimum, price, quality assurance, vendor competence, cooperation and problem resolution methods, compliance to repair authorization procedures and invoicing dispute procedures. A list of Automotive Repair Shops that are unable to meet the established performance standards and requirements shall be posted on the Contractor's website and updated at least weekly;
- F. Assistance with selection of an Automotive Repair Shop from those available for use with the Contract, when requested by an Authorized User;
- G. A list of Authorized User Vehicles currently enrolled in the Monthly Enrollment Plans, that is available for download from the Contractor's website, and updated at least daily;
- H. The ability for Authorized Users to enroll or remove Vehicles from a Monthly Enrollment Plan at any time during a Monthly Enrollment Plan period, online, via email, and via phone. Cancellation shall include: (1) removal from the Contract website; (2) a statement issued to the Authorized User that the Vehicle has been removed from the Monthly Enrollment Plan; and (3) a definitive cancellation code or other indicator included on the Contract website and Contract reports;

- I. A process for ensuring that all Vehicles enrolled in a Monthly Enrollment Plan are screened by the Contractor's system to ensure that the VINs entered are correct, (i.e. correspond to the basic identifying information about the Vehicle, including the make, model and year). The Contractor must also provide an online VIN decoder program to assist the Authorized User with this process;
- J. Standardized pricing with at least one (1) National Account Vendor that provides Vehicle glass replacement and repair. The standardized pricing must include a method for determining, for each Vehicle glass part number available from the vendor, a flat rate for glass replacement that includes the price of the glass, the labor charges for the removal of the old glass, the installation of the new glass, glass cleanup and any sealants needed for the replacement. The standardized pricing must also include a flat rate for glass repair that includes labor charges for removal of debris from the impact area and repair of the glass, and the price of materials needed for the repair. In addition, the Contractor shall negotiate with Automotive Repair Shops that provide glass replacement and repair, for a not-to-exceed fee for glass replacement or repair, prior to Contractor authorizing each glass replacement or repair requested by an Authorized User;
- K. A negotiated storage rate for Authorized User Vehicles to be stored at each Automotive Repair Shop for the first twenty-four (24) consecutive hours, and for each twenty-four (24) hour period thereafter. Maximum reimbursable storage rate time will be for five (5) days, including weekend days, unless previously agreed upon in writing by the Authorized User. The Contractor shall negotiate the rate for storage beyond five (5) days, and receive written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), approval from the Authorized User, prior to approving continued storage of a Vehicle by an Automotive Repair Shop. Storage charges shall only be invoiced provided that the Contractor has been notified by the Automotive Repair Shop and that the Contractor has notified the Authorized User that such charges are being initiated;
- L. A Vehicle Preventive Maintenance program which, at a minimum, is consistent with OEM specifications and warranty requirements, State inspection schedule implementation, government regulations that apply, and generally accepted fleet practices for all Vehicles enrolled in a Monthly Enrollment Plan. The Preventive Maintenance program shall provide:
 1. Preventive Maintenance schedules and maintenance activities for all Authorized Users;
 2. Preventive Maintenance services, based on Vehicle mileage, that include, at a minimum, oil and filter changes, engine tune-ups, tire rotation, tire pressure check and adjustment, and check and fill of all fluid levels. Such services must be consistent with the OEM guidelines as detailed in the Vehicle's owner's manual. Annual New York State inspection service shall also be included in the Preventive Maintenance schedule;
 3. Email notification to the Authorized User, via the Fleet Manager, or other individual designated by the Authorized User, of due and overdue Preventive Maintenance services for each Vehicle, within forty-eight (48) hours of notification to the Contractor that the mileage marker for the Preventive Maintenance service has been reached;
 4. The ability for the Authorized User to designate a Preventive Maintenance schedule that is above and beyond what is recommended by an OEM;
 5. A coupon book, or email notification to the Authorized User, that includes, at a minimum, each Preventive Maintenance service required, and the recommended or Authorized User-designated mileage increment(s) or time interval(s) for completion of the service, for each Vehicle; and
 6. A sample Preventive Maintenance schedule, provided at the Authorized User's request, for programs currently being used by other customers.
- M. Participation in quarterly account review meetings with participating Authorized Users, if requested, for the full duration of the contract, including any renewal period(s). If requested by the Authorized User, the Contractor shall provide a report of the actual attainment of Authorized User cost savings for services listed in this section. Such meetings shall be conducted via conference call or webcast, as specified by the Authorized User;

- N. Participation in bi-annual Contract review meetings with OGS, if requested, for the full duration of the contract, including any renewal period(s), to provide Fleet Maintenance Services program updates and other maintenance-related or accident-related issues identified by OGS or the Contractor. Such meetings shall be conducted via conference call or webcast, as specified by OGS;
- O. A process for tracking all existing warranties for Vehicles enrolled in a Monthly Enrollment Plan and recouping warranty reimbursements on behalf of the Authorized User, and a process for recovery of post-and out-of warranty repairs which includes, at a minimum:
1. Identification of OEM warranty repair opportunities for Vehicles and notification to the Authorized User(s) affected;
 2. Monitoring of repair activities and notifying Authorized Users of repairs eligible for warranty reimbursement; and
 3. Seeking reimbursement from OEMs on behalf of the Authorized User for out-of-warranty repairs or service when circumstances so warrant.
- P. A process for monitoring OEM recalls that affect Vehicles enrolled in a Monthly Enrollment Plan, and notifying the applicable Authorized User in writing of all recalls, which includes, at a minimum:
1. Providing information about all OEM recalls online within forty-eight (48) hours of the Contractor receiving notification from the OEM. The website where such information is posted shall be accessible to the OGS Contract Administrator and Authorized User Fleet Managers;
 2. Creating or scheduling work orders in response to recalls only with prior authorization from the Authorized User;
 3. Recall notification that includes all Vehicle makes and models enrolled in a Monthly Enrollment Plan; and
 4. Inclusion of the status of recalls (e.g., open or closed) in the Vehicle data available for Authorized User enrollment and transaction reports at the Contract website (see Section II.6 *Reporting*).
- Q. A incentive bonus pursuant to the following terms:
1. At the end of each year of the Contract term, on the Contract anniversary date, Contractor will credit all Vehicles (including Light and Medium to Heavy Duty) enrolled in the Fleet Maintenance Services Monthly Enrollment Plan provided for in Section II.2 *Monthly Enrollment Plans*, the amount of \$5.15 per Vehicle.

II.3 PER OCCURRENCE PLANS

A Contractor shall offer the following Per Occurrence Plans for Fleet Maintenance Services that will provide service for Authorized Users of Light Duty Vehicles and Medium to Heavy Duty Vehicles. Per Occurrence Plans shall provide a per-incident Fleet Maintenance Service for a Vehicle for one flat administrative fee each time the Per Occurrence Plan service is used. This flat administrative fee is in addition to the actual charges for the repair or service. All services listed under Section II.1 *Automotive Repair Shops* shall be applicable to the Per Occurrence Plans offered under the Contract. See Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contractor and Pricing Information* for applicable pricing information for the Per Occurrence Plans.

For all Per Occurrence Plans, the Contractor must provide the ability for Authorized Users to enroll or remove Vehicles from services daily, online, via email, and via phone. Removal from the Per Occurrence Plan shall include: (1) removal from the Contractor's website; (2) a statement issued to the Authorized User that the Vehicle has been removed from the program to prevent service and billing under a program; and (3) a definitive cancellation code or other indicator included on the Contract website and Contract reports.

Usage by an Authorized User of a Per Occurrence Plan for a Vehicle does not preclude enrollment of that same Vehicle, or other Authorized User Vehicles, in a Monthly Enrollment Plan (see Section II.2 *Monthly Enrollment Plans*). An Authorized User may independently obtain and be invoiced for a service, (e.g., body repair, roadside assistance, and towing), for a Vehicle that is enrolled in a Monthly Enrollment Plan, from an Automotive Repair Shop that participates in the Contract, and not incur a Per Occurrence Plan administrative fee.

At a minimum, the following Per Occurrence Plans shall be offered under the Contract:

- A. Maintenance and Repair Service. A Contractor shall offer Maintenance and Repair Services, as described in Section II.2 *Monthly Enrollment Plans*, on a Per Occurrence basis, for Light Duty Vehicles and for Medium to Heavy Duty Vehicles. These Per Occurrence Plans shall include all aspects of the Monthly Enrollment Plans, except Preventive Maintenance (see Section II.2 *Monthly Enrollment Plans*, Paragraph L).
- B. Accident Management. A Contractor shall offer the following Accident Management program options for Authorized Users of Light Duty Vehicles and Medium to Heavy Duty Vehicles. A Contractor shall have a flat administrative fee for each of the Accident Management program options listed below. An Authorized User shall have the ability to choose the All-In program, or one or more individual programs, at the time of the incident. *Note: State Agencies are instructed to follow the accident reporting procedures posted by the OGS Risk Insurance and Fleet Management office: <http://ogs.ny.gov/BU/SS/RIFM/ARP.asp>.* Accident Management Programs shall be provided under the Contract according to the following terms:
1. All-In. The All-In Accident Management Program offered shall include all aspects of accident management, including the individual services listed below (i.e., Documentation Only, Repair Estimates Only, Appraisal Only, and Subrogation Only). Accident management services provided shall include administering all collision and other-than-collision (e.g., glass breakage, theft, and vandalism) claims and repairs on Vehicles including, but not limited to:
 - a) Receiving reports of accidents via a toll-free number, twenty-four (24) hours a day, seven (7) days a week, 365 days a year;
 - b) Taking comprehensive accident reports from Authorized Users, completing Contractor's Standard Loss Report forms and forwarding via email the forms to the OGS Risk Insurance and Fleet Management office, the Authorized User's Fleet Manager and the Authorized User employee involved in the accident, or as otherwise instructed by the Authorized User;
 - c) Creating a file in the Contractor's internal information system for each accident, to track Accident Management services;
 - d) Providing the ability for an Authorized User to report and view the status of Accident Management services online through the Contractor's website;
 - e) Providing a database, available online through the Contractor's website and accessible twenty-four (24) hours a day, seven (7) days a week, 365 days a year, to OGS to track and report all Contract Vehicle accident volume and expenses by Authorized User. Individual accident occurrences shall be identified by, at a minimum, Authorized User agency, Vehicle, accident type and cost;
 - f) Obtaining and evaluating every damage repair estimate for accuracy and consistency with industry standards;
 - g) Arranging for towing and negotiating the cost, when necessary;
 - h) Arranging for repairs with an Automotive Repair Shop, including obtaining Authorized User authorization for the repair;
 - i) Monitoring repairs to ensure that the repair is timely, of high quality and performed at the least cost to the State;
 - j) Consolidating payment and billing of collision repairs and tracking of collision repair costs; and
 - k) Providing the Fleet Manager, and Authorized User employee permanently assigned the Vehicle, with status updates daily regarding repair status either via email or telephone.
 2. Documentation Only. A Documentation Only Accident Management program shall be offered. Services offered shall include, at a minimum, obtaining accident reports, claim reporting, and obtaining pictures of vehicle damage.
 3. Repair Estimates Only. A Repair Estimates Only Accident Management program shall be offered. Services offered shall include, at a minimum, securing repair estimates for Vehicles from an Automotive Repair Shop.

4. Appraisal Only. An Appraisal Only Accident Management program shall be offered. Services offered shall include, at a minimum, providing appraisal service for the Vehicle, in order to assess and determine the estimated value of a Vehicle involved in an accident.
 5. Subrogation Only. A Subrogation Only Accident Management program shall be offered. A Contractor shall track and follow up on subrogation incidents on behalf of the Authorized User. A Contractor shall offer this service for either one flat administrative fee or for a percentage of the dollar amount recovered by the Contractor, as specified by the Authorized User at the time the service is requested. Services offered under the Contract shall include:
 - a) A review of all accident or vandalism claims for the opportunity to collect damages from a responsible (negligent) third party;
 - b) Filing a subrogation claim notice on behalf of the Authorized User, if requested, with the other party involved in the accident, or their insurance carrier;
 - c) If requested by the Authorized User, a sample report demonstrating how the subrogation claims will be tracked and followed up on; and
 - d) A quarterly accident subrogation status report, provided to the Authorized User, that identifies resolved and outstanding claims for the applicable quarter.
- C. Roadside Assistance. A Contractor shall offer administration of roadside assistance service provided by Automotive Repair Shops, twenty-four (24) hours a day, seven (7) days a week, 365 days a year, for Light Duty Vehicles and Medium to Heavy Duty Vehicles. Administrative fees for Per Occurrence Plan calls to Automotive Repair Shops that provide roadside assistance, and arranging for service, shall not exceed the Per Occurrence Plan Administrative fee Bid. Roadside assistance shall be provided under the Contract according to the following terms:
1. Contractor shall contact Automotive Repair Shops that provide roadside assistance when contacted by Authorized Users, in order to provide roadside repair services in the State of New York, and locations nationwide, within reasonable response times that include, but are not limited to:
 - a) Battery jumpstarts and engine service;
 - b) Driver lock out service;
 - c) Flat tire assistance; and
 - d) Fuel/oil/engine fluids and water service.
 2. Upon Authorized User request, Contractor shall provide detailed, itemized invoice(s) for roadside assistance provided under the Contract. The Contractor will be responsible for providing detailed information to the Authorized User, including explanations regarding miscellaneous charges; and
 3. Payment to Contractor for emergency roadside assistance shall not be made prior to Authorized User receipt and review of Contractor's supporting details regarding the invoiced charges.
- D. Towing. A Contractor shall offer administration of towing service provided by Automotive Repair Shops, twenty-four (24) hours a day, seven (7) days a week, 365 days a year, for Light Duty Vehicles and Medium to Heavy Duty Vehicles. Towing service shall be provided under the Contract according to the following terms:
1. Contractor shall contact an Automotive Repair Shop that provides towing service within fifteen (15) minutes of notification from an Authorized User that towing service is required, and provide the Authorized User with an estimated response time from the Automotive Repair Shop. A response time of no more than one (1) hour for the service to arrive at the scene after the call is initiated is desired. If this cannot be provided by the Automotive Repair Shop, the Contractor shall contact other area Automotive Repair Shops to determine if a shorter response time can be provided;
 2. The Contractor shall negotiate with the Automotive Repair Shops that provide towing services, for a not-to-exceed hookup fee, plus mileage, prior to Contractor authorizing dispatch for each towing service requested by an Authorized User;

3. Priority shall be given to existing State, and other applicable Authorized User-contracted towing vendors for towing services. The State currently has existing towing service contracts for limited access highways and bridges (e.g., New York State Thruway, and bridges and tunnels operated by the Metropolitan Transportation Authority), and the City of New York currently has existing towing service contracts for towing from NYC highways. If towing service is not available from a State or other applicable Authorized User-contracted towing vendor, the Contractor may contact other towing vendors in order to provide towing service for an Authorized User Vehicle;
4. Calls placed to an Automotive Repair Shop that provides towing service shall be considered the same as a call placed for a Per Occurrence Plan event and shall not exceed the Bid Per Occurrence Plan price for towing; and
5. Upon Authorized User request, Contractor shall provide detailed, itemized invoice(s) for towing service(s) provided under the Contract. The Contractor will be responsible for providing detailed information to the Authorized User, including explanations regarding miscellaneous charges.

