

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
REAL ESTATE PLANNING AND DEVELOPMENT
MAYOR ERASTUS CORNING 2ND TOWER - 26TH FLOOR
THE GOVERNOR NELSON A. ROCKEFELLER
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242



RETAIL LEASE AGREEMENT
THE GOVERNOR NELSON A. ROCKEFELLER
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

(OR OTHER LOCATION)

Project No.:

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**STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
MAYOR ERASTUS CORNING 2ND TOWER
The Governor Nelson A. Rockefeller
Empire State Plaza
Albany, New York 12242**

LEASE AGREEMENT

THIS AGREEMENT (hereinafter referred to as the "Lease," the "Lease Agreement" or the "Agreement") made as of the _____ day of _____ in the year ____ by and between the People of the State of New York, acting by and through the Commissioner of General Services, pursuant to Section 3(13)(a) of the New York State Public Buildings Law, whose office is located at The Mayor Erastus Corning II Tower, 41st Floor, The Governor Nelson A. Rockefeller Empire State Plaza (GNARESP), Albany, New York, 12242 (hereinafter referred to as the "State" and/or the "Lessor") and _____, The Governor Nelson A. Rockefeller Empire State Plaza (GNARESP), Concourse Level, Albany, New York, 12220 (hereinafter referred to as the "Lessee") **(OR OTHER LOCATION)**, whose representative is currently _____. The Lessee's address for purposes of notices hereunder shall be the address set forth above, Attention: _____. The foregoing are individually referred to as a "Party" and collectively referred to as the "Parties."

WITNESS, that:

The State and the Lessee, for and in consideration of the rents, covenants and agreements hereinafter contained, mutually covenant and agree as follows:

SECTION 1. DEFINITIONS

The following terms, when used in this Lease Agreement, shall have the respective meanings given below:

- (a) "Business Day" is defined as Monday through Friday, excluding State Legal Holidays, as that term is defined in Section 14 of this Lease.
- (b) "Causes or Conditions Beyond the Control of the State or the Lessee," shall mean and include acts of God, the elements, weather conditions, tides, earthquakes, settlements, fire, acts of governmental authority, war, terrorism, shortage of labor or materials, acts of third parties for which the State and the Lessee are not responsible, injunctions, strikes, boycotts, picketing, slowdowns, work stoppages, labor troubles or disputes of every kind (including all those affecting the State or the Lessee, their contractors, suppliers or subcontractors) or any other conditions or circumstances, whether similar to or different from the foregoing (it being agreed that the foregoing enumeration shall not limit or be characteristic of such conditions or circumstances) which is beyond the control of the State or the Lessee, or which could not be prevented or remedied by reasonable effort and at reasonable expense.
- (c) "Minority- and Women-Owned Business Enterprise" (MWBE): Businesses certified as such by New York State Empire Development. NOTE: Businesses eligible to participate in the program must be owned and operated by women and/or minority group members who are citizens of the United States or permanent resident aliens. Generally they must have been in operation for at least one year.
- (d) "Plaza" shall mean The Governor Nelson A. Rockefeller Empire State Plaza (GNARESP) located in the City of Albany and County of Albany, State of New York. **(ADJUST AS NECESSARY)**
- (e) "Utility, Mechanical, Electrical, Communication and Other Systems" shall mean and include (without limitation thereto) the following: machinery, engines, dynamos, boilers, elevators, escalators, incinerators and incinerator flues, systems for the supply of fuel,

electricity, water, gas and steam, plumbing, heating, sewerage, drainage, ventilating, air conditioning, communications, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other similar systems, fire hydrants, fire hoses, and their respective wires, mains, conduits, lines, tubes, pipes, equipment, motors, cables, fixtures and other equipment.

SECTION 2. HEADINGS

The section headings and the paragraph headings, if any, are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provision hereof.

SECTION 3. LETTING

The State hereby lets to the Lessee and the Lessee hereby hires and takes from the State approximately _____ (_____) rentable square feet located on the Concourse Level of the Plaza **(OR OTHER LOCATION)** (hereinafter referred to as the "Premises" or the "Demised Premises"). The foregoing is shown on the plan annexed to this Lease and marked as "Exhibit 1," together with the fixtures, improvements and other property of the State located or to be located in the Premises.

