CENTRALIZED CONTRACT FOR

PURCHASING AND TRAVEL CARD SERVICES

BY AND BETWEEN

NEW YORK STATE

OFFICE OF GENERAL SERVICES

AND

CITIBANK, N.A.

CONTRACT NUMBER PS66495

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1.

STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT # PS66495
CENTRALIZED CONTRACT FOR THE ACQUISITION OF
PURCHASING AND TRAVEL CARD SERVICES

THIS AGREEMENT (hereinafter the "Contract" or the "Agreement") is made this 7th day of **April, 2014**, by and between the People of the State of New York, acting by and through the **Commissioner of the Office of General Services** (OGS), whose office is on the 41st Floor, Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the "State" or "OGS") and **Citibank, N.A.**, having its principal place of business at 701 East 60th Street North, Sioux Falls, SD 57117 (hereinafter referred to as the "Contractor"). OGS and the Contractor are collectively referred to as the "Parties."

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

WHEREAS, OGS has identified a need by New York State agencies and other Authorized Users for Purchasing and Travel Card Services, as further described herein, and

WHEREAS, since taking office, Governor Andrew Cuomo has committed his administration to implementing enterprise-wide changes that will utilize modern business practices in running New York State government, and

WHEREAS, New Yorkers need a government in which they can take pride, and this comprehensive overhaul of operations will help accomplish that goal, and

WHEREAS, as part of Governor Cuomo's Procurement Transformation, OGS issued a procurement for Purchasing and Travel Card Services to create a centralized contract for use by New York State agencies and Authorized Users that focuses on implementing best practices and identifying opportunities for savings, and

WHEREAS, OGS conducted a competitive procurement to identify the bidder(s) which could provide the Purchasing and Travel Card Services at the best value, referred to as RFP #22712 (hereinafter the "RFP"), which was advertised on August 8, 2013 in the New York State Contract Reporter, as required by New York State Economic Development Law, and

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

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

1. OVERVIEW

1.1. SCOPE

This Contract shall be a no-cost OGS centralized Contract under which Contractor will provide New York State Agencies and other Authorized Users of OGS centralized contracts, including political subdivisions, school districts, and others authorized by law ("Authorized Users"), with bank issued credit cards known as Purchasing/Procurement Cards ("P-Cards"), Travel Cards, and Non-Employee Travel ("NET") Cards, and associated Purchasing and Travel Card Services as further described herein, at no cost to State Agencies or Authorized Users. P-Cards, Travel Cards and NET Cards are management tools which can be used by authorized employees to purchase the commodities or services needed for individual agency requirements.

The P-Card, Travel Card and NET Card Program is intended to increase efficiency, simplify the purchasing process, reduce paperwork and administrative costs, and increase reporting and monitoring abilities for State Agencies and other Authorized Users.

This Contract sets forth the terms and conditions governing the provision of Purchasing and Travel Card Services from the Contractor to Authorized Users of the Contract.

1.2. ESTIMATED QUANTITIES

This Contract is an estimated quantities contract. All dollar values and quantities quoted in this Contract are based on current P-Card, Travel Card and NET Card information and represent potential card usage only. Use of this Contract is voluntary and therefore, the State provides no guarantee of volume or individual Authorized User participation. The Estimated Total Card Usage set forth below is based on a per fiscal year time period.

Estimated Total Card Usage

	P-Cards	Travel Cards	NET Cards
Annual Transaction Volume	$200 - $250 million	$46 million	$841,000
Number of Cards	16,000	31,000	310
Number of Transactions	800,000	38,000	1,800

In accordance with Appendix B, §42, estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. Therefore, this Contract shall be for the quantities actually ordered and the transaction volume actually used during the Contract period. No guarantee of any quantity is implied or given.

1.3. CONTRACT PERIOD AND RENEWALS

This Contract shall commence on April 7, 2014 and shall be in effect for a term of five (5) years. If mutually agreed between OGS and the Contractor, the Contract may be renewed, under the same terms and conditions, for up to two (2) additional one (1) year period(s), not to exceed a total Contract term of seven (7) years. If at any time the Contract is cancelled, terminated or expires, the Contractor has the affirmative obligation to extend appropriate and reasonable cooperation to assure the orderly transition of Contract services to the subsequent contractor.

1.4. DEFINITIONS

1. **Agency Program Administrator/Authorized User Program Administrator:** "Agency Program Administrator" or "Authorized User Program Administrator" shall refer to an individual(s) designated by the Authorized User to administer its P-Card, Travel Card and/or NET Card service program.

2. **Association Rules:** "Association Rules" shall refer to any rules, regulations, releases, interpretations or other requirements imposed or adopted by any applicable association (e.g., Visa, MasterCard).

3. **Authorized User(s):** "Authorized User" shall be as defined in State Finance Law §163(1)(k).

4. **Best Value:** "Best Value" shall refer to the basis for awarding this Contract to the bidder that optimizes quality, cost and efficiency among responsive and responsible bidders. [State Finance Law §163(1)(j)].

5. **Business Day:** "Business Day" shall refer to Monday through Friday, excluding New York State or Federal holidays.

6. **Business Hours:** "Business Hours" shall refer to 8:00 AM to 5:00 PM ET on Business Days.

7. **Cardholder/Account:** "Cardholder" or "Account" shall refer to any employee or authorized non-employee of a New York State Agency or other Authorized User who is authorized to use a P-Card, Travel Card or NET Card.

8. **Card Services/Services:** "Card Services" or "Services" shall refer to the services provided by Contractor for an Authorized User's Procurement/Purchasing Card (P-Card) program, Travel Card program and Non-Employee Travel (NET) Card Program under this Contract.

9. **Centralized Contract:** "Centralized Contract" shall be as defined in Appendix B.

10. **Contract:** "Contract" shall be as defined in Appendix B. This document shall be the Contract.

11. **Contractor:** "Contractor" shall refer to Citibank, N.A.

12. **DOB:** "DOB" shall refer to the New York State Division of the Budget.

13. **Level I data:** "Level I data" shall refer to traditional credit card detail similar to that provided for retail cards. This data includes merchant name, purchase amount, date and place of purchase.

14. **Level II data:** "Level II data" includes all data provided in Level I, but also breaks out sales tax paid (if any) and includes a customized purchaser code provided at point of purchase. Level II information can provide a custom code that uniquely identifies each transaction, which assists in reconciliation to a general ledger and allows for automated 3-way matching (receipt of merchandise, invoice and payment) as well as the inclusion of invoice numbers with credit card data.

15. **Level III data:** "Level III data" includes all detail provided in Levels I and II, plus line item detail including information such as unit cost, SKU# and shipping costs. Level III data provides line item detail on exactly which items were purchased.

16. **May:** the term "May" denotes the permissive in a Contract clause or specification. "May" does not mean "required." Also see "Should."

17. **Merchant Category Code (MCC):** "MCC" shall refer to a code used to classify a business or other entity that accepts credit card payments by the type of goods or services it provides.

18. **MCC Blocking:** "MCC Blocking" shall refer to Contractor's ability to block purchases of certain specified MCC codes, as designated by the State or Authorized User.

19. **Must:** the term "Must" denotes the imperative in a Contract clause or specification. "Must" is synonymous with "required." Also see "Shall."

20. **MWBE:** "MWBE" shall refer to a business certified with the New York State Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.

21. **NACHA Rules:** "NACHA Rules" shall refer to the set of rules issued by the National Automated Clearing House Association that financial institutions must follow in order to process ACH payments within the ACH network.

22. **Non-State Agencies:** "Non-State Agencies" shall refer to political subdivisions and other entities authorized by law to make purchases from New York State centralized contracts other than those entities that qualify as "State Agencies." This term includes all entities permitted to participate in centralized contracts in accordance with Appendix B §39(b), *Non-State Agency Authorized Users* and §39(c), *Voluntary Extension*.

23. **NYS Procurement (NYSPro):** "NYSPro" shall refer to the division of the New York State Office of General Services which is authorized by law to issue centralized, statewide contracts for use by New York State agencies, political subdivisions, schools, libraries and others authorized by law to participate in such contracts.

24. **NYS Vendor File:** "NYS Vendor File" shall refer to a centralized repository to maintain timely and reliable information on all contractors registered to do business with New York State. The Office of the State Comptroller's Bureau of State Expenditures created the Vendor Management Unit (VMU) to manage this file.

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

26. **PCI-DSS**: "PCI-DSS" shall refer to the Payment Card Industry Data Security Standards as set forth by the Payment Card Industry Standards Council.

27. **Program Administrator**: "Program Administrator" shall refer to an individual(s) designated to administer the P-Card, Travel Card and/or NET Card service program.

28. **Procurement/Purchasing (P-Card), Travel Card and Non-Employee Travel (NET) Card: "**P-Card(s)," "Travel Card(s)" and "NET Card(s)" shall refer to the bank-issued credit cards to be provided by the Contractor under this Contract.

29. **Request for Proposal (RFP):** "RFP" shall refer to the solicitation #22712 released by the New York State Office of General Services for Purchasing and Travel Card Services which resulted in this Contract.

30. **Shall:** the term "Shall" denotes the imperative in a Contract clause or specification. "Shall" is synonymous with "required." Also see "Must."

31. **Should:** the term "Should" denotes the permissive in a contract clause or specification. "Should" does not mean "required." Also see "May."

32. **State Agency or State Agencies:** the term "State Agency" or "State Agencies" shall have the same meaning as "Agency" or "Agencies" as defined in Appendix B §5, *Definitions*.

33. **Visa Commercial Format (VCF):** "VCF" shall refer to the standard file format in which Contractor will provide transaction files.

2. CONTRACT TERMS AND CONDITIONS

2.1. APPENDIX A

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

2.2. APPENDIX B

Appendix B, Office of General Services General Specifications, dated July 2006, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

2.3. APPENDIX B AMENDMENTS

The following Appendix B clauses are hereby amended, as follows:

A. Section 4 (Conflict of Terms) is deleted and replaced with the following language:

Conflict of Terms and Conditions. Conflicts among the documents shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts;
2. The base Contract (this document);
3. Appendix B, OGS General Specifications;
4. Appendix D, Rebate and Pricing Schedule;
5. Appendix E, Citibank Commercial Card Agreement;
6. Appendix F, Participation Agreement ; and
7. Other Appendices and attachments as deemed necessary.

B. Section 27 (Procurement/Purchasing Card) is deleted in its entirety.

C. Section 62 (Contract Billings) is deleted and replaced with the following:

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, Contractor's billing statement and standard reporting data for the State 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.

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 http://www.osc.state.ny.us/epay/index.htm or by e-mail at epayments@osc.state.ny.us. 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 as are in effect as of the effective date of this Contract, except where the Commissioner has expressly authorized payment by paper check as set forth above. Inquiries relating to OSC's Electronic Payments program should be directed to:

NYS Office of the State Comptroller

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

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, including Contractor's billing statement and standard reporting data. 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.

D. Section 65(b) (Remedies for Breach; Withhold Payment) is deleted and replaced with the following:

In any case where a question of non-performance by Contractor arises pursuant to a material breach of this Contract by Contractor, any disputed 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.

2.4. APPENDIX C

Contractor's Executive Law, Article 15-A (M/WBE) Requirements, Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement, is hereby expressly made a part of this Contract as fully as if set forth herein.

2.5. APPENDIX D – REBATE AND PRICING SCHEDULE

Appendix D – Rebate and Pricing Schedule is hereby expressly made a part of this Contract as fully as if set forth herein.

2.6. CONTRACT ADMINISTRATOR

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. If Contractor's dedicated Contract Administrator changes, Contractor must notify OGS within five (5) business days and must provide an interim contact person until the position is filled. Contractor may submit a Contract Administrator change by submission to the OGS NYSPro individual designated on the front of the Contract Award Notice. Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via email.

2.7. REBATE REQUIREMENTS

Contractor shall provide quarterly rebates in accordance with Appendix D – Rebate and Pricing Schedule, for all Authorized Users of P-Cards, Travel Cards and/or NET Cards under the Contract. Within a mutually agreeable timeframe not to exceed 60 days after the end of each quarter, Contractor shall aggregate the usage of all charges accumulated on the P-Cards, Travel Cards and NET Cards by all Authorized Users, and submit the appropriate rebate amount for each card program in accordance with Appendix D – Rebate and Pricing Schedule, to each Authorized User. The rebates shall be transmitted directly to the individual Authorized Users. Contractor shall also provide statistical spend data for the preceding quarter.

The rebate amount shall be based on the number of basis points as indicated in Appendix D – Rebate and Pricing Schedule for the total annualized spend after each quarter of the State's fiscal year (April 1 – March 31) for all Authorized Users of the Contract and the corresponding speed of invoice payment. At the end of each quarter of the State's fiscal year, the total qualified annual spend volume (as defined in Appendix D) for all Authorized Users in such fiscal year shall be annualized and rebates shall be issued based on the number of basis points indicated in the corresponding rebate tier as set forth in Appendix D – Rebate and Pricing Schedule. Contractor shall report all Contract usage by Authorized User, in a form mutually agreed upon by the parties. Contractor shall show all calculations in determining the final amounts rebated to each Authorized User.

2.8. LATE FEES

Contractor shall not charge any late fees to New York State Agencies. Payments by State Agencies shall be required within the timeframes established by the New York State Prompt Payment Law (State Finance Law Article 11-A). Payments by Non-State Agency Authorized Users shall be required within 30 days. Late payments by State Agencies shall be governed by the New York State Prompt Payment Law, as applicable. Late fees as set forth in Appendix D – Rebate and Pricing Schedule may only be charged to Non-State Agency Authorized Users where the New York State Prompt Payment law does not apply.

2.9. MWBE PARTICIPATION REQUIREMENTS AND PROCEDURES

I. General Provisions

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State Certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

II. Contract Goals

For purposes of this procurement, OGS conducted a comprehensive search and determined that this Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is however encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. To locate MWBEs, the Directory of Certified Businesses can be viewed at: http://www.esd.ny.gov/MWBE/directorySearch.html

III. Equal Employment Opportunity (EEO)

A. Contractor agrees to be bound by the provisions of New York State Executive Law Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

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

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall:

a. Submit an EEO policy statement to OGS with the bid, or
b. If Contractor does not have an existing EEO policy statement, the Contractor shall sign and submit Appendix C, Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement annexed hereto; or
c. Contractor shall certify and affirm that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy.

3. The Contractor's EEO policy statement shall include the following language:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

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

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

d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 3 and Paragraph "E" of this Section II, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. To ensure compliance with this Section, the Contractor shall submit Form EEO 100- Staffing Plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractor shall complete the Staffing plan form and submit it as part of their Contract.

D. Form EEO 101 - Workforce Employment Utilization Report ("Workforce Report")
Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

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

2.10. SHORT TERM EXTENSION

In the event that a replacement contract has not been issued, this Contract may be extended unilaterally by the State for an additional period of up to three months, upon notice to the Contractor, with the same terms and conditions as the original Contract. With the concurrence of the Contractor, the extension may be for a period of up to six months. However, this extension shall terminate in the event that the replacement contract is issued in the interim.

2.11. EXTENSION OF USE

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

Contractor agrees to honor all orders from State Agencies, Political Subdivisions and others authorized by law to participate in this Contract, which are in compliance with the pricing, terms, and conditions contained herein.

2.12. CONTRACT AMENDMENT PROCESS

During the term of the Contract, this Contract may be amended, upon mutual written agreement of the parties, as changes occur within the industry, including pricing adjustments due to fluctuations in interchange rates, significant changes in interest rates or if market disruption affects the Contractor's ability to raise funds in the market, or if laws or regulations in any jurisdiction (or their interpretation thereof) should change, and such change has an adverse affect on either the income or the costs of the Contractor. Amendments may be proposed by either party. OGS reserves the right to consider amendments which are not specifically covered by the terms of the Contract but are judged to be in the best interest of the State. Contract amendments shall take effect upon written mutual agreement of the parties.

2.13. PERFORMANCE AND BID BONDS

There are no bonds for this Contract. 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 term of the Contract.

2.14. NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations as provided by State Finance Law §163(1)(k). See also Appendix B, §39, *Participation in Centralized Contracts*.

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

2.15. NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE

If it is found by the State that the Contractor's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract. Contractor agrees it shall recertify its Questionnaire no later than the end of the eleventh month of each Contract year.

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

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

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

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

2.16. NEW ACCOUNTS

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State contracts, agency code, name, address, and contact person. State Agency Authorized Users shall not be required to provide credit references. Contractor may not perform credit checks or credit risk evaluations on State Agencies. Contractor may perform credit checks or credit risk evaluations on Non-State Agency Authorized Users only.

2.17. NEW YORK STATE STATEWIDE FINANCIAL SYSTEM

The New York State Statewide Financial System (SFS) went live for NYS agencies in April 2012. Future SFS procurement functionality envisions the ability to fully host Contract catalogs or to integrate Contractor-hosted punch-out catalogs. OGS reserves the right to integrate either of these future catalog functions with a Contractor during the Contract period, and Contractor agrees to coordinate with SFS for integration if OGS exercises its right to do so. No costs or expenses associated with providing information and integration shall be charged to NYS. Technical Requirements for the data elements, such as data types, maximum field lengths, and cXML element names shall be provided by SFS during integration. Upon completion of integration and activation of an SFS-based catalog ordering system, State agencies utilizing SFS shall process their orders through the SFS functionality and the other Authorized Users shall continue to process orders in accordance with Contract terms and conditions, including through any Contractor-hosted web-based ordering system. For more information on SFS, its use, and its capabilities please visit the SFS website at: http://www.sfs.ny.gov/.

2.18. METHOD OF PAYMENT

Invoicing and payment shall be made in accordance with the terms set forth in § 2.3 (Appendix B amendments, § 62. *Contract Billings and Payments*).

2.19. BILLING/ORDERING SYSTEMS

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users.

2.20. REPORT OF CONTRACT USAGE

Contractor shall furnish daily, monthly and/or ad hoc reports, including but not limited to the following:

2.20.1. Daily/monthly Cardholder statements;

2.20.2. Daily/monthly billing statements;

2.20.3. Management reports;

2.20.4. Transaction data on a daily basis;

2.20.5. P-Card, Travel and NET card volumes;

2.20.6. Payment delinquency reports; and

2.20.7. Any other reports as mutually agreed upon by the parties.

Contractor shall provide online access for Cardholders as well as for the OGS and Agency Program Administrators for account maintenance and reporting capabilities.