II.4 CUSTOMER SERVICE SUPPORT CENTER

A Contractor must provide a customer service support center for no additional administrative fees. The customer service support center shall be available for Authorized Users twenty-four (24) hours a day, seven (7) days a week, 365 days a year. Contractor retains all liabilities should this service be transferred or assigned to a subcontractor. Services shall include, but not be limited to:

- A. Toll-free telephone access with average hold time of no more than one (1) minute; and
- B. Authorized User assistance with initial and ongoing enrollment in Contractor programs, including but not limited to:
 1. Requesting, from each Authorized User at the time of enrollment, a key entry code or other specific identifier for its fleet, which shall be incorporated into the Contractor's internal information technology system, if provided by the Authorized User;
 2. Assignment of a code that will be used in the Contractor's internal information technology system to identify the Authorized User as a State Agency or non-State Agency. Unless otherwise agreed upon by OGS, a State Agency shall be coded as "1" and a non-State Agency shall be coded as "2";
 3. Identifying each Authorized User in the Contractor's internal information technology system by either the specific complete name and agency abbreviation of the State Agency (e.g., Department of Transportation, DOT), or the specific complete name of the non-State Agency, (e.g., Onondaga County Water Authority), that the Authorized User represents; and
 4. Identifying each Authorized User in the Contractor's internal information technology system by the Agency Statewide Financial System (SFS) code, if applicable.
- C. Personnel responding to maintenance and repair calls that have a minimum of three (3) years' experience in the automotive industry as a technician or service writer, and are ASE Certified Mechanics and/or ASE Certified Master Mechanics. See Section I.4 *Qualifications of Contractor*, Paragraph A *Staffing Plan for Contract*.
- D. Personnel responding to calls must be able to provide support for maintenance, repair, breakdown and claims issues arising as well as being able to negotiate pricing with and provide approvals to Automotive Repair Shops under the Contract.

II.5 CONTRACT WEBSITE

A Contractor shall provide a Contract website, for no additional administrative fees, with at least the following capabilities and services:

- A. Access. Online access must be available twenty-four (24) hours a day, seven (7) days a week, 365 days a year. Information technology customer service shall be available through a toll-free number, and through email, during standard business hours, 8:00 AM to 5:00 PM EST, Monday through Friday;
- B. Enrollment/Cancellation. The Authorized User shall have the ability to enroll or remove a Vehicle from Contractor programs online at the Contract website, at any time;
- C. Itemization. The Contractor website shall include itemized Vehicle Fleet Maintenance Services data for each Authorized User that includes, for each enrolled Vehicle, at a minimum, the data required under Section II.6 *Reporting*. Costs for Fleet Maintenance Services, including Vehicle maintenance and repair shall be posted online within one (1) hour of implementation or completion of the service;
- D. Training. The Contractor shall provide online tutorials, webcast training and other remotely provided training requested by the Authorized User, in the use of the Contractor website, at no additional fee. In-person training shall be provided only at the request of an Authorized User. Reimbursement to the Contractor for travel, meals and lodging expenses for in-person training conducted by Contractor employees who do not reside in the local commuting area for the work site, shall be made in accordance with the State's Travel Reimbursement Manual published by the New York State Office of the State Comptroller. It will be the responsibility of the Authorized User to provide Contractor the most recently published reimbursement guidelines and rates.
- E. Restricted Access. The Contract website shall include security features capable of providing tiered, restricted account access for individuals within the Authorized User's organization, as designated by the Fleet Manager. Contractor shall also have a security plan that will be utilized to ensure the protection of Authorized User information and that access to such information is controlled and restricted to authorized Contractor personnel only;
- F. Data Backup. Contractor must demonstrate that the information included in the Contract website is backed up and stored in more than one (1) location to prevent loss of data in the event of disasters, (e.g., fires, hurricanes, tornadoes or theft). Data must be recoverable within forty-eight (48) hours; and
- G. Performance. The Contract website shall be available 99% of the time, measured quarterly. Quarterly periods will end on March 31st, June 30th, September 30th and December 31st. Availability shall not include scheduled maintenance. Contractor's failure to satisfy performance standards, requirements or other service levels set forth in the Contract for the Contract website shall result in a credit as follows:

If Contractor fails to meet a Contract website performance standard as set forth in the Contract for a period of three (3) consecutive months, a 10% service credit will be deducted from each Authorized User's invoice in the month immediately following the third month.

II.6 REPORTING

The Contractor shall provide standard and ad-hoc OGS and Authorized User reports including, at a minimum, the following types of reports:

- A. Authorized User online Vehicle enrollment and transaction reports. To exercise control over programs, each Authorized User requires on-demand, online reports, based on Authorized User input criteria, of Vehicle enrollment and Automotive Repair Shop data. It is anticipated that in most cases daily and monthly reporting will be necessary to provide the information needed to reconcile payments and to monitor Automotive Repair Shop usage. The Contractor shall provide a website that OGS and the Authorized User may access to produce Authorized User transaction reports in both Excel (Microsoft Excel 2003, or newer), and text formats. OGS shall require access to all Authorized User Vehicle enrollment and transaction data collected under the contract, and the ability to produce reports that include such data for multiple Authorized Users, and for statewide reports. The reports and the data collected to produce the reports are confidential and may only be shared with parties other than OGS with the prior approval of the Authorized User. Unless otherwise specified by an Authorized User, the report types that are required, include:
 1. Number of Vehicles enrolled in each Contractor program;

2. Contractor program(s) each Vehicle is enrolled in;
3. Automotive Repair Shops used by each Authorized User, monthly and annually, organized by provider type (e.g., maintenance vendor, towing);
4. Authorized User spend on each type of maintenance or repair service, listed by Authorized User account, division, sub-division and Vehicle;
5. Itemized maintenance and repair services and parts provided for each Vehicle, and by each Automotive Repair Shop;
6. Identification of “reworks” (i.e., repeat performance of service or repair because problem has not been resolved, same problem still exists, repair or service was not satisfactory, etc.);
7. Post- and out-of warranty servicing and repair reports that include repair activities and post-warranty adjustment credit;
8. Manufacturer recalls affecting Vehicles enrolled in Monthly Enrollment Plans, including the status of the recall (e.g., open or closed); and
9. Accident management data that includes VIN, date and time of accident, location and cause of accident, and itemized Vehicle service and repair costs.

In addition to the report types listed above, the Authorized User shall have the ability to produce customized ad-hoc reports, based on Authorized User input criteria, on-demand, online. If requested by the Authorized User, the Contractor shall produce these customized ad-hoc reports for the Authorized User, in the format required by the Authorized User, for no additional fee.

- B. Authorized User Data Export. At the Authorized User’s written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request, the Contractor shall export Vehicle enrollment and transaction reports into a data file that may be imported by the Authorized User. Data shall be provided in a tab-delimited or similar text file, (a fixed width text file, not comma or tab-delimited, is preferred), or Microsoft Office (2003 or newer) compatible file format that can be imported directly to Microsoft Excel or Access. At a minimum, Contractor shall have the ability to provide Authorized Users with the data inputs identified as “Mandatory” in Appendix C: *Fleet Maintenance Services Documents*, Number 4: *Data Export Requirements*. Data shall be provided at the frequency specified by the Authorized User (e.g., monthly or daily). At the written request of the Authorized User, Contractor shall provide details of applicable coding structures such as an update task code list with codes and descriptions where applicable. See also Section II.7 *Data Import and Export*.
- C. Authorized User Account Review Report. At the written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request of an Authorized User, Contractor must provide an emailed and/or webcast report that provides a review of the Authorized User’s account, at no additional cost. The report shall be made in-person only at the request of the Authorized User. Reimbursement to the Contractor for travel, meals and lodging expenses for an in-person report for employees who do not reside in the local commuting area for the report site, shall be made in accordance with the State’s Travel Reimbursement Manual published by the New York State Office of the State Comptroller. It will be the responsibility of the Authorized User to provide Contractor the most recently published reimbursement guidelines and rates.

Unless otherwise agreed upon by the Authorized User, the Account Review Report shall include, but not be limited to:

1. Vehicle service and repair account activity, summarized by Vehicle class and repair code;
2. Repair trends by vendor, agency, region, and Vehicle type;
3. Number of roadside assistance and tow occurrences, including the average response time;
4. List of overdue, scheduled Preventive Maintenance;
5. Subrogation summary that includes completed actions and recovery amounts, and those over 120 days old;
6. Cost comparisons of items 1 through 5 above, described in detail, with other similar-sized fleets; and

7. Other information as may be deemed necessary by the Fleet Manager.

- D. Report of Contract Usage. The Contractor shall furnish a report of all Fleet Maintenance Services provided under the Contract during each quarterly period, no later than fifteen (15) days following the close of the quarterly period. Quarterly periods will end on March 31st, June 30th, September 30th and December 31st. If the Contract period begins or ends in a fractional portion of a reporting period only the actual Contract sales for this fractional period should be reported in that quarterly report. Purchases by all Authorized Users under the Contract shall be reported in the same report and be indicated as required. A template for such report is included In Appendix C: *Fleet Maintenance Services Documents*, Number 3: *Report of Contract Usage*. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided, in Microsoft Excel 2003, or newer (or as otherwise directed by OGS), to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the OGS group number, award number, Contract Number, sales period, and Contractor's (or other authorized agent) name, and all other fields required. OGS reserves the right to amend the report template during the Contract term.
- E. Monthly MWBE Contractor Compliance Report. See Section III.15 *Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority- and Women-Owned Business Enterprises*.

II.7 DATA IMPORT AND EXPORT

The Contractor shall import Vehicle data from previous State Fleet Maintenance Services vendors' databases into the Contractor's internal information system upon Contract execution, as applicable, and shall export Vehicle data collected under the Contract to OGS and Authorized Users during the full term of the Contract, for no additional administrative fee. The Contractor shall provide the following import and export services:

- A. Historical data collected under OGS centralized State Contract PS63512, (Group 72002, Award 20108, Fleet Management Services), held by Automotive Rentals Inc. (ARI), shall be imported into the Contractor's internal information technology system, as applicable. At the request of OGS or an Authorized User, historical data shall also be imported from contracts held by Authorized Users;
- B. At the request of OGS or an Authorized User, the Contractor shall import Vehicle service and repair history from fleet management information systems that may be in use by an Authorized User;
- C. At the request of OGS or an Authorized User, the Contractor shall export Authorized User data as described above in Section II.6 *Reporting*, Paragraph B, *Authorized User Data Export*;
- D. Data for all Authorized Users of the Contract shall be exported to OGS, as directed by OGS. Failure to timely provide the OGS data files in accordance with this section shall be considered a breach of contract, and may result in cancellation of the contract in accordance with Appendix B §47 *Termination*. The following data files shall be exported:
1. Daily Transaction File. The following terms and conditions apply to the OGS Daily Transaction File:
 - a. The data shall be provided in a tab-delimited or similar text file, (a fixed width text file, not comma or tab-delimited, is preferred) or Microsoft Office (2003 or newer) compatible file format that can be imported directly to Microsoft Excel or Access;
 - b. The data file shall have a standard name with the date created appended (e.g., "VendorName[YYYYMMDD].txt");
 - c. The data file must be received by OGS electronically via an encrypted automated file transfer process. The file may either be exported to an OGS SFTP server (preferred method), or OGS can retrieve the file from the Contractor's SFTP server via an automated process. *Note: in order for OGS to retrieve the file from the Contractor's SFTP server, the folder shall be secure and not shared with other Contractor customers;*

- d. At a minimum, the Contractor shall have the ability to provide the data inputs identified as “Mandatory” in Appendix C: *Fleet Maintenance Services Documents*, Number 4: *Data Export Requirements*.
 - e. No later than four (4) calendar weeks after Contract execution, the Contractor shall provide an initial data file for all Fleet Maintenance Services provided from the Contract term start date to the date the file is created, and work with OGS to establish a file transfer process. The file transfer process must be established and in place no later than eight (8) calendar weeks after Contract execution;
 - f. Upon approval by OGS of the data file and file transfer process, Contractor shall provide a data file on a daily basis. Data export shall be automated and sent at the same time each day. The daily data file shall include only new transactional data that has not been included in previously exported files;
 - g. Data for new Contract users must automatically be included in the data files, without OGS or Authorized User initiation;
 - h. Data shall be provided only after the transaction has a “completed/closed” status. Transactions “in process” shall not be included in the data file;
 - i. Data shall contain a valid VIN (Vehicle Identification Number) for all Vehicles enrolled in Contractor Fleet Maintenance Services programs which are owned by a State Agency.
 - j. The data file shall include standard ATA and VMRS codes, and a description of the codes, used by the Contractor to identify Vehicle maintenance and repair services provided under the Contract. No later than four (4) calendar weeks after contract execution, the Contractor must provide a list of the standard ATA and VMRS codes used, and a description of the maintenance services and repairs that the codes apply to. The list shall include codes that will be used to identify incoming transactions as “preventive maintenance service” and “inspection related”. A list of the VMRS codes currently used is included on Appendix C: *Fleet Maintenance Services Documents*, Number 4: *Data Export Requirements*.
2. Post-Warranty Data File. The Contractor shall provide OGS with a monthly file that includes data for the recovery of post-warranty repair charges on Authorized User Vehicles enrolled in a Monthly Enrollment Plan. The format of delivery to OGS, and a timeframe for implementation, shall be mutually agreed upon by OGS and the Contractor upon tentative award notification. At a minimum, the warranty data file shall include:
- a. Date range of the post-warranty data file (e.g., April 1, 2014 to April 30, 2014);
 - b. OGS Contract number;
 - c. Contractor name, address, and telephone number;
 - d. Authorized User agency name, address, and Fleet Manager name;
 - e. Authorized User Purchase Order number and date;
 - f. Post-warranty claim number;
 - g. Post-warranty claim date;
 - h. Recovered date;
 - i. Automotive Repair Shop name;
 - j. Status of warranty recovery;
 - k. Dollar amount pursued; and
 - l. Dollar amount recovered.
3. Internal Shop Management Data File. OGS reserves the right to require data to be collected from Authorized User-owned Automotive Repair Shops, for use in the internal shop management system provided under the Contract (see Section II.11 *Additional Fleet Maintenance Services*, Paragraph G *Internal Shop Management System*). Data fields exported to OGS, and a timeframe for implementation

shall be mutually agreed upon by OGS and the Contractor upon an Authorized User's utilization of the Internal Shop Management System.

II.8 FLEET VEHICLE IDENTIFICATION CARD

The Contractor shall provide a Vehicle identification card for every Vehicle enrolled in a Fleet Maintenance Services program. This card will be connected with the service authorization and history of the vehicle, and shall be presented by the Authorized User at the start of every interaction between the Authorized User and Automotive Repair Shop. The card shall include:

- A. Model year, make and model name of the Vehicle;
- B. Identification number assigned to the Vehicle by the Contractor;
- C. Authorized User code, assigned by the Contractor;
- D. Vehicle Identification Number (VIN);
- E. Toll-free number to contact Contractor's customer service support center; and
- F. Directions for the Authorized User to follow in the case of an accident/emergency.