SECTION 4. RIGHTS OF USE BY THE LESSEE

The Lessee shall have the right to use and occupy the Demised Premises for the purpose of operating a _____. The foregoing shall be referred to herein as the "Use."

The Lessee shall be permitted to provide Wi-Fi at the Demised Premises, and to install a security camera or cameras, in compliance with Sections 23 and 24 of this Lease, upon the receipt of prior, written consent of the State, which shall not be unreasonably withheld, conditioned, or delayed.

SECTION 5. TERM

- (a) The term of this Lease Agreement shall commence at 12:01 o'clock a.m. on _____ (hereinafter referred to as the "Commencement Date"). The term of this Lease Agreement shall expire, unless sooner terminated, at 11:59 o'clock p.m. on the day before the ____ (____) anniversary of the Commencement Date (hereinafter referred to as the "Termination Date"). The foregoing are collectively referred to as the "Term."
- (b) Notwithstanding the foregoing, the Lease Term and the obligation to pay Rent, shall commence upon the first day of the month following the date of full execution, approval and delivery of this Lease to the Lessee, unless such delivery occurs on the first day of the month, in which case the Lease Term and obligation to pay Rent shall commence on that day.

SECTION 6. RENT

The Lessee shall pay the State, in accordance with Section 7 of this Lease entitled "Payments and Statements," for the Demised Premises rent (hereinafter referred to as the "Rent") in the amount of _____ and 00/100 Dollars (\$ _____) per year. Payment shall be made on a monthly basis, on the first day of the month, in the amount of _____ and 00/100 Dollars (\$ _____).

SECTION 7. PAYMENTS AND STATEMENTS

All Rent payments required to be paid by the Lessee shall be made by the first (1st) day of each month. Payment of Rent shall be made to the address set forth below: New York State Office of General Services, Financial Administration, Empire State Plaza, P.O. Box 2166, Albany, New York 12220.

SECTION 8. PERSONAL PROPERTY OF THE STATE AND THE LESSEE

All fixed and non-fixed State equipment and fixtures shall remain the property of the State and may not be removed by the Lessee. In no event shall the Lessee remove any restrooms, flooring, ceilings, or Utility, Mechanical, Electrical, Communication and Other Systems, as that term is defined in Section 1(e) of this Lease.

The Lessee may, however, at any time during the Lease Term, extension or holdover period, remove from the Demised Premises, at its sole cost and expense, all items and structural characteristics that are indicative of the Lessee's business, and otherwise "de-identify" the Demised Premises as the Lessee reasonably believes necessary or appropriate for the protection of the Lessee's interest in the its trademarks, trade names, or copyrights. Notwithstanding the foregoing, the Lessee shall not be required to remove its business and trade fixtures, machinery, equipment and cabinet work at the end of the Lease Term, extension or holdover period unless it so elects. In the event that the Lessee shall remove its business and trade fixtures, machinery, equipment and cabinet work, the Lessee shall procure and maintain commercial general liability insurance, or, if the work is to be done by an independent contractor, the Lessee shall require such contractor to procure and maintain such insurance in the name of the contractor, in either case, in limits not lower than those set forth for such categories of insurance in Section 26, naming the State as an additional insured, and if not so set forth, then as may be reasonably specified in advance by the State. Proof of compliance shall be submitted to The New York State Office of General Services, Assistant Director, Real Estate Planning & Development, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 26th Floor, Albany, New York 12242 prior to the commencement of the work. Any damage, including, but not limited to, the patching and filling of holes, caused by such removal, in the Demised Premises, or the Plaza, shall be repaired by the Lessee, at its sole cost and expense. The Lessee agrees to repair any areas damaged by any removal, whether such damage is caused by the Lessee or any of its contractors. All work, allowed or required by this Section, shall be done in a good and workmanlike manner.

SECTION 9. GOVERNMENTAL REQUIREMENTS

The Lessee shall pay all taxes, import duties, examination fees, excise and other charges which may be assessed, levied, exacted or imposed on its property, operations or occupancy hereunder, or any property whatsoever which may be received at the Demised Premises, or on the gross revenues or income therefrom and shall make all applications, reports and returns required in connection therewith. If any bond or other undertaking shall be required by any governmental authority in connection with any of the operations of the Lessee or any property received or exhibited by the Lessee at the Demised Premises, the Lessee shall furnish the same and pay all other expenses in connection therewith.

