Corning Tower, Empire State Plaza, Albany, NY 12242 | www.nyspro.ogs.ny.gov | customer.service@ogs.ny.gov | 518-474-6717

Contract Award Notification Update

Subject: Contract Extension

DATE: October 24, 2016 **AWARD #:** NEG-22265 **GROUP #:** 79008

AWARD DESCRIPTION: Electronic Value Transfer (American Express Branded Cards)

CONTRACT PERIOD: December 1, 2011 – November 30, 2021

CONTACT: Beverly Moore | 518-486-2143 | Beverly.moore@ogs.ny.gov

CONTRACT NO.: PS65669 **CONTRACTOR:** American Express Travel Related Services Co., Inc.

The above referenced contract has been extended for five (5) years. The new contract period is December 1, 2011 – November 30, 2021.

Authorized Users should refer to the OGS website to access the latest Contract information:

http://www.ogs.ny.gov/purchase/snt/awardnotes/7900822265can.HTM

All other terms and conditions remain the same.

Corning Tower, Empire State Plaza, Albany, NY 12242 | www.nyspro.ogs.ny.gov | customer.services@ogs.ny.gov | 518-474-6717

Contract Award Notification Update

Subject: Updated EVT Administrator and EVTA-1 form

DATE: March 17, 2016 **AWARD #:** NEG-22265 **GROUP #:** 79008

AWARD DESCRIPTION: Electronic Value Transfer (EVT)

CONTRACT PERIOD: December 1, 2011 – November 30, 2016

CONTACT: Beverly Moore | 518-486-2143 | PS_SW_EVTA@ogs.ny.gov

CONTRACT NO.: PS65669 **CONTRACTOR:** American Express Travel Related Services

Please note that the Electronic Value Transfer Administrator (EVTA) is now Beverly Moore.

The EVTA - 1 form - Program Plan Application, has been updated to reflect the following changes and is available online at: http://www.ogs.ny.gov/purchase/snt/awardnotes/7900822265form1_EVTA.xlsx

- Part 1, A: Contact information at bottom of form has been updated to reflect:
  - the new EVTA's phone number
  - a direct link to the EVT contract landing page
  - department name change from NYS Pro to Procurement Services
- Part 1, E-G: Fiscal Year dates have been updated from outdated to current
- Part 2, A-C: Fiscal Year dates have been updated from outdated to current

All other terms and conditions remain the same.

Office of General Services
NY State Procurement
Corning Tower Building
Empire State Plaza
Albany, New York 12242
http://www.ogs.ny.gov

PURCHASING MEMORANDUM

CONTRACT AWARD NOTIFICATION UPDATE

AWARD NUMBER: NEG - **22265**

DATE: **July 23, 2013**

GROUP: **79008 – American Express**
(Electronic Value Transfer)

CONTRACT PERIOD:
December 1, 2011 – November 30, 2016

PLEASE ADDRESS INQUIRIES TO:

STATE AGENCIES & CONTRACTORS
James Patrick, CPPB
Contract Management Specialist 1
(518) 408-1026
PS_CM_ITServices@ogs.ny.gov

CONTRACTOR(S)/ American Express Travel Related Services

CONTRACT NO(S).: **PS65669**

OTHER AUTHORIZED USERS
Customer Services
(518) 474-6717
customer.services@ogs.ny.gov

SUBJECT: **American Express – Discount Rate Adjustment**

ALL STATE AGENCIES AND OTHERS AUTHORIZED TO USE STATE CONTRACTS:

American Express has lowered the discount rate to the following:
(Refer to Base Contract clause 5.25: Appendix B, subdivisions f & g of clause 24 "Best Pricing" modification)

(CPC) lowered from 2.15% to 2.05% and the prepaid card rate lowered from 1.65% to 1.15%

All other terms and conditions remain the same

New York State Office Of General Services
New York State Procurement
Corning Tower Building
Empire State Plaza
Albany, New York 12242
http://www.ogs.ny.gov

PURCHASING MEMORANDUM

CONTRACT AWARD NOTIFICATION UPDATE

AWARD NUMBER: NEG-22265

DATE: July 18, 2013

GROUP: 79008 Electronic Value Transfer (American Express Branded Cards)

PLEASE ADDRESS INQUIRIES TO:

STATE AGENCIES & CONTRACTORS
Sheila Long
Contract Management Specialist
Electronic Value Transfer Administrator (EVTA)
518. 474.0293
PS_SW_EVTA@ogs.ny.gov

OTHER AUTHORIZED USERS
Customer Services
518. 474.6717
customer.services@ogs.ny.gov

CONTRACT PERIOD: December 1, 2011 – November 30, 2016

CONTRACTOR/ CONTRACT NO: American Express Travel Related Services Company, Inc. (AMEX) PS65669

SUBJECT: Contract Status Updates

ALL STATE AGENCIES AND OTHERS AUTHORIZED TO USE STATE CONTRACTS:

Please note the contract inquiry information has been revised. The Department of Taxation and Finance no longer has the Administrative oversight of the program. Approved by the Governor's office, the EVTA function has been transferred to the Office of General Services.

All state and non-state entities may contact the EVTA directly via email to: PS_SW_EVTA@ogs.ny.gov

AMEX Contact:

Thomas Dames
Director Merchant Services, Gov't Team
Phone 914. 693.8860
Fax 866. 878.8379
E-Mail: Thomas.J.Dames@aexp.com

* * * * *

State of New York Executive Department
Office Of General Services
Procurement Services Group
Corning Tower Building - 38th Floor
Empire State Plaza
Albany, New York 12242
http://www.ogs.ny.gov

CONTRACT AWARD NOTIFICATION

Title	:	**Group – 79008 – Electronic Value Transfer (American Express Branded Cards)** **Classification Code(s): 84 & 15**
Award Number	:	**N-22265** **(Replaces Award N-01428)**
Contract Period	:	**December 1, 2011 – November 30, 2016** **with option for 1 five year extension**
Date of Issue	:	**December 1, 2011**
Contractor Information	:	**Appears on Page 2 of this Award**

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Nicholas C. Jacobia Title : Purchasing Officer Phone : 518-473-4651 Fax : 518-486-6867 E-mail : nicholas.jacobia@ogs.ny.gov	Procurement Services Group Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.ny.gov

The Procurement Services Group values your input.
Complete and return "Contract Performance Report" at end of document.

Description

This is a comprehensive contract for the acquisition of American Express services, enabling Authorized Users the opportunity to acquire these services through the Electronic Value Transfer (EVT) program. EVT allows Authorized Users the ability to accept credit card and debit card payments, including American Express.

PR # 22265

(continued)

CONTRACT #	CONTRACTOR & ADDRESS	TELEPHONE #	FED.IDENT.#
PS65669	**American Express Travel Related Services Company, Inc.** **World Financial Center** **200 Vesey Street** **New York, NY 10285** **John L. Cavanagh** **john.l.cavanagh1@aexp.com**	**(866) 391-0005**	**13-3133497** **VENDOR ID#** **1000006309**

(continued)

Cash Discount, If Shown, Should be Given Special Attention.

INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
(See "Contract Payments" and "Electronic Payments in this document.)

AGENCIES SHOULD NOTIFY THE PROCUREMENT SERVICES GROUP PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES GROUP.

NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

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, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

CONTRACT PAYMENTS:

Payments cannot be processed by State facilities until the contract products have been delivered in satisfactory condition or services have been satisfactorily performed. Payment will be based on any invoice used in the supplier's normal course of business. However, such invoice must contain sufficient data including but not limited to contract number, description of product or service, quantity, unit and price per unit as well as federal identification number.

State facilities are required to forward properly completed vouchers to the Office of the State Comptroller for audit and payment. All facilities are urged to process every completed voucher expeditiously.

If the contract terms indicate political subdivisions and others authorized by law are allowed to participate, those entities are required to make payments directly to the contractor. Prior to processing such payment, the contractor may be required to complete the ordering non-State agency's own voucher form.

See "Contract Billings" in Appendix B, OGS General Specifications.

CONTRACT BILLINGS AND PAYMENTS:

a. Billings. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the 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 the format requested by the Commissioner

(continued)

and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

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.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-486-1255. 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.

PSG's DISPUTE RESOLUTION POLICY:

It is the policy of the Office of General Services' Procurement Services Group (PSG) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to PSG bid solicitations or contract awards. PSG encourages vendors to seek resolution of disputes through consultation with PSG staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of PSG's Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this document or through the OGS website (www.ogs.ny.gov).

(continued)

Table of Contents

Overview	**Page 6**
How to Use this Contract	**Page 7**
Frequently Asked Questions	**Page 9**
Exhibit 1 – Contract PS65669	**Page 13**
Exhibit 2 – Appendix C - Rate Schedules	**Page 30**
Exhibit 3 – Contract Performance Report	**Page 41**

(continued)

OVERVIEW:

This contract will provide Authorized Users the opportunity to acquire American Express services through the Electronic Value Transfer (EVT) program. EVT allows Authorized Users the ability to accept credit card and debit card payments, including American Express. This contract with American Express falls under the principle contract that is currently with Global Payments Direct, Inc. (Contract #CMS1001) to process transactions for these credit charge cards. It allows for acceptance of American Express for the purpose of paying monthly transaction and other fees.

This contract is awarded by the NYS Office of General Services in conjunction with the Department of Taxation and Finance. The Department of Taxation and Finance is the Electronic Value Transfer Administrator (EVTA) for the State. The EVTA is available to assist agencies with this program. You may contact:

ELECTRONIC VALUE TRANSFER ADMINISTRATOR
Department of Taxation and Finance
Building 8, Room 700
State Campus
Albany, New York 12227
Phone: (518) 485-0441
Facsimile Number: (518) 485-0243
EVTA@tax.state.ny.us

Please note: Transaction fees are assigned automatically at the time the transaction is processed; however, Authorized User's will be invoiced for each month's accumulated fees.

Please see the section Frequently Asked Questions (FAQs) for more information and a better understanding of EVT.

(continued)

HOW TO USE THIS CONTRACT:

Step 1: Read this Contract Award Notice, including Exhibit 2: NYS Card Acceptance Guidelines, to become familiar with EVT. All Authorized Users that implement an EVT program must follow the NYS Card Acceptance Guidelines and are bound by the provisions of this Agreement and the guide. In addition, if using this contract in conjunction with Contract #CMS1001 with Global Payments Direct, Inc., please also refer to the requirements listed within that contract.

Step 2: Complete Form EVT-1, Application Status Form:

After an Authorized User has made a policy determination to implement an EVT Program, the first step is to complete an EVTA-1 Form. **Form EVTA-1, Application Status Form** – http://www.tax.state.ny.us/evta/ is a document that is to be completed by all Authorized Users for the purpose of receiving approval from the EVTA to use this contract and implement an EVT Program. State Agencies (defined in Section 1.2a of RFP # 009395) must also receive approval from the EVTA and Division of the Budget for their EVTA agency plan. The EVTA will assist State Agencies in obtaining approvals from the Division of the Budget. The EVTA-1 form is to be filed with the EVTA (Department of Taxation and Finance). An approved Form EVTA-1 **does not** allow the Authorized User to begin implementation of their proposed EVT plan. A FORM EVTA-2 must be completed and approved first.

Step 3: Complete Form EVTA-2, Work Order Form:

The next step is for the Authorized User to contact the vendor to provide technical project details and any unique administrative terms and conditions required by the authorized user. After project costs have been determined, the Authorized User will file an EVTA-2 form. **Form EVTA-2, Work Order Form** – http://www.tax.state.ny.us/evta/ a document issued by an Authorized User, which provides all the EVT technical project details, project costs and any unique administrative terms and conditions required by an Authorized User.

Non-State Agency Authorized Users:

Upon completion of the Form EVT-2 with the Contractor, non-state agency Authorized Users may proceed to set up a funding source, issue an order to the Contractor and begin implementation of services.

State Agency Authorized Users:

For State Agency Authorized Users the EVTA shall review and approve Form EVTA –2 in writing prior to commencement of the Services.

Any Form EVTA-2, Work Order Form, regardless of whether completed by a State agency or a Non-state agency, that incorporates unique terms or conditions not provided for in the Agreement shall be reviewed and approved in writing by Contractor prior to its commencement of the Services.

Step 4: State Agency – issue a Purchase Order in accordance with agency purchasing policies & procedures. The Purchase Order must reference contract PS65669.

The signed and approved EVTA-1 and EVTA-2 forms must be retained in the Procurement Record as the forms may be required by OSC during processing or post auditing of the purchase.

Step 5. The agency can then send the Form EVT-2 work Order Form to the vendor and commence services.

Contractor's Authorization to Implement Services

The Contractor shall not provide any billable Services under this Agreement to State Agency

(continued)

Authorized Users unless the Authorized User has produced an executed copy of Form EVTA-1, Application Status Form and a completed and approved copy of EVTA – 2, Work Order Form. The EVTA –1 form is deemed executed if it is signed or stamped by both the EVTA and the Division of the Budget. The Form EVTA – 2 is deemed executed if it is signed or stamped by the EVTA.

The State reserves the right to modify these forms, at its discretion, throughout the term of the Agreement without prejudice to Contractor.

(continued)

ELECTRONIC VALUE TRANSFER FREQUENTLY ASKED QUESTIONS (FAQ'S):

1. *Question:* **What is EVT?**

Answer: **Electronic Value Transfer -** Any transfer of funds which is initiated by the use of an electronic value transfer device (within the scope of the OGS contracts: a credit card, charge card or debit card). To New York State agencies and other authorized users of the EVT contract it means the ability to accept credit/charge cards and debit transactions as payment for services, fines, fees or taxes.

2. *Question:* **What is the EVTA?**

Answer: **Electronic Value Transfer Administrator,** designated by the EVT legislation enacted in 1998 as the New York State Department of Taxation and Finance. The EVTA is responsible for:

- Establishing policies and direction for state agencies regarding EVT,
- Evaluating the costs and benefits associated with various electronic commerce solutions,
- Overseeing the efficient implementation of state agency programs.

3. *Question:* **How are EVT services made available to State and local agencies?**

Answer: **EVT Services** are provided by Financial Service Providers (FSPs) through contracts available from the NYS Office of General Services. There are two contracts for this program. The principle contract is with Global Payments Direct, Inc.), who handles all payments transactions. The remaining contract is with American Express for the purpose of paying monthly AMEX transaction fees.

4. *Question:* **Who can use the EVT contracts?**

Answer: **Authorized Users** of the EVT contracts fall into three (3) categories:

a) State Agencies authorized pursuant to NYS Finance Law, § 4-a, to accept electronic payments, including any department, board, bureau, division, commission, committee, council, office of the State, or other governmental entity with statewide jurisdiction.
b) Any local government authorized to accept electronic payments pursuant to New York General Municipal Law, Article 2, §5.
c) Any other entities, authorized pursuant to NYS Finance Law, § 163, to utilize NYS centralized service contracts.

NOTE: Entities other than State agencies should review their local laws to ensure there are no barriers to their accepting credit card and other forms of EVT payments.

5. *Question:* **Which Credit/Charge Cards will be accepted under these contracts?**
Answer: The four major credit/charge cards will be accepted: **MasterCard**®, **VISA**®, **Discover**® (Novus) and **American Express**®. Authorized Users may make their own determinations as to whether to accept all four or a smaller subset of the credit cards available. However, Authorized Users are encouraged to accept all cards if possible.

6. *Question:* **How does an agency establish a program to accept credit cards?**

Answer: After an agency has made a policy determination at the highest levels to implement an EVT program, the first step is to designate a properly authorized person to contact the EVTA and complete an EVTA-1 Program Plan Application. The EVTA-1 Program Application is available on the EVTA web-site at: http://www.tax.state.ny.us/evta/ or contact the EVTA at 518-485-0441. They will assist you with all of the requirements, procedures and forms necessary to set up an EVT program within your agency.