II.9 BILLING AND PAYMENTS

Unless otherwise agreed upon in writing between the Authorized User and the Contractor, Fleet Maintenance Services administrative fees and associated Vehicle maintenance and repair costs must be separately invoiced monthly in arrears to each participating Authorized User. In order to allow for the tiered pricing structure, all Authorized Users of the Contract shall be invoiced on the same billing cycle. See also Appendix B §49 *Contract Invoicing* and §51 *Prompt Payments*. The following billing and payment services shall be provided by the Contractor:

- A. Tax Deduction. The Contractor shall deduct all applicable federal, state and local government taxes for Fleet Maintenance Services administrative fees and associated Vehicle maintenance and repair costs prior to invoicing the Authorized User, if the Authorized User is a tax exempt organization. The Authorized User shall certify tax exempt status, if required by the Contractor.
- B. Tiered Pricing Structure. The Contractor shall invoice Authorized Users in accordance with the tiered pricing indicated by the Bidder on Attachment 4: *Financial Submittal*. The tiered NYS Contract Price shall be calculated monthly, based on the aggregate volume of all Authorized Users made during the applicable billing cycle at the time of invoicing, and be applied to the monthly invoice for the applicable billing cycle for each Authorized User. The tiered NYS Contract Price for each Monthly Enrollment Plan shall be based on the aggregate volume of all Authorized User Vehicles enrolled in a Monthly Enrollment Plan. The tiered NYS Contract Price for each Per Occurrence Plan shall be based on the aggregate volume of the number of incidents for all Authorized Users.
- C. Monthly Summary Invoice. Each monthly invoice shall include a summary of monthly fees, including, but not limited to, the following level of detail:
 1. Contract number;
 2. Contractor name, address and telephone number;
 3. Authorized User agency name, address, and Fleet Manager name;
 4. Authorized User code, assigned by the Contractor;
 5. Due date;
 6. Invoice number;
 7. Invoice date;
 8. Fleet Maintenance Services program fees (i.e., Monthly Enrollment Plan and Per Occurrence Plan program fees);
 9. Summary total for Vehicle maintenance and repair costs; and
 10. Payment Instructions including Contractor's third party billing name, address, etc.

- D. Monthly Transaction Detail Report. In addition to the monthly summary invoice described above in Section II.9 *Billing and Payments*, Paragraph C *Monthly Summary Invoice*, a transaction detail report for each Authorized User must be available for download from a secure location at the Contractor's website or submitted directly to the Authorized User in Excel format (Microsoft Excel 2003, or newer). The transaction detail report must match the billing cycle of the invoice, and include data for all Vehicles included in the billing cycle. Unless otherwise directed by the Authorized User, the Contractor shall include, at a minimum, the information listed below on the monthly transaction detail report.
1. Date range of the transaction detail report (e.g., April 1, 2014 to April 30, 2014);
 2. OGS Contract number;
 3. Contractor name, address, and telephone number
 4. Authorized User agency name, address, and Fleet Manager name;
 5. Authorized User code, assigned by the Contractor;
 6. Invoice creation date;
 7. Invoice due date;
 8. Invoice number;
 9. Monthly Enrollment Plan fees invoiced, if applicable;
 10. Per Occurrence Plan(s) fee(s), and related transaction details, if applicable;
 11. The following transaction details for each maintenance and repair service included in the report:
 - a) Automotive Repair Shop business name;
 - b) Vehicle number, assigned by Contractor;
 - c) Vehicle Identification Number (VIN);
 - d) Odometer reading at the start of service;
 - e) Vehicle license plate number;
 - f) Per Occurrence Plan(s) fee(s), if applicable;
 - g) Labor rate;
 - h) Quantity of hours for work performed;
 - i) Total cost of Labor;
 - j) Description of part(s);
 - k) Total cost of parts;
 - l) Credits, if applicable;
 - m) Discounts applied;
 - n) Description of maintenance and/or repair service performed;
 - o) ATA code(s) for maintenance and/or repair service performed;
 - p) Charges for work completed for each visit, even if such work is warranty work that will eventually be paid by OEM; and
 - q) Any other associated fees with the monthly invoice should be described in detail and are contingent upon Authorized User review and approval.
- E. Authorized User Invoice. The Contractor shall ensure that Automotive Repair Shops provide the Authorized User with a customer copy of the invoice for the service performed that includes the Contractor approval number, for each transaction at the time of service;
- F. Archiving. The Contractor shall maintain service, repair, billing and payment histories for each Vehicle in the Contractor's programs in accordance with Appendix A §10 *Records*. Archived records shall include all data collected under the full Contract term. At the request of an Authorized User, the Contractor shall provide the report types specified in Section II.6 *Reporting*, from archived data;

- G. Payment to Automotive Repair Shops. The Contractor shall make payment to Automotive Repair Shops within thirty (30) days of receipt of invoice for services performed under the Contract. No payment shall be made for unauthorized invoices;
- H. Original Invoicing. The original Automotive Repair Shop invoice that corresponds with each Vehicle repair or service provided under the Contract must be available and provided to OGS or the applicable Authorized User upon written request. OGS reserves the right to request a copy of any invoice, repair order, or technician's notes related to services performed under the Contract.

II.10 CONTRACT EXIT STRATEGY

Upon Contract expiration or cancellation, the Contractor must provide the following items to OGS, Authorized Users, and the replacement Contractor, if applicable. Data shall be provided within sixty (60) days after the end of the Contract term, and the Contractor shall bear the cost of providing the reports.

- A. All Authorized User and Vehicle data acquired under the full term of the Contract to OGS, in a format, or formats, agreed upon by OGS and the Contractor
- B. If requested by an Authorized User, all of that Authorized User's data acquired under the full term of the Contract, in a format, or formats, agreed upon by the Authorized User and the Contractor; and
- C. Export of all Authorized User and Vehicle data acquired under the full term of the Contract to the replacement Contractor, in a format, or formats, agreed upon by OGS, the Contractor and the replacement Contractor.

II.11 ADDITIONAL FLEET MAINTENANCE SERVICES

The following Fleet Maintenance Services shall be offered under the Contract. See also Section II.12 *Excluded Fleet Maintenance Services*. See Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contractor and Pricing Information* for applicable pricing information for the below services.

- A. Automotive Repair Shop Pricing. Automotive Repair Shop rebates, discounts or rewards that are listed in Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contractor and Pricing Information* shall be applied to Authorized User costs. At the written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request of NYSPRO or an Authorized User, the Contractor shall provide, for no additional fee, a list of pricing that National Account Vendors (i.e., Goodyear®, Firestone®, Pep Boys, Jiffy Lube®, and others, if available) would ordinarily charge the public at large (e.g., "posted prices" to any customer walking in off the street), and pricing they charge for the same products and services if provided as part of the State Contract;
- B. Integration of Other New York State Contract Pricing. The Contractor shall have the ability for Authorized Users to receive contract pricing and benefits for Vehicle parts and services from other contracts held by OGS or Authorized Users, without the need for separate transactions, Purchase Orders, invoices, etc. At the written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request of NYSPRO or an Authorized User, the Contractor shall endeavor to provide integration of third-party OGS or Authorized User contracts with this Contract. Upon mutual agreement with the third-party contractor, the Contractor must honor the specific pricing from other NYS contracts and list the pricing/discount on the Fleet Maintenance Services Contract invoices. This service shall be provided for no additional fee. OGS- and Authorized User-held contracts that have been integrated with this Contract shall be listed in Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contractor and Pricing Information*.
- C. Fuel Card Services Integration. The Contractor shall provide the following integration of fuel card services contract data.
 1. OGS Contract. Integration with the OGS Statewide fuel card services program (OGS Group 79008, Award 22445, Fuel Card Services (WEX), <http://www.ogs.ny.gov/purchase/snt/awardnotes/7900822445can.HTM>) to track Vehicle mileage and communicate mileage markers for Preventive Maintenance. The Contractor shall track Vehicle mileage

- status, via data that is either supplied by OGS, or directly from the fuel card services provider, for each Vehicle that participates in the OGS fuel card services contract that is also enrolled in a Monthly Enrollment Plan on the Fleet Maintenance Services Contract. The Contractor shall contact Authorized Users (via the Fleet Manager, or other individual as directed by the Authorized User) via email within forty-eight (48) hours of notification to the Contractor that a mileage marker for Preventive Maintenance Service has been reached, and provide notification that a Vehicle has reached or exceeded the Preventive Maintenance mileage marker. The cost of this service may be included in the Monthly Enrollment Plans fee; and
2. Authorized User Contracts. The Contractor, at the written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request of an Authorized User, shall provide integration of Authorized User fuel card services contracts. Authorized User fuel card services data shall be provided to the Contractor via either the Authorized User or directly from the fuel card services provider. Required services to be provided in relation to such integration, and pricing, shall be mutually agreed upon between the Authorized User and the Contractor before implementation of the integration.
- D. Telematics. At the written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request of a Fleet Manager, the Contractor shall provide a Vehicle tracking system capable of monitoring the location, movements, status and behavior of Authorized User Vehicles. The Contractor shall list pricing for the Vehicle tracking system devices and related services in the Contract. Authorized User will be required to enter into an End User Agreement with the provider prior to initiation of services. OGS has not reviewed or approved this End User Agreement. An Authorized User seeking to acquire this offering must review the End User Agreement terms and conditions. An Authorized User is further responsible for having its counsel review and approve the End User Agreement prior to ordering. If any terms and/or conditions of the End User Agreement are not acceptable to Authorized User's counsel, it is the responsibility of such counsel to negotiate any needed amendments. See Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contractor and Pricing Information* for specific information about the offered telematics system and the End User Agreement;
- E. Telematics/GPS Data Capture. The Contractor, at the written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request of an Authorized User, shall provide integration of telematics/GPS data for individual Authorized User accounts. Integration shall be provided for individual Authorized User contracts. Authorized User telematics/GPS data shall be provided to the Contractor via either the Authorized User or directly from the telematics/GPS provider. Required services to be provided in relation to such integration, and pricing, shall be mutually agreed upon between the Authorized User and the Contractor before implementation of the integration.
- F. Internal Shop Data Storage. At the written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request of an Authorized User, the Contractor shall designate the Authorized User-owned maintenance and repair facility(ies) as an Automotive Repair Shop for use with the Contract, so that Authorized Users may utilize data storage services for these facilities in conjunction with the Contract. Contractor shall provide Authorized Users who utilize this service with data capture or record keeping of Vehicle maintenance and repairs provided at these Authorized User-owned maintenance and repair facilities, with data entered by the Authorized User. There may be a monthly rate per Vehicle enrolled for this service, or the Contractor may allow an Authorized User to enter repair/service history and other Vehicle data for no additional fee for this data tracking. Participation in this program by Authorized Users shall be voluntary, and these Vehicles shall not participate in the Preventive Maintenance program offered by the Contractor. This service shall be identified on the Authorized User's monthly invoice as "Data Storage Service." Participating Authorized Users with Authorized User-owned maintenance and repair facilities will manage their own parts inventory, mechanic productivity, overhead, etc.
- G. Internal Shop Management System. The Contractor shall offer software, or an internet-based system, that an Authorized User may use to track Vehicle maintenance and repairs performed at an Authorized User-owned Automotive Repair Shop. The internal shop management system should include data capture, reporting and scheduling capabilities. The Contractor may charge a monthly fee, and/or other fees that are invoiced in the Contractor's usual course of business, for use of the internal shop management system.

See Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contractor and Pricing Information* for specific information about the offered internal shop management system See also Section II.7 *Data Import and Export*, Paragraph D, Subparagraph 3 *Internal Shop Management Data File*;

- H. Driver Training Services. The Contractor shall offer driver training services (e.g., safety programs, online driver training programs, defensive driving courses, and post-accident awareness). The Contractor shall specify the courses offered, any certificates of completion that a participant will receive at the end of the course, and the applicable fees for such programs, in the Contract. Reimbursement to the Contractor for travel, meals and lodging expenses for in-person training conducted by Contractor employees who do not reside in the local commuting area for the work site, shall be made in accordance with the State's Travel Reimbursement Manual published by the New York State Office of the State Comptroller. It will be the responsibility of the Authorized User to provide Contractor the most recently published reimbursement guidelines and rates.
- I. Driver Safety Program Offerings. The Contractor shall have programs for providing the Fleet Manager, if requested in writing, with driver safety offerings such as motor vehicle record checks, a skills assessment program and recommending specialized online training, based on a comprehensive risk assessment (including, but not limited to, driver behavior, performed by the Contractor, of driver behavior, incident types, Vehicle and job function. The Contractor may charge a per-driver fee for this service. See Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contractor and Pricing Information* for specific information about the drive risk assessment services offered;
- J. Additional services or Product proposed after Contract execution may be submitted in accordance with Section III.17 *Centralized Contract Modifications*,

II.12 EXCLUDED FLEET MAINTENANCE SERVICES

The following Fleet Maintenance Services are excluded from the scope of this solicitation and the resultant contract. The State reserves the right to exclude additional services not listed herein.

- A. Credit Card Services. The ability for an Authorized User to acquire Product or services via the addition of credit card services to the Vehicle identification card provided to Authorized Users (see Section II.8 *Fleet Vehicle Identification Card*), or with any other Fleet Maintenance Service provided under the contract;
- B. Vehicle Rental. Coordinating with a Vehicle rental service, or providing the actual Vehicle rental service, for an Authorized User while a Vehicle is undergoing maintenance or repair at an Automotive Repair Shop; and
- C. Auction Services. Facilitating auctions or providing other auction-related services, for decommissioned Authorized User Vehicles.

SECTION III: GENERAL TERMS AND CONDITIONS

III.1 APPENDIX A

Appendix A, *Standard Clauses For New York State Contracts*, dated January 2014, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

III.2 APPENDIX B

Appendix B, *Office of General Services General Specifications*, dated June 2014, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by this Contract or Appendix A.

III.2.1 APPENDIX B MODIFICATIONS

The following Appendix B clause is hereby modified for the purposes of this Contract:

Contract PS66689, Automotive Rentals Inc.

- A. Section 20, *Procurement Card*, is deleted and replaced with the following language:

Reserved.

- B. Section 23, *Tie Bids*, is deleted and replaced with the following language:

Reserved.

- B. Section 64, *Disputes* is deleted and replaced with the following language:

I. Policy

It is the policy of OGS to provide Interested Parties, as that term is defined herein, with an opportunity to administratively resolve disputes related to OGS bid solicitations, contract awards or contract administration. Interested Parties are encouraged, but not required, to seek resolution of disputes through consultation with OGS staff through the Informal Dispute Resolution Process described herein, prior to filing a Formal Dispute. All Informal and Formal Disputes will be accorded full, impartial and timely consideration. OGS Dispute Resolution Procedures may be obtained by contacting the person identified in the Contract as a designated contact or through the OGS website (www.ogs.ny.gov).

II. Dispute Resolution Procedures

A. Informal Dispute Resolution Process

1. In the event there is a dispute under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.
2. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result through negotiation.
3. If negotiation between the Contractor and Authorized User fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.
4. The Contractor shall extend the informal dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

B. Formal Dispute Process

1. Definitions

- a. Filed means the complete receipt of any document by OGS before its close of business.

- b. Interested Party for the purpose of filing a dispute relating to a solicitation, as used in this section, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a Contract or by the failure to award a Contract.
 - c. Interested Party for the purpose of filing a dispute relating to a Contract award, as used in this section, means an actual bidder or offeror for the subject Contract.
 - d. Interested Party for the purpose of filing a dispute relating to the administration of the Contract, as used in this section, means the awarded Contractor for the subject Contract.
 - e. Issuance of award means the Date of Issue identified on the Contract Award Notification transmitted by OGS.
 - f. A Formal Dispute means a written objection by an Interested Party to any of the following:
 - i. A solicitation or other request by OGS for offers for a contract for the procurement of commodities, services or technology.
 - ii. The cancellation of the solicitation or other request by OGS.
 - iii. An award or proposed award of the Contract by OGS.
 - iv. A termination or cancellation of an award of the Contract by OGS.
 - v. Changes in the scope of the Centralized Contract by the Commissioner.
 - vi. Determination of “materiality” in an instance of nonperformance or contractual breach.
 - vii. An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.
2. Submission of Formal Disputes
- a. A Formal Dispute must be filed in writing with the Director of NYSPRO by mail or facsimile, using the following contact information:

Director, New York State Procurement
A Division of the Office of General Services
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 474-2437
 - b. The Formal Dispute must include:
 - i. Name, address, e-mail address, fax and telephone numbers of the filer.
 - ii. Solicitation or Contract number.
 - iii. Detailed statement of the legal and factual grounds for the Formal Dispute, including a description of resulting prejudice to the filer.
 - iv. Copies of relevant documents.
 - v. Request for a ruling by the agency.
 - vi. Statement as to the form of relief requested.
 - vii. All information establishing that the filer is an Interested Party for the purpose of filing a Formal Dispute.
 - viii. All information establishing the timeliness of the Formal Dispute.
3. Formal Disputes concerning a solicitation shall be filed by an Interested Party (see II.B(1)(b)) with OGS no later than ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, Formal Disputes concerning the solicitation shall be filed with OGS at least twenty-four (24) hours before the time designated for receipt of bids.