2.21. PERFORMANCE SURVEYS

Contractor shall be required, upon request, to provide performance surveys to Authorized Users. Contract performance measures may include, but are not limited to, the following: delivery time, fill rate, response time to inquiries, resolution of problems, employee courtesy, staff knowledge and overall performance.

2.22. CONTRACTOR INSURANCE REQUIREMENTS

The Contractor shall procure or self-insure, at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance in accordance with the requirements of Appendix G – Contractor Insurance Requirements. At least thirty (30) days prior to the expiration of any policy required by the Contract or as soon as reasonably practicable, Contractor shall submit to OGS evidence of renewal or replacement policies of insurance with terms no less favorable to OGS, in accordance with Appendix G – Contractor Insurance Requirements.

2.23. TAX LAW SECTION 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 is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor has filed the ST- 220-TD with the NYS Department of Taxation and Finance (DTF). Please note that the NYS Department of Taxation and Finance should receive the completed Form ST-220-TD, not OGS. OGS should only receive the Form ST-220-CA.

Proposed Contractors should complete and return the certification forms within five (5) 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. Each Bidder shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. Website links to the Contractor certification forms and instructions are provided below.

Form No. ST-220-TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. 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 submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf.

Vendors may call DTF at 518-485-2889 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with DTF. For additional information and frequently asked questions, please refer to the DTF web site: http://www.tax.ny.gov.

2.24. USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State, as a member of the Council of Great Lakes Governors, supports and encourages vendors to use recycled, remanufactured 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 or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this bid solicitation. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, § 22, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

2.25. IRAN DIVESTMENT ACT

By entering into this Contract, Contractor certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before OGS may approve a request for Assignment of Contract.

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

OGS reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Contract, and to pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

2.26. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER 4

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program) (EO4), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at http://www.ogs.ny.gov/EO/4/Default.asp. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

2.27. INFORMATION SECURITY BREACH AND NOTIFICATION ACT

§ 208 of the State Technology Law (STL) and § 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted person information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Disclosure of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after necessary measures to determine the scope of the breach and to restore integrity, but with delay if law enforcement determines it impedes a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York may also be required to notify the following New York State agencies: the Attorney General, the Office of Cyber Security (OCS), the Division of State Police,

and/or the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: http://www.dhses.ny.gov/ocs/breach-notification/.

2.28. ADDITIONAL CONTRACT TERMS

I. Authorized Users

A. "Authorized Users", as provided for under this Contract, shall consist of (i) State Agencies and (ii) non-State Agencies as such terms are defined in Section 1.4 herein. The State is liable, in accordance with the terms of this Contract, for all amounts incurred in connection with the receipt and use of Card Services by State Agencies only. Non-State Agencies will be solely liable for amounts incurred in respect of their receipt and use of Card Services. The State acknowledges that Non-State Agencies shall be entitled to receive their own rebate in accordance with the terms of the Contract, and that the State will not be entitled to any rebate in respect of amounts incurred by Non-State Agencies in connection with the Card Services provided to such Non-State Agencies.

B. In order for any Non-State Agency to qualify to receive Card Services, such entity and Contractor must each execute the form of participation agreement attached hereto as Appendix F (the "Participation Agreement"). Once such Participation Agreement is fully executed, the Non-State Agency that is a party thereto shall be deemed to qualify to receive Card Services. A Non-State Agency may not receive Card Services until a Participation Agreement with respect to such Non-State Agency is fully executed. Provided that the Non-State Agency is eligible to participate in this Contract in accordance with Appendix B §39, no further consent of the State is required in order for a Participation Agreement to be entered into with any Non-State Agency, it being understood and agreed that the State hereby consents to each such eligible Non-State Agency entering into a Participation Agreement and receiving Card Services. For the avoidance of doubt, other than with respect to Non-State Agencies, the State shall be liable for all amounts incurred in connection with the receipt and use of Card Services by all State Agency Authorized Users to which the State seeks to have Card Services made available, as provided in this Contract.

II. Billing and Payment Procedures

A. For each statement period that there is account activity, the Contractor will provide each Authorized User with a statement for the account, which will indicate the outstanding balance, amount due and the payment due date. In addition, it will show an itemized list of current purchases, payments and credits.

B. Unless required by applicable law or otherwise agreed between the State and the Contractor, all account statements will be provided to each Authorized User via an electronic method. If necessary to retrieve statements, the State shall ensure that each State Agency Program Administrator or other authorized employee of the State has secure encrypted access to the Contractor's website to access and view electronic account statements.

C. If the State or Authorized User, as the case may be, sends a payment that exceeds the amount due on an account, the Contractor will reflect the amount of the excess as a credit against future charges on the subject account. The State or Authorized User, as the case may be, may request a refund of a credit balance.

D. The Contractor may accept late or partial payments (including, but not limited to, those marked as in settlement of a dispute or "payment in full" or with other restrictive endorsements), without losing any of its rights under this Contract. The State or Authorized User, as the case may be, is required to comply with all requirements established by the Contractor regarding procedures for remitting payments to the Contractor and required information to be included with payments. The State and each Authorized User acknowledges that a failure by the State or Authorized User, as the case may be, to comply with the Contractor's procedures for remitting payments may result in late payment of amounts due, assessment of late charges, reduction in the spending limit of the subject account(s), and/or the closing or suspension of the subject account. Notwithstanding the foregoing, in the event of termination of an Authorized User due to the Authorized User's failure to make payment, the provisions of Appendix B §63 shall apply.

III. Spending Limit

The initial aggregate spending limit for the Program Jurisdiction under this Contract is set forth in Appendix D to the Contract. With respect to any sub-limits applicable to individual accounts, the State or Authorized User, as the case may be, may advise the Contractor of the State's or Authorized User's, as the case may be, desired sub-limit allocation for such accounts. The Contractor may lower or raise the aggregate spending limit for the Program and any account sub-

limit in the Contractor's sole discretion; provided that, in the event of a decrease in the aggregate spending limit for the Program, the Contractor will inform the State as soon as reasonably practicable of such decrease.

IV. Liability for Use of Account

A. Subject to Sections 2.28 IV.C., IV.D. and V.A. below, the State shall be liable for and shall pay all amounts charged to the account(s) established in respect of State Agencies, and each Non-State Agency shall be liable for and shall pay all amounts charged to the account(s) established in respect of such Non-State Agency, in accordance with the terms of the Contract and Appendix D – Rebate and Pricing Schedule.

B. If a Cardholder, Program Administrator or any employee of the State or an Authorized User has any reason to believe that a card or account information is lost or stolen, or that any fraud or unauthorized use of an account has occurred or is likely to or will occur, the State must notify the Contractor promptly . Notification can be made to the Contractor at any time – 24 hours a day, 7 days a week – and shall be made via the telephone number listed in the account materials. The State shall (and shall ensure its State Agencies), and each Non-State Agency shall, cooperate with the Contractor in its efforts to investigate fraudulent activity. No later than sixty (60) days from the date of an account statement, the State or Authorized User shall notify the Contractor in writing of any charges on the account statement that occurred as a result of loss, theft, fraud or unauthorized use. If the Contractor detects unusual or suspicious activity on an account, it may temporarily suspend credit privileges until it can verify the activity.

C. If the State, Authorized User or a Cardholder believes that an amount charged to an account is the result of fraud or unauthorized use by a third party, the Contractor offers a dispute process subject to the bankcard association rules and procedures. To dispute a charge, the Cardholder, Authorized User or State must complete and submit all required forms and documentation, as and when requested by the Contractor (a "Disputed Charge"). Disputed Charges shall not be due and payable until completion of the dispute process. If upon conclusion of the dispute process the State, Authorized User or the Cardholder is found to be (i) not liable for a Disputed Charge, then such Disputed Charge shall be removed from the applicable account, or (ii) liable for a Disputed Charge, then such Disputed Charge shall be then due and payable.

D. In addition to the dispute process mechanism set forth in Section 2.28 IV.C. above, the parties acknowledge that the corporate liability waiver program may offer partial or full waiver for certain liabilities described in Section 2.28 IV.A., subject to the terms and conditions of such program.

V. Closing of Accounts

A. The Program Administrator shall notify the Contractor in the manner prescribed by the Contractor whenever the State or Authorized User desires to close an account. The State or Authorized User, as the case may be, shall not be liable for charges made to an account on which the State or Authorized User, as the case may be, is liable under this Contract after the State or Authorized User, as the case may be, has given the Contractor proper notice to close such account and the Contractor has had a reasonable opportunity to close the account; provided that, the State or Authorized User, as the case may be, shall be liable for any recurring charges (for example, journal subscriptions and memberships) which continue to be made to such account regardless of the termination, suspension or cancellation of such account.

B. The State or Authorized Users shall immediately advise the Contractor of the separation from employment of any Cardholder from the State or an Authorized User or termination of any Cardholder's business relationship with the State or an Authorized User (which shall include, among other things, dismissals, voluntary resignation by the Cardholder and termination due to death or illness) and hereby authorizes the Contractor to cancel the accounts of such Cardholders. The State and any Authorized User shall, take all reasonable actions necessary to prohibit access and use of accounts by, and to collect cards issued to, Cardholders whose employment or such other business or governmental relationship has terminated or whose accounts have been canceled and shall immediately destroy such cards.

VI. Mutual Waiver of Consequential Damages

Under no circumstances shall either party be liable for indirect, incidental, consequential, punitive or special damages or any increased costs or expenses or any loss of profit, business, contracts, revenues or anticipated savings even if advised of the possibility of such damages, loss of profit, business, contracts, revenues or anticipated savings. The Contractor shall not be liable to the State, any Authorized User, any Cardholder or any third party for the standard, quality or suitability of any goods or services purchased using an account.

VII. Account Termination

Contractor may terminate the right of any Non-State Agency Authorized User to receive Card Services under this Contract upon the occurrence of any of the following:

(a) an Insolvency Event, as defined in Appendix E – Citibank Commercial Card Agreement;
(b) failure of such Authorized User to meet any of its payment obligations under the Contract;
(c) any representation or warranty made by such Authorized User that is false or incorrect in any material respect as of the Effective Date of this Contract or becomes false or incorrect in any material respect at any time during the term of this Contract;
(d) the merger, consolidation, acquisition or other fundamental change in control of all or substantially all of such Authorized User's assets without the Contractor's consent; or
(e) Contractor's reasonable and verifiable determination that suspension or termination of such Authorized User's right to receive Card Services is required in order to comply with Contractor's legal or regulatory requirements or rules. (each of (a) through (e) being a "Termination Event").

Upon the occurrence of a Termination Event, such termination shall be effective upon ninety (90) days' prior written notice from Contractor to such Authorized User (or such earlier period as the parties may agree). Thereafter, the Bank may close the applicable account(s) and cancel any applicable cards, demand immediate payment of the full outstanding balance owed by such Authorized User in connection with the account (including any amounts not yet reflected on an account statement), and avail itself of all rights and remedies it may have. In the event of termination by Contractor for an Authorized User's failure to make payment, the provisions of Appendix B §63 shall apply.

In any event, it is understood that 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.

3. CONTRACTOR REQUIREMENTS

3.1. CUSTOMER SUPPORT, IMPLEMENTATION AND TRAINING

3.1.1. Contractor shall provide customer support for Authorized User Program Administrator(s) and Cardholder(s) on a 24/7 basis, including phone and online.

3.1.2. Contractor shall provide a dedicated customer support primary point of contact, as well as a Cardholder point of contact.

3.1.3. Contractor shall provide training to Authorized Users, as necessary, to provide a smooth and seamless transition, refresher training, new product enhancements, updates on rules and regulations, etc.

3.1.4. Contractor shall establish and provide a procedure for handling questioned or disputed charges.

3.2. TECHNICAL REQUIREMENTS

3.2.1. Contractor shall meet all system requirements for integration with the New York State Statewide Financial System (SFS), which uses Oracle Peoplesoft software.

3.2.2. Contractor shall provide a daily transaction file which includes all charges.

3.2.3. Contractor shall provide the transaction file in Visa Commercial Format (VCF) standard, or should the State elect for Contractor to issue a MasterCard product, the Contractor shall provide the transaction file in a standard file layout compatible with the State's Peoplesoft software.

3.2.4. Contractor shall provide all transactional fields required by PeopleSoft Purchasing.

3.2.5. Contractor shall provide Level III transactional detail, when available. Level III data includes all detail provided in Levels I and II, plus line item detail including information such as unit cost, SKU# and shipping costs. Level III data provides line item detail on exactly which items were purchased.

3.2.6. Contractor shall provide transactions that can be uniquely identified by PeopleSoft key fields for P-Card charges.

3.2.7. Contractor shall provide separate files for P-Cards, Travel Cards and NET Cards.

3.2.8. Contractor shall deliver files daily, at a mutually agreed upon time.

3.2.9. Contractor shall provide a Business Unit field (unique identifier for a NYS agency) rather than a credit card mapping extract.

3.2.10. Contractor shall include a Business Unit field (unique identifier for a NYS agency) for each charge in the VCF file, or should the state elect for Contractor to issue a MasterCard product, the Contractor shall include a Business Unit field in a standard file compatible with the State's Peoplesoft software.

3.2.11. Contractor shall provide historical files, as necessary.

3.3. BUSINESS REQUIREMENTS

3.3.1. Contractor shall allow payment via ACH, for all agencies that process payments through the Office of the State Comptroller (OSC), in accordance with OSC rules and guidelines.

3.3.2. Contractor shall interface with the Statewide Financial System (SFS) at no additional cost to the State.

3.3.3. Contractor shall bill individual Authorized Users.

3.3.4. Contractor shall assume liability for unauthorized third party use of credit cards or account numbers that are fraudulently used by third parties, and lost or stolen cards. Authorized Users shall be liable for the use of cards by authorized Cardholders, provided that the use is within the transaction limit as well as any control restrictions established.

3.3.5. Contractor shall not sell or distribute lists of participating Authorized Users, Cardholders, their addresses or any other information acquired from the Authorized Users.

3.3.6. Contractor shall issue quarterly rebates based on annualized actual quarterly results.

3.3.7. Contractor shall issue rebates directly to individual State Agencies or Authorized Users.

3.3.8. Contractor shall provide MCC blocking capability at the agency level, with override capability by either the OGS Program Administrator or the Agency Program Administrator.

3.3.9. Contractor shall allow OGS and/or Agency Program Administrators to make temporary credit limit changes, as necessary.

3.3.10. Contractor shall provide monthly as well as ad hoc reports, including but not limited to, the following: (1) daily/monthly Cardholder statements; (2) daily/monthly billing statements; (3) management reports; (4) transaction data on a daily basis; (5) P-Card, Travel and NET card volumes; (6) payment delinquency reports; and (7) any other reports as required by the State.

3.3.11. Contractor shall provide online access for Cardholders as well as for the OGS and Agency Program Administrators for account maintenance and reporting capabilities.

3.4. PROGRAM BENEFITS

3.4.1. Contractor shall issue cards to anyone that the authorized Agency Program Administrator selects, without requiring credit checks or credit risk evaluations for State agencies or State employees, and without requiring the submission of Social Security Numbers (SSNs). Notwithstanding the foregoing, the State shall have and shall maintain reasonable procedures to verify the personal information submitted to the Contractor regarding each proposed Cardholder (which may include name, home address and date of birth). The State agrees to cooperate, and to ensure that each Authorized User shall cooperate, with the Contractor in any efforts to obtain and verify any personal information required by applicable law regarding each proposed Cardholder.

3.4.2. Upon notification by the authorized OGS or Agency Program Administrator of card termination, temporary suspension or cancellation, or lost or stolen cards, Contractor shall immediately take appropriate action on the Cardholder's account.

3.4.3. Contractor shall imprint cards with a unique logo at the State's request.

3.4.4. Contractor shall deliver new or replacement cards within five (5) business days.

3.4.5. Contractor shall deliver emergency account numbers and expiration dates within 24 hours.

3.4.6. Contractor shall ensure that access, use and disposal of Cardholder data is safeguarded in accordance with applicable State and/or Federal law and/or industry standards.

3.4.7. Contractor shall comply with all applicable NACHA Rules, Association Rules, and Payment Card Industry Data Security Standards (PCI-DSS).

3.4.8. All Services shall be provided by Contractor at no cost to the State or Authorized Users.

4. GENERAL PROVISIONS

4.1. NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Agreement shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address set forth below, and (ii) if to Contractor, addressed to Contract Administrator at the address set forth below.

The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Agreement by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Agreement. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

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

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

4.2. DISPUTE RESOLUTION POLICY

It is the policy of the Office of General Services' New York State Procurement (NYSPro) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to NYSPro bid solicitations, contract awards and contract administration. NYSPro encourages vendors to seek resolution of disputes through consultation with NYSPro staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of NYSPro's Dispute Resolution Procedures for Vendors may be obtained through the OGS website at: http://www.ogs.ny.gov/BU/PC/Docs/VendorDisputePolicy.pdf

4.3. CAPTIONS

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

4.4. SEVERABILITY

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

4.5. 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 may be attached or appended to any counterpart to complete a fully executed counterpart of this Agreement, and shall bind such party.

4.6. ENTIRE AGREEMENT

This Contract and the referenced Appendices and Attachments constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract. In accordance with the terms set forth in Appendix B, § 40, *Modification of Contract Terms*, and § 44, *Purchase Orders*, no preprinted terms or conditions on a Purchase Order issued by an Authorized User which seek to vary the terms of this Contract or impose new duties or obligations on the Contractor shall have any force and effect.

5. CONTRACTOR SIGNATURE PAGE

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties as set forth in Appendix B, Clause 38, *Contract Creation/Execution*. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Contract, the approved signature page(s) will be affixed by the State, upon receipt of all necessary approvals, to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

CONTRACTOR

Signature: [signature]

Printed Name: Douglas C. Morrison

Title: Vice President

Company Name: Citibank, N.A.