(continued)

7. *Question:* **What is a Debit Card?**

Answer: A **Debit Card** is an electronic payment card that can be processed either on-line similar to an ATM card or off-line like a credit/charge card. On-Line Debit Card transactions are processed through the ATM networks and require entry of a PIN (Personal Identification Number) by the cardholder. This authorizes funds to be directly debited from the Device Users account. Off-Line Debit Card transactions are processed through the credit/charge card networks with funds being debited from the cardholder's account within a few days.

8. *Question:* **What are Transaction Fees?**

Answer: **Transaction Fees** are service costs charged to an Authorized User by the EVT contractor for processing EVT transactions on a per transaction basis. They include all of the following fees. **Authorization Fee** - Fees charged by the EVT Contractor to Authorized Users to obtain an authorization. The fees vary depending on the interface being used between the Authorized User and the EVT Contractor. **Interchange & Assessment Fee** - Fees set by the credit/charge card associations that are passed through to the Authorized User. These fees vary based upon which category (e.g. cardholder present or cardholder not present) the transaction falls under. **Processing/Access Fee** - A base processing fee which can be a percentage of the transaction value, a flat fee or a combination of both.

9. *Question:* **What are Blended/Bundled Rates?**

Answer: Fees that combine or "blend" the rates of the various categories used to determine the Interchange and Assessment Fees and "bundle" the blended Interchange & Assessment rate with all other fees (i.e., Authorized fees, Processing/Access fees and Other Services Fees) into a single rate for all MasterCard, Visa and Discover transactions

10. *Question:* **Are there any limitations to the solutions provided by the EVT Financial Service Provider (FSP) contracts?**

Answer: Yes. The FSPs (Global Payments Direct, Inc., and American Express TRS) can meet your needs for processing credit card and debit card transactions, providing Point of Sale (POS) terminal devices and basic customization required to process your payment transactions. However, if you need an Internet payment application, an Interactive Voice Response (IVR) system, web hosting services for Internet applications or other more technical solutions, you may need a technology service provider to partner with the FSP.

11. *Question:* **How do I obtain the technology service providers I may need?**

Answer: If Authorized Users need assistance to obtain technology service providers, they may avail themselves of the OGS "Computer Consulting, Systems Integration and Training" contracts, also known as IT Services or the Backdrop contracts.

12. *Question*: **What are Backdrop Contracts?**

Answer: Backdrop Contracts are OGS Statewide contracts that are uniform in their Back-Drop Terms and Conditions. They are used to provide computer related services. Each contract may cover Consulting, Systems Integration (SI) and Training for numerous Categories of Expertise, including Application Development, Data Conversion, GIS, Help Desk Services, Imaging, and Internet/Intranet Services, to name a few. These contracts pre-qualify contractors on a continuous recruitment basis to supply services to all authorized users. The contracts establish not to exceed pricing for each contractor. The actual cost to an authorized user of these services is established per project using the "mini-bid" process.

(continued)

13. *Question:* ***What is the Mini-Bid Process?***

Answer: The mini-bid process is the process whereby an Authorized User develops a project definition outlining their specific requirement and solicits bids from all pre-qualified backdrop contractors to determine the best value solution. The Authorized User forwards their project definition to all Backdrop Contractors that have been pre-qualified in the area of expertise called for in the scope of work. The backdrop contractors that have been solicited then have the option of submitting a bid for the project. The backdrop contractor submitting the proposal providing the best value to the Authorized User is then awarded a contract. From development of the project specifications to the project award takes up to ten weeks, a fraction of the time when compared with the traditional RFP procurement. Project awards shall be based on "Best Value." The mini-bid process is fully detailed in the associated Agency Guidelines available from the Procurement Services Group.

Except where an agency can justify single or sole source procurement or where the requirement does not exceed $5,000, this process is required for an Authorized User to utilize the computer consulting, training, and systems integration contracts.

The mini-bid process offers these additional benefits:

- Agencies are not required to advertise in the Contract Reporter.
- Contractors are pre-qualified for services under the Back-Drop Contracts.
- Since the Back-Drop Contracts contain all the terms and conditions, there is no need to include this language in the PD or RTS. This allows the issuing entity to concentrate on describing the project.
- OGS-supplied templates standardize the preparation of bid documentation, and, for New York State agencies, may simplify the bid process.
- The process ensures adherence to competitive bidding practices.
- For New York State agencies, there are no special requirements or forms (for example, the H100) for the Division of Budget.
- OGS' expertise in developing and administering contracts may reduce administrative overhead.
- For EVT, the Authorized User's Implementation Plan submitted to the EVTA can supply much of the detail needed for the Project Description.

14. *Question:* **What services are available on Backdrop Contracts?**

Answer: For purposes of the EVT contract, the services available on backdrop contracts include computer Consulting and Systems Integration for:

- Applications Development Mainframe
- Applications Development Mid Range
- Applications Development PC
- Electronic Commerce (EC) & Electronic Data Interchange (EDI)
- Internet/Intranet Application Services
- Point-Of-Sale Systems (POS)
- Telecommunications
- Internet and IVR Hosting services

Other services are available and new services may be added in the future.

15. *Question:* **How do Backdrop Contracts fit into EVT?**

Answer: The Computer Consulting and Systems Integration backdrop contracts can be used to develop EVT systems.

(continued)

- **Consulting Services** includes the qualified, professional ability of the contractor to offer **analysis, recommendations, design or programming** expertise to New York State relating to information technology systems with regard to various categories of expertise. Said expertise must include a current knowledge of the technology marketplace, related information technology issues and trends.
- **Systems Integration (SI) Services** requires the contractor to assume **principal responsibility** and liability for recommending and procuring hardware, software and related products, and to provide consulting services for a "total solution." In order to obtain a Back-Drop Contract, the SI contractor was required to show prior, substantial experience as a Systems Integrator, including principal responsibility for project management and acquisition of project materials or components from third party sources.

An Authorized User can contract with the SI backdrop contracts to provide the equipment and software needed for a complete system and the EVT Contractor for processing services.

(continued)

EXHIBIT 1

Contract PS65669

(continued)

AGREEMENT

This Agreement ("Agreement" or "Contract") made by and between the People of the State of New York, acting by and through the Commissioner of General Services, whose office is located at the 41st Floor, Corning Tower Building, Empire State Plaza, Albany, New York 12242 (hereinafter referred to as "OGS", or "State"), and American Express Travel Related Services Company, Inc., whose offices are located at the World Financial Center, 200 Vesey Street, New York, New York 10285 (hereinafter referred to as "American Express", "we", "our", "us", or "Contractor"). The foregoing are collectively referred to as the "Parties."

WHEREAS, OGS is statutorily authorized to enter into centralized procurement contracts for services and technology acquisitions for use by New York State agencies and departments, public authorities, political subdivisions and others authorized by statute to utilize its contracts, hereinafter "Authorized User", and

WHEREAS, the Procurement Services Group (hereinafter "PSG") has been established within OGS to implement this statutory authorization, and

WHEREAS, PSG has identified a need to establish a relationship with a Financial Services Processor ("FSP") for Financial Processing Services for credit/charge cards which is currently with Global Payments Direct, Inc. Contract #CMS1001, and

WHEREAS, American Express is a sole-source provider of American Express authorization, capture, settlement and reporting services, and is acting in such capacity in executing and performing this Agreement, and

WHEREAS, OGS desires to provide Authorized Users with the ability to accept the American Express® Card, and to have American Express authorize, capture, settle and report its American Express transactions, and

WHEREAS, American Express submitted pricing information for American Express® Card acceptance to the State, which is acceptable in order to fulfill the State's needs and objectives and American Express agrees to the specifications and terms set forth in this Agreement, and

WHEREAS, it is in the best interests of the State, to have the option to receive all services provided under this Agreement directly from American Express, and

WHEREAS, American Express is ready, willing and able to enter into this Agreement to provide the services as the sole-source provider of American Express authorization, capture, settlement and reporting services in conjunction with an FSP.

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

I. SCOPE OF AGREEMENT

This Agreement sets forth the terms and conditions governing the provision of services by Contractor for the Authorization, processing, Settlement, and reporting of American Express Transactions and other ancillary services to Authorized Users. Except as otherwise set forth in this Agreement, the terms used in this document shall have the meanings set forth in Appendix B. Except as specifically provided herein, amendments or modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties and with the approval of the New York State Attorney General and Comptroller. No hardware, supplies or consulting services are available for purchase under this Agreement. No development or customization work will be provided under any order. Furthermore, the Parties agree

(continued)

that no Systems or projects shall be provided under this Agreement. The Parties expressly agree that the Agreement shall not be amended to add hardware, any other consulting services or Systems as an offering. The Parties also agree that no public works or building services work can be provided by the Contractor under this Agreement.

Contractor acknowledges that it does not classify an Authorized User as a Payment Services Provider on Contractor's Network. If an Authorized User wishes to provide Payment Services and has obtained the necessary approvals to do so, and Contractor, in its sole discretion, approves and classifies such Authorized User as a Payment Service Provider, then Chapter 13, "Payment Service Provider," of the Merchant Regulations shall apply to such Authorized User. Otherwise, Chapter 13 does not apply to an Authorized User.

1.1 DEFINITIONS

a. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Regulations. Some definitions that appear in the Merchant Regulations are amended in section 1.1.b of this Agreement.

Account – a demand deposit account at a domestic bank designated by the Authorized User for receipt of funds from American Express.

Automated Clearing House (ACH) – the electronic money transfer system of the Federal Reserve System.

Authorized User(s) – a New York State agency, department, public authority, political subdivision and other authorized by statute to utilize OGS centralized service contracts. This definition shall supersede and replace the definition set forth in Appendix B, Part I, Section 5, Definitions.

Bank – a bank within the United States that participates in ACH.

Convenience Fee – a payment mechanism by which, at the direction of an Authorized User, a service provider (e.g., Internet or Interactive Voice Response service provider) is reimbursed by Device Users for costs associated with providing such services. The amount of the Convenience Fee and the method by which it may be collected shall be set forth in Authorized User's Implementation Plan.

Credit/Charge Cards – the four nationally recognized branded cards: MasterCard, Visa, Discover and American Express.

Electronic Pay – the pay program where funds are sent from Contractor electronically via the ACH.

Electronic Value Transfer Administrator (EVTA) - the New York State Department of Taxation and Finance.

Financial Services Processor ("FSP") - a processor of Credit/Charge Cards. Also referred to as a "Processor" in Contractor's materials.

Form EVTA-1, Application Status Form – a document that is to be completed by every State Agency for the purpose of receiving approval from the EVTA and Division of the Budget for their EVTA agency plan. Each State Agency must receive sign off from EVTA prior to submitting this form to the Contractor. The State reserves the right to modify this form, at its discretion, throughout the term of the Agreement without prejudice to Contractor and without the approval of the Department of Law or the Office of the State Comptroller.

Form EVTA-2, Work Order Form – a document issued by an Authorized User which provides all the EVT technical project details, project costs and any unique administrative terms and conditions required by an Authorized User. Each Form EVTA-2, Work Order Form that incorporates unique terms or conditions not provided for in the Agreement shall be reviewed and approved in writing by Contractor prior to its

(continued)

commencement of any services described in this Agreement. For a State Agency Authorized User, the EVTA shall review and approve the form in writing prior to commencement of any services described in this Agreement. The form is attached as Appendix G. The State reserves the right to modify this form, at its discretion, throughout the term of the Agreement without prejudice to Contractor and without the approval of the Department of Law or the Office of the State Comptroller.

Full Recourse – Refer to the definition of "Chargeback" in the Merchant Regulations.

Internet - online services, worldwide web and other similar networks.

Mail Order – an order that occurs when Card payment information is taken via the mail.

Plural Interface Processing (PIP) –the multiple direct routing process (via an American Express terminal or software) that routes bank card transactions to FSPs and American Express transactions directly to American Express for both authorizations and submission for settlement.
Reverse PIP – the multiple direct routing process (via a non-American Express terminal or software) that routes bank card transactions to FSPs and American Express transactions directly to American Express for both authorizations and submission for settlement.

Split Dial – the routing process (via a terminal or software) that does not support PIP technology may still have the capability of sending authorization requests directly to American Express, but the settlement submission batch is routed through an FSP, generally meaning that the industry-specific software cannot be accommodated.

Subcontractor or **subcontractor -** means 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 with Contractor, express or implied, for the performance of a portion of this Agreement, and shall not mean any third party vendor with whom Contractor has entered into an agreement to receive goods and/or services which Contractor utilizes in its regular course of business. This definition shall supersede and replace the definition set forth in Appendix B, Part I, Section 5, Definitions.

Telephone Order – an order that occurs when Card payment information is taken over the telephone.

b. The definitions in the Merchant Regulations are hereby amended as follows:

(i) The definition of *you* and *your* is hereby deleted in its entirety and replaced with the following:

You and *your* (sometimes called the "Merchant", "Service Establishment", or "SE" in American Express's materials) mean the Authorized Users.

1.2 HIERARCHY OF PRECEDENT

The following documents shall be deemed part of this Agreement and the Parties agree to perform this Agreement in accordance with all the conditions, covenants and representations set forth in these documents:

a. Appendix A, Standard Clauses for New York State Contracts;
b. This Base Agreement (that is, the material preceding the Parties' signatures), exclusive of all other Appendices;
c. Appendix B, General Specifications;
d. Completed and Approved EVTA-2, Work Order Form;
e. Appendix C, Rate Schedules;
f. Merchant Regulations;
g. Appendix D, Reporting

(continued)

h. Appendix E, Contractor's Crises Preparedness Program Summary;
i. Appendix G, EVTA-2 Form Work Order and
j. Appendix H, Procedures for Updating Agreement Pricing and/or Product Listings.

In the event of any discrepancy, disagreement or ambiguity among the above listed documents, they shall be given preference in the order listed above to interpret and to resolve such discrepancy, disagreement or ambiguity.

1.3 CLAUSES RESERVED IN APPENDIX B

a. OGS and the Contractor agree that the following clauses from Appendix B are not applicable because this is a negotiated agreement:

7. Bid Opening
8. Bid Submission
9. Facsimile Submissions
10. Authentication of Facsimile Bids
11. Late Bids
12. Bid Contents
13. Extraneous Terms
15. Release of Bid Evaluation Materials
16. Freedom of Information Law
21. Product References
25. Drawings
26. Site Inspections
28. Samples
29. Bid Evaluation
30. Conditional Bid
31. Clarifications/Revisions
32. Prompt Payment Discounts
33. Equivalent or Identical Bids
36. Quantity Changes Prior to Award
37. Timeframe for Offers
49. Re-weighing Product
50. Product Substitution
52. Installation
54. On-site Storage

b. OGS and the Contractor agree that the following clauses from Appendix B are not applicable because of the limited scope of the Agreement, which is expressly prohibited from amendment to incorporate:

17. Prevailing Wage Rates – Public Works and Building Services Contracts
41. Scope Changes
72. Additional Warranties
81. Ownership/Title to Project Deliverables

c. OGS and the Contractor agree that the following clause from Appendix B is not applicable to this Agreement:

27. Procurement Card

(continued)

1.4 MERCHANT REGULATIONS

The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, this Agreement. An Authorized User agrees to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time), to the extent such provisions do not conflict with the provisions set forth in the Agreement documents that are given preference to the Merchant Regulations in section 1.2 above, as if fully set out herein and as a condition of your agreement to accept the Card. Contractor reserve the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 5.2 below. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified above in the definition of "Merchant Regulations" or its successor website. However, American Express shall provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request. To order a copy, please call American Express's Merchant Services representatives (telephone: 1-800-528-5200). Notwithstanding anything to the contrary in the Agreement, the Parties agree that an electronic transmission contemplated hereunder is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §1700 *et seq.* (*E-Sign Act*). The Parties intend that the E-Sign Act apply to the fullest extent possible to validate their ability to electronically transmit and electronically commit to be bound by the obligations and form assent described in the Merchant Regulations and releases of scheduled changes therein.