4. Formal Disputes concerning a pending or awarded Contract must be filed within ten (10) business days by an Interested Party (see II.B(1)(c)) after the disputing party knew or should have known of the facts which form the basis of the Formal Dispute; however, a Formal Dispute may not be filed later than ten (10) business days after issuance of the Contract award.
5. Formal Disputes concerning the administration of the Contract after award (see II.B(1)(iv-vii)) must be filed within twenty (20) business days by an Interested Party (see II.B(1)(d)) after the disputing party knew or should have known of the facts which form the basis of the Dispute. However, if Contractor and Authorized User participate in the Informal Dispute Resolution Process, Formal Disputes concerning the administration of the Contract after award must be filed by Contractor within twenty (20) business days after the Contractor and Authorized User failed to reach resolution through the Informal Dispute Resolution Process set forth in Section II.A.
6. Agency Response
 - a. OGS will consider all information relevant to the Formal Dispute, and may, in its discretion, suspend, modify, or cancel the disputed procurement/Contract action prior to issuance of a Formal Dispute decision.
 - b. OGS reserves the right to require the filer to meet or participate in a conference call with OGS to discuss the Formal Dispute when, in its sole judgment, circumstances so warrant.
 - c. OGS reserves the right to waive or extend the time requirements for decisions and final determinations on appeals herein prescribed when, in its sole judgment, circumstances so warrant.
 - d. OGS reserves the right to consider or reject the merits of any Formal Dispute.
 - e. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the Formal Dispute.
7. Appeals
 - a. Should the filer be dissatisfied with the Formal Dispute determination, a written appeal may be filed with the Chief Procurement Officer, by mail or facsimile, using the following contact information:

Chief Procurement Officer
New York State Procurement
A Division of the Office of General Services
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 474-2437

- b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of NYSPRO shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.
- c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.
- d. An appeal of the decision of the Director of NYSPRO shall not include new facts and information unless requested in writing by the Chief Procurement Officer.
- e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

8. Legal Appeals

- a. Nothing contained in these provisions is intended to limit or impair the rights of any vendor or Contractor to seek and pursue remedies of law through the judicial process.

III.3 CONFLICT OF TERMS

Conflicts among the documents in the Contract shall be resolved in the following order of precedence:

- A. Appendix A, *Standard Clauses for New York State Contracts*;
- B. The Contract (that portion of the document preceding signatures of the Parties);
- C. Appendix B, *General Specifications*; and
- D. Appendix C: *Fleet Maintenance Services Documents*

III.4 MERCURY ADDED CONSUMER PRODUCTS

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

III.5 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <http://ogs.ny.gov/EO/4/Default.asp>. The Executive Order No. 4 specification for lubricating oil, high detergent, adopted in February 2009, for example, specifies that where lubricating oil with post-consumer material content is available at a competitive cost and meets the entity's form, function and utility requirements, all affected state entities shall, to the maximum extent practicable, purchase lubricating oil that meets or exceeds a minimum percentage of post-consumer material content by weight of 55 percent. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

III.6 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

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

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this 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 OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

III.7 PROCUREMENT INSTRUCTIONS

The following procurement instructions shall apply to the Contract.

- A. An Authorized User will review the Fleet Maintenance Services and associated pricing listed on the OGS website under the resultant Contract Award. OGS reserves the right to add additional procurement instructions on the OGS website, in addition to the general instructions contained in this RFP.
- B. An Authorized User shall seek to engage the services of the Contractor by submitting a request to the Contractor by means of the contact information provided in Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contractor and Pricing Information*, or other acceptable means established between the Contractor and OGS. At a minimum, the request shall consist of:
 1. Contract number;
 2. Contractor name;
 3. Authorized User name and contact information; and
 4. A description of the Fleet Maintenance Services that will be required.
- C. When utilizing the Contract, the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
 - A statement of need and associated requirements;
 - Obtaining all necessary prior approvals;
 - A summary of the Contract alternatives considered for the purchase, if any; and
 - The reason(s) supporting the resulting purchase.
- D. An Authorized User reserves the right to secure through separate procurement methods all or part of the Fleet Maintenance Services from any other contract sources.

III.8 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in centralized contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B §27 *Participation in Centralized Contracts*.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS NYSPRO Customer Services at 518-474-6717.

III.9 EXTENSION OF USE

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

III.10 EXTENSION OF USE COMMITMENT

The Contractor agrees to honor all orders from State Agencies, political subdivisions and others authorized by law (see Section III.8 *Extension of Use*) which are in compliance with the pricing, terms, and conditions set forth in the Contract.

Any unilateral limitations/restrictions imposed by the Contractor on eligible Authorized Users will be grounds for cancellation of the Contract.

III.11 CONTRACT PERIOD AND RENEWALS

The Contract shall commence after all necessary approvals by the Parties, and shall become effective upon Contract execution by OGS. The Contract shall be in effect for three (3) years, unless terminated in accordance with the contractual provisions. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional one (1) year terms. The Contract renewal may be exercised on a month to month basis such as an additional three month, six month, twelve month, or 24 month period.

III.11.1 SHORT TERM EXTENSION

In the event a replacement Contract has not been issued, the Contract, may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

III.12 POOR PERFORMANCE

Authorized Users should notify NYSPRO Customer Services promptly if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services	Tel: 518-474-6717
New York State Procurement	Fax: 518-474-2437
Customer Services	Email: customer.services@ogs.ny.gov
38th Floor Corning Tower	
Empire State Plaza	
Albany, NY 12242	

III.13 CONTRACT ADVERTISING

In addition to the requirements set forth in Appendix B §13 *Advertising Results*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by NYSPRO prior to issuance.

III.14 OVERLAPPING CONTRACT ITEMS

Products/services available in this Contract may also be available from other New York State contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

III.15 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES

I. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State

Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State Certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.

- C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- D. 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 clause VII of this section or enforcement proceedings as allowed by the Contract.

II. Equal Employment Opportunity (EEO)

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

- 1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- 2. The Contractor certifies by entering into this Contract that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof is Contractor’s equal employment opportunity policy.

- B. Form EEO 100 - Staffing Plan.

To ensure compliance with this section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their contract.

- C. Form EEO 101 - Workforce Employment Utilization Report (“Workforce Report”)

Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor’s and/or subcontractor’s total workforce and that the information provided on the previously submitted Staffing Plan is Contractor’s total workforce during the subject time frame, not limited to work specifically under the Contract.

- D. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

III. Contract Goals

- A. OGS hereby establishes an overall goal of 2% for MWBE participation, 1% for Minority-Owned Business Enterprises (“MBE”) participation and 1% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). The total contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in clause III-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com/frontend/diversityusers.asp>.

Questions regarding compliance with MWBE participation goals should be directed to the OGS Office for Minority and Women Owned Business Enterprises.

Additionally, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VI below) and ensure that the MWBEs utilized under the Contract perform commercially useful functions (see clause III.D below).

D. Commercially Useful Function Requirement

Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. OGS will assess whether a MWBE is performing a commercially useful function by considering the following:

1. the amount of work subcontracted;
2. industry practices;
3. whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;
4. the credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and
5. any other relevant factors.

IV. MWBE Utilization Plan

A. Contractor certifies that it has submitted a completed MWBE Utilization Plan on Form MWBE 100 to OGS and will follow such Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause III-A of this Section.

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

C. Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Request for Waiver

A. If the Contractor, after making good faith efforts, as set forth in clause VI below, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form (BDC 333) documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

B. If the OGS, upon review of the MWBE Utilization Plan and updated Quarterly Workforce Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in

regards to such non-compliance, the OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

C. Prior to submission of a request for a partial or total waiver, Contractor shall speak to the OGS Office for Minority and Women Owned Business Enterprises for guidance.

VI. Required Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of required good faith efforts shall include the following:

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

VII. Monthly MWBE Contractor Compliance Report

- A. Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System (NYSCS) to report subcontractor and supplier payments made by Contractor to MWBEs performing commercially useful functions under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State Agency Authorized User following a purchase from an OGS NYSPRO contract, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an e-mail or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System for Vendors**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "**Account Lookup**" to identify the Contractor's account by company name. Contact information

should be reviewed and updated if necessary by choosing “**Change Info.**” It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through “**Request New User.**” When identifying the person responsible, please add “- **MWBE Contact**” after their last name (i.e John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for “Contact Us & Support” then “Technical Support” on the NYSCS website.

- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month’s activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor’s responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause VIII below.

VIII. Breach of Contract and Liquidated Damages

- A. In accordance with Executive Law Section 316-a and 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made, after Contractor has been afforded the process that it is due, which requires the payment of liquidated damages and such identified sums have not been withheld by the OGS, Contractor shall pay such liquidated damages to the OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if the Director renders a decision in favor of the OGS.

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

III.16 JOINT VENTURE OR PARTNERSHIP BIDS

Should the Contractor elect to undertake Contract performance with a joint venture partner, the Contractor acknowledges that all other members of the joint venture would likely be deemed to be subcontractors and the Contractor may be liable for claims made against an uninsured Joint Venture partner. Contractor shall require all such Joint venture partners, prior to commencement of an agreement between Contractor and the Joint venture partner, to secure and keep in force during the term of the Contract, the insurance requirements of this document on the Joint venture partner, as applicable.

III.17 CENTRALIZED CONTRACT MODIFICATIONS

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

and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

- B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
- C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
- D. All modifications proposed by Contractor, shall be processed in accordance with Appendix C: *Fleet Maintenance Services Documents*, Number 5: *Contract Modification Procedure*. The Contractor shall submit all requests in the form and format contained in Appendix C: *Fleet Maintenance Services Documents*, Number 5: *Contract Modification Procedure*.

The form contained within Appendix C: *Fleet Maintenance Services Documents*, Number 5: *Contract Modification Procedure* is subject to change at the sole discretion of OGS.

- E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B §28 *Modification of Contract Terms*.

III.18 PRICE CHANGES

The Monthly Enrollment Plans and Per Occurrence Plans administrative fees set forth in Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contract and Pricing information* shall not increase during the Contract term, except for the percentage (%) of the dollar amount recovered for Accident Management (Subrogation Only), which shall not decrease.

The NYS Contract Price for other Fleet Maintenance Services and Products set forth in Appendix C: *Fleet Maintenance Services Documents*, Number 1: *Contract and Pricing information*, shall not increase without the prior approval of OGS. In order to request an increase in the NYS Contract Price, or a decrease in discount, a Contractor shall follow the procedures outlined in Section III.17 *Centralized Contract Modifications*.

Contractor may decrease administrative fees or the NYS Contract Price, or increase the Contract discounts offered at any time for Fleet Maintenance Services offered, without prior approval by OGS, provided that OGS be notified at the time of the price or discount change. Such notification shall be made by submittal of the form contained within Appendix C: *Fleet Maintenance Services Documents*, Number 5: *Contract Modification Procedure*.

III.19 PERFORMANCE AND BID BONDS

There are no bonds required for this Contract. In accordance with Appendix B §45 *Performance/Bid Bond*, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the initial term, or any renewal term, for the resulting Contract.

III.20 WEB ACCESSIBILITY

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, *Accessibility of Web-Based Information and Applications* as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by OGS and the results of such testing must

be satisfactory to OGS before web-based information and applications will be considered a qualified deliverable under the contract or procurement

III.21 DATA OWNERSHIP

Contractor must process all Authorized User data in accordance with the resulting contract and shall acquire no rights in the Authorized User data and shall not use or disclose the Authorized User data except as provided under the resulting contract or as required by law. Authorized User data means all data that is provided to or prepared on behalf of OGS or an Authorized User.

III.22 ADDITIONAL REQUIREMENTS

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

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

III.23 DIESEL EMISSION REDUCTION ACT

Pursuant to N.Y. Environmental Conservation Law §19-0323 (“the Law”) it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra-low sulfur diesel fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by contract vendors “on behalf of” State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2015 (unless further extended by Law). The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and 6 NYCRR Parts 248 and 249.

III.24 CONTRACTOR’S ABILITY TO CONDUCT CREDIT EVALUATIONS

- A. State Agency. The Contractor is precluded from conducting credit evaluations for State Agencies.
- B. Non-State Agency. The Contractor may conduct credit evaluations for Non-State Agencies intending to use the Contract and deny services to Non-State Agencies that do not meet the Bidder’s standard commercial risk qualifications. The successful Contractor shall notify the Non-State Agency in writing that their use of the Contract has been denied based on an unsatisfactory credit rating.

III.25 NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address, and (ii) if to Contractor, addressed to Contract Administrator at the Contractor address. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

All notices sent shall be effective upon actual receipt by the receiving party. The Contractor will be required to forward a copy of the official notice to an Authorized User that is associated with the subject of the notice.

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

III.26 CAPTIONS

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

III.27 SEVERABILITY

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

III.28 COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and shall bind such party.

III.29 ENTIRE AGREEMENT

This Contract and the referenced appendices and attachments constitute the entire agreement between the Parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein in accordance with the terms set forth in Appendix B Clauses 28, *Modification of Contract Terms*, and 32, *Purchase Orders*.

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Agreement being executed simultaneously herewith.

CONTRACTOR



Signature: _____

Printed Name: Robert White

Title: Exec. V.P. Fleet Management

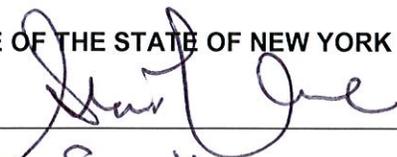
Company Name: Automotive Rentals, Inc.

Date: 1/30/15

Federal ID: 21-0622527

NYS Vendor ID 10000 8893

THE PEOPLE OF THE STATE OF NEW YORK



Signature: _____

Printed Name: Sean Hume

Title: Assistant Director

Office of General Services

Date: 2/3/15

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

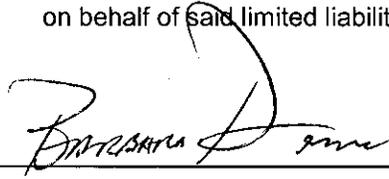
STATE OF _____ }
: Sworn Statement:
COUNTY OF _____ }

On the 30th day of January in the year 2015, before me personally appeared Daniel Wulard, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at 4001 Leadenhall Rd, Mt Laurel NJ 08054

and further that:

[Check One]

- If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.
- If a corporation): he is the Director - Financial Services of Automotive Rentals, Inc, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- If a partnership): he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- If a limited liability company): he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.


Signature of Notary Public

BARBARA A. DEVINE
NOTARY PUBLIC OF NEW JERSEY
ID # 2889737
My Commission Expires 9/24/2019

Notary Public Registration No. _____ State N.J.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

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

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

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

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

the contract, the Department of Civil Service and the State Comptroller.