Federal ID: 13-5266470

NYS Vendor ID: 1100012030

THE PEOPLE OF THE STATE OF NEW YORK

Signature: [signature]

Printed Name: Sergio Panetque

Title: Chief Procurement Officer

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

CORPORATE ACKNOWLEDGMENT

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

On the 1st day of April in the year 2014, before me personally came: Douglas C Morrison, to me known, who, being by me duly sworn, did depose and say that he/~~she/they~~ reside(s) in Sioux Fall SD; that he/~~she/they~~ is ~~(are)~~ Vice President (the President or other officer or director or attorney in fact duly appointed) of Citibank, N.A. Nat'l Bank, 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. Natural Bank

TAMARA K. POWELL
Notary Public
South Dakota
SEAL

[signature]
Notary Public Signature

Tamara K. Powell
Notary Public
State of South Dakota Minnehaha County
My Commission Expires: May 7, 2014

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Appendix A – Standard Clauses for New York State Contracts

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does

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

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

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

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

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

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical

hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In

the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

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

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

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

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

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

APPENDIX B – OGS GENERALSPECIFICATIONS

APPENDIX B

GENERAL SPECIFICATIONS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

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

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

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

63. DEFAULT – AUTHORIZED USER

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

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

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

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

64. INTEREST ON LATE PAYMENTS

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

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

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

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

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

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

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

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

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

expenses expended or incurred by the Authorized User in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where Contractor, the Independent Software Vendor "ISV," or other third party manufacturer markets any Project Deliverable delivered by

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Copy the Product;

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

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

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

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

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

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

80. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any site where a copy of the Product resides provided that: (i) Contractor gives Licensee(s) at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software

Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the NYS Net Price in effect at time of audit, or if none, then at the Contractor's U.S. Commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

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

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

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

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

(i) Existing Products:

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

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

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

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

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

e. Contractor's Obligation with Regard to ISV (Third Party) Product Where Contractor furnishes Existing Licensed Product(s) as a

Project Deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

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

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

84. CHANGES TO PRODUCT OR SERVICE OFFERINGS

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

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

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

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

85. NO HARDSTOP/PASSIVE LICENSE MONITORING Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

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

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

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

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

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APPENDIX C – MWBE EEO POLICY STATEMENT

APPENDIX C

Contractor's Executive Law, Article 15-A (M/WBE) Requirements

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

I, _____, the _____(title) of _____ (Contractor) agree **that** Contractor has adopted the following policies with respect to this Contract.

M/WBE

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

1) Actively and affirmatively soliciting bids for subcontracts from qualified State certified MBEs or WBEs, including solicitations to MWBE contractor associations.

2) Request a list of State-certified MWBEs from OGS and solicit bids from them directly.

3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.

4) Where feasible, divide the work into smaller portions to enhanced participations by MWBEs and encourage the formation of joint venture and other partnerships among MWBE contractors to enhance their participation.

5) Document and maintain records of bid solicitation, including those to MWBEs and the results thereof.

6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided and provide appropriate support, including waiving bonding and other credit requirements where permissible, to encourage MWBE participation.

Agreed to this _____ day of _____, 2013

By _____

Print: _____

Title: _____

EEO

(a) Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

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

(c) At the request of the contracting agency, Contractor shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of Contractor's obligations herein.

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

(e) Contractor will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

APPENDIX D – REBATE AND PRICING SCHEDULE

PURCHASING AND CORPORATE (TRAVEL) CARD REBATE AND PRICING TERMS

Initial Spending Limit: $60,000,000 (subject to change by the Contractor)

A. Fees and Charges:

1. Annual Fee	Waived
2. Cash Advance / ATM	Not offered
3. Purchase Finance Charge	With respect to State Agencies to which the New York State Prompt Payment Law (State Finance Law Article 11-A) applies, the terms of such law shall apply in respect of any payments not received by Contractor on a timely basis as required by this Agreement. With respect to Authorized Users to which the New York State Prompt Payment law does not apply, the following terms shall apply in respect of any payments not received by Contractor on a timely basis as required by this Agreement: Prime Rate plus 2% per annum based on the average daily balance. Adjustment frequency is monthly based upon the Prime Rate published in The Wall Street Journal. If any portion of the past due balance appears on two consecutive billing statements (approximately 55-60 days after the billing cycle date in which the charge first appears), a Purchase Finance Charge will be assessed.
4. Foreign Transaction Fee	Waived
5. Return Payment Fee	*Waived*
6. Implementation Fee	*Waived*
7. Implementation and Training	Implementation and training included
8. File Integration and Reporting	No charge for standard file to central data point or Citi's standard online reporting system
9. Custom File Development and Integration	Not Offered
10. Custom Card Design	Single color hot stamped logo card design waived
11. Central Travel Account / Travel Agency Data	Not Offered
12. Convenience Checks	Not offered
13. Convenience Checks Stop Payment	Not offered

B. Pricing Term: The pricing for this Agreement shall be effective for the term of the Agreement.

C. Payment Due Date: Payment is due in full **30** days after billing statement date

D. Rebates

- Rebates will be payable in accordance with Section 2.7 of the Contract
- Qualified Annual Spend Volume is the total spend on the Accounts during the Rebate Period, excluding cash advances, returns, credits and unauthorized use of Cards or Accounts during the Rebate Period. Transactions associated with reduced large ticket interchange are included for purposes of determining the applicable rebate tier.
- The following will be deducted by the Contractor from any rebates before payment: (i) any spend that is more than 90 days past its Payment Due Date, with associated fees, if applicable; and (ii) Upon a Termination Event or termination of this agreement (whichever is earlier), all monies due from the State or Authorized User to the Contractor under this Agreement and/or under any other card program between the Contractor and State or any of State's Affiliates.
- The State shall be eligible for rebates according to the rebate parameters set forth in Appendix D.

Purchasing Card Program Rebates (in Basis Points)

	Invoice Paid Within:						
Annual Contract Volume	< 6 Days	6-10 Days	11-15 Days	16-20 Days	21-25 Days	26-30 Days	> 30 Days
$0 - $75,000,000	199.5	197	194.5	192	189.5	187	178.5
$75,000,001 - $125,000,000	200.5	198	195.5	193	190.5	188	179.5
$125,000,001 - $150,000,000	201.5	199	196.5	194	191.5	189	180.5
$150,000,001 - $175,000,000	202.5	200	197.5	195	192.5	190	181.5
$175,000,001 - $200,000,000	203.5	201	198.5	196	193.5	191	182.5
$200,000,001 - $225,000,000	204.5	202	199.5	197	194.5	192	183.5
$225,000,001 - $250,000,000	205.5	203	200.5	198	195.5	193	184.5
$250,000,001 - $275,000,000	206.5	204	201.5	199	196.5	194	185.5
$275,000,001 - $300,000,000	207.5	205	202.5	200	197.5	195	186.5
$300,000,001 - $325,000,000	208.5	206	203.5	201	198.5	196	187.5
$325,000,001 - $350,000,000	209.5	207	204.5	202	199.5	197	188.5
> $350,000,000	210.5	208	205.5	203	200.5	198	189.5

Travel and Non-Employee Travel (NET) Card Program Rebate (in basis points)

	Invoice Paid Within:						
Annual Contract Volume	< 6 Days	6-10 Days	11-15 Days	16-20 Days	21-25 Days	26-30 Days	> 30 days
$0 - $25,000,000	189.5	187	184.5	182	179.5	177	168.5
$25,000,001 - $30,000,000	190.5	188	185.5	183	180.5	178	169.5
$30,000,001 - $35,000,000	191.5	189	186.5	184	181.5	179	170.5
$35,000,001 - $40,000,000	192.5	190	187.5	185	182.5	180	171.5
$40,000,001 - $45,000,000	193.5	191	188.5	186	183.5	181	172.5
$45,000,001 - $50,000,000	194.5	192	189.5	187	184.5	182	173.5
$50,000,001 - $55,000,000	195.5	193	190.5	188	185.5	183	174.5
$55,000,001 - $60,000,000	196.5	194	191.5	189	186.5	184	175.5
$60,000,001 - $65,000,000	197.5	195	192.5	190	187.5	185	176.5
$65,000,001 - $70,000,000	198.5	196	193.5	191	188.5	186	177.5
> $70,000,000	199.5	197	194.5	192	189.5	187	178.5

E. Liability and Payment Structure:

- These Citibank Purchase and Corporate Card Programs are corporate liability with central bill and central payment.

APPENDIX E – CITIBANK COMMERCIAL CARD AGREEMENT

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APPENDIX E

CITIBANK COMMERCIAL CARD AGREEMENT

This Citibank Commercial Card Agreement (the "**Agreement**") is entered into by and between **CITIBANK, N.A.**, a national banking association (the "**Bank**") and **STATE OF NEW YORK** (the "**State**").

This Agreement consists of this cover sheet and Schedules A and B listed below (including any addenda, exhibits, or attachments to such schedules), and the Rebate and Pricing Terms attached to the Contract (as defined below) each of which is incorporated in its entirety into this Agreement by reference as if set forth in full:

In the event that any of the terms or conditions contained in this Agreement are found to conflict with any of the terms or conditions contained in Contract #PS66495 entered into between the State of New York and Citibank, N.A. pursuant to RFP #22712 for Purchasing and Travel Card Services (the "Contract"), the terms and/or conditions of the Contract shall prevail, in accordance with the order of precedence set forth in Section 2.3.A of the Contract. Defined terms used but not defined herein shall have the respective meanings set forth in the Contract.

Schedule A – General Terms and Conditions
Schedule B – Program Schedule (including jurisdiction-specific terms)

All State obligations under this Agreement shall be deemed to be obligations of each Non-State Agency which enters into a Participation Agreement, and all rights of the Bank under this Agreement may be exercised by the Bank in respect of any Non-State Agency which enters into a Participation Agreement.

SCHEDULE A
GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

For purposes of this Agreement, the following terms have the meanings set forth below.

"**Account**" means each credit account established by the Bank under the Program, including, without limitation, as the context requires, those accounts associated with Cards and Special Use Accounts.

"**Anonymized and/or Aggregated Data**" has the meaning assigned to it in Section 12(k).

"**Authorized Account User**" has the meaning assigned to it in Section 8(b)(i).

"**Bank Personal Data**" has the meaning assigned to it in Section 12(a)(iii)(A).

"**Billing Currency**" means the currency in which transactions will be posted to Accounts and billing statements will be issued, as identified in the applicable Program Schedule.

"**Card**" means a physical card issued by the Bank in connection with an Account.

"**Card Association**" means MasterCard, VISA or any other card association approved by the Bank.

"**Cardholder**" has the meaning assigned to it in Section 4(a).

"**Cardholder Account Agreement**" means the terms and conditions governing the use of a Card or Account, as amended from time to time, which may be included with the Card application completed by a prospective Cardholder.

"**Cardless Accounts**" are Accounts issued without a Card and may be used by one or more persons within the Authorized User to procure goods and services for the Authorized User and/or such Participating Affiliate. In certain jurisdictions, Cardless Accounts are commonly known as Ghost Accounts.

"**Citibank Mark**" has the meaning assigned to it in Section 14(a).

"**Confidential Information**" has the meaning assigned to it in Section 12(a)(i).

"**Corporate Bank**" has the meaning assigned to it in Section 19(a).

"**CTA**" has the meaning assigned to it in Section 8(a).

"**Data Protection Laws**" has the meaning assigned to it in Section 12(a)(ii).

"**Declining Balance Card**" means an Account that has a pre-established credit limit, which limit is reduced by the amount of every purchase until the Account's purchase value is exhausted or supplemented.

"**Departmental Cards**" are Accounts intended to be used by a department or division within the Authorized User and/or a Participating Affiliate for such department's or division's expenses incurred by one or more persons.

"**Disclosing Party**" has the meaning assigned to it in Section 12(b).

"**Financial Information**" means and shall include accountants' opinion letters, balance sheets, income statements, cash flow statements and all footnotes and supplementary schedules prepared thereto.

"**Infringement Claim**" has the meaning assigned to it in Section 14(b).

"**Insolvency Event**" means with respect to a Non-State Agency Authorized User as defined in the Contract, that such entity (i) applies to be or is dissolved or resolves to be dissolved or to cease to carry on business; (ii) enters into liquidation, insolvency, bankruptcy or files (by itself or by its directors), has filed against it, applies for or otherwise becomes subject to bankruptcy proceedings, a moratorium, administration, liquidation (including provisional liquidation) or similar proceeding; (iii) experiences any deterioration of such Authorized User's creditworthiness as determined by the Bank based on the Bank's risk policies and procedures; (iv) or suffers any event equivalent to the foregoing under applicable law in the Program Jurisdiction.

"**Meeting Card**" means an Account used by the Authorized User and/or a Participating Affiliate for purchases by one or more persons relating to meetings, events, and/or other Authorized User and/or Participating Affiliate projects.

"**Permitted Purposes**" has the meaning assigned to it in Section 12(a)(iv).

"**Personal Data**" has the meaning assigned to it in Section 12(a)(iii).

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"**Processing**" and "**Process**" have the meaning assigned to them in Section 12(a)(v).

"**Program**" means all Cards, Accounts and services provided to the Authorized User for business or governmental use pursuant to the terms of this Agreement.

"**Program Administrator**" has the meaning assigned to it in Section 3(a).

"**Program Jurisdiction**" means the primary jurisdiction in or into which an Account is established, as specified in the Program Schedule governing the use of such Account.

"**Program Schedule**" means the jurisdiction-specific and/or region-specific schedule, labeled Schedule B, that specifies the Program Jurisdiction(s) and Billing Currency for Accounts issued in or into the Program Jurisdiction(s), and that includes any jurisdiction-specific and/or region-specific terms.

"**Purchasing Card**" means an Account intended to be used for purchasing goods and services in the ordinary course of business or governmental use.

"**Receiving Party**" has the meaning assigned to it in Section 12(b).

"**Representatives**" has the meaning assigned to it in Section 12(d).

"**Security Incident**" has the meaning assigned to it in Section 12(l).

"**Special Use Accounts**" means CTAs, Declining Balance Cards, Departmental Cards, Virtual Card Accounts, Meeting Cards, Cardless Accounts and any other Account designated in Schedule B as a Special Use Account.

"**State Personal Data**" has the meaning assigned to it in Section 12(a)(iii)(B).

"**T&E Card**" means an Account intended to be used for travel expenses.

"**Termination Event**" has the meaning assigned to it in Section 10.

"**Transaction Account Number**" has the meaning assigned to it in Section 8(b)(i).

"**Travel Management Company**" has the meaning assigned to it in Section 8(a)(i).

"**Virtual Card Accounts**" and "**VCA**" have the meaning assigned to them in Section 8(b)(i).

2. THE PROGRAM

(a) For the term hereof, the Bank hereby agrees to provide the Authorized Users with the Program in the Program Jurisdiction(s). Under the Program, the Bank will establish Accounts for Cardholders in the Program Jurisdiction(s). The Program and each Account established in a Program Jurisdiction shall be subject to and governed by this Agreement and the Contract. These General Terms and Conditions (Schedule A) shall be amended and supplemented by the Program Schedule (Schedule B). Capitalized terms used in Schedule B shall have the meanings set forth in this Schedule A, unless otherwise defined in Schedule B. In the event of a conflict between these General Terms and Conditions and the Program Schedule, the terms of the Program Schedule shall prevail.

(b) Each Account is established for the purpose of permitting Cardholders to charge purchases of goods and services that are for the business or governmental purposes of the Authorized User or a Participating Affiliate (as applicable) from merchants that accept the Accounts, provided that an Account is valid and has not expired or been canceled or suspended by the Bank. The Authorized User shall use commercially reasonable efforts to ensure that each Account is used only for such purposes.

3. PROGRAM ADMINISTRATOR

(a) The State shall designate one or more individuals (individually and collectively, the "**Program Administrator**"), to administer the Program on behalf of the State and Authorized Users, including, without limitation, cooperating with the Bank with respect to the Program. The Program Administrator shall undertake the following duties on behalf of the State, as well as any other reasonable duties requested by the Bank and agreed to by the State:

(i) the Program Administrator shall be familiar with all aspects of the Program, including but not limited to, billing procedures, number and status of Accounts, status of Cardholders, notice requirements, and status of late payment charges, if applicable;

(ii) the Program Administrator shall on behalf of the State administer, monitor and be responsible for entitlement and usage of the Bank's electronic communication and reporting systems by himself/herself and any delegates in accordance with the Program including, but not limited to, users' ability, if any, to (A) request Accounts and modify

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Account information or usage parameters, (B) establish and modify Account authorization controls, and (C) access Account and transaction data for reporting and monitoring purposes; and,

(iii) if requested, the Program Administrator shall advise the Bank of a Cardholder's contact information and, with respect to Accounts for which the Cardholder makes payments, whether a Cardholder has been reimbursed by the State or a Authorized User for spend on such Accounts.

(b) The State must inform the Bank promptly of any change (including termination) of the Program Administrator or delegates who have been granted access to the Bank's electronic and reporting systems by the Program Administrator. The State shall comply with any security procedures designed to verify the origination of communications from the State, the Program Administrator and his or her delegates as the Bank may implement from time to time. The Bank is not responsible for errors or omissions made by the State, the Program Administrator or his or her delegates in such communications, and may act in reasonable reliance on such communications; provided that the Bank reserves the right to not act on any such communication where it reasonably doubts its authenticity or appropriateness.

4. ACCOUNT ESTABLISHMENT; CARD ISSUANCE AND RENEWAL

(a) The Bank will establish an Account for and issue a Card (if applicable) to each eligible person ("**Cardholder**") designated by the State or an Authorized User, provided that each such designee is an employee, partner, officer, contractor, agent or subcontractor of the State or Authorized User, has a business, governmental or commercial purpose for such Account, and either executes a standard Card application form, which may include associated conditions of use (the designee's acceptance of which may be signified electronically) and which shall be countersigned by a person authorized by the State or such person's designee, or fulfills an alternative application process specified by the Bank from time to time. As necessary to comply with legal or regulatory requirements or due to operational requirements, the Bank reserves the right to establish additional requirements in connection with the application process to be met by proposed Cardholders from time to time. Such additional requirements shall be substantially similar as those requirements imposed with respect to the Bank's similarly situated customers.

(b) Each Card shall be valid for the term indicated thereon, unless earlier canceled or suspended by the Bank at the request of the State, Authorized User, or as otherwise permitted under this Agreement. Prior to the expiration of a Card, the Bank will either provide the Cardholder with a new Card or will notify the Cardholder, the State or Authorized User, as applicable, that the Card will not be renewed. The Bank reserves the right to cancel or suspend an Account in accordance with Section 2.28 of the Contract.