SECTION 10. CONSTRUCTION AND APPLICATION OF TERMS

- (a) Wherever in this Lease Agreement a third person singular, neuter pronoun or adjective is used referring to the Lessee, the same shall be taken and understood to refer to the Lessee, regardless of the actual gender or number thereof.
- (b) Whenever in this Lease Agreement the Lessee is placed under an obligation or covenants to do or to refrain from or is prohibited from doing, or is entitled or privileged to do, any act or thing, the following shall apply:
 - (1) If the Lessee is a corporation, its obligations shall be performed or its rights or privileges shall be exercised only by its officers and employees; or
 - (2) If the Lessee is an unincorporated association or a business or "Massachusetts" trust, the obligation shall be that of its member or trustees, as well as of itself, and shall be performed only by its members or trustees, and officers and employees, and the right or privilege shall be exercised only by its members or trustees, and its officers and employees; or
 - (3) If the Lessee is a partnership, the obligation shall be that of its partners and shall be performed only by its partners and employees and the rights or privileges shall be exercised only by its partners and employees; or

- (4) If the Lessee is an individual, the obligations shall be that of himself (or herself) and shall be performed only by himself (or herself) and his (or her) employees and the right or privilege shall be exercised only by himself (or herself) and his (or her) employees.
- (5) None of the provisions of this paragraph (b) shall be taken to alter, amend or diminish any obligation of the Lessee assumed in relation to its invitees, customers, agents, representatives, contractors or other persons, firms or corporations doing business with it.
- (c) If more than one individual or other legal entity is the Lessee under this Lease Agreement, each and every obligation hereof shall be the joint and several obligation of each individual or other legal entity.
- (d) Unless otherwise stated in Section 4 of this Agreement entitled "Rights of Use by the Lessee," the rights of use herein granted to the Lessee with respect to the Demised Premises, shall be exercised by the Lessee only for its own account and, without limiting the generality of the foregoing, shall not be exercised as agent, representative, factor, broker, forwarder, bailee, or consignee without legal title to the subject matter of the consignment.
- (e) The Lessee's representative, hereinbefore specified in this Lease Agreement (or such substitute as the Lessee may hereafter designate in writing), shall have full authority to act for the Lessee in connection with this Lease Agreement and any things done or to be done hereunder, and to execute on the Lessee's behalf any amendments or supplements to this Lease Agreement or any extension thereof.
- (f) This Lease Agreement does not constitute the Lessee as an agent or representative of the State for any purpose whatsoever. Neither a partnership nor any joint venture is hereby created.
- (g) All designations of time herein contained shall refer to the time system then officially in effect in the municipality wherein the Demised Premises are located.
- (h) No greater rights or privileges with respect to the Uses of the Demised Premises, or any part thereof, **or with respect to the Plaza** are granted or intended to be granted to the Lessee by this Lease Agreement, or by any provision thereof, than the rights and privileges expressly granted hereby.

SECTION 11. OPERATIONS

The Lessee shall conduct a "first class" operation and will furnish, install and maintain all necessary or proper equipment, fixtures, improvements (subject to Section 24 of this Lease Agreement entitled "Construction by the Lessee"), personnel, supplies, materials and replacements required to conduct and maintain a "first class" operation.

The Lessee shall maintain the Demised Premises in an attractive, clean, safe, operable, sanitary, orderly and inviting condition at all times, including, but not limited to, all portions of the Demised Premises **and the Plaza** used for the disposal of waste and refuse, public lobbies, restrooms, entrances and exits. All goods and services offered for sale must be in good taste and considered appropriate, proper and consistent with the State's obligations and responsibilities to the patrons **of the Plaza**. It is the intention of the State that all standards shall be diligently adhered to and carried out so as to reflect positively on the reputation of the State and the Lessee.