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

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

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

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

APPENDIX B
GENERAL SPECIFICATIONS

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GENERAL

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

2. DEFINITIONS Terms used herein shall have the following meanings:

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

b. AUTHORIZED USER(S) Authorized User shall have the meaning set forth in New York State Finance Law section 163(1)(k) and includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

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

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

- 1. Agency Specific Contracts** Contracts where the specifications for a Product or a particular scope of work are described and defined to meet the needs of one or more Authorized User(s).
- 2. Centralized Contracts** Single or multiple award Contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency or competitive basis. Once established, procurements may be made from the selected Contractor(s) without further competition or Mini-Bid unless otherwise required by the Bid Specifications or Contract Award Notification.
- 3. Back-Drop Contracts** Multiple award Centralized Contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid

among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

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

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

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

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

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

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

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

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

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

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

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

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

o. LICENSEE(S) One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for

purposes of compliance with an individual license, the term "Licensee(s)" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

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

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

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

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

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

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

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

w. REQUEST FOR PROPOSALS (RFP) A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law, to the responsive and responsible Bidder(s).

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

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

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

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

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

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

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

ee. STATE State of New York.

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

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

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

BID SUBMISSION

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

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

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

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

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

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

- Group Number

- IFB or RFP Number
- Bid Submission date and time”

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

Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

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

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

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

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

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

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license

agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

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

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

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

9. CONFIDENTIAL/TRADE SECRET MATERIALS

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

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

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

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

b. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.

c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS In compliance with Article 8, Section 220 of the New York State Labor Law:

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

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

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

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

d. ARTICLE 9 BUILDING SERVICES CONTRACTS In compliance with Article 9, Section 230 of the New York State Labor Law:

i. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work site while work is being performed.

ii. Overtime Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

11. TAXES

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

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

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

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

13. ADVERTISING RESULTS The prior written approval of the Commissioner is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor

shall also obtain the prior written approval of the Commissioner relative to the Bid or Contract for press or other media releases.

14. PRODUCT REFERENCES

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

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

15. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS

Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the “Warranties” set forth below.

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

16. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS

Bids offering Products that are manufactured or produced in public institutions will be rejected.

17. PRICING

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

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

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

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

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

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

g. Specific price decreases:

(i) **GSA Changes:** Where NYS Net Prices are based on an approved GSA Schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) **Commercial Price List Reductions:** Where NYS Net Prices are based on a discount from Contractor’s list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

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

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

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

h. **Cost Proposal Revisions** A Contractor may be solicited prior to contract award to propose the best possible offer for the Product or service being bid on, in accordance with State Finance Law § 163(9)(c). A cost proposal revision must be a lower price than the initial price.

18. DRAWINGS

a. **Drawings Submitted With Bid** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings

and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

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

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

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

20. PROCUREMENT CARD The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing Purchase Orders or Purchase Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

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

21. SAMPLES

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

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

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

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

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

e. Testing All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.

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

BID EVALUATION

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

23. TIE BIDS In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

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

25. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Where an award is not made within the sixty day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid.

TERMS & CONDITIONS

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

27. PARTICIPATION IN CENTRALIZED CONTRACTS

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

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

c. Voluntary Extension Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the Bid Specifications shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163(3)(a)(iv) of the State Finance Law.

d. Responsibility for Performance Participation in Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a

breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-State Agency Authorized User and Contractor guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the non-State Agency Authorized User's or Contractor's failure to perform in accordance with its obligations under the Contract.

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

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

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

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

29. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within thirty days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a proposal. Failure to agree to any adjustment shall be a dispute under the Disputes clause, provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

30. ESTIMATED / SPECIFIC QUANTITY CONTRACTS

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

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

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

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

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

If, with respect to an Agency Specific Contract let by the Commissioner, a Purchase Order is not received by the Contractor within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, JUNE 2014

the Contractor shall promptly notify in writing the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and without cost to the State, result in the cancellation of such requirement by the OGS Commissioner with a corresponding reduction in the Contract quantity and price.

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

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

35. SHIPPING/RECEIPT OF PRODUCT

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

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

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

36. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by

Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

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

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

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

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

41. REPAIRED OR REPLACED PARTS / COMPONENTS Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties, as set forth in the Warranties Clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components
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meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturers installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

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

43. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, notwithstanding anything in Section 138 of the State Finance Law to the contrary, any approval required thereunder shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the contract.

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

44. SUBCONTRACTORS AND SUPPLIERS The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior OGS Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do business; the Commissioner's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

45. PERFORMANCE / BID BOND The Commissioner reserves the right to require a Bidder or Contractor to furnish, without additional cost, a performance, payment or Bid bond, negotiable

irrevocable letter of credit, or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

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

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

47. TERMINATION

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

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

c. For Violation of Sections 139-j and 139-k of the State Finance Law: The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

d. For Violation of Section 5-a of the New York State Tax Law: The Commissioner reserves the right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

e. For Non-Responsibility: The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

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

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

f. For refusal to testify, sign a waiver of immunity or answer questions

The Commissioner reserves the right in accordance with State Finance Law §139-a, to terminate the contract in the event it is found that a member, partner, director or officer of Contractor refused, when called before a grand jury, head of a state department, temporary state commission or other state agency, or the organized crime task force in the department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor.

48. SAVINGS/FORCE MAJEURE A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any Force Majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the Force Majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the Force Majeure condition continues beyond thirty (30) days, the Parties shall jointly decide on an appropriate course of action that will permit fulfillment of the Parties' objectives hereunder.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor, under the Contract due to a Force Majeure occurrence:

- a. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or
- b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the Force Majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the Force Majeure event.

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

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss. Failure of the Contractor to agree to any adjustment shall be a dispute under the Disputes clause; provided however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

49. CONTRACT INVOICING

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

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

b. **Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment** The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.nv.us, by e-mail at HelpDesk@sfs.nv.gov, or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

50. DEFAULT – AUTHORIZED USER

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

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

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

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

51. PROMPT PAYMENTS

a. **State Agencies** Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by Agency

may be made in accordance with State Finance Law §§179-d et. seq. and the implementing regulations (2 NYCRR §18.1 et seq.).

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

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

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

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

Such purchases may be deducted from the Contract quantity without penalty or liability to the State. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during a period where Contractor is making good faith efforts to cure a material breach.

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should Contractor and the Commissioner fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be a dispute under the Disputes clause.

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

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

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may obtain substitute Product temporarily and the cost of the replacement
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Product shall be deducted from the Contract quantity without penalty or liability to the State.

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

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

54. TOXIC SUBSTANCES Each Contractor furnishing a toxic substance, as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than two copies of a Material Safety Data Sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

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

55. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment.

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

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

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

59. WARRANTIES

a. Product Performance Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users.

In addition, Contractor hereby warrants and represents that the Products acquired by the Authorized User under the terms and conditions of this Contract conform to the manufacturer's specifications, performance standards and documentation, and the

documentation fully describes the proper procedure for using the Products.

Contractor further warrants and represents that Products, components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be free from defects in material and workmanship and will conform with all requirements of the Contract for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period").

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

b. Title and Ownership Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify Authorized Users and hold Authorized Users harmless from any damages and liabilities (including reasonable attorneys' fees and costs) awarded by a court of competent jurisdiction arising from any breach of Contractor's warranties as set forth herein.

c. Product Warranty for Deliverables During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the system requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

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

Where Contractor, ISV or other third-party manufacturer markets any Project Deliverable with a standard commercial warranty which goes beyond the Project warranty or extended warranty period(s), Contractor shall notify the Authorized User and pass through the manufacturer's standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the third-party extended warranty after expiration of the Project warranty and extended warranty period(s).

The Commissioner agrees that Contractor is not responsible for any modification of the Products made by an Authorized User without Contractor's approval.

d. Replacement Parts Warranty If during the regular or extended warranty periods, parts or components break or fail to perform as intended, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period(s) shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

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

e. Virus Warranty The Contractor represents and warrants that any Licensed Software acquired by the Authorized User does not contain any known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

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

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

This Date/Time Warranty shall survive beyond termination or expiration of this contract as long as the Product is used by the governmental entity, or its successor, for whom the Product was originally purchased." Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

g. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards. The Authorized User must notify Contractor of any services warranty deficiencies within ninety calendar days from performance of the services that gave rise to the warranty claim.

h. Miscellaneous The Authorized User shall promptly notify the Contractor and the Commissioner in writing of any claim of breach of any warranty provided herein.

The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

60. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

61. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Commissioner shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

62. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS The Contractor will also defend, indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, JUNE 2014

liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, or by reason of an off-the-shelf component; and b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

At Authorized User's option, Contractor may be given the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

Such indemnity shall only be applicable in the event of claims, judgments, liabilities and/or costs that may be finally assessed against Authorized User in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, judgments, liabilities and/or costs arise solely from the Authorized Users negligent act, failure to act, gross negligence or willful misconduct.

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

In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and seek to secure a continuance to permit the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

63. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Third Party Rights clause, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim (said amount

not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) five hundred thousand dollars (\$500,000), whichever is greater.

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

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

64. DISPUTES

a. Informal Dispute Resolution Process

1. It is the policy of OGS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to OGS bid solicitations, contract awards or contract administration. If the Parties are not able to resolve their dispute between themselves as set forth below, OGS encourages vendors to seek resolution of disputes through consultation with OGS staff. Such consultation is voluntary. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the Dispute Resolution Procedures for Vendors may be obtained by contacting the person identified in the Contract as a designated contact or through the OGS website (www.ogs.ny.gov).

2. In the event there is a dispute or controversy under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

3. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute or controversy, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result.

4. If negotiation between such persons fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section JUNE 2014

shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

5. The Contractor shall extend the dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

b. Formal Disputes

1. Definitions

- a.** Filed means the complete receipt of any document by OGS before its close of business.
- b.** Dispute means a written objection by Contractor to any of the following:
 - i.** A solicitation or other request by OGS for offers for a contract for the procurement of commodities or services.
 - ii.** The cancellation of the solicitation or other request by OGS.
 - iii.** An award or proposed award of the Contract by OGS.
 - iv.** A termination or cancellation of an award of the Contract by OGS.
 - v.** Changes in the Scope of the Centralized Contract by the Commissioner.
 - vi.** Determination of "materiality" in an instance of nonperformance or contractual breach.
 - vii.** An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

2. Submission of Disputes

- a.** A formal dispute by Contractor must be filed in writing to OGS by mail, email or facsimile.

3. The dispute must include:

- a.** Name, address, e-mail address, fax and telephone numbers of the filer.
- b.** Solicitation or Contract number.
- c.** Detailed statement of the legal and factual grounds for the dispute, including a description of resulting prejudice to the filer.
- d.** Copies of relevant documents.
- e.** Request for a ruling by the agency.
- f.** Statement as to the form of relief requested.
- g.** All information establishing that the filer is an interested party for the purpose of filing a dispute.
- h.** All information establishing the timeliness of the dispute.

Disputes must be filed with the Director of OGS New York State Procurement (NYSPRO) at the following address:

New York State Office of General Services

Director, NYSPRO
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 486-6099

Disputes concerning the administration of the Contract after award must be filed within twenty (20) business days by Contractor after the Authorized User and Contractor fails to reach resolution through the Informal Dispute Resolution Process.

4. Agency Response

- 1. OGS will consider all information relevant to the dispute, and may, at its discretion, suspend, modify, or cancel the disputed

procurement/Contract action prior to issuance of a formal dispute decision.

2. OGS reserves the right to require the Contractor to meet or participate in a conference call with OGS to discuss the dispute when, in its sole judgment, circumstances so warrant.

3. OGS reserves the right to waive or extend the time requirements for decisions and final determination on appeals herein prescribed when, in its sole judgment, circumstances so warrant.

4. OGS reserves the right to consider or reject the merits of any dispute.

5. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the dispute.

5. Appeals

a. Should the filer be dissatisfied with the dispute determination, a written appeal may be directed to:

Chief Procurement Officer
New York State Office of General Services
NYSPRO
 38th Floor, Corning Tower
 Empire State Plaza
 Albany, NY 12242
 Facsimile: (518) 486-9166

b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of NYSPRO shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.

c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.

d. An appeal of the decision of the Director of NYSPRO shall not include new facts and information unless requested in writing by the Chief Procurement Officer.

e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

6. **Legal Appeals** Nothing contained in these provisions is intended to limit or impair the rights of Contractor to seek and pursue remedies of law through the judicial process.

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

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

a. **License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or JUNE 2014

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h. Confidentiality Restrictions The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as

authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

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

(i) Copy the Product;

(ii) Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;

(iii) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

66. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware Products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

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

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

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

Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

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

68. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

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

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

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

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the JUNE 2014

Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

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

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

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

c. Transfers or Assignments to a Third Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchase(s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required

by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS) The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this clause.

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

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

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

71. CHANGES TO PRODUCT OR SERVICE OFFERINGS

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

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under JUNE 2014

the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

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

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

72. NO HARDSTOP/PASSIVE LICENSE MONITORING

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

73. SOURCE CODE ESCROW FOR LICENSED PRODUCT

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

updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause.

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

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Appendix C:

Fleet Maintenance Services Documents

Number 1: *Contractor and Pricing Information*

Number 2: *Insurance Requirements*

Number 3: *Report of Contract Usage*

Number 4: *Data Export Requirements*

Number 5: *Contract Modification Procedure*

Number 6: *Staffing Plan for Contract*

Appendix C: Number 1: Contractor and Pricing Information

Note: For the most recently updated version of this Appendix, please see the “Contractor Info” page located on the OGS website at: <http://www.ogs.ny.gov/purchase/spg/awards/7200222752can.HTM>

Contract #	Contractor & Address	Centralized Contract Contact	Federal ID NYS Vendor ID
PS66689	Automotive Rentals Inc. 4001 Leadenhall Road Mount Laurel, NJ 08054	Timothy Weick 4001 Leadenhall Road Mount Laurel, NJ 08054 (856) 439-7469 tweick@arifleet.com	Federal ID 21-0622527 NYS Vendor ID 1000008693
Questions for NYS contract users: 1-877-FLEET (1-877-353-3874) Emergency Services (24/7/365): 1-800-CAR-CARE (1-800-227-2273) Email: ImplementNY@arifleet.com			

ADDITIONAL CONTACT (Expedited Ordering)

Name: Leah Haas Title: Client Administrator Phone: (856) 778-1500 Fax: (856) 533-9084 Email: lhaas@arifleet.com

Payment/Ordering Information

Does Contractor offer Prompt Payment Discounts?	No. ARI currently offers the State a pricing structure that reflects 15 day pricing while still providing 30 day payment terms.
Does Contractor offer Electronic Access Ordering (EDI)?	Yes

Contract Pricing

Fleet Maintenance Service (Monthly Enrollment Plans)*	Administrative Fee
Monthly Enrollment Plan (Light Duty Vehicles) [Vehicles with a GVWR less than or equal to 16,000 lbs. (i.e., Class 1 through Class 4 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section II.2 <i>Monthly Enrollment Plans</i>]	\$5.15 (per vehicle, per month)
Monthly Enrollment Plan (Medium to Heavy Duty Vehicles) [Vehicles with a GVWR equal to or greater than 16,001 lbs. (i.e., Class 5 through Class 8 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section II.2 <i>Monthly Enrollment Plans</i>]	\$19.25 (per vehicle, per month)

*See Contract Section II.2 *Monthly Enrollment Plans*, Paragraph Q, for the terms of retention bonuses offered for previous and continued enrollment in a *Monthly Enrollment Plan*.