(c) The State shall, and shall cause each State Agency to: (i) take reasonable steps to ensure proper use and security of Accounts, (ii) control access to Accounts, and (iii) if applicable, timely and accurately reimburse Cardholders for all legitimate business expenses charged on the Accounts.

(d) The State shall, and shall ensure that all State Agencies have and shall maintain reasonable procedures to collect, maintain and verify the personal information (which may include name, home address, SSN or other government-issued identification number and date of birth) of each proposed Cardholder in connection with the employment process. As necessary to comply with legal or regulatory requirements, upon Bank's request, the State agrees to allow Bank to conduct an onsite visit at the State at a mutually agreed upon date, time and location, to verify, and/or to annually confirm to Bank that it continues to maintain such procedures in connection with State's employment process. The State further agrees to cooperate, and to ensure that each State Agency shall cooperate, with the Bank in any efforts to obtain and verify any personal information required by applicable law regarding each proposed Cardholder.

(e) The State agrees to provide such information and documents as are reasonably required by the Bank to comply with any anti-money laundering and/or counter terrorism financing laws, regulations, or directives or guidance from regulators.

(f) If available, upon the agreement of the parties, the Bank may enable the State to submit a file to the Bank of its employees (or those of its State Agencies) who are designated to receive an Account. The State is responsible for ensuring that the file contains details of only those individuals for whom the State has adequate authorization to request that the Bank establish an Account through this process. The Bank shall then process, disclose and transfer the information of the individuals contained within such file in order to pre-populate any form used in the Account establishment process and store such information in its systems until the Account establishment process is completed.

5. SPENDING LIMIT

The initial aggregate spending limit for the Program Jurisdiction under this Agreement is set forth in Appendix D to the Contract. With respect to any sub-limits applicable to individual Accounts, the State or Authorized User may advise the Bank of the State's or Authorized User's desired sub-limit allocation for such Accounts. The Bank may lower or raise the aggregate spending limit for the Program and any Account sub-limit in the Bank's sole discretion; provided that, in the event of a decrease in the aggregate spending limit for the Program, the Bank will inform the State as soon as reasonably practicable of such decrease.

6. BILLING AND PAYMENT PROCEDURES

The Bank will invoice for charges made to Accounts, and any applicable fees, as provided in the Program Schedule.

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7. CASH ADVANCES ON CARDS

Cash advances are not available under the Program. In the event any Authorized User desires to have cash advances be made available under the Program in respect of such Authorized User, the Bank may make cash advances available to such Authorized User on such terms and conditions as may be separately agreed upon between the Bank and such Authorized User.

8. DESCRIPTION OF SPECIAL USE ACCOUNTS

The State, through the Program Administrator, may request that one or more Special Use Accounts be established in connection with the Program by providing a written request to the Bank's State account or sales manager. If any such requested Special Use Account is offered by the Bank in the applicable Program Jurisdiction in connection with the type of Program provided for the State under this Agreement, then, in addition to the other terms and conditions set forth in this Agreement, the provisions in this Section 8 (including any specific provisions relating to such Special Use Account set forth below) shall apply to such Special Use Account. The Program Administrator shall complete the applicable documentation (if any) required to establish such Special Use Account. With respect to each such Special Use Account, the State or its designee shall be responsible for controlling access to, and usage of, each such Special Use Account by employees, partners, officers, contractors, agents and subcontractors of the State or any State Agency, and any third parties that have access to such Account, such as Travel Management Companies (as defined below) and merchant vendors. The State may only cancel a Special Use Account through the Program Administrator, the Program Administrator's designee, or the person whose name is listed on the Account, which person may cancel such Special Use Account by notifying the Bank either by telephone or in writing.

(a) **Central Travel Account ("CTA")**

(i) A CTA is an Account that the State and/or an Authorized User may provide to its Travel Management Company in order to charge the travel expenses of individuals who contact such Travel Management Company for such purpose. "**Travel Management Company**" means an entity that has been appointed by the Card Association to accept T&E Cards and/or a CTA number and which the State (for itself or on behalf of a State Agency) or Authorized User has authorized to communicate with and supply data to the Bank. The State acknowledges that any descriptions of charges on CTA Account statements are provided to the Bank by Travel Management Companies and a failure by a Travel Management Company to provide the Bank with full details of a charge shall not constitute a basis for the State to delay or withhold payment of such charge. If the State wishes to cancel any charges on the CTA, the State must contact the Travel Management Company directly to obtain credit against the original charge. The Bank will only credit the CTA with a refund if it receives written instructions from the Travel Management Company to do so.

(ii) The Bank is not responsible for: (A) any decision by a Travel Management Company to accept or reject use of the CTA or CTA number; (B) charges incurred by users of the CTA who do not in fact have sufficient authorization from the State or Authorized User; or (C) (as between the Bank and the State), the failure by the Travel Management Company to obtain authorization of a user to incur a charge, which failure shall not relieve the Company of its liability to pay for such charge.

(b) **Virtual Card Accounts**

(i) Upon request by an Authorized User, the Bank may establish Virtual Card Accounts, which are Accounts that allow an Authorized Account User to request the issuance of unique Transaction Account Numbers associated with each such Virtual Card Accounts to settle transactions with merchants ("**Virtual Card Accounts**" or "**VCAs**"). Once Virtual Card Accounts are established, Transaction Account Numbers associated with such Virtual Card Accounts will be issued by the Bank. "**Transaction Account Number**" means a unique number associated with a Virtual Card Account that is issued upon the request of an Authorized Account User and provided to a merchant (in lieu of an Account number) for the purpose of completing one or more transactions. "**Authorized Account User**" means each eligible employee, partner, officer, contractor, agent or subcontractor of a State Agency or Authorized User expressly designated by the Program Administrator to request the issuance of a Transaction Account Number.

(ii) All charges and fees associated with a Transaction Account Number will post to the Virtual Card Account under which the Transaction Account Number was generated and are required to be paid by the State Agency or Authorized User in accordance with the terms of this Agreement. Each Transaction Account Number is issued for the purpose of permitting Authorized Account Users to charge to the subject Virtual Card Account purchases of goods and services which are for the business of the State or a State Agency or Authorized User from merchants that accept such Transaction Account Numbers. The State Agency or Authorized User shall use commercially reasonable efforts to ensure that each Transaction Account Number is used only for such purpose. Purchases under the VCA may only be charged to Virtual Card Accounts through the use of Transaction Account Numbers. Each Transaction Account Number issued by the Bank is subject to the same terms and conditions governing use of the associated Virtual Card Account.

(iii) Authorized Account Users may request Transaction Account Numbers in accordance with the Bank's applicable procedures. The Bank may rely on the authority of each Authorized Account User to request Transaction Account Numbers until the Bank has received written notice or other notice acceptable to it from the Program Administrator

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terminating such authority. The Program Administrator shall monitor and control Authorized Account Users' ability to (A) request Transaction Account Numbers and modify Transaction Account Number usage parameters, (B) establish and modify Virtual Card Account authorization controls, and (C) access Virtual Card Account and transaction data for reporting and monitoring purposes.

(iv) Each Transaction Account Number will be valid for the term indicated by the Bank unless earlier canceled or suspended by the Bank at the request of the State or as otherwise permitted under this Agreement. Each Transaction Account Number may be used for one or more purchases, as determined by the Bank or otherwise agreed between the Bank and the State.

(v) The State shall supervise the use of Transaction Account Numbers. The State shall establish and maintain compliance with procedures designed to ensure the security of the Virtual Card Accounts, Transaction Account Number requests and generated Transaction Account Numbers. The Bank reserves the right to cancel or suspend any Transaction Account Number at any time for any reason, without notice unless required by applicable law or regulation.

9. LATE PAYMENT FEES

If the outstanding balance on an Account is not paid in full by the payment due date, a late payment fee may be charged as specified in Appendix D to the Contract (for those Authorized Users where the New York State Prompt Payment Law [State Finance Law Article 11-A] does not apply), and such Account may be subject to suspension or cancellation as specified in Section 2.28 of the Contract and Appendix B §63. The Bank will show any unpaid portion of the balance due as a "past due" balance on subsequent Account statements. The Bank may provide a written report to the State listing Cardholders who have charges unpaid for a monthly billing period and who are subject to potential suspension or cancellation.

10. INTENTIONALLY OMITTED

11. SUBCONTRACTORS

The State acknowledges that the Bank may, from time to time, subcontract for the performance of any of its obligations under this Agreement, provided that the use of subcontractors by the Bank shall not relieve the Bank of any obligation, duty or liability under this Agreement.

12. CONFIDENTIALITY; DATA PROTECTION

(a) Definitions

(i) "**Confidential Information**" means:

(A) where the Disclosing Party (as defined below) is the Bank or its Affiliates, or any of their respective employees, partners, officers, contractors, agents and subcontractors: information relating to the Bank or Bank Affiliates received by the State or any Authorized User in connection with the Program, including, without limitation, Bank Personal Data, product information, technology (including software, the form and format of reports and on-line computer screens), pricing information, internal policies, operational procedures and any other information which is either designated by the Bank as confidential or proprietary at the time of disclosure or that a reasonable person would consider to be of a confidential or proprietary nature; and,

(B) where the Disclosing Party is the State or its Authorized Users, or any of their respective employees, partners, officers, contractors, agents and subcontractors: information relating to the State, Authorized Users or Cardholders received by the Bank in connection with the Program, including, without limitation, State Personal Data, Account information, and any other information which is either designated by the State as confidential or proprietary at the time of disclosure or that a reasonable person would consider to be of a confidential or proprietary nature.

(ii) "**Data Protection Laws**" means all laws, enactments, regulations, mandatory regulatory policies and processes, and other legal requirements relating to or impacting on privacy and/or the Processing of Personal Data that are in force in the relevant jurisdiction(s) during the term of this Agreement;

(iii) "**Personal Data**" means any information that can be used, directly or indirectly, alone or in combination with other information, to identify an individual, and includes Bank Personal Data and/or State Personal Data, as the context requires;

(A) "**Bank Personal Data**" means Personal Data relating to employees, partners, officers, contractors, agents and subcontractors of the Bank and/or any Bank Affiliates received by the State or any Authorized Users in connection with the Program;

(B) "**State Personal Data**" means Personal Data relating to Cardholders, employees, partners, officers, contractors, agents and subcontractors of the State and/or any Authorized Users received by the Bank or any Bank Affiliates in connection with the Program;

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(iv) **"Permitted Purposes"** means the following purposes: (A) for the Bank to provide the Program and ancillary services; (B) to fulfill legal, regulatory and compliance requirements applicable to the Bank or State, as the case may be (including, without limitation, in connection with anti-money laundering laws and regulations, Public Officers Law Article 6 (New York State Freedom of Information Law) requirements, audit and reporting requirements and the maintenance of accounting and tax records); (C) to verify the identity of representatives of the State and Authorized Users and Cardholders who contact the Bank or may be contacted by Bank; (D) in respect of the monitoring and recording of telephone calls, as provided in Section 19(g), to help maintain service quality, train staff and deal with complaints, disputes and potential criminal activity; (E) to monitor and analyze the use of any Account, in each case to prevent fraud, assure security, and for statistical and trend analysis; (F) to operate the Bank's risk and control systems and management information systems; (G) to allow system administration, operation, testing and support; (H) to investigate and remediate Security Incidents; (I) to enforce a party's rights or performing a party's obligations under this Agreement; and (J) to manage the Bank's relationship with the State and the Authorized Users.

(v) **"Processing"** and **"Process"** means any operation or set of operations performed on Personal Data manually or automatically, such as collection, recording, organization, storage, adaptation or alteration, retrieval, accessing, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

(b) **Protection of Confidential Information:** The party receiving Confidential Information (**"Receiving Party"**) of the other party (**"Disclosing Party"**) will exercise at least the same degree of care with respect to the Disclosing Party's Confidential Information that the Receiving Party exercises to protect its own Confidential Information of a similar nature, and in any event, no less than reasonable care.

(c) **Use and disclosure of Confidential Information:** The Disclosing Party hereby grants the Receiving Party the right to use or disclose the Disclosing Party's Confidential Information to the extent necessary to accomplish the Permitted Purposes. The Receiving Party will only use and disclose the Disclosing Party's Confidential Information to the extent permitted in this Section 12(c).

(d) **Disclosure to Representatives:** The Receiving Party may disclose the Disclosing Party's Confidential Information and the terms of this Agreement to those of the Receiving Party's employees, Affiliates, professional advisers, agents, contractors and subcontractors (collectively **"Representatives"**) who have a "need to know" such Confidential Information, although only to the extent necessary to fulfill the purposes set forth in Section 12(c) above. The Receiving Party shall ensure that any of its Representatives to whom it does disclose the Disclosing Party's Confidential Information shall be bound to keep such Confidential Information confidential.

(e) **Disclosure to designated third parties:** The State and/or an Authorized User may request the Bank to communicate with third parties designated by the State or Authorized User, such as Travel Management Companies and merchant vendors, in connection with the Program. If the Bank receives such a request, then the Bank may disclose certain State Confidential Information to such third parties. The Bank may also disclose to Card Associations, acquiring banks, and merchants such State Confidential Information as is required in connection with the transaction authorization and clearing process, the dispute process, and as otherwise necessary to provide the Program.

(f) **Exceptions to Confidentiality:** Notwithstanding anything in this Agreement to the contrary, the following information shall not be deemed Confidential Information of either the Bank or the State: information (i) that is in or enters the public domain other than as a result of the wrongful act or omission of the Receiving Party or its Affiliates, or their respective employees, contractors, agents or subcontractors, (ii) that is lawfully obtained by the Receiving Party from a third party or already known by the Receiving Party in each case without notice of any obligation to maintain it as confidential, (iii) that was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information, and (iv) that an authorized officer of the Disclosing Party has agreed in writing that the Receiving Party may disclose on a non-confidential basis.

(g) **Legal disclosure:** The Receiving Party may disclose the Disclosing Party's Confidential Information without further notice to the Disclosing Party if required by applicable law, regulation or legal process, including disclosure to courts, or if required to comply with obligations to regulatory and/or governmental authorities. If the Receiving Party is requested by any court to disclose the Disclosing Party's Confidential Information, the Receiving Party shall (if reasonably practicable and not restricted from doing so by applicable law or competent authority) use commercially reasonable efforts to give the Disclosing Party advance notification of the disclosure. If the Receiving Party is subject to such a request by any court, if the Disclosing Party does not obtain a protective order relieving the Receiving Party of its obligation to disclose such Confidential Information before the Receiving Party is obliged to make such disclosure, or the Disclosing Party waives the requirement that the Receiving Party restrict the disclosure of the requested Confidential Information, then the Receiving Party may disclose such part of the Disclosing Party Data that is legally required to be disclosed. The Receiving Party shall use commercially reasonable efforts to obtain reasonable assurances that any disclosed Confidential Information will be treated confidentially.

(h) **Record Retention:** On closure of any Accounts or termination of the Program, each party shall be entitled to retain and use the other party's Confidential Information (i) in order to fulfill legal, regulatory and compliance requirements applicable to such party, or (ii) for the Receiving Party's legitimate business or governmental purposes (including, without limitation, the maintenance of accounting and tax records, and the enforcement and defense of the Receiving Party's legal rights) to the extent that this is legally permissible and in accordance with its internal records management policy or contractual

obligations, including Appendix A §10. Thereafter, the Receiving Party shall securely destroy or delete the Confidential Information.

(i) **State Consent**: The State hereby consents, and shall ensure that such of its Representatives whose Personal Data may be disclosed to the Bank and/or Bank Affiliates or their Representatives in connection with this Agreement (and who are not proposed Cardholders) consents, to the Processing of such Personal Data by the Bank, Bank Affiliates, their Representatives and third parties selected by the Bank, Bank Affiliates or the State, for the purposes of implementation and administration of the Program and this Agreement and the management of Bank's relationship with the State. In connection with the implementation or administration of the Program, such Processing may include the transfer of the Personal Data to Affiliates and third parties located in other countries including countries that may have only limited or no data protection laws (for example, but not by way of limitation, in the event that a Cardholder uses a Card outside of the United States, such data will be transmitted internationally), but the Bank remains obliged to protect the Personal Data in accordance with this Section 12 and to comply with any applicable data protection laws, including the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

(j) **Protection of Personal Data**:

(i) Each party shall comply with Data Protection Laws which are applicable to it in transferring Personal Data to the other party and/or in Processing Personal Data received from the other party in connection with this Agreement; and,

(ii) Each party shall apply adequate technical and organizational security measures to protect against unauthorized or unlawful damage to, loss, disclosure or destruction of all such Personal Data. Each party shall on request by the other party provide the requesting party with an overview of such measures that it maintains, provided that it is not required that such overview include any detailed information which if disclosed, in the view of the party, may in any way threaten or adversely impact on the adequacy of such measures.

(k) **Anonymized and Aggregated Data:** The State agrees that the Bank and the Bank Affiliates may use Anonymized and/or Aggregated Data for their own legitimate business purposes (including without limitation trend analysis), and that all intellectual property rights in any databases, reports or other works created as a result of such use shall vest in the Bank or the relevant Affiliate upon their creation and be its sole and exclusive property. For the purpose of this Section, "**Anonymized and/or Aggregated Data**" means data in respect of which all personal identifiers have been removed, and/or which has been aggregated with other data, in both cases such that the data cannot identify the State, Authorized Users, or a natural person, and which had originally been obtained through Bank's electronic card management and reporting system.

(l) **Security Incidents**: If a Receiving Party becomes aware of an incident whereby the security or confidentiality of Personal Data of the Disclosing Party within the custody or control of the Receiving Party has been materially compromised ("**Security Incident**"), the Receiving Party will investigate and remediate the Security Incident in accordance with its internal policies and procedures and any applicable law, including the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). The Receiving Party will notify the Disclosing Party of the Security Incident as soon as reasonably practicable (taking into account any legal or regulatory restraints on notification and the need to avoid prejudicing current investigations) after it becomes aware of the Security Incident and will provide reasonable co-operation and assistance to the Disclosing Party to remediate the impact of the Security Incident on the Disclosing Party. Each party agrees to respond to reasonable inquiries received from the other party in connection with the Security Incident, and where requested shall make available relevant employees to discuss such enquiries with the other party's representatives.