The Parties recognize that the numbering system used in the Merchant Regulations may change. For avoidance of doubt, the Parties agree that the narrative used to describe a section of the Merchant Regulations controls over the number reference. For example, in the phrase "Chapter 14, Merchant Fees", the controlling element is the narrative "Merchant Fees."

1.5 AMERICAN EXPRESS NETWORK

The State and Contractor agree that the American Express Network, as defined in the April 2011 edition of the Merchant Regulations, with the exception of the Online Merchant Services tool, is neither Licensed Software nor a Licensed Product, but that it is a Product. Accordingly, Contractor shall have no obligation to meet the requirements of sections 82 through 86 of Appendix B of this Agreement with respect to the American Express Network (with the exception of the Online Merchant Services tool). As stated in section 3.3, the Contractor's On-Line Merchant Services ("OMS") tool is not authorized under this Agreement, the Parties agree to continue discussions to amend the Agreement in the near future to provide for use of OMS consistent with the terms and conditions of this Agreement.

II. ADMINISTRATIVE REQUIREMENTS

2.1 AGREEMENT COSTS

All costs associated with this Agreement are outlined in Appendix C, Rate Schedules. For the avoidance of doubt, any fees set forth in the Merchant Regulations, including, but not limited to, any fees set forth in Chapter 14, Merchant Fees, of the Merchant Regulations, that are not also set forth in Appendix C shall not apply. Any adjustment to the fees set forth in Appendix C shall be submitted to OGS by Contractor pursuant to Appendix H.

A. Discount Rate –The Discount Rate is calculated as a percentage of the transaction and is set forth in Appendix C. Effective every April 1st (beginning after the first full calendar year of this Agreement) American Express may seek to adjust the Discount Rate. Any request for an increase in the Discount Rate must be provided to the State, with sixty (60) days advance written notice. American Express must provide the appropriate supporting written documentation for the rate increase, as mandated by the Office of the State

(continued)

Comptroller. The effective date of such change shall coincide with the beginning of the next monthly invoicing cycle following State Comptroller approval. However, if the State determines a change in the discount rate to be unacceptable, the State shall have the option of terminating this Agreement consistent with Section 60 of Appendix B.

B. Gateway Fees – If an Authorized User or its Covered Parties route Authorization requests to Contractor through the Visa or MasterCard processing gateways, Visa and MasterCard charge Contractor fees for these Authorizations. Contractor will pass their fees, which may vary depending on Authorization volume and other factors, on to Authorized User for all Authorized User's Authorizations that are routed through their gateways in a given month.

2.2 CONTRACTOR PAYMENTS

Contractor will pay the Authorized User in United States Dollars for the face amount of Charges each Authorized User submits. After the close of each month, Contractor shall invoice each Authorized User monthly for the following applicable deductions, reversal and withholdings from the previous month: (i) the aggregate Discount; (ii) any amounts owed by an Authorized User to Contractor for Gateway Fees; (iii) any Credits the Authorized User submits; and (iv) any amounts for which Contractor has Full Recourse. In order to be eligible for this billing process, each Authorized User must: 1) submit all Charges to Contractor electronically; and 2) receive all payments electronically via ACH.

Authorized User agrees it will not receive payment: (1) for a Charge using a Merchant Number other than its own Merchant Number(s); and (2) on behalf of an entity other than itself or another Authorized User.

2.3 SETTLEMENT PAYMENT METHOD

Under Electronic Pay, funds are sent electronically via ACH. Authorized User must designate an Account at a Bank. Authorized User must also provide to American Express the required information about Authorized User's Account and Authorized User's Bank and Authorized User must notify their Bank that American Express may have access to the Account to make payments. Authorized User must immediately notify Contractor of any changes to Authorized User's Bank, Account or ACH information. American Express will initiate payment to Authorized User's Account via ACH within two (2) days and in accordance with the following table and column definitions (excluding Sunday and Federal Reserve Holidays where American Express will initiate payment on the next day that American Express's bank is open for processing ACH payments.)

Charges received before 6pm EST on the following days	Contractor will initiate payment via ACH no later than 6pm EST on the following days
Monday	Wednesday
Tuesday	Thursday
Wednesday	Friday
Thursday	Saturday
Friday	Monday
Saturday	Tuesday

Contractor will not be responsible for any obligations, damages or liabilities over and above the amount of the applicable debit, credit or adjustment to Authorized User's Account in the event that any such debit, credit or adjustment is not honored by Authorized User's Bank or is improperly applied to Authorized User's Account by the Bank.

2.4 AUTHORIZED USER PAYMENTS

All State Agency Authorized User payments will be made to Contractor in conformance with Article XI-A of the New York State Finance Law.

(continued)

A non-State Agency Authorized User payment will be made to Contractor within thirty (30) calendar days of receipt of a complete and accurate invoice (excluding legal holidays recognized by the State) subject to applicable law under which the Authorized User operates. The non-State Agency Authorized User will provide the Contractor with documentation that supports payment terms exceeding thirty (30) calendar days in its EVTA-2 Form or other writing provided to Contractor.

2.5 CARD SERVICES

An Authorized User shall procure the services of an FSP for the data capture and routing for authorization of American Express related Transactions. Contractor agrees that it will use commercially reasonable efforts to approve and to accept Transactions through the FSP designated by Authorized User. If Contractor does not approve the Authorized User's designated FSP, Contractor is not obligated to sign or accept that Authorized User's EVTA-2 Work Order Form. Because such FSPs are not authorized to handle either the funds or the reports associated with American Express Card Transactions, American Express shall be responsible for the settlement of funds associated with these Transactions into the account designated by the Authorized User, and for making the related American Express Card transaction data available to the Authorized User. Contractor shall not be responsible for any errors, omissions, delays or expenses caused by the FSP. Authorized User will provide Contractor with all relevant information requested about the FSP and will notify Contractor promptly in writing if the FSP is changed.

2.6 TRANSMITTING DIRECTLY TO AMERICAN EXPRESS

This Agreement permits an Authorized User to transmit American Express Card Transactions directly to American Express. If an Authorized User chooses to transmit both Authorization requests and Batch submissions to American Express directly, the Authorized User must utilize PIP or Reverse PIP. If an Authorized User chooses to transmit only Authorization requests to American Express directly, the Authorized User must use Split Dial.

2.7 FULL RECOURSE

In addition to any Full Recourse rights Contractor has in the Merchant Regulations, Contractor shall have Full Recourse if Authorized User does not comply with the terms of this Agreement with respect to a Charge(s), even if Contractor had notice when it paid Authorized User for the Charge(s) that Authorized User did not so comply and even if Authorized User obtained Authorization for the Charge(s) in question. In the event that a dispute involves a Card Not Present Charge that is an Internet Electronic Delivery Transaction, Contractor shall exercise its right of Full Recourse for the full amount of the Charge immediately, without first sending Authorized User an inquiry.

Neither Authorized User nor Contractor shall be responsible hereunder for damages arising from delays or problems caused by any telecommunications carrier or banking system; provided, however, that the foregoing shall have no effect upon Contractor's rights to Full Recourse pursuant to this Agreement.

2.8 CONVENIENCE FEE

This section 2.8 shall supersede section 12.6 of the Merchant Regulations titled "Government/Utilities/Higher Education." The Convenience Fee shall be applied at the direction of the Authorized User. When Convenience Fees are applied, the Authorized User agrees to clearly disclose to Cardmembers: (1) the amount of such Convenience Fee; (2) that the Authorized User is charging the Convenience Fee; and, (3) that the Convenience Fee is being charged for the usage of such convenient method of payment. Authorized User agrees to not discriminate against any Cardmember by charging him/her a higher Convenience Fee than the Authorized User would charge a holder of another charge, credit, debit or smart card or similar card, service or payment product. For the Authorized User, the amount of the Convenience Fee and the method by which it may be collected shall be submitted for approval by American Express prior to being set forth in the Authorized User's EVTA-2 Work Order Form.

(continued)

When Convenience Fees are applied and are paid by a Cardmember directly to an Authorized User, then one (1) Charge (constituting both the amount of the payment and the amount of the Convenience Fee) must be submitted to American Express. The Discount will be assessed on this Charge.

When Convenience Fees are applied and are paid by a Cardmember to a party who is not the Authorized User, then two (2) Charges (one (1) constituting the amount of the payment, and one (1) constituting the amount of the Convenience Fee) must be submitted to American Express. The Discount will be assessed on both Charges. In such cases, the Authorized User must instruct American Express as to the payment of the Convenience Fee on the Authorized User's EVTA-2 Work Order Form. Authorized User remains responsible for payment of the Discount.

2.9 PERFORMANCE BOND

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

III. AMERICAN EXPRESS RESPONSIBILITIES

3.1 GENERAL

Authorized User that is a State agency: Upon receipt of an executed and approved Form EVTA –1 Application Status Form from an Authorized User, the Contractor can begin to design an American Express Card acceptance program under this Agreement. Upon receipt of a completed EVTA–2, Work Order Form, the Contractor may begin to provide reimbursable services to that Authorized User. Copies of these forms are included in Appendix F.

Authorized User that is not a State agency: The Parties acknowledge that an Authorized User that is not a State Agency is required to submit its completed Form EVTA-1 to the EVTA, but that the EVTA only acknowledges receipt and does not have an approval role. Upon receipt of an executed Form EVTA-1 that denotes "receipt" by the EVTA, the Contractor can begin to design an American Express Card acceptance program under the this Agreement. Upon receipt of a completed EVTA–2, Work Order Form, the Contractor may begin to provide reimbursable services to that Authorized User. Copies of these forms are included in Appendix F.

3.2 CONNECTIVITY

Contractor shall be responsible for maintaining only its interfaces with an FSP. Contractor shall not be responsible for maintaining the FSP's interfaces in order to support any services provided for in this Agreement.

The Contractor system for all critical communication links and routing the Credit Authorization System (CAS) features full redundancy. CAS reliability, excluding delays caused by external telecom providers and/or hardware utilized outside of the American Express Network, exceeds 99% uptime. Contractor minimizes system "down time", with "down time" defined as a period of time during the normal Authorized User's business hours where Contractor's system is unavailable to provide the services pursuant to this Agreement.

3.3. REPORTS

Contractor agrees to provide the following types of reports as listed below. While use of the Contractor's On-Line Merchant Services ("OMS") tool is not authorized under this Agreement, the Parties agree to continue discussions to amend the Agreement in the near future to provide for use of OMS consistent with the terms and conditions of this Agreement.

(continued)

A. Each month Contractor shall provide each Authorized User with a Merchant Financial Activity Statement. Each Merchant Financial Activity Statement shall include transaction data sufficient to reconcile, monitor and audit Settlements made to the Authorized User by Contractor during the previous month under this Agreement including the aggregate number of: (i) Submissions; (ii) Transactions; (iii) Credits issued; (iv) Discount amounts; (v) fees and incentives; and (vi) Settlement amounts. Should an Authorized User desire to share its transaction data with a third-party other than OGS or the EVTA, this will be noted on the EVTA-2 Work Order Form. An example of a Merchant Financial Activity Statement is attached hereto as Appendix D.

B. Contractor shall provide monthly and semi-annual summary reports to OGS and the EVTA summarizing the aggregate number of: (i) Transactions; (ii) Submissions; (iii) Settlements; (iv) Discount owed; (v) Gateway Fees; (vi) Chargebacks; and (vii) Transactions Contractor determines to be fraudulent for all Authorized Users during the prior month or the prior six months, as applicable. Contractor shall also provide a separate summary report on a monthly and semi-annual basis containing the elements listed in subsections (i) through (vii) above for all State Agency Authorized Users. The monthly and semi-annual summary reports required by this section shall be made available in a hard copy and electronic format by Contractor, in the form and manner requested by OGS. The semi-annual reports shall be provided by Contractor within thirty (30) days of January 1st and June 30th of each contract year for the prior six (6) month reporting period. If the contract period begins or ends in a fractional portion of a reporting period, only the reporting elements listed in subsections (i) through (vii) above for such fractional period shall be reported in the applicable semi-annual report. An example of the monthly and semi-annual summary report is attached hereto as Appendix D.

3.4 TRAINING

If requested by an Authorized User, Contractor shall conduct training sessions for each Authorized User via telephone/webinar or some other mutually agreed upon method. Contractor agrees that OGS will post the Merchant Regulations on their web site as a primary informational resource for all Authorized Users. In addition, upon request, Contractor agrees to provide the following training, including but not limited to, at no additional cost:

(1) Basic processing / card acceptance procedures;
(2) Online Merchant Services (OMS);
(3) Security and fraud detection; and
(4) General overview of support available (e.g., 800 number merchant support, on-line resources).

3.5 POINT OF CONTACT

American Express shall provide a point of contact, along with the appropriate level of support staff, whose role will include, but not be limited to, the following functions:

(1) Oversee the timely processing of American Express transactions within the American Express system by the Authorized User;
(2) Ensure the services provided for under this Agreement are performed; and
(3) Communicate any identified problems/situations to the Authorized User.

3.6 CRISIS PREPAREDNESS PROGRAM

The Contractor shall maintain crisis preparedness plans to ensure business continuity and minimum disruption to the Authorized User under this Agreement. A copy of Contractor's current Crisis Preparedness Program Summary is set forth as Appendix E.

The Contractor shall provide the State with any updates made to this plan.

(continued)

Contractor certifies that its Crisis Preparedness Plan: (i) addresses the recovery of Transaction data received by Contractor in its owned systems that is affected by an unplanned business disruption; (ii) provides for a contingency plan in the event of a telecommunications failure on Contractor's primary network; and (iii) provides for alternate site locations.

3.7 LATE PAYMENT REMEDY

In cases where American Express payment of Authorized User's Charges is five (5) or more days late and not the result of any act or inaction by Authorized User, Authorized User's Bank, the FSP, Force Majeure (as defined in Clause 61 of Appendix B) or other act or inaction by a party other than American Express, American Express will pay Authorized User daily interest on the amount of such payment (but not compounded daily), from the date due until the date such payment is received. Such interest rate shall be calculated at the then current fifteen (15) day commercial paper rate in effect as published daily in the Wall Street Journal as of the date of such payment.

Authorized User agrees to contact the then current point of contact at American Express in writing in all such cases where Authorized User believes that this late payment remedy is available to Authorized User. The American Express point of contact as of the Effective Date is set forth below. Authorized User agrees to include Authorized User's Merchant Number with this request and provide American Express with all necessary documents to support Authorized User's request. Authorized User also agrees to allow American Express a commercially reasonable amount of time to investigate the matter and to work with American Express to resolve the matter if there are any disagreements. Contractor shall notify OGS, in accordance with section 5.9 of this Agreement, in the event that Contractor's then current point of contact changes. Such notice shall include the name and contact information of such new point of contact.

American Express Travel Related Service Company, Inc.
Attn: John Cavanagh
Email: john.l.cavanagh1@aexp.com
Fax: (866) 391-0005

3.8 ASSIGNING MERCHANT NUMBERS

The Contractor will provide, at the Authorized User's request, multiple Merchant Numbers to support distinct reporting and reconciliation of Authorized User's payment programs (e.g., revenue sources) and payment channels (e.g., Point of Sale, Internet) within payment programs. In all cases, however, a separate Merchant Number will be required for Internet transactions.