Fleet Maintenance Service (Per Occurrence)	Administrative Fee
Maintenance and Repair Service (Light Duty Vehicles) [Vehicles with a GVWR less than or equal to 16,000 lbs. (i.e., Class 1 through Class 4 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section II.3 <i>Per Occurrence Plans</i> , Paragraph A <i>Maintenance and Repair Service</i>]	\$18.00 (per vehicle, per incident)
Maintenance and Repair Service (Medium to Heavy Duty Vehicles) [Vehicles with a GVWR equal to or greater than 16,001 lbs. (i.e., Class 5 through Class 8 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section II.3 <i>Per Occurrence Plans</i> , Paragraph A <i>Maintenance and Repair Service</i>]	\$25.00 (per vehicle, per incident)
Accident Management (All-In) [See Contract Section II.3 <i>Per Occurrence Plans</i> , Paragraph B <i>Accident Management</i> , Subparagraph 1 <i>All-In</i>]	\$225.00 (per vehicle, per incident)
Accident Management (Documentation Only) [See Contract Section II.3 <i>Per Occurrence Plans</i> , Paragraph B <i>Accident Management</i> , Subparagraph 2 <i>Documentation Only</i>]	\$100.00 (per vehicle, per incident)
Accident Management (Repair Estimates Only) [See Contract Section II.3 <i>Per Occurrence Plans</i> , Paragraph B <i>Accident Management</i> , Subparagraph 3 <i>Repair Estimates Only</i>]	\$125.00 (per vehicle, per incident)
Accident Management (Appraisal Only) [See Contract Section II.3 <i>Per Occurrence Plans</i> , Paragraph B <i>Accident Management</i> , Subparagraph 4 <i>Appraisal Only</i>]	\$125.00 (per vehicle, per incident)
Accident Management (Subrogation Only) [See Contract Section II.3 <i>Per Occurrence Plans</i> , Paragraph B <i>Accident Management</i> , Subparagraph 5 <i>Subrogation Only</i>]	\$105.00 (per vehicle, per incident)
Accident Management (Subrogation Only) [See Contract Section II.3 <i>Per Occurrence Plans</i> , Paragraph B <i>Accident Management</i> , Subparagraph 5 <i>Subrogation Only</i>]	15% of the dollar amount recovered
Roadside Assistance (Light Duty Vehicles) [Vehicles with a GVWR less than or equal to 16,000 lbs. (i.e., Class 1 through Class 4 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section II.3 <i>Per Occurrence Plans</i> , Paragraph C <i>Roadside Assistance</i>]	\$30.00 (per vehicle, per incident)
Roadside Assistance (Medium to Heavy Duty Vehicles) [Vehicles with a GVWR equal to or greater than 16,001 lbs. (i.e., Class 5 through Class 8 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section II.3 <i>Per Occurrence Plans</i> , Paragraph C <i>Roadside Assistance</i>]	\$50.00 (per vehicle, per incident)
Towing (Light Duty Vehicles) [Vehicles with a GVWR less than or equal to 16,000 lbs. (i.e., Class 1 through Class 4 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section II.3 <i>Per Occurrence Plan</i> , Paragraph D <i>Towing</i>]	\$30.00 (per vehicle, per incident)
Towing (Medium to Heavy Duty Vehicles) [Vehicles with a GVWR equal to or greater than 16,001 lbs. (i.e., Class 5 through Class 8 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section II.3 <i>Per Occurrence Plans</i> , Paragraph D <i>Towing</i>]	\$50.00 (per vehicle, per incident)

Fleet Maintenance Service (Other Products/Services)	Pricing
<p>Automotive Repair Shop Pricing and Discounts [For additional information, see Contract Section II.1 <i>Automotive Repair Shops</i>, Paragraph E4, and II.11 <i>Additional Fleet Maintenance Services</i>, Paragraph A]. Automotive Repair Shop rebates, discounts or rewards that are listed in the “Automotive Repair Shop Discounts” section below shall be applied to Authorized User costs. At the written request of NYSPRO or an Authorized User, the Contractor shall provide, for no additional fee, a list of pricing that National Account Vendors (i.e., Goodyear®, Firestone®, Pep Boys, Jiffy Lube®, and others, if available) would ordinarily charge the public at large (e.g., “posted prices” to any customer walking in off the street), and pricing they charge for the same products and services if provided as part of the State Contract.</p>	See “Automotive Repair Shop Discounts” section below
<p>Integration of Other New York State Contract Pricing [For additional information, see Contract Section II.11 <i>Additional Fleet Maintenance Services</i>, Paragraph B]. The Contractor shall have the ability for Authorized Users to receive contract pricing and benefits for Vehicle parts and services from other contracts held by OGS or Authorized Users, without the need for separate transactions, Purchase Orders, invoices, etc. At the written request of NYSPRO or an Authorized User, the Contractor shall endeavor to provide integration of third-party OGS or Authorized User contracts with this Contract. Upon mutual agreement with the third-party contractor, the Contractor must honor the specific pricing from other NYS contracts and list the pricing/discount on the Fleet Maintenance Services Contract invoices. This service shall be provided for no additional fee. The State currently has the following contracts for Vehicle parts and services integrated with this Contract:</p> <ol style="list-style-type: none"> OGS Group 30310, Award 22523, Automotive Parts and Supplies – Filters, (United Auto Supply of Syracuse West Inc. and Uni-Select USA Inc.), http://www.ogs.ny.gov/purchase/spg/awards/3031022523CAN.HTM; 	\$0.00
<p>Fuel Card Services Integration (OGS Contract) [For additional information, see Contract Section II.11 <i>Additional Fleet Maintenance Services</i>, Paragraph C <i>Fuel Card Services Integration</i>, Subparagraph 1 <i>OGS Contract</i>] Integration with the OGS Statewide fuel card services program (Group 79008, Award 22445, Fuel Card Services (WEX), http://www.ogs.ny.gov/purchase/snt/awardnotes/7900822445can.HTM). The cost of this service will be included in the Monthly Enrollment Plans fee</p>	\$0.50 (per vehicle, per month)
<p>Fuel Card Services Integration (Authorized User Contracts) [For additional information, see Contract Section II.11 <i>Additional Fleet Maintenance Services</i>, Paragraph C <i>Fuel Card Services Integration</i>, Subparagraph 2 <i>Authorized User Contracts</i>]</p>	Fee to be negotiated with Authorized User
<p>Telematics System (ARI/GeoTab Solution) [For additional information, see Contract Section II.11 <i>Additional Fleet Maintenance Services</i>, Paragraph D <i>Telematics</i>]. This all-in-one package includes data integration into ARI insights for alerts and reporting, consolidated contracts and billing, the expertise of the Technology Advisory Team, and first-level support and installation of GeoTab telematics devices. See http://www.geotab.com/ for information about GeoTab. <i>*Note: Average installation typically ranges from \$35 to \$85 per vehicle. A consolidation of vehicles to a designated installation location typically results in lower installation and travel costs per vehicle. Authorized User is required to enter into an End User Agreement with GeoTab prior to initiation of services (https://my.geotab.com/eula.html) OGS has not reviewed or approved this End User Agreement with GeoTab. An Authorized User seeking to acquire this offering must review the End User Agreement terms and conditions. An Authorized User is further responsible for having its counsel review and approve the End User Agreement prior to ordering. If any terms and/or conditions of the End User Agreement are not acceptable to Authorized User’s counsel, it is the responsibility of such counsel to negotiate any needed amendments.</i></p>	\$50 for hardware; \$25 per vehicle, per month for service. Additional cost* for hardware installation.

<p>Telematics/GPS Data Capture [For additional information,see Contract Section II.11 <i>Additional Fleet Maintenance Services</i>, Paragraph E <i>Telematics/GPS Data Capture</i>] The Contractor, at the written request of an Authorized User, shall provide integration of telematics/GPS data for individual Authorized User accounts. Integration shall be provided for individual Authorized User contracts. Authorized User telematics/GPS data shall be provided to the Contractor via either the Authorized User or directly from the telematics/GPS provider.</p>	<p>Fee to be negotiated with Authorized User</p>
<p>Internal Shop Data Storage [For additional information,see Contract Section II.11 <i>Additional Fleet Maintenance Services</i>, Paragraph F <i>Internal Shop Data Storage</i>] At the written request of an Authorized User, the Contractor shall designate the Authorized User-owned maintenance and repair facility(ies) as an Automotive Repair Shop for use with the Contract, so that Authorized Users may utilize data storage services for these facilities in conjunction with the Contract. Contractor shall provide Authorized Users who utilize this service with data capture or record keeping of Vehicle maintenance and repairs provided at these Authorized User-owned maintenance and repair facilities, with data entered by the Authorized User. There may be a monthly rate per Vehicle enrolled for this service, or the Contractor may allow an Authorized User to enter repair/service history and other Vehicle data for no additional fee for this data tracking. Participation in this program by Authorized Users shall be voluntary, and these Vehicles shall not participate in the Preventive Maintenance program offered by the Contractor. This service shall be identified on the Authorized User’s monthly invoice as “Data Storage Service.” Participating Authorized Users with Authorized User-owned maintenance and repair facilities will manage their own parts inventory, mechanic productivity, overhead, etc.</p>	<p>Fee to be negotiated with Authorized User</p>
<p>Internal Shop Management System (ARI Garage Management System) [For additional information,see Contract Section II.11 <i>Additional Fleet Maintenance Services</i>, Paragraph G <i>Internal Shop Management System</i>]. All-inclusive management solution for fleets that utilize outside vendors and operate internal maintenance facilities. ARI’s Garage Management System (GMS) helps manage technicians, vehicle preventive maintenance (PM) schedules, and unscheduled repairs and parts inventories – while simultaneously consolidating all vendor-in/vendor-out data.</p>	<p>\$400 (per garage, per month)</p>
<p>Driver Training Services [For additional information,see Contract Section II.11 <i>Additional Fleet Maintenance Services</i>, Paragraph H <i>Driver Training Services</i>]</p>	<p>\$6 (per module; see “Driver Training Services” section below)</p>
<p>Driver Safety Programs [For additional information,see Contract Section II.11 <i>Additional Fleet Maintenance Services</i>, Paragraph I <i>Driver Safety Programs</i>] ARI offers a full menu of safety services designed to help the State improve driver performance, lower accident rates, and streamline administrative efforts and costs. These services are available separately, or they can be combined to offer a more comprehensive program. Safety services include:</p> <ul style="list-style-type: none"> • Motor Vehicle Records (MVRs). • Skills Assessment • Safety Policy Testing <p>*Note: Additional vendor administration and NYS pass-through fees apply to MVRs.</p>	<p>Motor Vehicle Records (MVRs) \$7* (per occurrence) Skills Assessment \$15 (per occurrence) Safety Policy Testing \$2,000 (one-time fee), plus \$6 (per exam)</p>

Automotive Repair Shop Pricing and Discounts

The following Automotive Repair Shop rebates, discounts or rewards that shall be applied to Authorized User costs. Discounted services range from 10 to 20 percent off normal retail prices.

2015 National Account Pricing for Common Services					
Service	Goodyear	Firestone	Michelin	Jiffy Lube	AVG
Tire Rotation (Lt Duty, Car)	\$14.00	\$14.00	\$16.00	N/A	\$14.67
Wheel Balance - each	\$10.95	\$9.50	\$12.00	N/A	\$10.82
Flat Tire Repair	\$14.00	\$12.99	\$14.00	N/A	\$13.66
Valve Stem	\$3.00	\$3.00	\$3.50	N/A	\$3.17
Transmission service (Pan Drop)	\$79.70	\$80.00	\$120.00	N/A	\$93.23
Transmission service (Flush)	\$119.95	\$139.99	\$140.00	N/A	\$133.31
Alignment (4 wheel)	\$74.95	\$69.99	\$75.00	N/A	\$73.31
Alignment Check	\$29.00	\$21.99	\$29.00	N/A	\$26.66
Front Disc Brakes (pads)	\$149.95	\$159.95	\$150.00	N/A	\$153.30
Rear Disc Brakes (pads)	\$162.30	\$169.99	\$170.00	N/A	\$167.43
Rear Drum Brakes	\$135.95	\$139.99	\$140.00	N/A	\$138.65
Wheel Bearing Grease (repack)	\$32.50	\$68.99	NL	N/A	\$50.75
Wiper Blade Installed (each)	\$18.00	\$18.99	\$12.50	N/A	\$16.50
Labor Rates					
Zone 1	\$78.00	\$74.00	\$92.00	N/A	\$81.33
Zone 2	\$80.00	\$77.00		N/A	\$78.50
Zone 3	\$85.00	\$82.00		N/A	\$83.50
Metro	\$89.00	\$83.00	\$100.00	N/A	\$90.67
Major Metro	\$91.00	\$89.00	\$105.00	N/A	\$95.00
Avg	\$84.60	\$81.00	\$99.00	N/A	\$88.20
Engine Diagnostic	FLR	\$89.99	\$99.99	N/A	\$94.99
Brake Inspection	\$24.00	\$14.99	\$25.00	N/A	\$21.33
Cooling System Test	\$89.95	\$69.99	\$90.00	N/A	\$83.31
Charging System Test	\$24.99	\$25.99	\$25.00	N/A	\$25.33
AC Performance Check	\$39.95	\$45.99	\$45.00	N/A	\$43.65

5Qt Service	Goodyear	Firestone	Michelin	Jiffy Lube	AVG
Lube, Oil Filter / Conventional Oil	\$27.95	\$27.99	\$27.00	\$34.99	\$29.48
Lube, Oil Filter / Syn Blend				\$49.99	\$49.99
Lube, Oil Filter / Synthetic	\$44.95	\$42.99	\$59.00	\$64.99	\$52.98
Motor Oil / Conv or Syn Blend / Qt	\$3.50	\$3.10	\$3.50	NL	\$3.30
Motor Oil Full Syn / Qt	\$7.00	\$6.10	\$8.50	NL	\$6.55

NL-Not Listed

FLR - Flat Labor Rate

** pricing is based on estimates only and can vary by vehicle application

Driver Training Services

The following online driver training modules are offered under the contract:

Aggressive Driving	Intersections and Right-of-Way
Alcohol, Drugs and Driving	Limited Visibility Conditions
Avoiding Animals and Debris	Parking Lot Safety
Avoiding Auto Theft	Proactive Driving
Avoiding Crashes	Sharing the Road with Others
Cell Phone & Texting Distractions	Speed Management
Changing Lanes	Towing and Trailers
Driving and Adverse Weather	Understanding Distracted Driving
Drowsy Driving Causes & Countermeasures	Understanding Drowsy Driving
Eco Driving Techniques	Understanding Eco Driving
Emotions and Driving	Vehicle Backing Safety
Highway Driving	Vehicle Maintenance
Safety Devices	Cargo Van Safety
Low Speed Vehicle Safety	Passenger/Shuttle Van Safety

Once a training module is completed by a driver, the driver will receive a certificate of completion.

Appendix C: Number 2: *Insurance Requirements*

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

The Contractor shall deliver to OGS evidence of such policies in a form acceptable to OGS. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under this Contract.

General Conditions

A. Conditions Applicable to Insurance. All policies of insurance required by this Contract must meet the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Paragraph B *Insurance Requirements* below.
2. **Policy Forms.** Except as may be otherwise specifically provided herein or agreed to in writing by OGS, policies must be written on an occurrence basis.
3. **Certificates of Insurance/Notices.** Contractor shall provide a Certificate or Certificates of Insurance and all required endorsements, in a form satisfactory to OGS, upon tentative award and within three (3) business days of request. Certificates shall reference the Contract Number. **ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME:** The New York State Office of General Services, NYSPRO, 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder). Certificates shall be submitted to the New York State Office of General Services, NYSPRO, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment, in which case, notice shall be provided as required by law to OGS, Attention: NYSPRO, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply OGS updated replacement Certificates of Insurance and amendatory endorsements.