(m) **Survival**: The provisions of this Section 12 shall survive, with respect to Personal Data, for so long as the Receiving Party has possession, custody or control of such Personal Data, and for all other Confidential Information, for three years after the expiration or earlier termination of this Agreement.

13. INTENTIONALLY OMITTED

14. INTENTIONALLY OMITTED

15. INTENTIONALLY OMITTED

16. REPRESENTATIONS AND WARRANTIES

The State and the Bank each hereby represents and warrants to the other party that, on the date hereof and on each date thereafter that Accounts are used or provided, (a) it is duly organized, validly existing and in good standing in each jurisdiction in which it is legally required to be, (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement, and (c) this Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

17. AUTHORIZED USERS

The State acknowledges and confirms that it is responsible in relation to any amounts owed by State Agencies under this Agreement and that it is the State's responsibility to administer and manage the Program in relation to the arrangements

contemplated under this Agreement, including participation of Authorized Users and settling of disputes with or among Authorized Users and/or Cardholders regarding payment, rebate allocation, spending limits, etc, with reasonable cooperation from the Bank as necessary.

18. COMPLETE AGREEMENT; AMENDMENTS

This Agreement, including the base Contract and any addenda, exhibits and schedules thereto or hereto, constitutes the complete understanding between the parties hereto with respect to the subject matter hereof and all prior oral or written communications and agreements with respect thereto are superseded. Each party agrees that it has not entered into this Agreement in reliance upon any representation or warranty not specifically contained in or incorporated into this Agreement. Except as provided in the immediately following sentence, this Agreement shall not be varied without the prior express agreement in writing of each party. In the event of a Program change, including but not limited to pricing change, applicable to all customers similarly situated, this Agreement may be amended at any time upon mutual agreement of the parties in accordance with Section 2.12 of the Contract.

19. MISCELLANEOUS

(a) **Financial Information** – As long as the State maintains a corporate banking relationship with a Citibank entity (the "**Corporate Bank**"), the Bank may obtain from the Corporate Bank all documents and Financial Information necessary for the Bank to administer the Program. The State hereby authorizes the Bank to obtain such Financial Information.

(b) **No Implied Waivers** - The right of any party under any provision of this Agreement shall not be affected by its prior failure to require the performance by the other party under such provision or any other provision of this Agreement, nor shall the waiver by any party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other provision or constitute a waiver of the provision itself. A waiver of any right hereunder must be in writing and signed by the party against which it is to be enforced. The Bank may waive spending limits, payment due dates, or any other provision of this Agreement, but any such waiver (even if repeated) shall apply only to the provision waived and only to those occasions on which the waiver is granted, and shall not establish a course of dealing or constitute a waiver of any other term or condition or of performance on any other occasion.

(c) **Remedies** - If either party breaches or violates any of the obligations contained in this Agreement, the other party shall be entitled to exercise any right or remedy available to it either at law or in equity, including without limitation, termination of this Agreement in accordance with Section 2.28 of the Contract or Appendix B Section 60, as applicable, damages and injunctive relief. The exercise of any right or remedy shall not preclude the concurrent or subsequent exercise of any other right or remedy, and all rights and remedies shall be cumulative.

(d) **Severability** - The invalidity or unenforceability of any one or more provisions, sentences, clauses, sections or paragraphs in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement or any part hereof.

(e) **Liability** – Under no circumstances shall either party be liable for indirect, incidental, consequential, punitive or special damages or any increased costs or expenses or any loss of profit, business, contracts, revenues or anticipated savings even if advised of the possibility of such damages, loss of profit, business, contracts, revenues or anticipated savings. The Bank shall not be liable to the State, any Authorized User, any Cardholder or any third party for the standard, quality or suitability of any goods or services purchased using an Account.

(f) **Foreign Currencies; Currency Conversion Information** –Transactions initiated in a currency other than the Billing Currency will be converted to the Billing Currency in accordance with the foreign currency conversion procedures of the applicable Card Association or, for cash advances at an ATM or branch of a bank, the foreign currency conversion procedures of the financial institution. The foreign currency conversion rate in effect on the applicable processing date for a transaction may differ from the rate in effect on the sale or processing date on Account statements for that transaction. Applicable cash advance fees still apply to foreign cash advance transactions.

(g) **Monitoring of Calls** - Subject to applicable law and regulation in the Program Jurisdiction, the State consents to the recording and monitoring of its telephone calls (including calls with the Program Administrator and other employees, partners, officers, contractors, agents and subcontractors of the State and the Authorized Users) by the Bank and its agents and subcontractors.

(h) **Illegality** - If at any time the Bank determines that it is or will become unlawful or contrary to any regulation, directive, or supervisory guidance (e.g., advisory letters, policy statements) of any regulatory authority having jurisdiction over the Bank or its Affiliates for the Bank to continue with all or any part of the Program, the Bank may forthwith terminate the Program (or a portion thereof) by prior written notice to the State. Upon such notification by the Bank, the Bank shall be released from all its obligations under the Program and the State shall immediately pay all sums due and payable under this Agreement to the Bank. The State shall not be entitled to any further claims for any loss or damages suffered by the State or any Authorized User as a result thereof.

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(i) **Further Assurance** – Each of the parties shall, and as necessary, any Authorized Users shall,, execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the provisions of this Agreement and the transactions contemplated hereby.

(j) **Survival** – Sections 9, 10, 12, 13, 14(b), 14(c), 17, 19(b), 19(c), 19(d), 19(e), 19(h), 19(j), 19(k), and 20 shall survive expiration or earlier termination of this Agreement.

(k) **Compliance with Laws** – Each party shall comply with all applicable laws in connection with performing its obligations and asserting its rights under this Agreement.

20. APPLICABLE LAW

This Agreement (including any non-contractual matters arising out of or in connection with it) shall be governed and interpreted in accordance with the laws of the State of New York, without regard to conflict of laws principles of such jurisdiction (if any).

21. NOTICES

Written notices required by this Agreement shall be sent by express delivery service to each party to the address set forth on the cover sheet portion of this Agreement. Notices shall be deemed delivered upon proof of delivery of such notice to the party intended to receive the same. Additionally, the Program Administrator may receive information relating to the Program from the Bank via electronic mail.

SCHEDULE B

PROGRAM SCHEDULE

United States – T&E Cards (Corporate Bill/Corporate Liability)
and Purchasing Cards (Corporate Bill/Corporate Liability)

Schedule A to this Agreement is hereby amended as set forth below:

1. **Program Jurisdiction**: United States

2. **Billing Currency**: U.S. dollars

3. **Program Pricing:** The pricing terms relevant to this Program are identified by Program Jurisdiction on Appendix D to the Contract. Any pricing terms set out in Appendix D to the Contract for jurisdictions other than the Program Jurisdiction are provided for information purposes only and do not form a binding part of this Agreement.

4. **Bank Commercial Card Program**: For greater certainty and for the purposes of Section 2(a) of Schedule A to this Agreement, each Account established and Card issued in the United States shall be subject to and governed by the terms and conditions of Schedule A and this Schedule B.

5. **Available Cards/Accounts**: Under the Program, the following Cards and Accounts will be available: T&E Cards, Purchasing Cards, CTAs, Declining Balance Cards, Departmental Cards, Ghost Accounts, Meeting Cards, and Virtual Card Accounts, and any other Accounts and/or Cards provided for under the Program after the Effective Date of this Agreement.

6. **Billing and Payment Procedures**: The terms of this Section 6 shall apply to all Accounts established under the Program unless specified otherwise in this Schedule B:

   (a) The State is liable for and shall pay in full by the due date set forth in Appendix D, all charges, fees, and other costs incurred on the Accounts in accordance with the terms of this Agreement, including, without limitation, with respect to Cards and Accounts in the name of the State, State Agencies, departments, divisions and individuals.

   (b) For each statement period that there is Account activity, the Bank will provide the State with a statement for the Account in the Billing Currency, which will indicate the outstanding balance, amount due and the payment due date. In addition, it will show an itemized list of current purchases, payments and credits.

   (c) Unless required by applicable law or otherwise agreed between the State and the Bank, all Account statements will be provided to the State via an electronic method. If necessary to retrieve statements, the State shall ensure that each Program Administrator or other authorized employee of the State has secure encrypted access to the Bank's website to access and view electronic Account statements.

   (d) If the State sends a payment that exceeds the amount due on an Account, the Bank will reflect the amount of the excess as a credit against future charges on the Account. The State may request a refund of a credit balance.

(e) The Bank may accept late or partial payments (including, but not limited to, those marked as in settlement of a dispute or "payment in full" or with other restrictive endorsements), without losing any of its rights under this Agreement. The State is required to comply with all requirements established by the Bank regarding procedures for remitting payments to the Bank and required information to be included with payments. The State acknowledges that a failure by the State to comply with the Bank's procedures for remitting payments may result in late payment of amounts due, assessment of late charges, reduction in the spending limit of the subject Account(s), and/or the closing or suspension of the subject Account.

7. **Liability Waiver Program**: Certain unauthorized charges by Cardholders may be waived pursuant to the terms of the applicable liability waiver program as set forth in Addendum 1 attached hereto.

8. **Applicable Law; Jurisdiction; Venue**: The Agreement shall be governed and interpreted in accordance with federal law, the laws of the State of New York, without regard to conflict of laws principles thereof. Any action or other judicial proceeding arising out of or relating to the Agreement or the transactions or other activities contemplated by the Agreement shall be instituted only in a court of competent jurisdiction within the State of New York. Each of the parties irrevocably and unconditionally submits to the jurisdiction of such courts in any such action and agrees that all claims in respect of such action may be heard and determined in such courts. Each of the parties irrevocably and unconditionally waives any objection it may now or later have as to the venue of any such action brought in such a court or that such court is an inconvenient forum.

9. **MasterCard Branded Cards (such as for VCAs)**

The State may desire that certain of its designated Cardholders receive MasterCard branded Cards or Accounts (such as Virtual Card Accounts). If the Program Administrator informs the Bank that a Cardholder(s) should receive a MasterCard branded Card, then the MasterCard liability waiver attached hereto as "Addendum 1 (cont.)" would apply to such Cardholder in lieu of the Visa liability waiver attached hereto.

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Addendum 1

Liability Waiver

VISA

VISA COMMERCIAL CARD
LIABILITY WAIVER PROGRAM OUTLINE

I. PROGRAM OVERVIEW

A company ("Company") that has established a Visa Commercial Card account ("Account") with a Visa Commercial Card issuing Member ("Financial Institution") may request that the Financial Institution waive the Company's liability for certain charges in accordance with the Visa Commercial Card Liability Waiver Program ("Program"). Visa has arranged insurance coverage to provide payment to the Financial Institution for covered losses and will administer the Program.

The Financial Institution may waive the Company's liability for waivable charges up to $100,000 per Visa Commercial Card Cardholder and be reimbursed by the Program Underwriter ("Program Underwriter") provided both the Financial Institution and the Company have satisfied all Program obligations.

II. DEFINITIONS

1) "Financial Institution" shall mean the Visa Member which issues Visa Commercial Card Accounts to the Company for use by designated employees.

2) "Company" shall mean a corporation, partnership, sole proprietorship, or any other entity which has signed a Commercial Card Account agreement with a Financial Institution and subsequently issues Commercial Card Accounts for use by persons designated by the Company.

3) "Cardholder" means a person designated by the Company who is authorized by the Company to use the Visa Commercial Card Account for Company business purposes only.

4) "Charges" shall mean all amounts, including cash disbursements, charged to the Company's Commercial Card Account with the Financial Institution.

5) "Affidavit of Waiver" shall mean a written request or claim form sent from the Company requesting the Financial Institution to waive the Company's charges in accordance with the terms and conditions of this Program.

6) "Billed" or "Unbilled" with respect to any Charge shall be based upon the date of the Financial Institution's statement.

7) "Notification of Termination" of the Cardholder's employment shall mean the date the Cardholder gives or receives oral or written notice of immediate or pending termination, or the date the Cardholder leaves the Company's service, whichever is earlier.

8) "Waivable Charges" shall mean Charges incurred by a Cardholder, or other authorized person which:

   a) do not benefit the Company directly or indirectly, or in cases where the Financial Institution bills the Cardholder, benefit the Company directly or indirectly, and the Company has reimbursed the Cardholder but the Cardholder has not paid the Financial Institution; and

   b) (i) are Billed within seventy-five (75) days preceding Notification of Termination, or

      (ii) are incurred but Unbilled as of Notification of Termination, or

      (iii) are incurred up to fourteen (14) days after Notification of Termination; provided, however, that the Financial Institution has received a request to cancel the Cardholder Account within two (2) business days of Notification of Termination. There will be no coverage after Notification of Termination, as defined, unless notice to cancel the Cardholder Account is received by the Financial Institution within two (2) business days; and

   c) are the responsibility of the Company and/or Cardholder for payment to the Financial Institution.

III. PROGRAM EXCLUSIONS

The following are not Waivable Charges and are not covered by the policy:

1) Charges made by partners, owners, or principal shareholders who own more than five percent (5%) of the Company's outstanding shares, elected directors, or persons who are not employees of the Company.

2) Interest or fees imposed by the Financial Institution on outstanding unpaid charges.

3) In cases where the Financial Institution invoices the Cardholder, any amount on a check submitted by a Cardholder which is not paid by the Cardholder's drawee financial institution as not sufficient funds or due to a closed account, if the Cardholder has, within the last (12) months, submitted any other check to the Financial Institution which was not paid in full by the Cardholder's drawee financial institution as not sufficient funds or due to a closed account.

4) Charges incurred to purchase goods or services for the Company or for the persons other than the Cardholder pursuant to the instructions of the Company, in accordance with company policy, if those goods or services are of the type which are regularly purchased by or for the Company. However, theses charges would be Waivable in cases where the Financial Institution bills the Cardholder, and the Company has reimbursed the Cardholder, but the Cardholder has not paid the Financial Institution.

5) Charges incurred by the Cardholder after Notification of Termination unless the Financial Institution receives a request from the Company to cancel the Account within two (2) business days of Notification of Termination. If cancellation of the Account is received by the Financial Institution within two (2) business days, then coverage will be afforded fourteen (14) days from Notification of Termination, but not beyond.

6) Charges incurred by the Cardholder more than fourteen (14) days after Notification of Termination or earlier than seventy-five (75) days prior to Notification of Termination

7) Charges resulting from either a lost or stolen Commercial Card or bankruptcy/insolvency of the Company.

8) Charges in excess of $100,000 for each Cardholder from Companies with five (5) or more valid Cardholder Accounts.

9) Charges in excess of $5,000 for each Cardholder from Companies with two (2) to four (4) valid Cardholder Accounts.

10) Cash advances, after Notification of Termination, shall be limited to $300 per day, or a maximum of $1,000 whichever is less.

11) Charges incurred by a Cardholder after discovery by the Company of any fraudulent or dishonest act on the part of the Cardholder.

IV. OBLIGATIONS OF THE COMPANY

The Company may request that the Financial Institution waive the Company's liability for Waivable Charges only if the Company meets all of the following requirements:

1) The Cardholder's employment is terminated, voluntarily or involuntarily.

2) The Company has two (2) or more Accounts in good standing.

3) The Company must attempt to retrieve the Visa Commercial Card from the employee.

4) The Company must request that the Financial Institution cancel the Account within two (2) business days of Notification of Termination, as defined. Failure to notify within two (2) business days will exclude coverage for any Charges incurred after Notification of Termination.

5) The Company must deliver to the Cardholder or send by first-class mail or fax, a written notice stating that the Account has been cancelled, that the Cardholder should immediately discontinue all use of the Account, that the Cardholder must immediately pay any outstanding amounts owed to the Financial Institution, and that the Cardholder must immediately return the Commercial Card to the Company.

6) The Company must send a completed and signed Visa Affidavit of Waiver claim form with all required documentation to the Financial Institution within ninety (90) days of Notification of Termination. All claim documents must be filed with the Program Underwriter within one hundred eighty (180) days from Notification of Termination.

7) The Company shall promptly give written notice to the Financial Institution in cases where the Financial Institution invoices the Cardholder, if the Company knows or should know that a Cardholder is receiving reimbursement for Charges but is not paying the Financial Institution for those Charges.

8) The Company will remit all such amounts to the Financial Institution if the Company recovers any amounts for Waived Charges from any source after the Company has filed a Visa Affidavit of Waiver claim form with the Financial Institution. The Company agrees to assign any rights it may have to collect such amounts from the Cardholder to the

Program Underwriter. However, the Company will not be required to pay the Financial Institution any amount that exceeds the loss sustained by the Financial Institution.

9) Once a claim has been paid for a given person, no future claims will be considered.

V. OTHER INSURANCE

This program does not cover any loss which is insured by or would for the existence of this policy, be insured by any other existing policy or policies except in respect of any excess (not exceeding the limits of the policy) beyond the amount which would have been payable under such other policy or policies including any deductible applicable thereunder had the Program not been in effect.

VI. OBLIGATIONS OF THE FINANCIAL INSTITUTION

In order to receive insurance reimbursements from the Program Underwriter, the Financial Institution must:

1) Enforce all of the Company's obligations under its Commercial Card Account agreement, and use reasonable efforts to enforce all of the Company's obligations set forth under Section IV, Obligations of the Company.

2) Provide the Company with a Visa Affidavit of Waiver claim form and a sample Employee Account Cancellation Notification Letter and Account Cancellation Request.

3) Provide the Company with copies or a description of the Waivable Charges billed during the waiver period.

4) Make diligent efforts in accordance with its usual credit and collection practices to collect the Charges from the Cardholder or other responsible party and have failed to obtain full payment for said Charges within sixty (60) days from the Notification of Termination.

5) Assign any uncollected Charges to a collection agency for collection, with the net proceeds (up to $100,000) to be paid to the Program Underwriter.

6) File a Visa Affidavit of Waiver claim form with the Program Underwriter within one hundred eighty (180) days of Notification of Termination and no earlier than sixty (60) days after Notification of Termination and provide the Program Underwriter with the following documentation:

a) A list of Waivable Charges and written evidence that they are Waivable Charges as defined in Section II, Definitions.

b) In cases where the Cardholder was reimbursed by the Company but failed to pay the Financial Institution, proof that the Cardholder was reimbursed by the Company (for claims over $5,000).

c) The Company's completed Visa Affidavit of Waiver claim form and proof of the Account Cancellation Request.

d) Evidence of all action taken to collect the Charges from the Cardholder.

e) A copy of the Company agreement.

f) A copy of the Cardholder agreement.