IV. AUTHORIZED USER RESPONSIBILITIES

4.1. GENERAL

A. An Authorized User that is a State agency must complete, and have approved by the EVTA, an EVTA–1 Form. This Form must be forwarded to American Express prior to the initiation of an American Express Card acceptance program. An Authorized User that is a State agency must also complete an EVTA–2 Form, to initiate the provision of billable services by American Express consistent with the requirements identified by the Authorized User in its EVTA-2 Form.

B. Authorized User that is not a State agency: The Parties acknowledge that an Authorized User that is not a State Agency is required to submit its completed Form EVTA-1 to the EVTA, but that the EVTA only acknowledges receipt and does not have an approval role. Upon receipt of an executed Form EVTA-1 that denotes "receipt" by the EVTA, the Contractor can begin to design an American Express Card acceptance program under this Agreement. Authorized User that is not a State agency must complete an EVTA–2 Form, to initiate the provision of billable services by American Express consistent with the requirements identified by the Authorized User in its EVTA-2 Form.

(continued)

C. This section 4.1.C shall supersede sections 40 and 44 of Appendix B in relation to the ability of the Authorized User to modify the terms of the transaction between Contractor and Authorized User. In order for an Authorized User to propose any additional terms and conditions, such terms and conditions must be included in Authorized User's EVTA-2 Work Order Form and must be mutually agreed to by Authorized User and Contractor.

4.2. ACCEPTING THE CARD

You must accept the Card as payment for all goods and services sold at all of your Establishments, except as otherwise expressly specified in the Merchant Regulations. Each Authorized User is responsible and liable for the performance by its Establishments of all provisions of, and obligations in, the Agreement. For the avoidance of doubt, neither the OGS nor the EVTA shall be responsible or liable for the performance by Authorized Users of the provisions of, or obligations in, the Agreement.

4.3 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

In accordance with Article 15-A of the New York State Executive Law and regulations adopted pursuant thereto, OGS may establish separate goals for participation of New York State Certified minority and women-owned business enterprises, at the time of the acquisition, if the acquisition will result in a State contract (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. As a condition of award of the Contract, the Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women and for the facilitation of minority-and women-owned business.

Equal Employment Opportunity Requirements

Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any Subcontractors awarded a Subcontract over $25,000 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, shall undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to this contract; or (ii) employment outside New York State.

Contractor further agrees to submit with the Contract a staffing plan (Form EEO 100) identifying the anticipated work force to be utilized on the Contract and if awarded a contract, will, upon request, submit to OGS a workforce utilization report (Form EEO 101) identifying the work force actually utilized on the Contract if known.

Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises (MWBE)

For purposes of this procurement, OGS has determined that this Contract either does not offer any opportunities for participation by MWBEs or that there are insufficient MWBEs to establish a participation goal for certified Minority-owned Business Enterprises participation and for certified Women-owned Business Enterprises participation.

(continued)

V. GENERAL PROVISIONS

5.1 ENTIRE AGREEMENT

Each party acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms, and further agrees that, together with the attachments hereto referenced in Section 1.2, it constitutes the entire Agreement to the subject matter hereof and supersedes all previous agreements, promises or representations.

5.2 AMENDMENT

Except as otherwise provided in this Agreement, this Agreement may not be changed, altered or modified except by an instrument in writing executed and approved by both Parties, subject to the approval of the New York State Office of the Attorney General and the New York State Office of the Comptroller, provided that Contractor shall change the Merchant Regulations pursuant to the following provisions. Authorized User agrees to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of its agreement to accept the Card to the extent such provisions do not conflict with the provisions set forth in the documents that are given preference to the Merchant Regulations in section 1.2 above.

(1) Scheduled Changes. The Merchant Regulations are published twice each year, in April and October. Contractor has the right to, and hereby notifies you that Contractor may, change the provisions of the Merchant Regulations in scheduled releases (sometimes called "Notification of Changes" in Contractor's materials) as follows:

- a release of scheduled changes, to be published every April, which changes shall take effect in the following October (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations, and
- a release of scheduled changes, to be published every October, which changes shall take effect in the following April (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations.

Where a change is to take effect during the period between two editions of the Merchant Regulations, Contractor shall also include the change in the edition of the Merchant Regulations covering the period during which the change shall take effect, noting the effective date of the change therein.

(2) Unscheduled Changes. Contractor also has the right to, and hereby notifies Authorized User that Contractor may, change the provisions of the Merchant Regulations in separate unscheduled releases, which generally shall take effect ten days after notice to Authorized User (unless another effective date is specified in the notice.

Contractor shall provide an electronic copy of each scheduled and unscheduled release to OGS via electronic e-mail within thirty (30) days of the applicable release. Any unscheduled changes which are mandated by law shall take effect as set forth in subsection (2) above of this section 5.2. Except for unscheduled changes which are mandated by law, OGS agrees to notify Contractor if OGS, or an Authorized User, objects to any of the applicable changes within 60 days of OGS's receipt of the applicable release, or such other time as the Parties may agree to in writing. If the Parties cannot reach an agreement with respect to any such changes prior to the effective date of such changes, or some other time mutually agreed upon by the Parties, then: (i) the Authorized User may terminate its EVTA-2 Work Order Form; or (ii) OGS may terminate the Agreement. Any such termination shall take effect as of the effective date of the applicable changes. In the event that OGS, or Authorized User, does not object to the changes, or if OGS or Authorized User raises an objection, but does not exercise its termination rights under this section 5.2, then such changes shall apply to this Agreement as of effective date of such change.

(continued)

5.3 CONTRACT TERM

The initial term of this Agreement shall be five (5) years, commencing on the date the OGS Contract Award Notice is issued, and expiring sixty months thereafter (the "Initial Term"). The State has the option to renew this Agreement for one (1) additional five (5) year term with the approval of the Offices of the Attorney General and State Comptroller.

5.4 CURRENT CARD ACCEPTANCE AGREEMENTS BETWEEN CONTRACTOR AND ELIGIBLE AUTHORIZED USERS

Eligible Authorized Users, including educational institutions of the State of New York, with independent contracts for Contractor services may, at any time, convert any existing Card Acceptance Agreements with American Express to participate under this Agreement and upon execution of an EVTA-2 Work Order Form shall have all rights of an "Authorized User," provided that notice of such migration shall be forwarded to the Contractor in compliance with the notice requirements of this Agreement.

5.5 DISCLOSURE OF INFORMATION

American Express agrees to obtain written approval from the State (OGS) or the Authorized User prior to the issuance of any news releases and any paid or unpaid advertising or marketing concerning the subject matter. Notwithstanding the foregoing, American Express may list the State or any Authorized User as an entity accepting the American Express Card in other materials.

5.6 CONFIDENTIALITY

A. American Express agrees to comply with the confidentiality requirements of Appendix B, Clause 14. In addition the following confidentiality requirements are imposed on the Contractor, State and Authorized Users:

(1) Each party shall keep confidential and not disclose to any third party any information it receives from the other party that is not publicly available or necessary for providing service under this Agreement. The Parties understand that this Agreement will become a State public record.

(2) An Authorized User agrees that the names, addresses and account numbers of Cardmembers are the sole and exclusive property of American Express. An Authorized User shall not use or disclose any Cardmember's name, address or account number except as provided in this Agreement.

B. If any unique confidentiality requirements are necessary for a specific Authorized User, then these shall be set forth on the EVTA-2 Work Order Form and must be agreed to by Contractor. This could include the signing of agreements to adhere to certain laws, rules and/or procedures.

5.7 PREFERENCE

In the event that an Authorized User displays, states, publishes or otherwise exhibits a preference for any other charge, credit, debit or smart card or similar card, service or payment product over the Card, and in addition to any and all other rights and remedies American Express may have under this Agreement and/or in law or in equity, American Express shall have the right to immediately terminate the EVTA-2 Work Order Form for that Authorized User upon sending written notice of such termination to the EVTA and the subject Authorized User.

5.8 SECTION INTENTIONALLY DELETED

5.9 NOTICES

A. Except for changes to the Merchant Regulations, which shall be submitted to OGS pursuant to Appendix H, any and all notifications, consents and other communications to the State regarding the

(continued)

implementation, production or operational processes or procedures of this Agreement shall be sent in writing and posted return receipt mail to:

ELECTRONIC VALUE TRANSFER ADMINISTRATOR
Department of Taxation and Finance
Building 8, Room 700
State Campus
Albany, New York 12227
Facsimile Number: (518) 485-0243

And

Nicholas Jacobia
Purchasing Officer 1
New York State Offices of General Services
Procurement Services Group
Corning Tower – 38th Floor
Empire State Plaza
Albany, NY 12242
Phone: (518) 473-4651
Facsimile Number: (518) 486-6867

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 and will forward a copy to the EVTA. Each Authorized User will provide its address and a designated contact name on the Form EVTA-2, Work Order Form.

B. Any notifications, consents and other communications to American Express regarding this Agreement (except for Late Payment Remedy) shall be sent in writing and posted return receipt mail to:

American Express Travel Related Services Company, Inc.
P.O. Box 53773
Phoenix, AZ 85072
Attn: Department 87
E-mail: American.Express.Contract.Keying@aexp.com
Fax: (602) 744-8413
Tel: (800) 528-5200

With a copy to:

American Express Travel Related Services Company, Inc.
Attn: General Counsel's Office / Merchant Services Practice Group
3 World Financial Center
200 Vesey Street, 49th Floor
New York, NY 10285

5.10 SECTION HEADINGS

Section headings are for reference only and in no way define, limit, affect or describe the meaning, scope or interpretation intent of any of the provisions of this Agreement.

5.11 SEVERABILITY OF PROVISIONS

It is the intent of the Parties to this Agreement that, if any provision of this Agreement or the application of this Agreement to any person or circumstances shall be adjudged by any New York State

(continued)

Court to be invalid, that judgment shall not affect, impair or invalidate the remainder of this Agreement or its application to other persons or circumstances, unless so provided by the court or unless the severance of the invalid provision alters the basic intent or purpose of this Agreement, causes increase in the State or Authorized User's financial obligation, or prevents compliance with an applicable statute, regulation, limitation, guideline or policy.

5.12 AUTHORITY TO SIGN

Each party represents that the individual who signs this Agreement has authority to do so and to bind it to the terms and conditions of this Agreement. Each party represents and warrants that they have full authority to enter this Agreement and perform the obligations indicated herein and that they shall be liable, subject to sections 74, 75 and 76 of Appendix B, for their respective failure to comply with the provisions of this Agreement.

5.13 TERMINATION

Authorized User agrees that this Agreement is a contract to extend financial accommodations and that if insolvency or similar proceedings are filed with respect to Authorized User, the subject Authorized User's EVTA-2 Work Order Form will be automatically terminated. If Authorized User ceases or adversely alters Authorized User's operations, or if Authorized User sells all or substantially all of Authorized User's assets or stock, or if Authorized User becomes insolvent, or if Contractor receives a disproportionate number of Cardmember inquiries or complaints relating to Charges at an Authorized User Location, or if Contractor has reasonable cause to believe that an Authorized User will not be able to perform all of its obligations under this Agreement, Contractor may, in its discretion, immediately terminate the EVTA-2 Work Order Form for the subject Authorized User. Authorized User agrees to notify Contractor immediately if any of the above events occur.

Upon termination, Authorized User must: 1) remove all displays of American Express Marks and return Contractor's materials and equipment immediately; and, 2) submit to Contractor any Charges and Credits incurred prior to the termination in accordance with this Agreement. Termination of the Agreement for any reason does not relieve the Parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive termination, including the provision of the sections entitled "Agreement Costs," "Contractor Payment," "Settlement Payment Method," "Full Recourse," "Confidentiality," "Dispute Resolution Process," "Indemnification," "Termination," "Trademarks and Service Marks," "No Waiver," "Section 76 of Appendix B, Limitation of Liability," and Contractor's Full Recourse rights and Authorized User's duties set forth in the Merchant Regulations to protect Cardmember Information, retain documents evidencing Transactions, and notify Authorized User's Recurring Billing customers of such termination shall survive termination of this Agreement.

5.14 DISPUTE RESOLUTION PROCESS

In the event of any dispute or controversy arising out of or relating to this Agreement, the State, subject Authorized User and Contractor agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, State and Authorized User shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.

Should the dispute not be resolved amicably, each party shall use the legal procedures as governed by New York State Law.

All documents, materials, and information in the possession of either party that are relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying according to the applicable New York State Law requirements. This language covers the discovery rules and guidelines applicable in New York State as well as any laws that apply to claims or disputes by/between State entities.

(continued)

5.15 TRADEMARKS AND SERVICE MARKS

This Agreement does not give either party any rights in the other party's name, logo, service marks, trademarks, trade names, taglines or any other proprietary designation (Marks). Except as otherwise provided in this Agreement, no use may be made of either party's Marks without the prior written permission of that party. Where the State and Authorized User mention the Card as a payment method, the State and Authorized User agrees to use Contractor's Marks. The State/Authorized User agrees to seek permission from American Express prior to using any American Express Marks.

5.16 NO WAIVER

Failure to enforce any term or condition of this Agreement shall not be a waiver of the right to later enforce such term or condition or any other term or condition of this Agreement.

5.17 COUNTERPARTS

This Agreement 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 Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any counterpart to complete a fully executed counterpart of this Agreement, and any telecopy or other facsimile transmission of any signature shall be deemed an original and shall bind such party.

5.18 PROCUREMENT LOBBYING LAW

A summary of OGS policy on Procurement Lobbying follows:

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html

5.19 NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE

Contractor agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire, which is attached as Appendix 1 (hereinafter the "Questionnaire"). The Contractor acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Contractor is responsible, and that the State will be relying upon the Contractor's responses to the Questionnaire in making that determination. The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract by providing ten (10) days written notification to the Contractor. 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.

(continued)

5.20 TAX LAW 5-A

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

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this bid. Form No. ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at **1-800-698--2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: http://www.nystax.gov

5.21 INSURANCE REQUIREMENTS

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with The People of the State of New York, Office of General Services (hereinafter referred to as "OGS"), Certificates of Insurance evidencing compliance with all requirements contained in this Contract. Such Certificates shall be of form and substance acceptable to OGS.

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

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; and shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to OGS. Contractor shall provide written notice to OGS at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to New York State OGS, Empire State Plaza, Corning Tower, 38th floor, Albany NY 12242. "Material alteration" shall mean an event which brings about non-compliance with the terms of this section 5.21 of the Base Agreement. The Commercial General Liability and Business Automobile Liability policies shall name The People of the State of New York, its officers, agents, and

(continued)

employees as additional insureds thereunder (General Liability Additional Insured Endorsement shall be on an Insurance Service Office's (ISO) form, number CG 20 26 07 04) and shall be primary and non-contributing to any insurance or self-insurance maintained by OGS.

The Contractor shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. OGS agrees that the current deductibles are acceptable. The Contractor shall require that any subcontractors hired carry insurance of such types and in such amounts as are reasonably appropriate for the services being provided by such subcontractors.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Department and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. 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.

Upon renewal of a policy of insurance required to be maintained under this Contract, the Contractor shall supply OGS updated replacement Certificates of Insurance, and, if applicable, amendatory endorsements.

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

a) Commercial General Liability Insurance with a limit of not less than $1,000,000 each occurrence. Such coverage shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract).

b) Commercial Internet Liability and Network Protection Policy with a limit of not less than $1,000,000 each occurrence. Such coverage must be written on ISO occurrence form EC 0010, or a substitute form providing equivalent coverage and shall cover liability arising from network security. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of the Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than 1 year after the contract is complete.

c) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included.

d) Comprehensive Business Automobile Liability Insurance with a limit of not less than $1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles.

Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if

(continued)

Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS. Certificates of Insurance are to be filed at the following address:

Office of General Service
Procurement Services Group
Corning Tower, 38th Floor
Albany, NY 12242
Attn: Kathy McAuley

5.22 WORKERS' COMPENSATION INSURANCE & DISABILITY BENEFITS REQUIREMENTS

Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document it has 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 bid or renewal.

A. 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 Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

1. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
2. Obtain such coverage from an insurance carrier; or
3. 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 the Office of General Services** at the time of bid submission or shortly after the opening of bids:

1. **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); Reference applicable IFB/RFP and Group #s on the form.

2. *Certificate of Workers' Compensation Insurance:*
   a. **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 the New York State Office of General Services, or
   b. **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 the New York State Office of General Services.

3. **Form SI-12**, *Certificate of Workers' Compensation Self-Insurance* available from the New York State Workers' Compensation Board's Self-Insurance Office.

4. **Form GSI-105.2**, *Certificate of Participation in Workers' Compensation Group Self-Insurance* available from the contractor's Group Self-Insurance Administrator.

B. Proof of Compliance with Disability Benefits Coverage Requirements:

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

1. Be legally exempt from obtaining disability benefits coverage; or

(continued)

2. Obtain such coverage from an insurance carrier; or
3. 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 the Office of General Services** at the time of bid submission or shortly after the opening of bids:

1. **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required,* which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); Reference applicable IFB/RFP and Group #s on the form.
2. **Form DB-120.1**, *Certificate of Disability Benefits Insurance.* Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or
3. **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.

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: The Office of General Services, Procurement Services Group, Team 8, 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder)

5.23 Appendix B, clause 3, (Ethics Compliance) is deleted and replace with the following:

3. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the applicable requirements of Sections 73 and 74 of the Public Officers Law, other applicable 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.

5.24 Appendix B, subdivision b of clause 14 (Confidential/Trade Secret Materials) is deleted and replaced as follows:

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

5.25 Appendix B, subdivisions f and g of clause 24 (Pricing) are deleted and replaced as follows:

f. Best Pricing Offer During the Contract term, if the Contractor introduces a new discount rate table for Merchants in the State Government industry category with a 541 industry code, and based on such new discount rate table, the State would be entitled to a lower Discount Rate based on the State's Charge and Chargeback and Credit volume, then Contractor shall promptly adjust the Discount Rate under this Contract in accordance with such new discount rate table. In the event Contractor fails to adjust the Discount Rate as required by the preceding sentence, Contractor shall be obligated to apply the lower Discount Rate

(continued)

retroactively to the date when the State would have otherwise been entitled to receive such lower discount rate

Price decreases provided for in the immediately preceding paragraph shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after:

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

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

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

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

g. Intentionally deleted.

5.26 **Appendix B, subdivision d. of clause 39 (Participation in Centralized Contracts)** is deleted and replaced with the following:

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

5.27 **Appendix B, clause 55 (Employees, Subcontractors & Agents)** is deleted and replaced with the following:

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

(continued)

5.28 Appendix B, clause 56 (Assignment) is deleted and replaced with the following:

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

The Contractor has no right to assign this Agreement to a successor upon its corporate dissolution unless the State consents to such assignment. For purposes of this clause any merger of the Contracting entity with another entity will be considered an assignment as will a transfer of twenty five percent (25%) or more of voting control of the Contracting entity or its parent. Consent to assignment shall not be unreasonably withheld. The reasonableness of an assignment shall be determined solely by the State.

Upon notice to the Contractor, the Agreement 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 Agreement.

Notwithstanding the foregoing, the Commissioner or a state agency may, with the concurrence of the Comptroller if the original Agreement was subject to the Comptroller approval, waive prior written consent required under this paragraph in accordance with the provisions of State Finance Law §138.

5.29 Appendix B, subdivision a. of clause 60 (Termination) is deleted and replaced with the following:

a. For Cause: For a material breach that remains uncured for more than thirty (30) days or other greater specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach. Notwithstanding anything else in this subdivision to the contrary, if the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid amounts incurred and owed to Contractor under this Contract through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

5.30 Appendix B, clause 61(Savings/Force Majeure) is deleted and replaced with the following:

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

(continued)

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. For the avoidance of doubt, a force majeure event shall not relieve Contractor or Authorized Users from their payment obligations under the Agreement.

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

a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Authorized Users with respect to Product subjected to allocation; and/or

b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State; or

c. Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an upward equitable adjustment in the Contract 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.

5.31 Appendix B, clause 62 (Contract Billings) is deleted and replaced with the following:

62. BILLINGS AND PAYMENTS

a. Billings. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Agreement 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 Agreement or where the billing was inaccurate.

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

b. Payment of Agreement 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

(continued)

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.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement 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 Agreement 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 Agreement 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, subject to section 2.4 of the Agreement. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

5.32 Appendix B, subdivisions b and c. of clause 63 (Default – Authorized User) is deleted and replaced with the following and the remaining paragraphs renumbered accordingly:

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

c. For Cause. In the event an Authorized User commits a material breach of the Agreement (other than as specified in section 63.b of this Appendix B and in the first paragraph of section 5.13, Termination, of the Base Agreement), without waiving its other rights and remedies, the Contractor has the right to send such Authorized User a written notice specifying the breach and providing such Authorized User an opportunity to cure the breach within a period of time no less than 30 days (Cure Period). If a breach by an Authorized User is not cured within the Cure Period, then Contractor has the right to suspend Card acceptance by the subject Authorized User, with suspension to be effective not less than 10 days following the end of the Cure Period. Contractor shall notify OGS in writing if a breach by Authorized User is not cured within the Cure Period. If the breach is not cured within 30 days of OGS's receipt of notice from Contractor, or other period of time mutually agreed to by Authorized User and Contractor, then Contractor may immediately terminate the subject Authorized User's EVTA-2 Work Order Form. Notwithstanding the foregoing, if the Authorized User disputes the existence of the material breach, it may invoke the Dispute Resolution Process set forth in section 5.14 of the Base Agreement by providing written notice of such dispute to Contractor within 10 days of its receipt of written notification from Contractor under this paragraph. Contractor shall not terminate the Authorized User's EVTA-2 Work Order Form during the pendency of the Dispute Resolution Process. Contractor may suspend Card acceptance by the Authorized User during the pendency of the Dispute Resolution Process, provided that any such suspension shall be effective not less than 10 days following the end of the Cure Period.

5.33 Appendix B, subdivision d. of clause 65 (Remedies for Breach) is deleted and replaced with the following:

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

(continued)

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

5.34 Appendix B, clause 68 (Independent Contractor) is deleted and replaced with the following:

68. INDEPENDENT CONTRACTOR No agency, partnership, joint-venture, or employment relationship is created among OGS, EVTA, Contractor and Authorized Users. It is understood and agreed that in no event shall Contractor, its agents, officers and employees be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

5.35 Procedures for Updating Agreement Pricing and/or Product Listings

Appendix H of this Agreement contains procedures related to changes for the addition of services under this Agreement. For each of these Agreement changes, the Contractor must complete the Contract Update Form, which is attached in Appendix H. The State reserves the right to modify this appendix, at its discretion without the approval of the Department of Law or the Office of the State Comptroller, throughout the term of the Agreement without prejudice to Contractor.

The auto add method may be utilized to update the Financial Services Processing offered by the Contractor. The regular add method may be utilized to update the Financial Services Processing offered by the Contractor for Product that is consistent with the scope of this Agreement. See Appendix H - OGS Procedures for Updating Contract Pricing and/or Product Listings for procedures for updating Financial Services Processing Interface offerings.

(continued)

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

TABLE OF CONTENTS

Page

1. Executory Clause 36
2. Non-Assignment Clause 36
3. Comptroller's Approval 36
4. Workers' Compensation Benefits 36
5. Non-Discrimination Requirements 37
6. Wage and Hours Provisions 37
7. Non-Collusive Bidding Certification 37
8. International Boycott Prohibition 37
9. Set-Off Rights 38
10. Records 38
11. Identifying Information and Privacy Notification 38
12. Equal Employment Opportunities For Minorities and Women 38
13. Conflicting Terms 39
14. Governing Law 39
15. Late Payment 39
16. No Arbitration 40
17. Service of Process 40
18. Prohibition on Purchase of Tropical Hardwoods 40
19. MacBride Fair Employment Principles 40
20. Omnibus Procurement Act of 1992 40
21. Reciprocity and Sanctions Provisions 41
22. Compliance with New York State Information Security Breach and Notification Act 41
23. Compliance with Consultant Disclosure Law 41
24. Procurement Lobbying 41
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors 42

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).

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, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital 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) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, 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
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
http://www.empire.state.ny.us

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
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
http://www.empire.state.ny.us

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.

APPENDIX B

GENERAL SPECIFICATIONS

TABLE OF CONTENTS

GENERAL **PAGE**

1. Applicability 46
2. Governing Law 46
3. Ethics Compliance 46
4. Conflict of Terms 46
5. Definitions 46-50

BID SUBMISSION

6. International Bidding 50
7. Bid Opening 50
8. Bid Submission 50
9. Facsimile Submissions 51
10. Authentication of Facsimile Bids 51
11. Late Bids 51
12. Bid Contents 51
13. Extraneous Terms 51
14. Confidential/Trade Secret Materials 52
15. Release of Bid Evaluation Materials 52
16. Freedom of Information Law 53
17. Prevailing Wage Rates - Public Works and Building Services Contracts 53
18. Taxes 54
19. Expenses Prior to Contract Execution 55
20. Advertising Results 55
21. Product References 55
22. Remanufactured, Recycled, Recyclable Or Recovered Materials 55
23. Products Manufactured in Public Institutions 55
24. Pricing 55
25. Drawings 56
26. Site Inspection 57
27. Procurement Card 57
28. Samples 57

BID EVALUATION

29. Bid Evaluation 58
30. Conditional Bid 58
31. Clarification/Revisions 58
32. Prompt Payment Discounts 58
33. Equivalent or Identical Bids 59
34. Performance and Responsibility Qualifications 59
35. Disqualification for Past Performance 59
36. Quantity Changes Prior To Award 59
37. Timeframe for Offers 59

TERMS & CONDITIONS

38. Contract Creation/Execution 59
39. Participation in Centralized Contracts 60
40. Modification of Contract Terms 60
41. Scope Changes 61

TERMS & CONDITIONS PAGE

43. Emergency Contracts 61
44. Purchase Orders 61
45. Product Delivery 62
46. Weekend and Holiday Deliveries 62
47. Shipping/Receipt of Product 62
48. Title and Risk of Loss 62
49. Re-Weighing Product 63
50. Product Substitution 63
51. Rejected Product 63
52. Installation 63
53. Repaired or Replaced Product/ Components 63
54. On-Site Storage 64
55. Employees/Subcontractors/Agents 64
56. Assignment 64
57. Subcontractors and Suppliers 64
58. Performance/Bid Bond 64
59. Suspension of Work 64
60. Termination 65
61. Savings/Force Majeure 65
62. Contract Billings 66
63. Default - Authorized User 66
64. Interest on Late Payments 67
65. Remedies for Breach 67
66. Assignment of Claim 68
67. Toxic Substances 68
68. Independent Contractor 68
69. Security 68
70. Cooperation with Third Parties 68
71. Contract Term - Renewal 68
72. Additional Warranties 68
73. Legal Compliance 70
74. Indemnification 71
75. Indemnification Relating to Third Party Rights 71
76. Limitation of Liability 71
77. Insurance 72

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

78. Software License Grant 72
79. Product Acceptance 74
80. Audit of Licensed Product Usage 75
81. Ownership/Title to Project Deliverables 75
82. Proof of License 77
83. Product Version 77
84. Changes to Product or Service Offerings 77
85. No Hardstop/Passive License Monitoring 78
86. Source Code Escrow for Licensed Product 78

42. Estimated/Specific Quantity Contracts 61

GENERAL

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

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

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

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

a. **Appendix A** (Standard Clauses for NYS Contracts)

b. **Mini-Bid Project Definition** if applicable and in accordance with the terms and conditions of the Back-Drop Contract.

c. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.

d. **Bid Documents** (Other than Appendix A).

i. Bid Specifications prepared by the Authorized User.

ii. Appendix B (General Specifications).

iii. Incorporated Contract Appendices, if any, following the order of precedence as stated for Contract above.

e. **Contractor's Bid or Mini-Bid Proposal**.

f. **Unincorporated Appendices** (if any).

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

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

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

ATTORNEY GENERAL Attorney General of the State of New York.

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

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

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

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

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

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

COMPTROLLER Comptroller of the State of New York.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes error corrections, upgrades, enhancements

or new releases, and any deliverables due under a maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

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

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

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

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

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

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

OGS The New York State Office of General Services.

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

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

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

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

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

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

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

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

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

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

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

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

STATE State of New York.

SUBCONTRACTOR Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered

into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

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

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

BID SUBMISSION

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

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

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

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

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

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

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

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

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

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

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

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

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

Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids

were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of the Authorized Users. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with their specifications. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Authorized User shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of the Commissioner.

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

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

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

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

a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and

b. The writing must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and

c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

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

14. CONFIDENTIAL/TRADE SECRET MATERIALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. TAXES

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

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

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

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

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

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

21. PRODUCT REFERENCES

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

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

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

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

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

24. PRICING

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

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

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

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

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

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

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

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

25. DRAWINGS

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

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

c. Accuracy of Drawings Submitted All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or

other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.

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

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

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

28. SAMPLES

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

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

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

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

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

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

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

BID EVALUATION

29. BID EVALUATION The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his/her sole discretion, may accept or reject illegible, incomplete or vague Bids and his/her decision shall be final. A conditional or revocable Bid

which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the offer.

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

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

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

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

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

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

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

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

TERMS & CONDITIONS

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

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

a. Agencies All State Agencies may utilize and purchase under any state Centralized Contract let by the Commissioner,

unless the Bid Documents limit purchases to specific State Agencies.

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

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

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

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

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

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

41. SCOPE CHANGES The Commissioner reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. The Commissioner may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

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

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

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

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

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

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

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

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

47. SHIPPING/RECEIPT OF PRODUCT

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

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

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

48. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance

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

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

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

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

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

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

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

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

56. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable). Failure to obtain consent to assignment from the Authorized User shall revoke and annul such Contract. Notwithstanding the

foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. The Commissioner reserves the right to reject any proposed assignee in his/her discretion.

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

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

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

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

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

60. TERMINATION

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

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

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

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

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

written notice of any force majeure occurrence as soon as the delay is known.

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

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

a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Authorized Users with respect to Product subjected to allocation; and/or

b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State; or

c. Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

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

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

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

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

63. <u>DEFAULT – AUTHORIZED USER</u>

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

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

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

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

64. <u>INTEREST ON LATE PAYMENTS</u>

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

b. By Non-State Agencies The terms of Article 11-A apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

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

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

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

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

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

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

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

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

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

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

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

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

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

69. SECURITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) in performance of the Contract

including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

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

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

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

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

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

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

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

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

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

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

e. Replacement Parts Warranty If during the regular or extended warranty period's faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the

Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

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

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

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

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

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

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

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

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

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

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

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

given a refund for any amounts paid for the period during which Usage was not feasible.

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

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

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

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

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

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

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

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

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

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

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

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

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

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

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise,

copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license.