Certificates of Insurance shall:

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

Only original documents or electronic forms that can be directly traced back to the insurance carrier, agent or broker via e-mail distribution (Certificates of Insurance and other attachments) will be accepted.

4. **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from the Contractor’s work under this Contract, or as a result of the

Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Contractor's insurance.

5. **Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the State than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph A.3. *Certificates of Insurance/Notices* above. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OGS or Authorized Users may withhold further payments due under this Contract, treat such failure as a material breach or default of this Contract. In the event of such a material breach, the Contractor shall be subject to liability for damages, indemnification and all other legal remedies available to OGS. The Contractor's failure to obtain and/or keep in effect any and all required insurance shall also provide the basis for OGS' immediate termination of this Contract, subject only to a five (5) business day cure period. Any termination by OGS or any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by this Contract or not providing proof of same in a form acceptable to OGS, shall in no event constitute or be deemed a breach of this Contract and no liability shall be incurred by or arise against OGS or any authorized user, their agents and employees therefore for lost profits or any other damages.
6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self insured retention on each policy. Deductibles or self-insured retentions above \$350,000 are subject to approval from OGS. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
7. **Subcontractors.** During the term of this Contract, should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of this Contract the insurance requirements of this document on the Subcontractor, as applicable. Proof thereof shall be supplied to OGS.

The General Liability and Comprehensive Business Automobile Liability insurance requirements under this Contract shall be endorsed to name The People of the State of New York, its officers, agents, and employees and the New York State Office of General Services as additional insureds hereunder. The Additional Insured Endorsements shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or the equivalent. Such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term. Additional Insured Endorsements shall be provided upon tentative award and within three (3) days of request to OGS, NYSPRO, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242. The additional insured requirement does not apply to Workers' Compensation, Disability or Professional Liability coverage.

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

1. **Commercial General Liability Insurance (CGL)** covering the liability of the Contractor for bodily injury, property damage and personal/advertising injury from all work and operations under this Contract. The limits under such policy shall not be less than the following:
 - Each Occurrence limit-\$2,000,000.00
 - General Aggregate-\$2,000,000.00
 - Products/Completed Operations-\$2,000,000.00
 - Personal Advertising Injury-\$1,000,000.00
 - Damage to Rented Premises-\$50,000.00
 - Medical Expense-\$5,000.00

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

- premises liability;
- independent contractors;
- blanket contractual liability, including tort liability of another assumed in a contract;
- defense and/or indemnification obligations, including obligations assumed under this solicitation or any contract resulting from this solicitation;
- cross liability for additional insureds;
- products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by this Contract;
- explosion, collapse, and underground hazards; and
- contractor means and methods.

The following ISO forms must be endorsed to the policy:

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

2. **Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile in connection with the work required under this Contract, including owned, leased, hired and non owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least **\$2,000,000.00** each accident and shall name the People of the State of New York, its officers, agents, and employees and the New York State Office of General Services as additional insureds. The limits may be provided through a combination of primary and umbrella liability policies. If this Contract involves the removal of hazardous waste from the project site or otherwise transporting hazardous materials, pollution liability coverage for covered autos shall be provided by form CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached.

Waiver of Subrogation. For the coverages required above, the Contractor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or subrogation against the People of the State of New York, its officers, agents, and employees, the New York State Office of General Services and any authorized user of the Contract. Waiver of Subrogation Endorsements shall be provided upon tentative award and within three (3) days of request to OGS, NYSPRO, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242..

3. Workers' Compensation Insurance and Disability Benefits Requirements

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

Proof of Compliance with Workers' Compensation Coverage Requirements:

An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law, pertaining to workers' compensation coverage, Contractor shall:

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

A contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to OGS **at the time of bid submission**:

- A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the New York State Workers' Compensation Board's website (www.wcb.ny.gov); (Reference applicable solicitation and Group #s on the form.)
- B) Certificate of Workers' Compensation Insurance:
 - 1) Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to OGS, or
 - 2) Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to OGS.
- C) Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
- D) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

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

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

A contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to OGS **at the time of bid submission**:

- A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the New York State Workers' Compensation Board's website (www.wcb.ny.gov); (Reference applicable solicitation and Group #s on the form.)
- B) Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to OGS; or
- C) Form DB-155, Certificate of Disability Benefits Self-Insurance. The contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

Appendix C: Number 3: *REPORT OF CONTRACT USAGE*

Enter Contractor information below.

Contract Group & Award Number:	Group 72002, Award 22752
Contract Number:	
Contract Sales Period:	
Contractor Company Name:	
Contact Name:	
Contact E-Mail:	
Contact Phone Number:	

The Contractor shall furnish a report of all Fleet Maintenance Services provided under the Contract during each quarterly period, no later than fifteen (15) days following the close of the quarterly period. Quarterly periods will end on March 31st, June 30th, September 30th and December 31st. Purchases by all Authorized Users under the Contract shall be reported in the same report and be indicated as required. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided, in Microsoft Excel 2003, or newer (or as otherwise directed by OGS), to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the OGS group number, award number, Contract Number, sales period, and Contractor's (or other authorized agent) name, and all other fields required. OGS reserves the right to amend the report template during the Contract term.

Tabs included in this workbook:

Tab
Contractor Information
FMS Management Fees
FMS Service Summary

Appendix C: Number 4: DATA EXPORT REQUIREMENTS

Upon Contract Award, data for all Authorized Users of the Contract shall be exported to OGS, as directed by OGS Fleet Management. See RFP Section II.7 *Data Import and Export*, Paragraph D. At the written request of OGS or an Authorized User, the Contractor shall export Authorized User data as described in Section II.6 *Reporting*, Paragraph B, *Authorized User Data Export*. At a minimum, the Contractor shall have the ability to provide the data inputs identified below as “Mandatory.” OGS reserves the right to require data collected from Authorized User-owned Automotive Repair Shops, if the Internal Shop Management service is utilized by the Authorized User. Data fields exported to OGS, and a timeframe for implementation shall be mutually agreed upon by OGS and the Contractor upon an Authorized User’s utilization of the Internal Shop Management System. **Note: The Contractor shall not be held responsible for providing data that the Authorized User, or third party, if applicable, has not made available to the Contractor. Character lengths listed are considered minimum unless “character length may vary” is stated in the “Description/Comments” column.**

Field Name	Field Type	Character Length	Example Data	Description / Comments	Mandatory
Start File Indicator					
Record Type	Varchar	1	N/A	Contractor-specified; code that indicates start of file	Yes
File Date	Varchar	8	03302015	File run date (date file created); MMDDYYYY format	Yes
Client Name	Varchar	20	N/A	Contractor-specified; use to pull in all records tied to the contract (e.g., State of New York or contract number); character length may vary	Yes
Inventory Header					
Record Type	Varchar	1	N/A	Contractor-specified; code that indicates change in inventory record	Yes
Acct Num	Varchar	4	N/A	Contractor-specified; account number for Authorized User (Agency); character length may vary	Yes
VIN	Varchar	17	1FTRX14W67FB58955	Vehicle Identification Number	Yes
Contract User Type	Varchar	1	1	Identifies whether account holder is a NYS Agency or other Authorized User (non-NYS Agency); (i.e., "1" for State Agency, "2" for Other).	Yes
Account Services for Vehicle	Varchar	1	M	Contractor-specified; code that indicates the Fleet Maintenance Service(s) a Vehicle is currently enrolled in; character length may vary. <i>Note: This will require multiple fields if the Vehicle is enrolled in more than one program. Also, enrollment may change over the life of the contract.</i>	Yes
Vehicle Number	Varchar	6	074107	Authorized User-specified Vehicle identification code	Yes
Model Year	Varchar	4	2013	Vehicle model year	Yes
Make	Varchar	20	Ford	Vehicle make name; character length may vary	Yes
Model	Varchar	20	Escort	Vehicle model name; character length may vary	Yes
PO Header					
Record Type	Varchar	1	N/A	Contractor-specified; code used to manage transaction	Yes
Acct Num	Varchar	4	N/A	Contractor-specified; account number for individual customer/driver; character length may vary	Yes
Unit Code	Varchar	6	AB1234	Authorized User-specified Vehicle identification code	Yes
PO Number	Varchar	10	N/A	Contractor-specified; purchase order number for the transaction; character length may vary	Yes
PO Date	Varchar	8	03022015	Date that the purchase order was issued; MMDDYYYY format	Yes
PO Total	Explicit Number (pad right blanks)	9	243.50	Total dollar amount cost of transaction that appears on purchase order	Yes
Vendor Code	Varchar	10	N/A	Contractor-specified Automotive Repair Shop identification code; character length may vary	Yes
Vendor Name	Varchar	40	John Smith Auto Repair	Automotive Repair Shop name; character length may vary.	Yes
Vendor Address	Varchar	81	125 Example St	Automotive Repair Shop address (e.g., physical address, mailing address or corporate/national account address); character length may vary. <i>Note: It is not mandatory that address related data (i.e., Street Address, City, State, and Zip Code) be provided in separate fields, but it is preferred.</i>	Yes
Vendor City	Varchar	30	Albany	Automotive Repair Shop city; character length may vary	Yes
Vendor State	Varchar	2	NY	Automotive Repair Shop state	Yes
Vendor Zip	Varchar	5	12204	Automotive Repair Shop ZIP code	Yes
Primary Tax ID	Varchar	9	452793768	Automotive Repair Shop FEIN (Federal Employer Identification Number)	Yes
Client Authorization	Varchar	25	Prior approval required for repairs over \$500	Information on NYS authorizations required by the Authorized User for Vehicle maintenance and repair costs before work may begin (e.g., designated dollar amount that requires prior approval); character length may vary	No
Bill Paid Date	Varchar	8	03302015	Date that Automotive Repair Shop Invoice was paid by the Contractor; MMDDYYYY format	No
Event ID	Varchar	20	AB12345	Identification code used to link a maintenance record to a related accident record; character length may vary	Yes
Odometer	Explicit Number (pad right blanks)	10	20500	The number indicated on the odometer of a Vehicle, rounded to the nearest mile, at the start of service by an Automotive Repair Shop; character length may vary.	Yes
PO Detail					
Record Type	Varchar	1	N/A	Contractor-specified; code that indicates line item details record for the transaction that appears on the purchase order	Yes
PO Number	Varchar	10	N/A	Contractor-specified; purchase order number for the transaction; character length may vary	Yes
Purchase Type	Varchar	5	Part	Type of purchase (e.g., Part or Labor)	Yes
Maintenance Type	Varchar	20	Maintenance Repair	Type of service provided to the Authorized User (e.g., Maintenance Repair, Preventive Maintenance); character length may vary	No
Charge Code	Varchar	6	N/A	Contractor-specified; code for each charge that appears on the purchase order; character length may vary	Yes
Charge Code Description	Varchar	100	N/A	Contractor-specified; description of the charge code; character length may vary	Yes
Repair Code	Varchar	10	13002012	Standard ATA or VMRS code used by Automotive Repair Shop for the maintenance or repair performed on the Vehicle (see below for a list of VMRS codes currently used by the State).	Yes
Repair Code Description	Varchar	100	Rear Brake, Shoe & Lining Assembly	ATA-specified description of the VMRS code	Yes
Charge Amount	Explicit Number (pad right blanks)	9	286.50	Total dollar amount cost of the line item detailed	Yes
Unit Price	Explicit Number (pad right blanks)	9	143.25	Unit price of the part or service purchased	Yes
Quantity Purchased	Explicit Number (pad right blanks)	9	2	Quantity of the part or service purchased	Yes
Repair Date	Varchar	8	03032015	Date that maintenance or repair service was completed; MMDDYYYY format	Yes
PO Line Item Description	Varchar	100	SN-95 13" Front Replacement Rotor Ring Set	Description of the part or service purchased; character length may vary	Yes
Correction	Varchar	25	Replace	Correction to record, if applicable (e.g., Replace, Repair, Inspect, Preventative Maint., Diagnose, Towing, Adjust); character length may vary	No
Cause	Varchar	30	Maintenance	Cause of issue (e.g., Does not operate properly, maintenance, worn, road service); character length may vary	Yes
In/Out of Network	Varchar	15	N/A	Contractor-specified; code that indicates if service was performed at an in or out of network Automotive Repair Shop, if applicable; character length may vary	Yes
Warranty	Varchar	3	No	Indicates if service performed was a warranty service (i.e., Yes or No).	Yes
Post Warranty	Varchar	3	No	Indicates if the service performed was determined to be done under warranty later (i.e., Yes or No).	Yes
Accident					
Record Type	Varchar	1	N/A	Contractor-specified; code that indicates an accident record	Yes
Account Number	Varchar	4	N/A	Contractor-specified; account number for Authorized User (Agency); character length may vary	Yes
Customer Vehicle ID	Varchar	6	AB1234	Authorized User-specified Vehicle identification code	Yes
VIN	Varchar	17	1FTRX14W67FB58955	Vehicle Identification Number of the Authorized User Vehicle involved in the accident	Yes

GROUP 72002-22752 – Fleet Maintenance Services (Statewide)

Field Name	Field Type	Character Length	Example Data	Description / Comments	Mandatory
Claim Number	Varchar	10	N/A	Contractor-specified; accident claim number; character length may vary	No
Accident Type ID	Varchar	3	N/A	Contractor-specified; accident type identification code; character length may vary	No
Close Date	Varchar	8	04012015	Date that accident repair was completed; MMDDYYYY format	Yes
Accident Date Time	Varchar	14	03022015-12:15	Date and time that the accident occurred; MMDDYYYY-HH:MM format	Yes
Driver First Name	Varchar	25	Robert	Authorized User Vehicle operator first name	Yes
Driver Last Name	Varchar	25	Smith	Authorized User Vehicle operator last name	Yes
Accident Location Street Intersection	Varchar	50	Main Street at Example Avenue	Information that identifies where the accident occurred (e.g., street address and/or intersection); character length may vary	Yes
Accident Location City	Varchar	25	Albany	City where accident occurred; character length may vary	Yes
Accident Location State	Varchar	2	NY	State where accident occurred	No
Accident Type	Varchar	45	N/A	Contractor-specified; description of Accident Type ID (Row 61); character length may vary	Yes
Accident Type Description	Varchar	1000	Driver states that another vehicle hit their car on the driver side while they were parked on Main Street.	Narrative description of the accident that occurred; character length may vary	Yes
Damage Description	Varchar	25	Driver front side	Location of damage to the Authorized User Vehicle; character length may vary	Yes
Supplemental Damages	Varchar	25	Mirror	Part(s) damaged (e.g., mirror, bumper, fender, door,whole side); character length may vary	Yes
Estimate	Explicit Number (pad right blanks)	9	453.00	Estimated dollar value of the cost of Vehicle repair	Yes
Third Party First Name	Varchar	25	John	First name of the third party involved in the accident; character length may vary	Yes
Third Party Last Name	Varchar	25	Example	Last name of the third party involved in the accident; character length may vary	Yes
Third Party Owner	Varchar	25	John Example	Individual or company name of the owner of the third party Vehicle involved in the accident; character length may vary	Yes
Third Party Year	Varchar	4	2011	Model year of the third party Vehicle involved in the accident	Yes
Third Party Make	Varchar	25	Chevrolet	Make of the third party Vehicle involved in the accident; character length may vary	Yes
Third Party Model	Varchar	25	Silverado	Model name of the third party Vehicle involved in the accident; character length may vary	Yes
Third Party Insurance	Varchar	30	XYZ Insurance Company	Insurance company name of third party involved in the accident; character length may vary	Yes
Third Party Policy Number	Varchar	20	67849ABC65749	Insurance policy number of third party involved in the accident; character length may vary	Yes
Third Party Vehicle Plate	Varchar	10	ABC789	Licence plate number of third party Vehicle involved in the accident; character length may vary	Yes
Third Party Vehicle State	Varchar	2	PA	State where the third party Vehicle is registered	Yes
Event ID	Varchar	20	N/A	Contractor-specified; identification code that links to the purchase order for Vehicle repairs that result from the accident; character length may vary. <i>Note: This may link to more than one purchase order.</i>	Yes
Odometer	Explicit Number (pad right blanks)	10	150000	The number indicated on the odometer of the Authorized User Vehicle, rounded to the nearest mile, at the time of the accident	Yes
File Trailer					
Record Type	Varchar	1	N/A	Contractor-specified; code that indicates end of file	Yes
Total Detail Records	Varchar	5	100	Total number of purchase order detail records included in the file	Yes
Total Amount	Explicit Number (pad right blanks)	9	5000.70	Total actual dollar amount cost for all purchase order detail records included in the file.	Yes