VII. WAIVER OF CHARGES

1) Upon receipt of the completed Visa Affidavit of Waiver claim form and verification that the Charges are Waivable, the Financial Institution will waive the Company's liability for those Charges.

2) The Financial Institution will then complete the appropriate sections of the Visa Affidavit of Waiver claim form and submit it with all required documentation to the Program Underwriter.

3) If necessary, Visa and/or its Program Underwriter may request further documentation regarding proof concerning the Charges in question.

4) Upon receipt of adequate documentation from the Financial Institution, the Program Underwriter will reimburse the Financial Institution for all Waivable Charges up to a maximum of $100,000 for each Cardholder.

5) The Program Underwriter will remit payment to the Financial Institution within thirty (30) days of the receipt of all completed documentation.

6) Any monies the Financial Institution may receive at any time from the Cardholder or any other source in respect of Waivable Charges will be used by the Financial Institution to reduce the Waivable Charges and/or the amount of any claim the Financial Institution files with the Program Underwriter.

V5143-01-97D

Addendum 1 (cont.)

MasterCoverage

Summary
Introduction

Effectively managing travel and entertainment (T&E) spending, small-dollar purchasing, and other business expenditures is increasingly important to the overall financial health of any company.

The suite of MasterCard Corporate Payment Solutions®* helps companies control and streamline all their expenses, while providing them with flexibility and security for all their business needs.

Experience indicates that employee** misuse of company credit card privileges is rare. However, to protect against these losses, if they occur, MasterCard International Incorporated established the MasterCoverage® Liability Protection Program.

The MasterCoverage Liability Protection Program is purchased by MasterCard International and is provided complimentary to financial institutions and companies covered by the program. MasterCoverage provides protection for cards issued in the United States BINs (Bank Identification Numbers) for the full spectrum of liability agreements between a company and its card-issuing financial institution:

Individual Liability, Joint & Several, or Corporate Liability.*** For information specifically pertaining to Corporate Liability Insurance outside the United States, contact the Customer Relationship Manager assigned to your financial institution.*†

This brochure describes the coverage amounts, what is and is not covered under the program, how financial institutions must manage this program in conjunction with their client companies, and the minimum collection standards for recovering outstanding eligible charges. It also contains the steps required for companies to file a claim and a glossary of terms (all glossary terms appear in bold). Lastly, there are three claim forms included.

After reading this brochure, if you have any questions about the MasterCoverage Liability Protection Program, please contact your Customer Relationship Manager assigned to your financial institution.

The MasterCoverage Liability Protection Program…it's another important benefit that makes MasterCard Corporate Payment Solutions a smart choice for all your corporate payment needs.

*MasterCard Corporate Payment Solutions include MasterCard BusinessCard® Card, MasterCard Executive BusinessCard Card®, Debit MasterCard BusinessCard® Card, MasterCard Small Business Multi Card™, MasterCard Corporate Card®, MasterCard Corporate Executive Card®, MasterCard Corporate Purchasing Card®, MasterCard Corporate Fleet Card® (driver-assigned cards only), MasterCard Corporate Multi Card®, MasterCard Public Sector Travel Card®, MasterCard Public Sector Purchasing Card®, MasterCard Public Sector Fleet Card®, MasterCard Public Sector Multi Card®, MasterCard Government Travel Card®, MasterCard Government Purchasing Card®, MasterCard Government Fleet Card®, and MasterCard Government Integrated Card®.

**Employees are persons working for the company, including independent contractors.

***The MasterCoverage Liability Protection Program is provided subject to the terms and conditions set forth in the master policies described in this brochure.

† There is a small fee for coverage for employees based outside the United States. Please contact your Customer Relationship Manager assigned to your financial institution.

Description of Coverage

The MasterCoverage Liability Protection Program protects financial institutions and companies from employee misuse of charge privileges for any of the MasterCard Corporate Payment Solutions cards including:

- MasterCard BusinessCard Card
- MasterCard Executive BusinessCard Card
- Debit MasterCard BusinessCard Card
- MasterCard Small Business Multi Card
- MasterCard Corporate Card
- MasterCard Corporate Executive Card
- MasterCard Corporate Purchasing Card
- MasterCard Corporate Fleet Card (driver-assigned cards only)
- MasterCard Corporate Multi Card
- MasterCard Public Sector Travel Card
- MasterCard Public Sector Purchasing Card
- MasterCard Public Sector Fleet Card
- MasterCard Public Sector Multi Card
- MasterCard Government Travel Card
- MasterCard Government Purchasing Card
- MasterCard Government Fleet Card
- MasterCard Government Integrated Card

The MasterCoverage Liability Protection Program provides protection in the following instances:

- Up to a maximum limit of USD 25,000 per cardholder for companies that have two to four cards, or
- Up to a maximum limit of USD 100,000 per cardholder for companies that have five or more cards provided that all program conditions, as outlined in this brochure, are met.***
- Cash advances of USD 300 per day, up to a maximum of USD 1,000 per claim.

The MasterCoverage Liability Protection Program provides protection based on the type of liability agreement that exists between a financial institution and their client company:

- **Individual Liability** defined as "The MasterCard Corporate Payment Solutions cardholder will be solely liable for all charges on the issued card."
- **Joint & Several Liability** defined as "The company and the individual MasterCard Corporate Payment Solutions cardholder are both liable for all the charges on the MasterCard Corporate Payment Solutions card account."
- **Corporate Liability** defined as "The company is solely liable for all charges on the MasterCard Corporate Payment Solutions card account."

The MasterCoverage program will reimburse financial institutions up to the limits defined above for charges that fall within the protection period outlined in **Table A** and meet the following criteria (herein referred to as eligible charges):

A. Individual Liability Accounts:

- Charges on cards that were reimbursed to the employee, which were not remitted by the employee to the financial institution
- Charges on cards that were reimbursed to the employee that did not directly or indirectly benefit the company
- Charges on cards that were reimbursed directly to the financial institution by the company on behalf of the cardholder but were later discovered not to have directly or indirectly benefited the company

B. Joint & Several Liability Accounts:

- Charges on cards that were either reimbursed to the employee, which were not remitted by the employee to the financial institution
- Charges on cards that did not directly or indirectly benefit the company
- Charges on cards that were reimbursed directly to the financial institution by the company on behalf of the cardholder but were later discovered not to have directly or indirectly benefited the company

C. Corporate Liability Accounts:

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• Charges on cards that did not directly or indirectly benefit the company Employee termination is a requirement of the MasterCoverage claim process. The card cancellation date and employee termination date establish the protection period for eligible charges set forth in **Table A**.

The card cancellation date is an important date that establishes the protection period for eligible charges. **Table A** illustrates how a company must request card cancellation immediately upon employee termination.

Table A

	If card cancellation date occurs before employee termination date, then Protection Period is:	If card cancellation date occurs 0–2 business days after employee termination date, then Protection Period is:	If card cancellation date occurs 3+ business days after employee termination date, then Protection Period is:
Protection Period for eligible charges before card cancellation date or employee termination date is:	75 calendar days prior to employee termination date	75 calendar days prior to employee termination date	75 calendar days prior to card cancellation date; any charges between employee termination date and card cancellation date are not eligible for coverage
Protection Period for eligible charges after card cancellation date or employee termination date is:	14 calendar days after employee termination date	14 calendar days after employee termination date	No coverage

Note: Companies with one card are not covered under the program. Vehicle-assigned cards are not eligible for coverage under the program.

Exclusions

The following are *not* considered eligible charges under the MasterCoverage program:

- Charges transacted on, or anytime after, the employee termination date if the card is not cancelled within two business days of the employee termination date
- Interest or fees (including, but not limited to, ATM service charges) imposed by the financial institution
- Cash advances on, or anytime after, the employee termination date if the card is not cancelled within two business days of employee termination date
- Personal charges on Individual Liability Accounts for which the company did not reimburse the employee
- Charges made by someone who is not an employee of the company
- Charges resulting from bankruptcy/insolvency of the company
- Charges made on cards or accounts issued to multiple employees rather than an individual, which cannot be traced back to the employee who incurred the charge
- Charges made on vehicle-assigned cards
- Charges resulting from a lost or stolen card
- Any amount unpaid on an Individual Liability Account as a result of an employee's bad check if at least one bad check has been written by the employee within the prior 12 months (a "bad check" is defined as a check written against an account with insufficient funds)
- Charges for goods or services that would regularly be used by the company and that would benefit the company, or were purchased by the employee for someone else according to the company's instructions, or were agreed to by the company in advance
- Charges made by partners, owners, volunteers, or elected directors
- Charges made by shareholders owning more than 5% of a company's outstanding shares
- Charges in excess of USD 25,000 per card if the company has two to four MasterCard Corporate Payment Solutions cards
- Charges in excess of USD 100,000 per card if the company has two to four or more cards
- Cash advances exceeding the limit of USD 300 per day or a maximum limit of USD 1,000 per claim

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- Charges made by a company that has been issued only one card
- Charges resulting from the use of convenience checks
- Any amount unpaid due to an employee death where there is no indication of misuse/abuse

How to File a Claim

By following the steps below, a company with two or more MasterCard Corporate Payment Solutions cards can be protected from eligible charges made by a former employee.

Company	**Step 1:** Company notifies Financial Institution of employee termination date immediately.	**Step 2:** Company requests card cancellation and sends written confirmation to Financial Institution immediately after employee termination date, but no later than two business days.	**Step 4:** Company notifies former employee of card cancellation immediately after card cancellation date, but no later than 30 days after card cancellation date.	**Step 5:** Company calculates eligible charges.
	MasterCard strongly urges companies to perform Steps 1 and 2 at this time.			
Financial Institution		**Step 3:** Financial Institution cancels card immediately after Company notification.		
Program Administrator				
Company	**Step 6:** Company submits claim form to Financial Institution immediately after card cancellation date, but no later than 90 days after card cancellation date.			
Financial Institution	**Step 7:** Financial Institution verifies eligible charges.	**Step 8:** Financial Institution begins collection efforts immediately after receipt of claim form from the company, for a minimum of 60 days.	**Step 9:** Financial Institution files a MasterCoverage claim immediately after collection effort period has ended, but no later than 180 days after card cancellation date.	
Program Administrator			**Step 10:** Program Administrator reimburses Financial Institution. Usually 30 days after receipt of a completed claim.	**Step 11:** Program Administrator may perform subrogation efforts.

Step 1: Company Notifies Financial Institution of Employee Termination Date
Timetable: Notification must occur immediately.
The company must notify the financial institution immediately of the employee termination date. Notification can be performed by phone, fax, e-mail or via Web site online tool. Phone notification must be followed by written confirmation and received by the financial institution within 30 days.

Step 2: Company Requests Card Cancellation
Timetable: Card must be cancelled immediately (must be cancelled within two business days of the employee termination date to receive maximum coverage).
The company must request that the card be cancelled within two business days of the employee termination date or in accordance with the issuing financial institution's policy, whichever is less. The company must also provide the following cardholder account information to the financial institution:
- Employee name
- Card account number
- Employee termination date
- Last-known home address
- Last-known home phone number
- Last-known business address
- Whether the card was retrieved or not

The company's request to cancel the card can be performed by phone, fax, e-mail, or via Web site online tool. Phone notification must be followed by written confirmation and received by the financial institution within 30 days of the card cancellation date.
MasterCard strongly urges companies to perform Steps 1 and 2 at the same time, immediately after an employee leaves the company (either voluntarily or involuntarily, or notifies the company that s/he will be terminating employment. Any charges transacted between the employee termination date and the card cancellation date will not be covered by the MasterCoverage program unless the card is cancelled within two business days of the employee termination date.

Step 3: Financial Institution Cancels the Card
Timetable: Financial Institution must cancel card immediately after notification from Company in Step 2.
When the company requests card cancellation, the financial institution must immediately cancel the card. The date the card is cancelled is the card cancellation date. The card cancellation date and the employee termination date establish the protection period for eligible charges.

Step 4: Company or Financial Institution Notifies Former Employee of Card Cancellation
Timetable: Must be done immediately after card cancellation date, not to exceed 30 days from card cancellation date.
The company or the financial institution must send a card cancellation notice within 30 days of the card cancellation date to the former employee with the following instructions:
- Immediately discontinue use of the MasterCard Corporate Payment Solutions card
- Return the card to the company or the financial institution
- Pay any outstanding balance

This step must be completed for any cardholder that leaves the company, whether voluntarily or not.

Step 5: Company Calculates Eligible Charges
Using the criteria outlined in the *"Description of Coverage"* section, the company must calculate which of the former employee's unauthorized charges qualify for protection and may be eligible for payment under the MasterCoverage program.

Individual Liability Accounts:
- For claims on reimbursed charges that were not remitted by the employee to the financial institution, review billing statements, copies of expense reports, and reimbursement checks, and refer to **Table A** in the *"Description of Coverage"* section to determine charges that may be eligible for payment under the MasterCoverage program.

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• For claims on reimbursed charges that did not directly or indirectly benefit the company, company must provide supporting documentation such as billing statements, copies of expense reports, reimbursement checks, detailed job description, travel schedule, copies of previous expense reports, and shipping invoices related to the charges in question. Refer to **Table A** in the *"Description of Coverage"* section to determine charges that may be eligible for payment under the MasterCoverage program.
• The company will be asked to provide a copy of either the employer/employee agreement or the company's travel and entertainment (T&E) policy to support unauthorized charges made by the employee.

Joint & Several Liability Accounts:
• For claims on reimbursed charges that were not remitted by the employee to the financial institution, review billing statements, copies of expense reports and reimbursement checks, and refer to **Table A** in the *"Description of Coverage"* section to determine charges that may be eligible for payment under the MasterCoverage program.
• For claims that did not directly or indirectly benefit the company, the company must perform an analysis to determine the amount of charges that did not benefit the company, and refer to **Table A**, in the *"Description of Coverage"* section, to determine charges that may be eligible for payment under the MasterCoverage program. This analysis may include examining any or all of the following supporting documentation: detailed job description, travel schedule, copies of previous expense reports, and shipping invoices related to the charges in question.
• The company will be asked to provide a copy of either the employer/employee agreement or the company's travel and entertainment (T&E) policy to support unauthorized charges made by the employee.

Corporate Liability Accounts:
• The company must perform an analysis to determine the amount of charges that did not benefit the company, and refer to **Table A**, in the *"Description of Coverage"* section, to determine charges that may be eligible for payment under the MasterCoverage program. This analysis may include examining any or all of the following supporting documentation: detailed job description, travel schedule, copies of previous expense reports, and shipping invoices related to the charges in question.
• The company will be asked to provide a copy of either the employer/employee agreement or the company's travel and entertainment (T&E) policy to support unauthorized charges made by the employee.

Step 6: Company Submits Claim Form to Financial Institution
Timetable: Must be done immediately after card cancellation date, not to exceed 90 days from card cancellation date.
The company must complete Sections 1–4 of the claim form and submit the claim form to the financial institution within 90 days of the card cancellation date. Please note that the claim form must be accompanied by the following supporting documentation depending upon the liability agreement as outlined in the MasterCoverage Claim Form:
• Copy of card cancellation confirmation letter or printout of card cancellation screen
• Copy of employee notification letter to cardholder, if not completed by the financial institution
• Copies or screen printouts of cardholder billing statements with eligible charges highlighted
• Copies of any written correspondence to the cardholder requesting payment of the cardholder's account balance
• Copies of expense reports or substitute equivalent documentation
(Substitute documentation may include, but is not limited to, shipping invoices, which include shipment to a location other than employee's work location, or explanation of how the purchase is unrelated to employee's job function.)
• Evidence of reimbursement documentation, if applicable
• Copy of analysis and all supporting documentation used to determine the amount of charges, which did not benefit the company
• Copy of company employer/employee agreement or travel and entertainment (T&E) policy to substantiate unauthorized charges

If the company does not return the claim form to the financial institution within 90 days of the card cancellation date, the claim will not be eligible for coverage.

Step 7: Financial Institution Reviews Documentation Submitted by Company
Upon receipt of the claim form and supporting documentation, the financial institution must review all documentation submitted by the company to verify charges the company has submitted for payment. The financial institution must thoroughly review all documentation submitted by the company to insure that only eligible charges are submitted to the program administrator.

Step 8: Financial Institution Begins Collection Efforts
Timetable: Must be done immediately after receipt and review of claim form in Step 7, for a minimum of 60 days.
The financial institution must begin 60 days of collection efforts as allowed by the card account agreement and, as permitted by local, state, and federal regulations, upon receipt of the claim form from the company. See page 12 the "Appendix–MasterCard Minimum Collection Standards," set forth by the MasterCoverage program administrator for this step. At a minimum, the financial institution must verbally contact the former employee once, and send three written notices requesting payment for unpaid charges, within the 60-day period.
IMPORTANT: If financial institution cannot conduct collection efforts due to restrictions listed in card account agreement, the 60 days of collection efforts as described above must be conducted by the company.

Step 9: Financial Institution Files a MasterCoverage Claim
Timetable: Must be done immediately after completing the collection efforts in Step 8, not to exceed 180 days after card cancellation date.
Following 60 days of collection efforts, the financial institution must complete Section 5 of the claim form and submit the completed form (including all required supporting documents) to the MasterCoverage program administrator.
The financial institution must file the claim within 180 days of the card cancellation date to be eligible for reimbursement. This provides for 90 days of collection efforts by the company followed by 60 days of collection efforts by the financial institution.
The following supporting documents must accompany the claim form submission:
• Copy of card cancellation confirmation letter or printout of card cancellation screen
• Copy of employee notification letter to cardholder
• Copies or screen printouts of cardholder billing statements with charges that may be eligible for coverage highlighted
• Copies of any written correspondence to the cardholder requesting payment of the cardholder's account balance
• Copies of expense reports or substitute equivalent documentation
(Substitute documentation may include, but is not limited to, shipping invoices, which include shipment to a location other than employee's work location, or explanation of how the purchase is unrelated to employee's job function.)
• Evidence of reimbursement documentation, if applicable
• Copy of analysis and all supporting documentation used to determine the amount of charges that did not benefit the company
• Copy of company employer/employee agreement or travel and entertainment (T&E) policy to substantiate unauthorized charges
• Documentation of actions taken by the financial institution to collect the unpaid charges from the cardholder, including a log of phone contacts to cardholder and copies of any collection letters or screen printouts showing attempts to collect unpaid charges
• The name, addresses, and phones number of a contact at the financial institution who is responsible for collection efforts on the account
• Any other documentation requested to substantiate the claim. The financial institution must be able to identify and document a cardholder on Corporate Liability Accounts
The financial institution must mail the completed claim to:

MasterCoverage Program Administrator

P.O. Box 94852
Cleveland, OH 44101-9813
Tel: 1-440-914-2214

Note: The MasterCoverage program administrator will close a claim 180 days from the day the last documentation was received.