All items sold or kept for sale under this Lease shall be of high quality and standards; and must conform in all respects to federal, state and municipal laws, ordinances, rules and regulations. The Lessee shall obtain and maintain all necessary licenses, certificates, permits or other authorizations from all governmental authorities having jurisdiction over the Lessee's operations at the Demised Premises **or the Plaza** and shall provide for the inspection and review of such licenses, certificates, permits and authorizations by the State and any other persons

authorized by law. The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules and regulations, orders and directions, which may pertain or apply to the specific operations of the Lessee at the Demised Premises **or the Plaza**, or its specific occupancy of the Demised Premises (as opposed to mere retail use), including any Lessee alterations at the Demised Premises **and the Plaza**, and the Lessee shall, in accordance with and subject to the provisions of Section 24 of this Agreement make any and all improvements, alterations or repairs of the Demised Premises **and the Plaza** that may be required at any time hereafter by any such present or future law, rule, regulation, requirement, order or direction. The provisions of this Section are not to be construed as a submission by the State to the application to itself of such laws, rules and regulations, requirements, orders or directions, or any of them. Notwithstanding the foregoing, the State shall be responsible, at its sole cost and expense, to comply with any current legal requirements and handicap accessibility requirements, including, but not limited to, ADA requirements relating to the physical condition of all parts **of the Plaza** outside of the Demised Premises, as well as any change in applicable legal requirements pertaining to real estate generally, and not to the Demised Premises specifically. The Lessee shall, in no event, be responsible for making any structural repairs, improvements or alterations to the Demised Premises **or the Plaza** in order to comply with the requirements of this Lease.

The service provided by the Lessee shall at all times be prompt, clean, courteous and efficient. Service shall be provided to all patrons without discrimination.

The Lessee shall not, without the prior, express, written permission of the State, operate vending machines (including coin activated game and music machines) on the Demised Premises. Furthermore, the sale of Lottery chances, newspapers, periodicals, tobacco and books is prohibited without the prior, express, written permission of the State. The specificity of the foregoing enumeration of disallowed items shall not be deemed to infer that any particular items not so enumerated are permitted under this Lease, and the State reserves the right to require the Lessee to immediately stop the sale of any items which the State, in its sole discretion, deems to be inconsistent with this Lease, any applicable rules, regulations or policies or the State's obligations and responsibilities to the patrons **of the Plaza**.

SECTION 12. QUIET ENJOYMENT

The State covenants and agrees that the Lessee, upon paying all Rent hereunder and performing all the covenants, conditions and provisions of this Lease Agreement on its part to be performed, shall and may peaceably and quietly have, hold and enjoy the Demised Premises free of any act or acts of the State except as expressly permitted in this Lease Agreement.

SECTION 13. DEMISED PREMISES

The Lessee acknowledges that, except as may expressly be set forth herein, it has not relied upon any representation or statement of the State or its officers, employees or agents as to the suitability of the Demised Premises for the Use, as defined in Section 4 of this Lease, permitted on the Demised Premises by this Lease Agreement. Without limiting any obligation of the Lessee stated in this Lease Agreement, the Lessee agrees that no portion of the Demised Premises will be used initially or at any time during the Term of this Lease, which is in a condition unsafe or improper for the conduct of the Lessee's Use so that there is likelihood of injury or damage to life or property. For all purposes of this Lease Agreement, the Demised Premises hereunder (notwithstanding any statement elsewhere in this Lease Agreement of any rule for the measurement of the area thereof) shall be deemed to include all of the enclosing partitions, and glass to and including the exterior surface thereof.

SECTION 14. HOURS OF OPERATION

The Lessee shall operate its business, at a minimum, from ___:00 a.m. to ___:00 p.m., on Business Days, excluding State Legal Holidays (hereinafter referred to as the "Normal Business Hours"), or such longer hours as the Lessee may desire (provided that the Lessee shall give the State advance, written notice, in accordance with Section 16 of this Lease, of such change in hours), and shall remain open as agreed upon by the Parties for events, programs or activities **at the Plaza**.

The Lessee shall not be required to operate such hours if the Lessee is unable to operate as a result of Causes or Conditions Beyond the Control of the State or Lessee, as that term is defined in Section 1(b) of this Lease, casualty, condemnation, periodic inventory (not more than three days per calendar year), or for permitted alterations. The Lessee shall provide written notice, ten days prior to the scheduled closing, to the State of scheduled closings for inventory or approved alterations. In addition, de minimis late openings and early closings shall not be deemed a violation of the hours' provision; however, the State must be notified by telephone or by e-mail, within two (2) hours of the decision to close early or open late. The contact for such notification is: _____, who may be reached at (518) _____ or _____@ogs.ny.gov. Notwithstanding the foregoing, however, the State may need to close the Plaza for fire alarms, emergencies, etc. In such cases, the Lessee shall close its business and the State shall have no liability to the Lessee for such closures.