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

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

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

e. Permitted License Transfers As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

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

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

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

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

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

(i) Copy the Product;

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

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

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

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

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

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

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

81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

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

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

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

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

(i) Existing Products:

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

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

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

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

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

e. Contractor's Obligation with Regard to ISV (Third Party) Product Where Contractor furnishes Existing Licensed Product(s) as a Project Deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in

the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

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

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

84. CHANGES TO PRODUCT OR SERVICE OFFERINGS

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

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

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

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

85. NO HARDSTOP/PASSIVE LICENSE MONITORING

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

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

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

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

I N D E X

	Paragraph No.
A	
Additional Warranties	72
Advertising Results	20
Applicability	1
Assignment	56
Assignment of Claim	66
Audit of Licensed Product Usage	80
Authentication of Facsimile Bids	10
B	
Bid Contents	12
Bid Evaluation	29
Bid Opening	7
Bid Submission	8
C	
Changes to Product or Service Offerings	84
Clarification/Revisions	31
Confidential/Trade Secret Materials	14
Conflict of Terms	4
Conditional Bid	30
Contract Billings	62
Contract Creation/Execution	38
Contract Term - Renewal	71
Cooperation with Third Parties	70
D	
Default - Authorized User	63
Definitions	5
Disqualification for Past Performance	35
Drawings	25
E	
Emergency Contracts	43
Employees/Subcontractors/Agents	55
Equivalent or Identical Bids	33
Estimated/Specific Quantity Contracts	42
Ethics Compliance	3
Expenses Prior to Contract Execution	19
Extraneous Terms	13
F	
Facsimile Submissions	9
Freedom of Information Law	16
G	
Governing Law	2
I	
Indemnification	74
Indemnification Relating to Third Party Rights	75
Independent Contractor	68
Installation	52
Insurance	77
Interest on Late Payments	64
International Bidding	6
M	
Modification of Contract Terms	40
N	
No Hardstop/Passive License Monitoring	85
O	
On-Site Storage	54
Ownership/Title to Project Deliverables	81
P	
Participation in Centralized Contracts	39
Performance and Responsibility Qualifications	34
Performance/Bid Bond	58
Prevailing Wage Rates Public Works & Building Services Contracts	17
Pricing	24
Procurement Card	27
Product Acceptance	79
Product Delivery	45
Product References	21
Product Substitution	50
Product Version	83
Products Manufactured in Public Institutions	23
Prompt Payment Discounts	32
Proof of License	82
Purchase Orders	44
Q	
Quantity Changes Prior to Award	36
R	
Rejected Product	51
Release of Bid Evaluation Materials	15
Re-Weighing Product	49
Remanufactured, Recycled, Recyclable or Recovered Materials	22
Remedies for Breach	65
Repaired or Replaced Product/Components	53
S	
Samples	28
Savings/Force Majeure	61
Scope Changes	41
Security	69
Site Inspection	26
Shipping/Receipt of Product	47
Software License Grant	78
Source Code Escrow for Licensed Product	86
Subcontractors and Suppliers	57
Suspension of Work	59
T	
Taxes	18
Termination	60
Timeframe for Offers	37

L
Late Bids 11
Legal Compliance 73
Limitation of Liability 76
Title and Risk of Loss 48
Toxic Substances 67

W
Weekend and Holiday Deliveries 46

APPENDIX C

American Express® Card Pricing Information

RATE SCHEDULE

The information listed below represents the complete charges for services provided under this Agreement. For further explanation of these services, please refer to the Section of the Agreement referenced. As noted in section 2.1, the costs associated with this Agreement are outlined in Appendix C, Rate Schedules. For the avoidance of doubt, any fees set forth in the Merchant Regulations, including, but not limited to, any fees set forth in Chapter 14, Merchant Fees, of the Merchant Regulations, that are not also set forth in Appendix C shall not apply. Any adjustment to the fees set forth in Appendix C shall be submitted to OGS by Contractor pursuant to Appendix H.

Discount Rate (Non-CPC)	2.15%	Section II.2.1 A
Discount Rate (CPC)	2.15%	Section II.2.1.A
Prepaid Card Rate	1.65%	Section II.2.1.A
Gateway Fee	Varies	Section II.2.1.D

APPENDIX D

REPORTING

New York Monthly Repo

CAP Account Number (SE#)	CAP Company Name	Company Name	Account (SE) Number	Hierarchy Code	DBA Name	Open Date	# AMEX Sales Jun 2011	$ AMEX Sales Jun 2011	Discount Fees Jun 2011	# Gateway Fees Jun 2011	$ Gateway Fees June 2011	# Chargebacks June 2011	$ Chargebacks Jun 2011	# Fraud June 2011
		NAME	1234567890	C	NAME	08/15/00	0	0	0	0	0	0	0	0

Request: **Q00000371181 - New York Monthly Report**
File Date: June 2011
Run Date: 08/11/2011 01:55 PM

Criteria:
MAP, CAP or SE number(s) (or Input List) 6310848155

Dependent Status = A,R

All dependent accounts and any supplied MAP, CAP or SE parent accounts are included.

CAP charge volume consists of total CV of SEs affiliated to the CAP.

MAP charge volume consists of total CV of US CAPs affiliated to the MAP.

Query Columns

CAP Account Number (SE#)
The CAP that an SE is cross-referenced to

CAP Company Name
The company name of the account

Company Name
The company name of the account

Account (SE) Number
SE (Service Establishment) number that is assigned to each account

Hierarchy Code
Code which indicates the type of account:
S - (SE) is an individual, physical, submitting location
C - (CAP) is a chain affiliated property. These records are usually established for cross-referencing
several properties owned or managed by the same company.
M - (MAP) is a master affiliated property. These records are usually established for corporations that own more than one chain (CAP).

DBA Name
Doing Business As' name for the account.
Typically the name which appears on the front door

Open Date
The date an account was opened on the system (when the SE number was assigned)

ROC 2011 Jun
Most recent June ROC count

VOL 2011 Jun
Most recent June volume

Vol Discount 2011 Jun
Cur Yr Cur Mo discount volume

ROC Chargebacks 2011 Jun
Cur Yr Cur Mo chargeback ROC count

Vol Chargebacks 2011 Jun
Cur Yr Cur Mo chargeback volume

ROC Fraud 2011 Jun
Cur Yr Cur Mo fraud count

Vol Fraud 2011 Jun
Cur Yr Cur Mo fraud volume

Establishment Services

Invoice
Merchant Financial Activity Statement by Settlement Date

American Express
PO Box 53619
Phoenix, AZ 85072-9945

Settlement Period through

For questions concerning your account please call 1-877-692-6373

Service Establishment Name	Service Establishment Number

SUMMARY FOR SETTLEMENT PERIOD						
Totals & Submissions	Trans Count	Sales Amount	Credit Amount	Discount Amount	Fees & Incentives	Settlement Amount
Regular Submissions Pre-Paid Card Total Adjustments						
Period Total						

	Discount Amount	Fees & Incentives	Total
Regular Submissions Pre-Paid Card Total Adjustments			
Total Amount Due			

* Payment is in due accordance with your Agreement.

Report continues on following page...

Please retain this copy for your records.

Establishment Services

Invoice
Merchant Financial Activity Statement by Settlement Date

American Express
PO Box 53619
Phoenix, AZ 85072-9945

For questions concerning your account please call 1-877-692-6373

Service Establishment Name	Service Establishment Number

Merchant Number **For Location**

S/E Date	Amex Date	Submission Amount	Sales Amount	Credit Amount	Discount Amount	Fees & Incentives	Settlement Amount
	TOTAL						

*Included in invoiced amount.

Merchant Number **For Location**

S/E Date	Amex Date	Submission Amount	Sales Amount	Credit Amount	Discount Amount	Fees & Incentives	Settlement Amount
	TOTAL						

*Included in invoiced amount.

Merchant Number **For Location**

S/E Date	Amex Date	Submission Amount	Sales Amount	Credit Amount	Discount Amount	Fees & Incentives	Settlement Amount
	TOTAL						

*Included in invoiced amount.

Merchant Number **For Location**

S/E Date	Amex Date	Submission Amount	Sales Amount	Credit Amount	Discount Amount	Fees & Incentives	Settlement Amount
	TOTAL						

*Included in invoiced amount.

Merchant Number **For Location**

S/E Date	Amex Date	Submission Amount	Sales Amount	Credit Amount	Discount Amount	Fees & Incentives	Settlement Amount

Report continues on following page...

Establishment Services

Invoice
Merchant Financial Activity Statement by Settlement Date

American Express
PO Box 53619
Phoenix, AZ 85072-9945

For questions concerning your account please call 1-877-692-6373

Service Establishment Name	Service Establishment Number

SUMMARY FOR SETTLEMENT DATE:					SETTLEMENT NUMBER:	
Totals & Submissions	Trans Count	Sales Amount	Credit Amount	Discount Amount	Fees & Incentives	Settlement Amount
Total Adjustments						
Period Total						

Merchant Number **For Location**

S/E Date	Amex Date	Submission Amount	Sales Amount	Credit Amount	Discount Amount	Fees & Incentives	Settlement Amount
DEBIT ADJUSTMENT-DEDUCTION PER YOUR AUTHORIZATION							
TOTAL							

*Included in invoiced amount.

Settlements for dates . transferred to the following bank account
Bank Identification Number:

Report continues on following page...

Appendix E

American Express Crisis Preparedness Program
General Summary

Policy, Standards & Procedures

American Express maintains a Crisis Preparedness Program Policy that addresses the recovery of key business operations (and supporting technology) in the event of an unplanned business disruption. The policy has been written to cover the American Express corporate group, including its key businesses, key utility groups and key third-party managed environments, and requires American Express to take appropriate responses to major incidents or events, including those that could materially impact facilities, employees, customers or other assets, with the goal of providing our customers with consistent, predictable service.

Management Commitment

Under our current Crisis Preparedness Program Policy, certain American Express officers and senior management are responsible for the following goals:

- Appropriate resources are available to plan and execute the applicable components of the relevant Crisis Preparedness Program in a manner consistent with applicable policies, standards and procedures
- As appropriate, plans addressing crisis management, emergency action, business continuity and disaster recovery of key business functions and processes (collectively referred to as "Crisis Preparedness Program Plans") are in place, materially accurate, regularly maintained and exercised as appropriate and practicable
- Employees are made aware, as appropriate, of the Crisis Preparedness Program Policy and supporting standards and procedures
- Reporting is provided to the appropriate level of management, boards, or other governing bodies

Risk Identification, Assessment & Analysis

The Crisis Preparedness Program Policy generally requires that recovery objectives for business functions and services (and any supporting technology) are based upon identification, assessment and prioritization of anticipated key risks (i.e., financial, regulatory and brand risks) should a major disruption occur ("Risk Identification, Assessment and Analysis"). The policy also requires that business functions or services associated with the most significant financial, regulatory and brand risks (e.g., significant settlement and clearing activities, availability of funds to consumer and business customers) receive the highest priority.

Plan Creation and Management

Crisis Preparedness Program Plans (i.e., crisis management, emergency action, business continuity and disaster recovery), collectively identify the particular mitigating strategies to limit the negative impact of a major business interruption to customers, employees and shareholders. The plans also address recovery activities, from the initial interruption and our response, through to recovery and restoration of service, as well as known resource

requirements or special considerations (e.g., alternate facilities, equipment, telecommunications, staff, equipment, technologies, physical security, information security, process flows).

Examples of mitigating strategies that have been utilized in different parts of the American Express Crisis Preparedness Program include, but are not limited to, the following:

- Utilization of geographically dispersed back up data centers
- Offsite data storage and retention
- Identification of hot and warm alternate sites
- Redundant work area identification and cross-trained personnel

Rather than focusing on specific scenarios, American Express generally takes an "all hazards" approach to plan development--addressing a wide range of potential hazards, such as, by way of example only, loss of area or building, technologies, telecom, other distribution channels or staff.

Incident Management Procedures & Controls

American Express implements crisis management teams and processes with the goal of ensuring a coordinated response to major business disruptions. Crisis management teams are typically geographically assigned and tasked with monitoring potential major interruption situations, expeditiously evaluating threats with the goal of meeting appropriate response times, and assessing actual disaster situations. Should a disaster occur, our crisis management personnel, following appropriate policies, are empowered to issue a formal declaration that would trigger implementation of the appropriate Crisis Preparedness Program Plan(s).

Awareness & Training

American Express strives to provide Crisis Preparedness Program training and awareness to its entire employee base, tailoring training content and availability based on an individual's engagement in the program. Training generally covers all major aspects of the Crisis Preparedness Program and is designed to help American Express employees understand their responsibilities regarding preparation for, response to, and recovery from a business disruption. Cross training is used in anticipation of restoring operations in the absence of key employees.

Exercises & Testing

Crisis Preparedness Program plans are required to be exercised and/or tested, as appropriate, in accordance with Risk Identification, Assessment and Analysis results for the purpose of validating the accuracy and effectiveness of documented strategies, tasks and dependencies. Exercises are required to increase in scope and difficulty over time and in accordance with the complexity/criticality of plans.

Internal governance and audit parties are tasked with observing, verifying and evaluating key tests. Test results are generally summarized and evaluated as to whether objectives were achieved. They are also reviewed by relevant business, staff group and technology management for the purpose of identifying appropriate corrections to the plans and the overall program. Identified material discrepancies are assigned to the applicable business-leader, staff group-leader, or technology-leader and tracked until satisfactorily resolved.

External Risk Management

American Express routinely evaluates key service providers for compliance with Crisis Preparedness Program requirements based on Risk Identification, Assessment and Analysis results. Contracts with key third party service providers usually cover the service provider's responsibility for maintenance, testing and reporting of recovery plans and capabilities. Responsibility for validating a third party service providers ability to meet contractual requirements is usually shared by business unit, staff group and technologies management.

Specific to the Scope of this Agreement

Contractor recognizes the criticality of its payment related Authorization and Settlement services and these activities are among Contractor's top priorities for recovery and high availability processing. Target down-times for Authorizations and Settlement services are seconds to hours depending on the nature of the disruption. There are processes for Contractor's critical functions and systems to monitor risks and business/customer requirements and to allocate appropriate resources to respond to business disruptions in a timely manner. Accordingly, it is Contractor's goal, consistent with Contractor's target down-times for Authorization and Settlement services, that payment-related Authorization and Settlement services for the State would be restored within seconds to hours (dependent on the nature of the disruption).

Authorization and Settlement systems have a combination of stand-in, geographically diverse high availability and hot sites to support the ongoing availability of those critical processes. Other less essential processes utilize similar availability strategies commensurate with their importance to Contractor's customers and business. As the majority of the services obtained by the State consist of Authorization and Settlement activities, Contractor has adequate sites to transfer processing that have high availability and/or are hot sites.

Contractor supports its relationship with the State through a variety of relationship management processes, ongoing service quality monitoring and back-end high availability systems solutions. Specific to disaster recovery planning, the core requirements of the State rely on Authorizations and Settlement services from Contractor which are among its top priorities in the event of small or large technology disruptions. Accordingly, recovery of Contractor's Authorization and Settlement services for Contractor's Merchants, including the State, will be among Contractor's top priorities.

Contractor's Crisis Preparedness Plan manages the recovery of the services and systems owned by Contractor. Contractor's Crisis Preparedness Plan covers Transaction information at the point that Contractor has received such Transaction information into its owned systems. Due to variations in the way information is provided to Contractor for processing, the specific point where Contractor takes ownership may vary (e.g., direct data network connectivity, dial-up connections, transmission via a third party, etc.) Before Contractor receives Transaction information into its owned systems, the Authorized User is responsible for any disaster recovery activities.