Step 10: Program Administrator Reimburses Financial Institution for Eligible Charges
The MasterCoverage program administrator will reimburse the financial institution for eligible charges up to the allowable maximum amount per cardholder within 30 days of submission of a completed claim form and all the required supporting documentation. Reimbursement will be made only for those charges that have been substantiated by the company. Should the program administrator be unable to validate certain charges submitted for reimbursement, payment will be made only for those charges substantiated by the company.
By accepting payment under the MasterCoverage program, the financial institution agrees to waive the company's liability for all eligible charges paid under the claim. If the company has already paid the former employee's account balance, the financial institution must credit or reimburse the company for amounts paid under the MasterCoverage program.
For inquiries about claims, the financial institution may contact:

MasterCoverage Program Administrator
P.O. Box 94852
Cleveland, OH 44101-9813
Tel: 1-440-914-2214

Step 11: Program Administrator May Perform Subrogation Efforts The claim form includes a section that assigns the right to collect any unpaid charges to the MasterCoverage program administrator. Assignment of the financial institution's right to collect to the MasterCoverage program administrator is a claim requirement. The MasterCoverage program administrator may perform subrogation efforts to recover any eligible charges.
Should the financial institution or company recover any amounts from the former employee or any other source that were paid as eligible charges under the MasterCoverage program, the financial institution or company must remit any recovered amounts to the program administrator.

Appendix
Glossary of Terms
Card cancellation date means the date the issuing financial institution cancels a cardholder's MasterCard Corporate Payment Solutions card.
Charges means all transactions, including cash advances, charged to the company's account with the financial institution.
Company means a corporation, partnership, sole proprietorship, government agency, non-profit institution, or any other entity, which has signed an agreement with a financial institution pursuant to which the financial institution issues a MasterCard Corporate Payment Solutions card account for use by the company's employees.
Corporate liability means the company is solely liable for all charges on the MasterCard Corporate Payment Solutions card account.
Employee means a person working for the company who is compensated by salary or wages and is solely under the direction and control of the company. Independent Contractors shall fall within the definition of employee.
Eligible charges are charges that meet the criteria for payment under the MasterCoverage program as defined in the "Description of Coverage" section beginning on page 1, not including those charges listed under Exclusions on page 3.
Employee termination date means the earlier of the date the employee leaves the company or the date the employee gives or receives oral or written notification of termination of employment.
Financial institution means an entity that is licensed by MasterCard International Incorporated to issue MasterCard Corporate Payment Solutions accounts and cards to a company.
Individual liability means the cardholder will be solely liable for all charges on the issued card.
Joint & several liability means the company and the individual cardholder are both liable for all the charges on the card account.

Program manager is the individual at the financial institution responsible for managing the MasterCoverage program. This individual is the central resource for the information about the program and the key contact for client companies' questions.
Program administrator is the entity responsible for processing the MasterCoverage claim.

Appendix
MasterCard Minimum Collection Standards
The Financial Institution must make a diligent attempt to collect eligible charges from the former employee for 60 days after receiving the claim form from the company. Outlined below are collection standards set forth by the MasterCoverage program administrator.
Within 7 days of the receipt of the claim form from the company
Telephone Contact with Cardholder
The financial institution should contact the cardholder during reasonable business hours, at the home phone number indicated on the claim form. The phone call should be brief, to the point, and the conversation should be limited to the fact that the charges were unauthorized and the cardholder is personally responsible for remittance of USD xx.xx amount of charges. ("Unauthorized Charges" are based on card liability type and are outlined on page 2 in the *"Description of Coverage"* section.) The objective is to make phone contact with the cardholder once within two weeks immediately following the receipt of the claim form from the company. The date/time of the call must be documented by the financial institution. At a minimum, there must be three documented attempts to reach the cardholder over the phone to complete the requirement of at least one telephone contact with the customer.
Within 14 days of the receipt of the claim form from the company
First Notice (Written)
The first written notice serves as a follow-up to the above "telephone contact" or as an initial contact if the cardholder could not be reached by phone. The notice consists of a standard form that reiterates (1) that charges were "unauthorized"; (2) the exact amount of such charges; and (3) that the cardholder is personally responsible for remittance.
Copies of all letters to the former employee must be retained on file.

Within 30 days of the receipt of the claim form from the company
Certified Letter to Cardholder
If the telephone contact and first notice bring less than full satisfaction of the amount outstanding, the financial institution must mail a certified letter to the former cardholder. This letter provides the former cardholder with a definite date to remit payment of the unauthorized charges. Furthermore, the letter notes that if payment is not received within 15 days, the file may be subrogated to an insurance agency. A copy of the itemized transactions that are considered to be "unauthorized" must also be enclosed. A copy of the letter must be retained on file.

Within 30 days of the receipt of the claim form from the company
Certified Letter to Cardholder: Second Notice (Written)
The second written notice must reference the previous written contact with the former cardholder ("First Notice" and "Certified Letter") and strongly request remittance of the full amount of excess charges. A copy of the letter must be retained on file.

If payment has not been received within 90 days of the receipt of the claim form, the financial institution agrees to assign rights it has to collect from the former cardholder, directly to the MasterCoverage program administrator.
5-11460 10/05

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APPENDIX F – PARTICIPATION AGREEMENT

PARTICIPATION AGREEMENT

In the event that any of the terms or conditions contained in this Agreement are found to conflict with any of the terms or conditions contained in Contract Number PS66495 entered into between the State of New York and Citibank, N.A. pursuant to RFP #22712 for Purchasing and Travel Card Services (the "Contract"), the terms and/or conditions of the Contract shall prevail, in accordance with the order of precedence set forth in Section 2.3.A of the Contract.

Under the terms the Contract between the State Of New York (the "Client") and Citibank, N.A. ("Citibank"), payment for charges made by Cardholders of each Non-State Agency is the responsibility of such Non-State Agency. By signing this Participation Agreement, the Non-State Agency agrees (i) to be bound by the terms and conditions contained in this Participation Agreement and in the Contract, (ii) that the Non-State Agency shall be obligated to comply with all obligations of the Client under the Contract which relate to the Card Services provided by Citibank to the Non-State Agency, and (iii) that all rights of Citibank under the Contract which relate to Card Services provided by Citibank may be exercised by Citibank against the Non-State Agency in respect of the Non-State Agency's participation in the commercial card program provided by Citibank under the Contract. Capitalized terms used but not defined in this document shall have the respective meanings assigned to such terms in the Contract.

Notwithstanding anything to the contrary in this Participation Agreement or in the Contract, payment for all charges made by Cardholders of the undersigned Non-State Agency shall solely be the responsibility of such Non-State Agency. The undersigned Non-State Agency agrees to the methodology for rebate calculation and terms for rebate payment, as appropriate, as set forth in the Contract.

Before the Non-State Agency may have access to the services under the Contract and have Cards issued to its employees or other authorized Cardholders, Citibank must first perform a risk assessment and credit evaluation of the Non-State Agency. Acceptance into the Program is contingent upon Citibank being satisfied, in its discretion, with such risk assessment and credit evaluation. The documentation required to be submitted for this assessment includes:

1. **Audited financial statements for the past two (2) years to initiate the credit evaluation**
   Note: Soft copies via PDF are preferred method of delivery and can be sent via e-mail to robert.s1.robbins@citi.com
2. **A statement giving the Non-State Agency's full legal name and Federal Tax ID and primary type of business or governmental entity**
3. **A fully completed & signed copy of the request form on Exhibit A to this document (the "Request Form")**
4. **A fully executed, signed & notarized copy of the Certification of Authority to Sign on behalf of the named Non-State Agency (Exhibit B to this document).**

Documents are to be forwarded to:
Robert Robbins, Director, Public Sector
Sales and Account Management
Citibank, N.A.
1 Penn's Way
1-2-0012
New Castle, DE 19720

Upon a positive completion of the risk assessment and credit evaluation, Citibank will contact the Non-State Agency via e-mail to initiate the completion of several additional forms, including, but not limited to: the form establishing the Non-State Agency's Program Administrator (PA); hierarchy forms establishing hierarchies for

administrative and reporting purposes; and depending on the number of Cardholders and types of Accounts to be requested, auto-enroll forms.

Please Note: Signing the Request Form and establishing a Commercial Card Program binds the Non-State Agency to the terms and conditions of the Contract and this Participation Agreement, and obligates the Non-State Agency to pay all charges made by Cardholders of the Non-State Agency.

Except as provided in this Participation Agreement or in the Contract, this Participation Agreement shall remain in full force and effect from [ ] and shall continue thereafter until terminated by either the Non-State Agency or Citibank in accordance with the Contract upon ninety (90) days' prior written notice to the other party. Upon the termination of this Participation Agreement for any reason, all Accounts shall be deemed canceled effective upon termination and all outstanding amounts owed in connection with the Accounts shall be deemed immediately due and payable.

The Non-State Agency acknowledges and agrees that the terms of the Contract may be modified by Citibank and Client from time to time, and in such event, the Non-State Agency will be bound by the Contract, as modified.

All notices from Citibank to the Non-State Agency shall be sent by Citibank to the Non-State Agency at the contact information set forth in the Request Form, unless another address is designated by the Non-State Agency in writing. All notices from the Non-State Agency to Citibank shall be sent by the Non-State Agency to Citibank at the contact information set forth in the Request Form, unless another address is designated by Citibank in writing.

The invalidity or unenforceability of any one or more provisions, sentences, clauses, sections or paragraphs in this Participation Agreement shall not affect the validity or enforceability of the remaining portions of this Participation Agreement or any part hereof. If any provision (or portion thereof) of this Participation Agreement is found to be invalid or unenforceable, such provision (or portion thereof) shall be amended to be construed as nearly as possible to reflect the original intent of the parties, and the remaining portions of this Participation Agreement shall remain in full force and effect in accordance with their terms.

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EXHIBIT A

Non-State Agency's Program Request Form

Reference is made to that certain Contract Number PS66495 entered into between the State of New York and Citibank, N.A. pursuant to RFP #22712 for Purchasing and Travel Card Services (as may be amended from time to time, the "Contract") between the State of New York (the "Client") and Citibank, N.A. ("Citibank"). Capitalized terms used but not defined in this document shall have the respective meanings assigned to such terms in the Contract. Under the terms of the Contract, Non-State Agencies are permitted to participate in the Program provided for under the Contract. Payment for charges made by Cardholders of the Non-State Agencies are solely the responsibility of the Non-State Agency. The undersigned Non-State Agency agrees that it is hereby bound by and subject to the terms and conditions set forth in the Contract.

Non-State Agency Legal Name: _____

Non-State Agency Street Address: _____

_____

Non-State Agency Federal Tax ID: _____

Non-State Agency Contact: _____

Contact E-mail Address: _____

Contact Telephone Number _____

Program Type: Purchasing Card / T&E Card (circle all that are applicable)

Estimated Annual Spend for Purchasing Card: _____

Estimated Annual Spend for T&E Card: _____

Estimated Number of Purchasing Cards: _____

Estimated Number of T&E Cards: _____

INTENDING TO BE LEGALLY BOUND, and in exchange of good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto have entered into this Participation Agreement as of the last date set forth below.

AGREED TO AND ACCEPTED BY:

Signature: _____

_____
Name of Non-State Agency
Name/Title: _____
Date: _____
Contact Information for Notices:

_____
_____
Attention: _____

CITIBANK, N.A.

Signature: _____
Name/Title: _____
Date: _____
Contact Information for Notices:
701 East 60th Street North
Sioux Falls, SD 57117
Attention: Vicky Anderson

EXHIBIT B

Certification of Authority to Sign

Reference is made to that certain Contract Number PS66495 entered into between the State of New York and Citibank, N.A. pursuant to RFP #22712 for Purchasing and Travel Card Services (as may be amended from time to time, the "Contract") between the State of New York (the "Client") and Citibank, N.A. ("Citibank"), and the Request Form executed by the Non-State Agency named below ("Non-State Agency") in connection with same. Capitalized terms used but not defined in this document shall have the respective meanings assigned to such terms in the Contract. The Request Form used to initiate use of the Program by the Non-State Agency must be fully and properly executed by an authorized officer or other executive of the Non-State Agency who is authorized to bind the Non-State Agency contractually.

The authorized individual that signs the Request Form must also sign this document certifying his or her authority to so sign the Request Form.

CERTIFICATION:
The undersigned, personally and on behalf of the Non-State Agency identified above, does hereby state and certify to the Client and Citibank that he or she possesses the express authority to sign the Request Form on behalf of the named Non-State Agency and to contractually bind the Non-State Agency to the terms of the Participation Agreement and Contract.

Name of Non-State Agency	Signature
Address	Typed or Printed Copy of Signature
City, Client, Zip	Title

ACKNOWLEDGMENT

STATE OF _____ }
}
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 resides in _____; that he/she is _____ (the President or other officer or director or attorney in fact duly appointed) of _____, the entity described in and which executed the above instrument; and that he/she signed his/her name thereto by authority of said entity.

_____
Notary Public

APPENDIX G – CONTRACTOR INSURANCE REQUIREMENTS

APPENDIX G – CONTRACTOR INSURANCE REQUIREMENTS

Insurance Requirements:

A Bidder must commit to providing all necessary proof of insurance with its proposal. Upon tentative award, Bidder shall be required to procure or self-insure all required insurance of this Appendix G. If awarded a contract, Contractor must provide proof of current insurance throughout the contract term if requested by an Authorized User or OGS NYSPro. The Contractor shall procure at its sole cost and expense or shall self-insure, and shall maintain in force at all times during the term of this Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-", Class "VII" or through self-insurance, as applicable. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the New York State Office of General Services ("OGS") and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

Citibank, N.A. shall have the option, either alone or in conjunction with Citigroup Inc., Citibank, N.A.'s ultimate parent corporation, or any subsidiaries or affiliates of Citi, to maintain self insurance and/or provide or maintain any insurance required by this Agreement under blanket insurance policies maintained by Citibank, N.A. or Citigroup Inc., or provide or maintain insurance through such alternative risk management programs as Citi may provide or participate in from time to time (such types of insurance programs being herein collectively and severally referred to as "self insurance"), provided the same does not thereby decrease the insurance coverage or limits sets forth in this Appendix G. Any self insurance shall be deemed to contain all of the terms and conditions applicable to such insurance as required in this Appendix G. If Citibank, N.A. elects to self-insure, then, with respect to any claims which may result from incidents occurring during the Term, such self insurance obligation shall survive the expiration or earlier termination of this Agreement to the same extent as the insurance required would survive.

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

i. ***Conditions Applicable to Insurance:***

All policies of insurance required by this Contract must meet the following requirements:

1. Coverage Types and Policy Limits. The types of coverage and policy limits required from the Contractor are specified below.

2. Policy Forms. Except as may be otherwise specifically provided herein or agreed in writing by OGS, policies must be written on an occurrence basis.

3. Certificates of Insurance/Notices. Contractor shall provide a Certificate or Certificates of Insurance, and all required endorsements, in a form satisfactory to OGS, before commencing any work under this Contract. Certificates shall reference the Contract Number. Certificates shall be mailed to the Office of General Services, NYSPro, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice, except for non-payment, as to which notice shall be provided as required by law, to OGS. The Contractor shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date or as soon as reasonably practicable, the Contractor shall supply OGS updated replacement Certificate(s) of Insurance, and amendatory endorsements.

Certificates of Insurance shall:

- Be in the form approved by OGS.

- Specify the Additional Insured and Named Insured as required herein.
- Refer to this Contract by number and any other attachments on the face of the certificate, and
- Be signed by an authorized representative of the insurance carrier or producer.

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

5. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OGS or Authorized Users may withhold further contract payments, treat such failure as a breach or default of the contract.

6. Self-insured Retention/Deductibles. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

7. Subcontractors. Should the Contractor engage a Subcontractor for any of the Services to be provided under this Contract, Contractor shall require such Subcontractor(s) to secure and keep in force during the term of this Contract, reasonable insurance limits to be determined commensurate with the work to be performed by the Subcontractor. Proof thereof shall be supplied to OGS upon request.

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

ii. ***Insurance Requirements:***

iii.

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, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

1. Commercial General Liability Insurance with a limit of not less than $2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

   Policy shall include bodily injury, property damage and broad form contractual liability coverage:

   - General Aggregate $2,000,000
   - Products – Completed Operations Aggregate $1,000,000
   - Personal and Advertising Injury $1,000,000

- Each Occurrence $1,000,000

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

3. Technology Professional Liability: The Contractor shall maintain Technology Professional Liability (Errors and Omissions) insurance with a limit of not less than $2,000,000.00 for damages arising from computer-related services including, but not limited to, the following: consulting, data processing, programming, system integration, software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer hardware or software developed, manufactured, distributed, licensed, marketed or sold. This errors and omissions insurance shall include coverage for third party claims and losses including with respect to network risks (such as data breaches, transmission of virus/malicious code; unauthorized access or criminal use of third party, ID/data theft) and invasion of privacy regardless of the type of media involved in the loss of private information (such as computers, paper files and records, or voice recorded tapes), covering collection, use, access, etc. of personally identifiable information, direct liability, as well as contractual liability for violation of privacy policy, civil suits and sublimit for regulatory defense/indemnity for payment of fines and penalties. This coverage is made on a claims-made policy form, so the Contractor shall purchase, at its sole expense, an Extended Discovery Clause for up to three (3) years after the work is completed if the coverage is cancelled or not renewed.

4. Cyber (Internet) liability – The Contractor shall maintain Cyber Internet Liability insurance with a limit of not less than $2,000,000.00 for damages arising from theft, destruction or unauthorized use of electronic data, and failing to safeguard another party's electronic data, including unauthorized access, viruses, attacks on covered systems, theft, extortion, loss of income due to online business interruption, and the cost of investigating the reason for the interruption.