As used herein, the term "State Legal Holidays" shall mean the calendar of legal holidays as established and maintained by the New York State Department of Civil Service. Annual updates of legal holidays are available at http://www.cs.ny.gov/attendance_leave/index.cfm; once you are on the website, scroll down to *Calendar of Legal Holidays* and click on the applicable year. Notwithstanding the foregoing, any day that is determined to be a floating holiday by the State, does not qualify as a State Legal Holiday for the purpose of this Lease.

SECTION 15. RESPONSIBILITIES OF THE LESSEE

- (a) The Lessee shall be required to provide and maintain the highest standard of quality of service. The Lessee shall provide management, supervisors and employees in sufficient numbers at all times to deliver all services properly and efficiently and to meet all of the standards for operation of the Use required by this Lease Agreement. The Parties shall work together in good faith to address any State concerns regarding such service. The Lessee's personnel shall have the experience and background generally acceptable in the field for the positions which they hold. The Lessee shall conduct its business in an orderly manner and so as not to annoy, disturb or be offensive to others at the Plaza. The Lessee shall use all reasonable efforts to control the conduct, demeanor and appearance in the Demised Premises of its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with it and outside of the Demised Premises, but elsewhere in the Plaza, of its officers, members, employees, representatives and contractors. The Lessee shall require employees to be clean, courteous, helpful, efficient and neat in appearance at all times. The Lessee shall not employ any persons in its business who use improper language or act in a loud, boisterous or otherwise improper manner. The Lessee agrees to take prompt and appropriate action with regard to complaints about the conduct of employees, and that upon objection from the State concerning the conduct, demeanor or appearance of its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with it, the Lessee shall immediately take all reasonable steps necessary to remove the cause of the objection.
- (b) The Lessee is strongly encouraged, to the maximum extent practicable consistent with legal requirements, to utilize MWBE suppliers in the fulfillment of the terms of this Lease.
- (c) The Lessee will implement all reasonable programs, to the extent that the Lessee is reasonably able to do so, designed to reduce the public health and environmental impacts of its activities and operations, including but not limited to: reducing or eliminating the use and generation of toxic substances, pollution and waste; to the maximum extent practicable consistent with legal requirements reducing, reusing, recycling and composting solid waste; increasing energy efficiency; increasing the use of renewable energy sources; conserving water and other natural resources; and maximizing the use of environmentally preferable "green" commodities, services, and technology. The Lessee will maintain complete compliance with state laws, regulations, Office of General Services (hereinafter referred to as "OGS") requirements and all Executive Orders (to the same extent as an entity legally bound by such orders) mandating energy conservation, green procurement and agency sustainability. In no case, shall polystyrene products be used in its business.