APPENDIX F

CONTRACTOR'S REQUIRED SUBMISSIONS

SUBMISSION #1
MANDATORY CONTRACTOR QUESTIONNAIRE
[CONTRACTOR MUST ANSWER ALL QUESTIONS]

1. Are you a New York State resident business?	**Yes** X	**No**_____
2. Total number of people employed by your firm:	**27,139 employees in the U.S.** _____	
3. Total number of people employed by your firm in New York State:	**Approximately 5,460** _____	
4. Is your company independently owned and operated?	**Yes**_____	**No**____**X**__
5. Place of manufacture or development of Product(s) offered (Please indicate "Yes" or "No" for A, B or C):		
A. All NYS manufacture/development? **OR**	**Yes**_____	**No**_____
B. All manufactured/developed outside NYS? **OR**	**Yes** _____	**No**_____
C. Manufactured/developed in NYS and outside NYS?	**Yes**__**X**__	**No**_____
6. Is your firm at least 51% owned and controlled by women, or 51% owned and controlled by minority group members, i.e., Black Hispanic, Asian, Pacific Islander, American Indian, Alaskan Native? **If yes,** _____**Minority Owned** _____**Women Owned** **If yes**, have you been certified or registered? ___**Yes** _____**No** **If yes**, List certification or registration authority: _____ _____	**Yes**_____	**No** X
7. Do any of the Products offered herein incorporate recycled materials?	**Yes**_____	**No**____ **N/A** X
8. Do any of the Products offered herein contain remanufactured components?	**Yes**_____	**No**____ **N/A** X
9. Are any of the Products offered herein Energy Star Compliant? If yes, which Products? _____ _____	**Yes**_____	**No**____ **N/A** X
10. **BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS** Pursuant to Procurement Lobbying Law (SFL §139-j)		
A. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?		X
If yes, please answer the following:		
B. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?		
C. If yes, was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?		

If yes, please provide details regarding the finding of non-responsibility:	
Governmental Entity: Date of Finding of Non-responsibility: Basis of Finding of Non-Responsibility: (add additional pages if necessary)	_____ _____ _____

D. Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?	**Yes_____**	**No_X**
If yes, please provide details:		
Governmental Entity:	_____	
Date of Termination or Withholding of Contract:	_____	
Basis of Termination or Withholding: (add additional pages if necessary)	_____	
Signature:	_____	
Printed Name:	_____	
Date:	_____	
11. "NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MacBRIDE FAIR EMPLOYMENT PRINCIPLES" In accordance with Section 165 of the State Finance Law, the Developer, by submission of this contract, certifies that it or any individual or legal entity in which the Developer holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the Developer, either: (answer Yes or No to one or both of the following, as applicable), A. have business operations in Northern Ireland: If yes, B. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to non-discrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such Principles.	**a. Yes_____** **b. Yes_____**	**No_X___** **No_____**

12. Are prices quoted the same as or lower than those quoted other corporations, institutions and government agencies (including GSA/VA contracts) on similar products, quantities, terms and conditions? See "Best Pricing Offer" in Appendix B, OGS General Specifications. If "NO", please explain on a separate sheet.	**Yes_____** **Refer to of**	**No_____** **Section 24** **Appendix B**
A. Do you have a contract with the General Services Administration (GSA) or Veterans Affairs (VA) for products offered? (Check all that apply.)	**Yes____** **GSA____** **VA ____**	**No___X___**
B. If yes, will you offer New York State your GSA or VA pricing or better?	**Yes_____** **GSA____** **VA ____**	**No_____**
C. If yes, a copy of the GSA or VA schedule is required. Have you included a copy?	**Yes_____** **GSA____** **VA ____**	**No_____**
13. If awarded a contract, will bidder accept the New York State Procurement Card?	**Yes_____**	**No____X__**
A. If yes, state any dollar limit on orders for which you will accept the NYS Procurement Card.	Up to **$**_____	
B. Additional discount for purchases made with the NYS Procurement Card:	**Yes_____** _____ %	**No_____**
14. Will you offer a Cash Discount for payment within 15 days of delivery and/or receipt of voucher?	**Yes_____** _____ %	**No___X___**
15. Will you offer a Cash Discount for payment within 30 days of delivery and/or receipt of voucher?	**Yes_____** _____ %	**No___X___**

*** * * ALL VENDORS PLEASE TAKE NOTICE OF NUMBER 16 BELOW * * ***

16. NON-COLLUSION CERTIFICATION

By submission of this contract, each contractor and each person signing on behalf of any contractor certifies, and in the case of a joint contract each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) The prices in this contract have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other contractor or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this contract have not been knowingly disclosed by the contractor and will not knowingly be disclosed by the contractor prior to contract award, directly or indirectly, to any other contractor or to any competitor; and

(3) No attempt has been made or will be made by the contractor to induce any other person, partnership or corporation to submit or not to submit a contract for the purpose of restricting competition.

_____ _____

(Contractor's Signature) (Name of Business)

APPENDIX G

EVTA-2 Form,
Work Order (American Express)

Introduction

EVTA-2 Form, Work Order authorizes the Contractor to initiate reimbursable activities, associated with providing the necessary FSP services and equipment, for the implementation of the Authorized User's Electronic Value Transfer program. This form must be used by State Agencies, and may be used by other Authorized Users, as the formal document to commence reimbursable Contractor services. All Authorized Users must have submitted an approved EVTA-1 Form to the Contractor, before services requested on this document can be officially started.

The EVTA-2 Form includes the following sections that must be fully completed by the Authorized User, in conjunction with the Contractor:

- Section 1 Authorized User and Contractor Information,
- Section 2 Work Order Check List
- Section 2.1 Initial Account Setup, On-line Debit Cards,
- Section 3 Other Services, Training,
- Section 4. Other Administrative Requirements,
- Section 5 Other Services, Reporting, and
- Section 6 Unique Terms or Conditions.

Electronic Value Transfer Administrator

Form EVTA-2, Work Order
Contract PS65669
American Express Travel Related Services Company, Inc.

Org. Agency Code	Date	Requisition No.	Comptroller's Contract No.: **PS65669**	Commodity Group No.: **79008**	Work Order No.
Originating Agency & Federal Identification #:			EVT Program # (s) (from Part 3 of Form EVTA-1):	Merchant #:	
Vendor:			Ship to:		
Unless otherwise indicated, all prices are F.O.B. Destination					

Item No.	Description of Services	Start Date	End Date*	Estimated Annual Costs**	Estimated Total Costs (entire term)
	Provide Electronic Value Transfer Services in accordance with attached EVTA-2, Work Order				

*Note: End date cannot extend beyond 10/31/2016.
**Note: The annual amount should relate to the remaining fiscal year period.

This EVTA Work Order is effective and binding when it contains the approvals from the Electronic Value Transfer Administrator, is signed by the Originating Agency, is submitted with a valid Purchase Order, and is transmitted to Contractor. Notwithstanding the foregoing, unique terms or conditions added by the Authorized User in section 6 pursuant to the authority in Appendix B §§40 or 44, must have Contractor's written approval before the Work Order takes effect and becomes binding. By signing this Form, Authorized User agrees to be bound by the terms and conditions of Contract Number PS65669, except as modified by sections 4, 5 and 6 of this Form.

_____ **APPROVED** **Electronic Value Transfer Administrator (New York State Department of Taxation and Finance)**	_____ **APPROVED** **New York State Comptroller**

Originating Agency Signature	**Signature:**	**Name:**
	Title:	**Date:**

Electronic Value Transfer Administrator

Form EVTA-2, Work Order
Contract PS65669
American Express Travel Related Services Company, Inc.

The State of New York is an Equal Opportunity/Affirmative Action Employer.

[This section is primarily for NYS Agencies]

Exemption from Taxes

All EVT orders from New York State agencies are exempt from certain federal taxes, and New York State and local sales taxes pursuant to Articles 28 and 29 of the New York State Tax Law. This Form EVTA-2 Work Order must be accepted in lieu of an exemption certificate; the vendor must retain a copy of this work order to prove that the sale was exempt. Do not include taxes from which the State is exempt when submitting invoices.

Introduction

Form EVTA-2, Work Order in conjunction with a valid Purchase Order, authorizes Contractor to initiate reimbursable activities, associated with providing the specific financial processing services for the implementation of the Authorized User's Electronic Value Transfer program. All Authorized Users must use this work order form as the formal document to commence reimbursable services. All Authorized Users must provide Contractor with an approved copy of Part 3 of Form EVTA-1, Program Plan Application, indicating authorization to implement an EVT program before services requested on this document can be officially started. For more information regarding Form EVTA-1, Program Plan Application, visit the Electronic Value Transfer Administrator's Web site (www.tax.state.ny.us/evta).

Using the OGS EVT Contract with Contractor

The following steps describe the process for using the OGS EVT Contract with Contractor. For more information refer to OGS' Contract Award Notice available at their Web site (www.ogs.ny.gov/purchase). Note: The following three steps all apply to Authorized Users.

Step 1: Complete this Form EVTA-2, Work Order.

An Authorized User, in conjunction with Contractor, must complete this Form EVTA-2, Work Order to identify the specific services it intends to procure under the Contract. In completing this work order, an Authorized User will also be identifying its program's technical details, projected costs and any unique terms and conditions. Instructions for completing this form are found in the *How to Complete Form EVTA-2, Work Order* section.

Step 2: Obtain Contractor approval for unique terms or conditions.

Any terms or conditions included in this Form EVTA-2, which are not provided for in the Contract, shall be reviewed and approved in writing by Contractor. Section 6, *Unique Terms or Conditions*, of this form must be used to identify any unique terms or conditions. Contractor shall approve any such unique terms or conditions by completing the signature lines at the end of Section 6 of this form. If Merchant has local laws that impact payment processing, such law must be identified and presented in this section.

Step 3: Submit completed work order to the EVTA **(State agencies also require EVTA approval at this step)**.

Once completed, a State agency must submit this work order to the Electronic Value Transfer Administrator (Department of Taxation and Finance) for approval. The EVTA's evaluation will verify that the services to be provided are reflective of the scope of the agency's approved Program Plan. The EVTA will use the Electronic Value Transfer Administrator approved signature box on page 1 of this form to indicate its approval. The EVTA will return the EVTA-2 back to the State agency.

Electronic Value Transfer Administrator

Form EVTA-2, Work Order
Contract PS65669
American Express Travel Related Services Company, Inc.

An electronic copy of Form EVTA-2 can be submitted as an e-mail attachment sent to:

evta@tax.state.ny.us

or a paper copy of the form can be mailed to:

EVTA Unit
NYS Tax Department, Room 700, Bldg. 8
State Campus
Albany, New York 12227

How to Complete Form EVTA-2, Work Order

An Authorized User should complete a Form EVTA-2, Work Order for payment programs approved through the Form EVTA-1, Program Plan Application process. An Authorized User should utilize the EVTA Guidelines and the Pre-Implementation Checklist at www.tax.state.ny.us/evta, Contractor, and OGS' Contract Award Notice at www.ogs.ny.gov when completing this work order. The EVTA Unit is available to assist an Authorized User in completing this work order.

This work order includes the following sections that must be fully completed, where applicable, by the Authorized User, in conjunction with the Contractor:

- Section 1 Authorized User and Contractor Information,
- Section 2 Work Order Check List
- Section 2.1 Initial Account Setup, On-line Debit Cards,
- Section 3 Other Services, Training,
- Section 4. Other Administrative Requirements,
- Section 5 Other Services, Reporting, and
- Section 6 Unique Terms or Conditions.

Line-by-line instructions are contained within each of these sections to assist an Authorized User in completing this work order. Most of these sections require the Authorized User to provide cost estimates for the services to be acquired from Contractor. The EVTA Rate Calculator, available for download from the EVTA Web site is available to assist Authorized Users in developing these cost estimates. The calculator is an Excel spreadsheet comprised of separate worksheets to calculate cost estimates for the various services being acquired through the contract. These worksheets are set-off as separate tabs, located at the bottom of worksheet. The instructions within each section of this work order will direct Authorized Users to the appropriate tab within the EVTA Rate Calculator. Instructions within the calculator will guide an Authorized User in using the worksheets.

Please review the Introduction in the EVTA Rate Calculator ("Intro" tab) to become familiar with the set-up of the Rate Calculator and how it is used to complete this work order.

Electronic Value Transfer Administrator

Form EVTA-2, Work Order
Contract PS65669
American Express Travel Related Services Company, Inc.

Section 1. Authorized User and Contractor Information

Instructions. Please provide the following contact information about the Authorized User and Contractor.

Line a. Provide the Authorized User and program name(s) as they appear on the Form EVTA-1, Program Plan Application(s). The Program #(s) are assigned by the EVTA and can be found in Part 3 of Form EVTA-1.

Line b. Provide the Authorized User's mailing address.

Line c. To be supplied by the Authorized User, provide the name of the primary contact for this program and include their e-mail address and phone and fax numbers.

Line d. To be supplied by Contractor, provide the name of Contractor's primary contact for this program and include their e-mail address and phone and fax numbers.

Line e. To be supplied by Contractor, provide the name of Contractor's account management contact for this program and include their e-mail address and phone and fax numbers.

a	Authorized User Name			
	Program Name(s)			
	Program #(s)			
b	Authorized User Address			
c	Authorized User Contact		E-Mail Address	
	Phone Number		Fax Number	
d	Contractor Primary Contact		E-Mail Address	
	Phone Number		Fax Number	
e	Contractor Account Manager		E-Mail Address	
	Phone Number		Fax Number	

Section 2. Contractor Work Order Check List

Instructions. Please provide the following contact information.

Line a. Provide card brand and types accepting and estimated annual sales volume and average ticket value (volume/transactions).

Line b. Provide bank account information - where funds will be deposited.

Line c. Provide Non-bank card information if applicable.

Line d. Provide hardware/auto settle/middleware information if applicable.

a	Initial account Setup	
	Estimated Annual Sales Volume:	$_____
	Estimated Average Ticket Value:	$_____
b	Bank Account Section:	Authorized User Account Information: Bank Name:_____
		Routing # _____ Account # _____
		Attach bank confirmation letter or pre-printed voided check.
c	Non-Bankcard	
	American Express	Amex service establishment number: _____
d	If using hardware method of communication: Dial_____ or IP_____	
	Auto settle: yes/no:_____ If yes, specify time: _____	
	If using VAR/Middleware, Provide Name: _____	

Section 2.1 Initial Account Setup, On-line Debit Cards

Instructions. Complete this section only if you will be accepting on-line debit:

Line a. List the Merchant IDs as provided by Contractor, which will be used to identify the source of online debit card payments. Use a separate column for each Merchant ID to be used. Copy the table to list more than two Merchant IDs. Enter "to be provided" if the Merchant IDs have not been provided before submitting this work order to the EVTA.

Line b. If multiple Merchant IDs are used, provide a brief description identifying the distinguishing characteristics of payments processed under the different IDs (e.g., "NYCE transactions, district office 1" or "MAC transactions, district office 2").

Line c. Identify the transfer device to be used in accepting on-line debit cards (currently, POS terminals are the only devices satisfying the networks security requirements).

Line d. Identify the communication method for transmitting transactions between the Authorized User and Contractor.

Line e Indicate if an Interim Working Account will be used. Authorized Users should be aware that there is a separate fee for each Interim Working Account and if using an Interim Working Account should consider using a single account for all Merchant IDs and payment sources under this contract. Report Interim Working Account cost estimates in the Account Opening and Maintenance Services line in Section 2.1 of this work order.

Line f. Identify the Authorized User account to which settled funds will be transferred. Supply a copy of a cancelled check or a letter from the Authorized User bank to Contractor authorizing transfers to the Authorized User's bank account.