VMRS Codes	
The VMRS codes listed below are currently used by OGS to update Vehicle records with the date and service type for all preventive maintenance and inspection related transactions.	
1. Service related codes:	
1E001006	Lube,Oil, Filter
1E001002	Oil,Engine
1E001007	Oil Disposal Fee
1E001003	Grease,Chassis
1E001012	PM check (no oil and filter change)
1E001001	Additive,Engine Oil
1E001005	Kit, Oil Analysis
1E001015	Filter Disposal Fee
1E010001	Wheel Chair lift preventive maintenance
2. Inspection related codes:	
1G001009	State inspection
1G001001	DOT
90001016	IN-SERVICE INSPECTION
1G001024	INSPECTION, AIR SUPPLY TO RAIL CAR-FRA REGULATED
1E001008	"A" INSPECTION
1E001009	"B" INSPECTION
1E001010	"C" INSPECTION
1E001011	"D" INSPECTION

Appendix C: Number 5: *Contract Modification Procedure*

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

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



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

CONTRACT MODIFICATION FORM	
DATE OF THIS SUBMISSION:	DATE DOCUMENTATION EMAILED:
CONTRACTOR NAME: _____ OGS GROUP #: _____ OGS AWARD #: _____ OGS CONTRACT #: _____	CONTRACTOR CONTACT: Name: _____ Phone #: _____ Email: _____
NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).	

INSTRUCTIONS:

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

COMPLETE STATEMENTS 1 THROUGH 5 BELOW:

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

Appendix C: Number 6: *Staffing Plan for Contract*



4001 Leadenhall Road, Mount Laurel, NJ 08054
P 856-778-1500 / F 856-778-6200 / arifleet.com

August 7, 2014

Wendy Reitzel
The State of New York
RFP# 22752 – Fleet Maintenance Services
Office of General Services
Corning Tower – 38th Floor
Albany, NY 12242

Dear Wendy,

On behalf of everyone here at ARI, thank you for the opportunity to respond to the State's RFP for Fleet Maintenance Services – RFP#22752. We welcome this opportunity to continue our long-standing partnership with the State and its agencies. Please let this statement serve as verification of the enclosed information in regards to ARI's staffing plan for the State.

Enclosed please find job descriptions and minimum qualifications for each of the below positions:

- District Sales Manager (18 individuals currently hold this position)
- Account Development Representative (22 individuals currently hold this position)
- Client Administrator (64 individuals currently hold this position)
- Truck Account Administrator (30 individuals currently hold this position)
- New Business Development Representative (1 individual currently holds this position)
- ASE Certified Technicians (323 individuals, including 36 World Class Technicians, currently hold this position)
- Project Leader – Implementation (5 individuals currently hold this position)

All of the individuals currently employed in the above positions meet or exceed the minimum qualifications for each job. Additionally, each of the ASE-certified technicians in our Technical Resource Centers has a minimum of three years of experience in the area of repair and/or maintenance of cars, truck, diesel tractors, trailers or other heavy-duty equipment.





We look forward to continuing our partnership with the State of New York and together, continue to build a strong fleet management partnership that will help support the State's day-to-day operations. If you require additional information in regards to ARI or have any questions, please do not hesitate to contact me. We appreciate your consideration and look forward to taking the next steps together.

Sincerely,

Dan Wilson
Manager – U.S. Operations & HR Business Partner
4001 Leadenhall Road
Mount Laurel, NJ 08054
(856) 727-7085
dwilson@arifleet.com

Sworn to before me this _____
day of _____ 20__.

Notary Public: _____
Registration No: _____
State: _____





District Sales Manager

Department: Sales and Marketing

Reports to: Director of Sales

Date: July 25, 2013

Job Purpose: Market and sell ARI services to prospects and existing customers.

Essential Functions:

- Prospecting/Cold Calling - Proactively prospect and cold call leads within their assigned territory to move prospects through the sales cycle; from discovery to closing the deal.
- Time Management - Manage all aspects of the job effectively: prospecting, client retention, and territory management.
- Networking/Territory Management – Participate in local NAFA chapters and annual conferences. Develop relationships with manufacturers' representatives, local business groups, and suppliers in order to generate business. Interacts with prospects and customers to develop relationships that result in future sales.
- Salesforce.com – Must effectively utilize this tool to properly manage the sales territory. Maintain and update the Salesforce.com database to ensure ARI's inclusion in sales solicitation opportunities.
- Content knowledge – ability to effectively communicate about the Fleet Management industry and ARI's programs, capabilities, and differentiators. Must use proper business acumen to communicate this message.
- Client Retention - Interacts with ADRs, Client Relations, and various departments to promote client retention.

Knowledge and Skill:

- Must have the ability to effectively communicate, both verbally and in writing, to all levels of management, staff, customers and prospects.
- Must have excellent interpersonal skills.
- Sales experience preferred.
- Must be a driven individual and have a strong desire to succeed in a competitive environment.
- Must have excellent time management skills.
- A working knowledge of Microsoft Windows, Word, Excel and PowerPoint is required.
- Must be able to travel frequently to locations involving overnight lodging.
- Bachelor's degree in Business Administration or equivalent experience required.





Account Development Representative

Department: Sales

Reports to: Director of Sales

Date: July 25, 2013

Job Purpose: Establish relationships with customers through regular customer visits, ensure that customer needs are met, and support the sales managers in their efforts to sign new business.

Essential Functions:

- **Client Advocate:** Acts as a customer advocate and are readily available to customers to address needs and answer questions. Recognizes customer dissatisfactions and opportunities for improved service. Communicates effectively with other ARI Departments on the customer's behalf.
- **Sales Support:** Assists sales managers with prospecting and sales calls. Helps identify opportunities for additional services to clients.
- **Content Knowledge:** Ability to effectively communicate about the Fleet Management industry and ARI's programs, capabilities, and differentiators. Must use proper business acumen to communicate this message. Develops accurate selectors, quotes, rates and responds to special requests.
- **Systems Knowledge and Training:** Facilitates account retention by promoting the use of ARI's insights system, training customers in its use and application, and utilization of FleeTrak and Salesforce.
- **Client Retention:** Uses the reporting capabilities of ARI's systems to reduce customers' TCO, deliver SPR's, proactive fuel management and improve efficiencies.
- **Time Management:** Manage all aspects of the job effectively.
- Other duties as assigned.

Knowledge and Skill:

- Must have excellent verbal, written and interpersonal communication skills.
- Must have superior presentation skills.
- Advanced skills in Microsoft Word, Excel and PowerPoint applications are required.
- Must have a thorough understanding of ARI's products, services and systems.
- Must have excellent organizational skills and the ability to manage multiple priorities.
- Ability to prepare quality presentations, analyze data and draw logical conclusions.
- Minimum of two to five years of experience in sales administration or account management.
- Bachelor's degree or industry related experience is preferred.
- Must be able to travel to customer locations.





Client Administrator

Department: Client Administration

Reports to: Supervisor Client Administration

Job Purpose: Act as a liaison between customers to coordinate inquiries and ensure customer satisfaction.

Essential Functions:

- Receives inquiries from customers (internal and external) / drivers and coordinates with ARI departments to resolve in a timely manner
- Investigate and provide closed loop resolution to customer problems, logs all inquiries in FleetTrak
- Provide regular status updates to clients on open items
- Processes stock purchase requests
- Process fleet database changes, duplicate material requests, and activation / deactivation of fuel card PINs per client parameters
- Assists with the processing of bulk mailings and with special projects
- Handles insights based reporting requests
- Updates and audits client profiles
- Handles all driver / field vehicles sales and processes any vehicle or driver terminations
- Manages client vanity email boxes
- Processes all vehicle transport needs
- Manages third-party vendor communications

Knowledge and Skill:

- Must have strong customer service experience
- Ability to communicate effectively, both verbally and in writing, with all levels of employees and customers
- Must demonstrate advanced organizational skills with strong attention to detail
- Ability to multi-task efficiently and possess time management and follow-up skills.
- Ability to work independently with customers
- Working knowledge of Microsoft Office (Word, Excel and Outlook)
- Must be willing to work flexible hours to fulfill client requirements
- Bachelor's degree required or currently pursuing degree





Truck Account Administrator

Department: Fleet Management, Support

Reports to: Assistant Manager, Truck and Equipment Maintenance

Date: January 26, 2010

FLSA: Exempt

Job Purpose: Using highly specialized technical knowledge, analyzes truck functionality to affect efficiencies and cost-savings for truck fleet accounts.

Essential Functions:

- Proactively monitors trends in vehicle maintenance for specific accounts and geographic markets.
- Builds and analyzes both standard and ad-hoc reports.
- Analyzes data and makes recommendations to customers and ARI management to implement cost-saving initiatives.
- Liaises with fleet managers, vendors and manufacturers to ascertain the most effective resolution to truck malfunctions.
- As the technical expert, acts as a consultant to fleet managers and service technicians when complex repairs are needed.
- Reviews and issues non-standard purchase orders to ensure that the customer's best interests are protected.
- Support the technical resource center by assisting customers and vendors as needed.
- Other duties as assigned.

Knowledge and Skill:

- Bachelor's degree in business or accounting desired.
- Five to ten years of experience working directly with heavy-duty trucks, with advanced technical knowledge.
- Advanced analytic abilities to make independent decisions and justify the financial outcomes.
- Intermediate skill level in Microsoft Office applications, with emphasis on Excel.
- Must be knowledgeable of ARI's fleet management programs.
- Must have strong written and verbal communication skills.
- Customer service orientation and attention to detail is required.





New Business Development Representative

Department: Sales Support

Reports to: Department Head – Sales Support

Date: July 1, 2014

Job Purpose: Market and sell ARI services to Utility and Government prospects and clients.

Essential Functions:

- Act as the subject matter expert to the Utility industry and the various state and government entities working through all ARI field offices and operational departments.
- Solicit acquisition, leasing and fleet management services to Utility & Government prospects.
- Assist sales efforts to identify potential up-sell opportunities within existing client base.
- Maintain and updates database, through the Salesforce reporting system, to ensure we capture communication with the customer or prospect and ARI's inclusion in sales solicitation opportunities.
- Stay abreast of the timing of state bids.
- Assist sales efforts in identifying new Utility and Government opportunities, including working with the Sales Response Team on bids, proposals and presentations.
- Maintain a working knowledge of state & government business norms and general policies, as well as trends and regulations in the Utility industry.
- Represent and promote ARI in Utility and various Government fleet organizations, associations, conferences and publications, including presentations to sizable audiences and training assistance.
- Timely follow up and interaction with DMs and ADRs on Utility and Government related issues.

Knowledge and Skills:

- Must have the ability to communicate, both verbally and in writing, to all levels of management, staff, customers and prospects.
- A working knowledge of Microsoft Windows, Word, Excel and PowerPoint is required.
- Background in sales or customer service is required.
- A thorough understanding of all ARI products, services and systems, especially as they relate to sales and operations is preferred.

Education and Experience:

- Bachelor's degree or equivalent experience required.
- Must be able to travel to locations involving overnight lodging.
- Understanding of process management as it relates to state regulations, laws and contracts is preferred.





ASE Certified Technician

Department: Fleet Management

Reports to: Technical Resource Center Supervisor

Date: August 14, 2012

Job Purpose: Provide fleet drivers and administrators with maintenance and repair options. Control clients' operating expenses.

Essential Duties and Responsibilities:

- Assists drivers in locating suitable repair locations.
- Provides accurate documentation on all maintenance and repair events.
- Verifies that all repair and maintenance work is necessary and done at a fair price.
- Reviews and authorizes all repairs for fleet vehicles as necessary.
- Documents all instances where a cost savings is realized.
- Ensures appropriate preventative maintenance schedule is followed.
- Maintains all monthly metrics at or above the established goal.
- Offers assistance willingly and makes a positive contribution to morale.
- Shows sensitivity to and consideration for other's feelings.
- Punctual, regular and consistent attendance.
- Responds positively to change, offers suggestions for improvements, remains calm and professional under pressure and accepts constructive criticism positively.
- Can be counted on to carry out assignments carefully and with appropriate follow-up. Overcomes obstacles to meet goals. Accepts personal accountability for his/her actions.
- Keeps manager and/or coworkers informed of work progress and other necessary information.
- Maintains a positive relationship with management and other workers, listens effectively.
- Must be able to complete transactions with accuracy while providing a high level of quality service

Knowledge and Skill:

- Must have solid verbal and written communication skills, and be able to communicate effectively with customers and vendors.
- Must be customer service oriented.
- Must have intermediate knowledge of Microsoft Office applications and be able to navigate the Internet.
- Must have the ability to learn internal ARI systems used within the TRC.
- Must have hands-on experience in automotive or truck repair.



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- Minimum of three years of experience in repair and maintenance of cars, trucks, diesel tractors, trailers, hydraulics, or other heavy duty equipment
 - ASE accomplishments

Other Requirements:

- Is adaptable to change, willing to work extra hours when needed.
- Maintains a professional image and demeanor.





Project Leader – Implementation

Department: Implementation

Reports to: New Business Implementation Supervisor

Date: March 20, 2012

Job Purpose: Guide clients through the implementation process with ARI to ensure clients desired programs and parameters are set-up and communicated to ARI departments.

Essential Functions:

- Initiates contact with new client and coordinates the entire startup process.
- Works in conjunction with Sales to ensure a successful and timely start up.
- Manages Implementation Project Plan to ensure all parties meet target deadlines.
- Retrieves, decodes, formats, tests and loads client's database into ARI's system.
- Identifies and documents best practices and recommendations made during the start up process.
- Coordinates the set up of the fee matrix, fuel account and client parameters into ARI's system.
- Details all information into the Implementation Profile and routes the document to the client and appropriate ARI personnel.
- Coordinates the generation of maintenance and fuel account support with the Materials Support group.
- Acts as main point of contact for external and internal clients during the first 90 days of the start up
- Provides exemplary customer service at all times.

Knowledge and Skill:

- Must have a complete understanding of ARI systems.
- Extensive customer service experience and a thorough understanding of the fleet management industry, ARI departments, processes and programs is required.
- Must have intermediate understanding of Microsoft Word and advance understanding of Excel.
- Must be able to communicate effectively, both verbally and in writing, to all levels of employees and customers.
- Must be detail oriented with strong logic and organization skills. Must have presentation skills and the ability to effectively organize and facilitate meetings.
- Must be able to work independently and effectively in a team environment.
- Ability to think critically and understand strategic goals.

Other Requirements:

- Travel to client locations to facilitate and manage start up is required.