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 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.

iv. *Workers' Compensation Insurance and Disability Benefits Requirements:*

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

Proof of Compliance with Workers' Compensation Coverage Requirements:

An ACORD form is <u>NOT</u> acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the Workers' Compensation Law, a contractor shall:

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

A Contractor seeking to enter into a contract with the State of New York **shall provide <u>one of the following forms</u> to the Office of General Services** at the time of bid submission:

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

B) *Certificate of Workers' Compensation Insurance:*
1) **Form C-105.2 (9/07)** if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or
2) **Form U-26.3** if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services, or
C) **Form SI-12**, *Certificate of Workers' Compensation Self-Insurance* available from the New York State Workers' Compensation Board's Self-Insurance Office; or
D) **Form GSI-105.2**, *Certificate of Participation in Workers' Compensation Group Self-Insurance* available from the contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:
In order to provide proof of compliance with the requirements of the Workers' Compensation Law, a contractor shall:
A) Be legally exempt from obtaining disability benefits coverage; or
B) Obtain such coverage from an insurance carrier; or
C) Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York **shall provide <u>one of the following forms</u> to the Office of General Services** at the time of bid submission:

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

B) **Form DB-120.1**, *Certificate of Disability Benefits Insurance.* Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or

C) **Form DB-155**, *Certificate of Disability Benefits Self-Insurance.* The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

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

4830-7087-6697, v. 1

CONTRACT MODIFICATION PROCEDURE

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

(1) **TYPES OF CONTRACT MODIFICATIONS**: In order to expedite processing of a contract modification, where proposed changes involve more than one category below, each change should be submitted to OGS as a separate request.

a) **UPDATES**: "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. Updates may include: Centralized Contract changes and updates made in accordance with the previously approved pricing formula (e.g. discount from list price); adding new products or services within the established, previously approved pricing structure; lowering pricing of products or services already on Contract, deleting products or services available through the Centralized Contract, adding product or service that do not fall under the previously established price structure or discounts under the Contract, re-bundled products, and other updates not listed above that are deemed to be in the best interest of the State and do not result in a change to the established Centralized Contract terms and conditions. Updates must be submitted to OGS for review, and must be accompanied by a justification of reasonableness of price if the change results in a change in pricing methodology. OGS will notify Contractor in writing if approved.

b) **AMENDMENTS**: "Amendments" are changes that are not specifically covered by the terms and conditions of the Centralized Contract but inclusion is found to be in the best interest of the State. Requests for product changes and other requests that would require changes to the terms and conditions of the Centralized Contract would fall into the Amendments category. Contractor must provide a written justification of reasonableness of the price levels offered in the applicable Program Agreement and a statement explaining why it is in the best interest of the State to approve the requested amendment. Amendments typically require negotiation between OGS and the Contractor. OGS will work directly with the Contractor to obtain the required documentation for each requested amendment and notify Contractor in writing if approved.

(2) **CONTRACTOR'S SUBMISSION OF CONTRACT MODIFICATIONS:** In connection with any Contract modification, OGS reserves the right to:

- request additional information
- reject Contract modifications
- remove Products from Contract modification requests
- request additional discounts for new or existing Products

(3) **PRICE LEVEL JUSTIFICATION – FORMAT:** Contractor is required to submit the Product and price level information for the update in an Excel spreadsheet format electronically via e-mail (and in hard copy if requested by OGS) to the OGS Contract Administrator. The list must be dated. The Product and price level information should include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):

Price level increases

- Price level decreases
- Products being added

(4) **SUPPORTING DOCUMENTATION:** Each modification request must include the current contract pricing discount relevant to the Products included in the update.

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

PS66495 – Purchasing. Travel and NET Cards (Statewide)

NYS Office of General Services
Serving New York
Empire State Plaza
Albany, New York 12242

STATE OF NEW YORK
EXECUTIVE DEPARTMENT - OFFICE OF GENERAL SERVICES
Corning Tower – 38th Floor

CONTRACT MODIFICATION FORM	
DATE OF THIS SUBMISSION: 02-13-2015	**DATE DOCUMENTATION EMAILED: 02-17-2015**
CONTRACTOR **NAME: Citibank, N.A.** OGS GROUP#: 79008-22712 OGS AWARD #: 22712 OGS CONTRACT #: PS66495	**CONTRACTOR CONTACT:** Name: Rob Robbins Phone#: 302-323-3894 Email: Robert.s1.robbins@citi.com
NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).	

INSTRUCTIONS:

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

PS66495 – Purchasing. Travel and NET Cards (Statewide)

COMPLETE STATEMENTS 1 THROUGH 5 BELOW:

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

6. Describe the nature and purpose of the modification. If applicable, please explain how pricing has been structured to customers, and/or identify and describe new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS.

The purpose of this modification is to convey similar terms for rebate calculation to the State of NY that other Citibank, N.A. clients have today. This existing contract allows for the deduction of rebate of any payments outstanding for 90 days. This update will allow that timeframe to be extended to 180 days and will read, "The following will be deducted by the Bank from any rebates before payment: (i) any outstanding balances that are 180 days past its Payment Due Date".

Please see attached Copy of Schedule D of the contract: Section D. Rebates; Third Bullet where the 90 Days is replaced with 180 days.

APPENDIX D – REBATE AND PRICING SCHEDULE

PURCHASING AND CORPORATE (TRAVEL) CARD REBATE AND PRICING TERMS

Initial Spending Limit: $60,000,000 (subject to change by the Contractor)

A. Fees and Charges:

1. Annual Fee	Waived
2. Cash Advance / ATM	Not offered
3. Purchase Finance Charge	With respect to State Agencies to which the New York State Prompt Payment Law (State Finance Law Article 11-A) applies, the terms of such law shall apply in respect of any payments not received by Contractor on a timely basis as required by this Agreement. With respect to Authorized Users to which the New York State Prompt Payment law does not apply, the following terms shall apply in respect of any payments not received by Contractor on a timely basis as required by this Agreement: Prime Rate plus 2% per annum based on the average daily balance. Adjustment frequency is monthly based upon the Prime Rate published in The Wall Street Journal. If any portion of the past due balance appears on two consecutive billing statements (approximately 55-60 days after the billing cycle date in which the charge first appears), a Purchase Finance Charge will be assessed.
4. Foreign Transaction Fee	Waived
5. Return Payment Fee	Waived
6. Implementation Fee	Waived
7. Implementation and Training	Implementation and training included
8. File Integration and Reporting	No charge for standard file to central data point or Citi's standard online reporting system
9. Custom File Development and Integration	Not Offered
10. Custom Card Design	Single color hot stamped logo card design waived Not Offered
11. Central Travel Account / Travel Agency Data	Not offered Not offered
12. Convenience Checks	
13. Convenience Checks Stop Payment	

B. Pricing Term: The pricing for this Agreement shall be effective for the term of the Agreement.

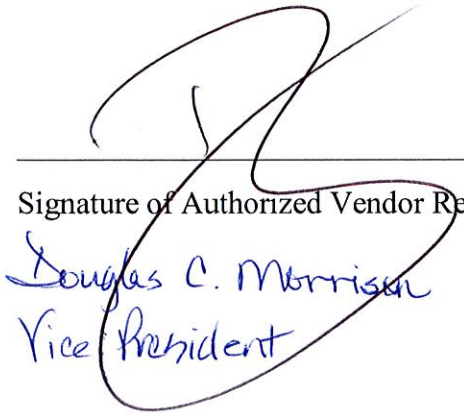
C. Payment Due Date: Payment is due in full **30** days after billing statement date

D. Rebates

- Rebates will be payable in accordance with Section 2.7 of the Contract
- Qualified Annual Spend Volume is the total spend on the Accounts during the Rebate Period, excluding cash advances, returns, credits and unauthorized use of Cards or Accounts during the Rebate Period. Transactions associated with reduced large ticket interchange are included for purposes of determining the applicable rebate tier.
- The following will be deducted by the Contractor from any rebates before payment: (i) any spend that is more than ~~90~~ 180 days past its Payment Due Date, with associated fees, if applicable; and (ii) Upon a Termination Event or termination of this agreement (whichever is earlier), all monies due from the State or Authorized User to the Contractor under this Agreement and/or under any other card program between the Contractor and State or any of State's Affiliates.
- The State shall be eligible for rebates according to the rebate parameters set forth in Appendix D.

PS66495 – Purchasing. Travel and NET Cards (Statewide)

The following ACKNOWLEDGEMENT statement must be signed by an individual authorized to sign on behalf of Contractor for the modification being requested in this Contract Modification document. The authorizing authority's signature must be notarized.



Signature of Authorized Vendor Representative

Douglas C. Morrison
Vice President

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGEMENT

STATE OF South Dakota }

: Sworn Statement:

COUNTY OF Minnehaha }

On the 18th day of February in the year 2015, before me personally appeared Douglas C. Morrison, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he maintains an office at Citibank, N.A, Sioux Falls, SD and further that:

[Check One]

(☐ **If an individual):** _he executed the foregoing instrument in his/her name and on his/her own behalf.

(☐ **If a corporation,** (☐ **a partnership,** ☐ **a limited liability company):** _he is the Vice President of National Bank Citibank, N.A., the ~~*corporation/ partnership/ Limited Liability Company*~~ described in the above instrument; that, _he is authorized to execute the foregoing instrument on behalf of the *national Bank corporation/ partnership/ Limited Liability Company* for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said ~~*corporation/ partnership/ Limited Liability Company*~~ *national Bank* as the act and deed of said ~~*corporation/ partnership/ Limited Liability Company.*~~

national Bank

Louise M. Sandoval

Signature of Notary Public

Notary Public Registration #:

Louise M. Sandoval
Notary Public
State of South Dakota Minnehaha County
My Commission Expires: March 12, 2018

State of:_____

PS66495 – Purchasing. Travel and NET Cards (Statewide)

OGS APPROVAL: Approved ✓ **Approved as amended** _____ **Disapproved**_____

Signature: [signature]

Date: 2/26/2015

Printed Name: Susan M. Filburn

Title Deputy CPO

CONTRACT NUMBER PS66495
STATE OF NEW YORK AGREEMENT FOR
PURCHASING AND TRAVEL CARD SERVICES
WITH CITIBANK, N.A.
AMENDMENT #2

THIS AMENDMENT (hereinafter Amendment #2) is made to Contract # PS66495 (hereinafter the "Contract") as of this 11th day of July, 2016 by and between the State of New York, acting by and through the Office of General Services (hereinafter "OGS" or the "State"), with offices at 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York, 12242 and Citibank, N.A. (hereinafter "Contractor"), having its principal place of business at 701 East 60th Street North, Sioux Falls, SD 57117. The State and the Contractor are collectively referred to as the "Parties."

WHEREAS, the Parties entered into the above referenced Contract, effective April 7, 2014 for Purchasing and Travel Card Services; and

WHEREAS, the annual volume of spending under the Contract has exceeded the amount anticipated by the Parties; and

WHEREAS, the Parties now wish to amend the Contract to provide for increased rebate payments based on higher tiers of annual spending volume under the Contract; and

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth in this Amendment #2, the Parties hereby agree to the following amendments to the Contract:

1. Appendix D (Rebate and Pricing Schedule) is deleted in its entirety and replaced with the amended Appendix D (Rebate and Pricing Schedule) attached hereto.

Except as herein modified in this Amendment #2, all other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment #2 to be executed as of the date first written above, and the persons signing this Amendment #2 represent and warrant that they are duly authorized to sign on behalf of the respective Parties.

CITIBANK, N.A.

By: _____

NAME: Carla Lahy-Schmidt

TITLE: Managing Director

DATE: 7/11/16

THE STATE OF NEW YORK

By: _____

NAME: Susan M. Filburn

TITLE: Deputy CPO

DATE: 7/12/16

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF New York }
: **SS.:**
COUNTY OF Kings }

On the 11 day of July in the year 2016, before me personally appeared GONCA LATIF-SCHMITT, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he maintains an office at 388 Greenwich Street, City/Town of New York, County of New York, State of New York; and further that:

[Check One]

(☐ **If an individual):** _he executed the foregoing instrument in his/her name and on his/her own behalf.

(☑ **If a national bank):** She is the Managing Director of Citibank NA, the national banking association described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the national banking association for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said bank as the act and deed of said bank.

(☐ **If a partnership):** _he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(☐ **If a limited liability company):** _he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Sworn to me before this 11 day of July, 2016

Vivian Fischetti Salvano

Notary Public
Registration No.

VIVIAN FISCHETTI SALVANO
Notary Public, State of New York
No. 01FI5040364
Qualified in Kings County
Commission Expires March 13, 2019

Appendix D

APPENDIX D – REBATE AND PRICING SCHEDULE

PURCHASING AND CORPORATE (TRAVEL) CARD REBATE AND PRICING TERMS

Initial Spending Limit: $60,000,000 (subject to change by the Contractor)

A. Fees and Charges:

1. Annual Fee	Waived
2. Cash Advance / ATM	Not offered
3. Purchase Finance Charge	With respect to State Agencies to which the New York State Prompt Payment Law (State Finance Law Article 11-A) applies, the terms of such law shall apply in respect of any payments not received by Contractor on a timely basis as required by this Agreement. With respect to Authorized Users to which the New York State Prompt Payment law does not apply, the following terms shall apply in respect of any payments not received by Contractor on a timely basis as required by this Agreement: Prime Rate plus 2% per annum based on the average daily balance. Adjustment frequency is monthly based upon the Prime Rate published in The Wall Street Journal. If any portion of the past due balance appears on two consecutive billing statements (approximately 55-60 days after the billing cycle date in which the charge first appears), a Purchase Finance Charge will be assessed.
4. Foreign Transaction Fee	Waived
5. Return Payment Fee	*Waived*
6. Implementation Fee	*Waived*
7. Implementation and Training	Implementation and training included
8. File Integration and Reporting	No charge for standard file to central data point or Citi's standard online reporting system
9. Custom File Development and Integration	Not Offered
10. Custom Card Design	Single color hot stamped logo card design waived
11. Central Travel Account / Travel Agency Data	Not Offered
12. Convenience Checks	Not offered
13. Convenience Checks Stop Payment	Not offered

B. Pricing Term: The pricing for this Agreement shall be effective for the term of the Agreement.

C. Payment Due Date: Payment is due in full **30** days after billing statement date

D. Rebates

- Rebates will be payable in accordance with Section 2.7 of the Contract.
- Qualified Annual Spend Volume is the total spend on the Accounts during the Rebate Period, excluding all payments received after the applicable Payment Due Date, cash advances, returns, credits, convenience checks and unauthorized use of Cards or Accounts during the Rebate Period. Corporate (Travel) Card transactions associated with reduced large ticket interchange are not counted towards Qualified Annual Spend Volume.
- Purchase Card transactions associated with reduced large ticket interchange will qualify for fifty (50) basis points (bps) of rebate.
- The following will be deducted by the Bank from any rebates before payment: (i) any spend that is more than 180 days past its Payment Due Date, with associated fees; and (ii) Upon a Termination Event or termination of this agreement (whichever is earlier), all monies due from the State or Authorized User to the Bank under this Agreement and/or under any other card program between the Bank and State or any of State's Affiliates.
- The State shall be eligible for rebates according to the rebate parameters set forth below.

Corporate (Travel) Card

Annual Spend Volume ($)	Rebate (bps)	Rebate ($)
$25,000,000	174	$435,000
$30,000,000	175	$525,000
$35,000,000	176	$616,000
$40,000,000	177	$708,000
$45,000,000	178	$801,000
$50,000,000	179	$895,000
$55,000,000	180	$990,000
$60,000,000	181	$1,086,000
$65,000,000	182	$1,183,000
$70,000,000	183	$1,281,000
$75,000,000	184	$1,380,000
$85,000,000	185	$1,572,500
$100,000,000	186	$1,860,000
$125,000,000	187	$2,337,500

Purchase Card

Annual Spend Volume ($)	Rebate (bps)	Rebate ($)
$55,000,000	183	$1,006,500
$75,000,000	184	$1,380,000
$125,000,000	185	$2,312,500
$150,000,000	186	$2,790,000
$175,000,000	187	$3,272,500
$200,000,000	188	$3,760,000
$225,000,000	189	$4,252,500
$250,000,000	190	$4,750,000
$275,000,000	191	$5,252,500
$300,000,000	192	$5,760,000
$325,000,000	193	$6,272,500
$350,000,000	194	$6,790,000
$375,000,000	195	$7,312,500

$450,000,000	196	$8,820,000
$650,000,000	197	$12,805,000

E. Early Payment Incentive: The Bank will add **0.5** basis point for every day early (prior to **30**) that the State or Authorized User remits payment.

For centrally billed programs, payment timeliness is calculated for each cycle by measuring the number of days in between the statement cycle date and the payment posting date.

F. Liability and Payment Structure:

- This Citibank Corporate (Travel) Card Program is **corporate** liability with **central** bill and **central** payment and central bill for Cross Border USD Cards.
- This Citibank Purchase Card Program is **corporate** liability with **central** bill and **central** payment.

Early Payment Incentive Example:
Travel and Purchase Card at tier net charge volume of $450,000,000, starting basis points = 196:

Days to pay	Early Pay Incentive	New Basis Points	Rebate
30	.00	196	$8,820,000
29	.5	196.5	$8,842,500
28	1.0	197	$8,865,000
27	1.5	197.5	$8,887,500
26	2.0	198	$8,910,000
25	2.5	198.5	$8,932,500
24	3.0	199	$8,955,000
23	3.5	199.5	$8,977,500
22	4.0	200	$9,000,000
21	4.5	200.5	$9,022,500
20	5.0	201	$9,045,000
19	5.5	201.5	$9,067,500
18	6.0	202	$9,090,000
17	6.5	202.5	$9,112,500
16	7.0	203	$9,135,000
15	7.5	203.5	$9,157,500
14	8.0	204	$9,180,000
13	8.5	204.5	$9,202,500
12	9.0	205	$9,225,000
11	9.5	205.5	$9,247,500
10	10.0	206	$9,270,000
9	10.5	206.5	$9,292,500
8	11.0	207	$9,315,000
7	11.5	207.5	$9,337,500
6	12.0	208	$9,360,000
5	12.5	208.5	$9,382,500
4	13.0	209	$9,405,000
3	13.5	209.5	$9,427,500