Line g. Estimate the number of transactions to be processed during the balance of the first fiscal year, then, use the EVTA Rate Calculator to estimate the processing costs for these transactions. *Please refer to the instructions in the EVTA Rate Calculator "C2" worksheet for the completion of costs associated with the entries made in the columns below. If there is more than one "Merchant ID" listed under this Section, re-use the EVTA Rate Calculator worksheet to calculate the costs for each Merchant ID. To maintain a record of these estimates before re-using the EVTA Rate Calculator, complete the program identification information at the bottom of the worksheet and print the individual sheet.*

Line h. Estimate the total number of transactions to be processed during the entire term of the program and use the EVTA Rate Calculator to estimate the total processing costs for these transactions (not to exceed five years). *To compute the costs for the entire term, re-use the worksheet to compute costs for each year of the program. To maintain a record of these estimates before re-using the EVTA Rate Calculator, complete the program identification information at the bottom of the worksheet and print the individual sheet.*

Electronic Value Transfer Administrator

Form EVTA-2, Work Order
Contract PS65669
American Express Travel Related Services Company, Inc.

a	Merchant ID	#	#
b	ID Usage		
c	Transfer Device	( )POS	( )POS
d	Communication Method	( )Dial up ( )Leased Line ( )ISDN ( )Host-to-Host ( )Wireless (cellular)	( )Dial up ( )Leased Line ( )ISDN ( )Host-to-Host ( )Wireless (cellular)
e	Interim Working Account	( )Yes ( )No	( )Yes ( )No
f	Authorized User Account Information	Bank Name : Routing # : Account # :	Bank Name : Routing # : Account # :
g	Estimated 1st Year Trans. & Cost	# of transactions: Cost:$	# of transactions: Cost:$
h	Estimated Total Trans. & Cost (entire term)	# of transactions: Cost:$	# of transactions: Cost:$

Section 3. Other Services, Training

Implementation Training	*Instructions:* Describe the implementation training to be provided - include dates and locations, if known. Implementation Training is provided at no additional charge.			
	Estimated 1st Yr. Cost	No additional charge	Estimated Total Cost	No additional charge
Standard On-Going Training	*Instructions:* Describe the standard on-going training to be provided - include dates and locations, if known. Standard On-going Training is provided at no additional charge.			
	Estimated 1st Yr. Cost	No additional charge	Estimated Total Cost	No additional charge

Section 4.0. Other Administrative Requirements

Instructions. Complete to identify any other administrative requirements of the Authorized User.

Line a. Identify the Authorized User Unique Field and the detailed makeup of the field. Describe its use by the Authorized User and what record and positions the field is located.

Line b. Identify and describe any certification of Authorized User interfaces to be performed by Contractor.

Line c .Identify the Authorized User person who will be receiving the monthly invoices and indicate that person's mailing address.

Line d. Identify the Authorized User person who will be receiving the chargeback data.

Line e. Identify the Authorized User person who will be receiving the records retrieval data.

Line f. Identify the records retention and/or data ownership period, not to exceed 7 years from the date of creation. If the records retention and/or data ownership period is beyond 7 years, Contractor must approve this section.

Line g Identify and describe any acceptance testing requirements beyond those provided for in the contract. If acceptance testing is beyond the contractually provided, Contractor must approve this section.

Line h Identify and describe any other administrative requirements. Contractor must approve this section.

Electronic Value Transfer Administrator

Form EVTA-2, Work Order
Contract PS65669
American Express Travel Related Services Company, Inc

Section 4.0. Other Administrative Requirements			
a	Authorized User Unique Field – 20 positions		
b	Certifying Interfaces		
c	Invoicing:(Billing statement contact: name/phone#/address)		
d	Chargeback: (contact: name/phone#/address)		
e	Records Retrievals: (contact: name/phone#/address)		
f	Records Retention/Data Ownership (if exceeds 7 years from creation, Contractor must approve this section)		
g	Acceptance Testing (if other than contractually provided. Contractor must approve this section)		
h	Other 1, specify: (Contractor must approve)		
	Other 2, specify: (Contractor must approve)		
i	Contractor Approval Signature	Contractor agrees to any and all unique terms or conditions set forth in Section 4, lines f - h above.	
		Signature:	Name:
		Title:	Date:

Electronic Value Transfer Administrator

Form EVTA-2, Work Order
Contract PS65669
American Express Travel Related Services Company, Inc

Section 5.0. Other Services, Reporting	
Standard Reporting (Contractor must approve below if this section varies	*Instructions:* Describe the standard reports which will be provided - include frequency (e.g., daily, monthly) and medium (e.g., paper, electronic, or both). Standard reports are provided at no additional charge.

from section 3.3.of Base Agreement).				
	Estimated 1st Yr. Cost	No additional charge	Estimated Total Cost	No additional charge
Ad-Hoc Reporting (Contractor must approve below)	*Instructions:* Describe the ad-hoc reports which will be provided - include frequency (e.g., daily, monthly) and medium (e.g., paper, electronic, or both).			
Contractor Approval Signature	Contractor agrees to any and all unique terms or conditions set forth in Section 5 above.			
	Signature:		Name:	
	Title:		Date:	

Section 6. Unique Terms or Conditions

Instructions. Complete to identify any terms or conditions required by the Authorized User beyond those provided for in the Contract. Enter "None" (or check No) as a response to each line in which no unique terms or conditions are required. Note: Contractor must approve this section in writing if any unique terms or conditions are identified. Unique terms and conditions can only be added through this document.

Line a. Identify and describe any security requirements beyond those provided for in the contract.

Line b. Identify and describe any confidentiality requirements beyond those provided for in the contract.

Line c. Indicate if a convenience fee will be charged to the cardholder. If you are planning on charging a fee to the cardholder,
please describe how the fee will be computed.

Line d. Identify and describe any other required terms or conditions beyond those provided for in the contract.

Line e. To be completed by Contractor if any line a thru d identifies unique terms or conditions.

a	Security	

b	Confidentiality	
c	Convenience Fees	( ) Yes ( ) No If yes, describe how the fee will be computed:
d	Other 1, Local laws impacting payment to Contractor:	
	Other 2, specify:	

e	Contractor Approval Signature	Contractor agrees to any and all unique terms or conditions set forth in Section 6, lines a - d above.	
		Signature:	Name:
		Title:	Date:

Cardholder Data Storage Compliance & Service Provider

******* PCI DSS and card association rules prohibit storage of track data under any circumstances. If you or your POS system pass, transmit, store or receive full cardholder's data, then the POS software must be PA DSS (Payment Application Data Security Standard) compliant or you (merchant) must validate PCI DSS compliance (see 1(b) below and questions 3 and 4 must be completed). If you use a payment gateway, they must be PCI DSS compliant. *******

1. Have you ever experienced an Account Data Compromise "ADC"?
Yes No

If yes, provide date(s) of compromise: _____

a) Have you validated PCI DSS (Payment Card Industry Data Security Standard) compliance? Yes No
If yes, go to 1(b); If no, go to #2

b) Date of compliance, Report on Compliance "ROC" or Self Assessment Questionnaire "SAQ"?

c) What is the name of your Qualified Security Assessor "QSA" or Self Assessment Questionnaire (circle one "SAQ") A, B, C, or D

d) Date of last scan: _____ Approved Scanning Vendor's name:

2. Are you using a "dial-up" terminal or "TTC" Touch Tone Capture? Yes No

3. Do you or your Service Provider(s) receive, pass, transmit or store the Full Cardholder Number "FCN", electronically?
Yes No

a) If yes, where is card data stored?
Merchant's location only Merchant's Headquarters/Corp office only
Primary Service Provider Both Merchant & Service Provider(s) Other Service Provider All Apply

4. What Primary Service Provider/Software Developer did you purchase your point of sale "POS" application from (e.g., software, gateway)?
Contractor: _____

a) What is the name of the Service Provider/Software Developer's software application?
Software Version #?

b) Do your transactions process through any other Service Provider (e.g., web hosting companies, gateways, corporate office)?
Yes No
c) If yes, name the other Service Provider: _____

APPENDIX H

PROCEDURES FOR UPDATING AGREEMENT PRICING AND/OR PRODUCT LISTINGS

OGS procedures for updating contract pricing and/or product listings

Types of Contract Changes

AUTO-ADD - Auto-adds are contract changes made in accordance with the previously approved contract pricing formula. An example of "Auto Add" formulas include contract changes with a previously approved "discount from list". Procurement Services Group (PSG) staff will verify that the correct contract discount(s) is/are applied against the correct list prices and discounts will be checked to verify that the net prices are correct in accordance with the contract formula. If found by PSG staff to be in accordance with the terms of the contract, Contractor will be notified to update their contract list and proceed with selling products. Contractor should note, however, that all "Auto Adds" approved by PSG are subject to a post audit by the Office of the State Comptroller. Auto-adds will only be processed **once a month**.

REGULAR ADD - Regular adds are products eligible for addition to the contract which do not fall under the discounts or product types previously approved under the contract. This type of addition must be accompanied with justification of reasonableness of price, and is subject to pre-audit by the Office of the State Comptroller. Contractor will be notified to update their contract list and proceed with selling products if the update is approved by OGS PSG and the Office of the State Comptroller.

During the contract period or any extension period, requests for contract product line updates should include the following, **in triplicate**, as applicable:

a. A cover letter briefly describing the update (i.e.: type of addition, deletions, price revisions). To avoid processing addition of "Auto-Adds" along with "Regular" or "Special" additions, they must be submitted separately. If applicable, this letter should highlight if Contractor has in any way restructured the pricing to its Licensees generally or has introduced new products or services which fall into a new group or category that did not exist at the time of approval of the Agreement by the New York State Comptroller.

b. A separate section in the required presentation format for all **additions**. Request must be **accompanied by current pricing information** (U.S. Commercial Price List) **and should include documentation necessary to determine that additions are in accordance with the contract pricing formula.**

c. A separate section of all **deleted models**.

d. Separate sections for **price increases** and **price decreases** in the required presentation format. Request must be accompanied by current pricing information (U.S. Commercial Price List).

e. A revised State Price List incorporating all changes may be submitted with each submission and is required at least on a semi-annual basis. The State reserves the right to require a revised State price list at any time during the contract period and it will be requested if many updates have occurred since the last complete update. This updated list must be either numbered as a version (Version 1, 2 etc.) and/or be dated.

f. A completed copy (in triplicate) of the Contract Update Form (attached following next page). All three (3) copies of the form must be signed by an authorized Contractor representative where indicated and notarized in the Corporate Acknowledgment box.

OGS reserves the right to:

-request additional information
-reject contract updates
-remove products from contracts
-request additional discounts for new or existing products

STATE OF NEW YORK
EXECUTIVE DEPARTMENT - OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP
Corning Tower – 37th Floor
Empire State Plaza
Albany, New York 12242

CONTRACT UPDATE FORM	
OGS CONTRACT NO.:_____	**DATE OF SUBMISSION:_____**
CONTRACT PERIOD: From :_____To: _____ **GROUP NO. &** **DESCRIPTION:_____**	**VENDOR CONTACT:** NAME:_____ PHONE NO:_____ FAX NO.:_____ E-MAIL:_____
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 updates. The form is to be completed **in triplicate** and submitted to the OGS Procurement Services Group for final approval. Vendors shall complete, sign, and notarize where indicated, and attach this form to a cover letter written on standard company letterhead. Any submission that is not complete or signed **in triplicate** will be rejected.

2. *Contractor may be required to submit the Product and price information for the update in an Excel spreadsheet format in hard copy and on a floppy disk and/or electronically via e-mail to the OGS Purchasing Officer. OGS agrees that with respect to submission of changes to the Merchant Regulations, such submissions may be made to OGS electronically via e-mail or, if requested by OGS, in hard copy.*

3. *To expedite the processing of updates that qualify as Auto Adds, do not combine Auto Adds with Regular or Special Adds.* ***If more than one type of update is being submitted, they should be submitted as totally separate requests****.*

4. *The list must be dated and the format should be consistent with the format of the price list(s) included in the Pricing Appendix of the Contract.*

5. *The contract update must be accompanied by either the GSA Price List and revised NYS Net Price List incorporating all changes or the US Commercial Price List and revised NYS Net Price List incorporating all changes, whichever is applicable, if any.*

COMPLETE STATEMENTS 1 THROUGH 8 BELOW:

1. This request is an: _____Auto Add _____Regular Add _____Special Add See contract for an explanation of these terms.	2. The intent of this submittal is to: _____Add new products _____Delete products _____Increase pricing _____Reduce pricing _____Amend VAR list

3. All terms and conditions of the contract shall apply to this request. _____Agree _____Disagree	4. All discounts as agreed to in the contract shall apply. _____Agree _____Disagree
5. All discounts are: _____GSA _____Most Favored Nation* *Prices offered are the lowest offered to any similarly situated entity.	6. Attached documentation includes: _____Current approved GSA (labeled "For information only") _____Current commercial price list (labeled "For information only") _____Revised NYS Net Price List
7. If other than an auto-ad, describe the Nature and Purpose of the update: _____ _____	
8. For a regular add, please explain how pricing has been restructured to customers, and/or identify and describe new Products or services, which fall into a new group or category that did not exist at the time of approval of the Contract by the New York State Comptroller. If not applicable, state NA: _____ _____	

The following CORPORATE ACKNOWLEDGEMENT statement is to be included in each of the three original forms. The request must be signed by an individual given the authority to perform this action by the corporation's board of directors and the signature must be notarized.

_____
Signature of Authorized Vendor Representative:

CORPORATE ACKNOWLEDGMENT

STATE OF }
: **ss.:**
COUNTY OF }

On the_____day of_____in the year 20__, before me personally came: _____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____; that he/she/they is (are) _____ (the President or other officer or director or attorney in fact duly appointed) of _____, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

_____
Notary Public

FOR STATE USE ONLY	
OGS APPROVAL: **Approved____ Approved as amended_____ Disapproved_____** Name:_____ Title:_____ Date_____	**OSC APPROVAL:** **Approved_____ Disapproved_____** Name:_____ Title:_____ Date_____

EXHIBIT 2

Appendix C – Rate Schedule

APPENDIX C

American Express® Card Pricing Information

RATE SCHEDULE

The information listed below represents the complete charges for services provided under this Agreement. For further explanation of these services, please refer to the Section of the Agreement referenced. As noted in section 2.1, the costs associated with this Agreement are outlined in Appendix C, Rate Schedules. For the avoidance of doubt, any fees set forth in the Merchant Regulations, including, but not limited to, any fees set forth in Chapter 14, Merchant Fees, of the Merchant Regulations, that are not also set forth in Appendix C shall not apply. Any adjustment to the fees set forth in Appendix C shall be submitted to OGS by Contractor pursuant to Appendix H.

Discount Rate (Non-CPC)	2.15%	Section II.2.1 A
Discount Rate (CPC)	2.15%	Section II.2.1.A
Prepaid Card Rate	1.65%	Section II.2.1.A
Gateway Fee	Varies	Section II.2.1.D

CPC – Corporate Purchasing Card

EXHIBIT 3

Contract Performance Report

State of New York
Office of General Services
PROCUREMENT SERVICES GROUP
Contract Performance Report

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

Contract No.: **PS65669** **Contractor**. **American Express Travel Related Services Company, Inc.**

Describe Product* Provided (Include Item No., if available):_____

***Note**: "**Product**" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments:_____

Agency:_____ Prepared by:_____

Address:_____ Title:_____

Date:_____

Phone:_____

E-mail:_____

Please detach or photocopy this form & return by FAX to 518/474-2437 or mail to:

OGS PROCUREMENT SERVICES GROUP
Customer Services, 38th Floor
Corning 2nd Tower - Empire State Plaza
Albany, New York 12242
* * * * *