- (d) The Lessee shall not commit any nuisance in the Demised Premises or do or permit to be done anything which may result in the creation or commission of a nuisance in the Demised Premises, and the Lessee shall not cause or permit to be caused or produced upon the Demised Premises, or to permeate or emanate therefrom, any unusual, noxious or objectionable smokes, gases, vapors, odors, or objectionable noises. Notwithstanding the foregoing, the State acknowledges and agrees that typical odors associated with the Lessee's permitted Use shall not be deemed objectionable.
- (e) The Lessee shall not keep, maintain, place or install in the Demised Premises any fixtures or equipment the use of which is not consistent with and required for the purposes set forth in Section 4 of this Agreement entitled "Rights of Use by the Lessee," and the Lessee shall not use or connect any equipment, or engage in any activity or operation in the Demised Premises which will cause or tend to cause an overloading of the capacity of any existing or future Utility, Mechanical, Electrical, Communication or Other Systems or portions thereof, as defined in Section 1(e) of this Lease, in the Demised Premises **or the Plaza**, nor shall the Lessee do or permit to be done anything which may interfere with the effectiveness or accessibility thereof. The State agrees that the Lessee's proposed Use shall not violate the provision of this paragraph. The State's agreement, however, shall neither be deemed to be nor construed as constituting a waiver of any of its rights or remedies herein contained.
- (f) The Lessee shall not overload any floor, roadway, passageway, pavement or other surface or any wall, partition, column or other supporting member, or any elevator or other conveyance, in the Demised Premises **or the Plaza**, and without limiting any other provision of this Lease, the Lessee shall repair, replace or rebuild any such damage caused by overloading.
- (g) The Lessee shall not do or permit to be done any act or thing upon the Demised Premises, **or the Plaza** which will invalidate or conflict with any insurance policies covering the Demised Premises, or any part thereof, **or the Plaza**, or any part thereof, or which, in the commercially reasonable opinion of the State, may constitute an extra hazardous condition, so as to increase the risks normally attendant upon the Use contemplated by Section 4 of this Lease Agreement entitled "Rights of Use by the Lessee," and the Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National Fire Protection Association and the New York Fire Insurance Rating Organization, and of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the Lessee's Use in the Demised Premises. The Lessee shall, subject to and in accordance with the provisions of Section 24 of this Lease Agreement entitled "Construction by the Lessee," make any and all improvements, alterations or repairs of the Demised Premises that may be required at any time hereafter by any such present or future rules, regulations, requirement, order or direction. If by reason of any failure on the part of the Lessee to comply with the provisions of this Lease Agreement any insurance rate on the Demised Premises **or the Plaza**, or any part thereof, shall at any time be higher than it otherwise would be, then the Lessee shall pay to the State, as an item of additional rent, that part of all insurance premiums paid by the State which shall have been charged because of such violation or failure by the Lessee, but no such payment shall relieve the Lessee of its other obligations under this paragraph. Notwithstanding the foregoing, the State represents to the Lessee that, to the State's knowledge, the Lessee's permitted Use hereunder shall not cause such an increase or invalidation of any insurance **on the Plaza**.
- (h) The Lessee shall not sell merchandise depicting or referencing the State of New York, any agency or property thereof or the Great Seal without the express prior, written consent of the State.
- (i) The Lessee shall perform and pay all costs for the thorough cleaning of those areas of the Demised Premises devoted to and available for use and circulation by patrons and guests, and areas reserved for the use of the Lessee and its employees, inclusive of floors, walls and ceilings. In addition, the said areas, furnishings and appurtenances are to be spot

cleaned, as needed, during Normal Business Hours, as that term is defined in Section 14 of this Lease.

The Lessee shall be solely responsible for supplying all cleaning equipment, materials and supplies needed to properly maintain and clean the Demised Premises as that term is defined in Section 3 of this Lease, as required. Should the Lessee fail or refuse to clean the Demised Premises to the reasonable satisfaction of the State, the Parties hereto agree that the State shall be authorized and empowered, after two (2) Business Days, as that term is defined in Section 1(a) of this Lease, notice to the Lessee, and the Lessee's subsequent failure to cure (except in the event of an emergency, where no notice and cure period shall be provided), to cause the Demised Premises to be properly cleaned, charging the Lessee, who shall be solely liable therefore, one hundred fifty percent (150%) of the expenses incurred for such service, as liquidated damages and not a penalty.

Governor Paterson's Executive Order 4 (hereinafter referred to as "EO-4"), which was continued by Governor Cuomo's Executive Order 2, directs all state agencies and authorities to purchase green products and promote sustainability. EO-4, a copy of which is annexed hereto as Exhibit "2," directs state agencies and authorities to develop and implement specific projects, programs and policies designed to reduce the public health and environmental impacts of the activities and operations of the agency or authority, including: the reduction or elimination of the use and generation of toxic substances, pollution and waste; the reduction, reuse, recycling and composting of solid waste; and maximizing the use of environmentally preferable or "green" commodities, services and technology.

In an effort to assist state agencies and authorities in complying with these directives, the Interagency Committee on Sustainability and Green Procurement has approved specifications for Industrial/Institutional Cleaning Products and Hand Soap/Cleaner. These specifications, along with other approved specifications, can be found at: <http://ogs.ny.gov/EO/4/ApprovedSpecs.asp>.

In order to comply with these directives, the Lessee has agreed to make careful selection of effective janitorial cleaning products and equipment that reduce or eliminate the health and environmental risks from the use or release of toxic substances and minimize the risks of the discharge of pollutants into the environment.

In addition, EO-4 requires state agencies and authorities, to the maximum extent practicable, to purchase janitorial paper and other paper supplies, including, but not limited to, bathroom tissue and paper towels that are processed chlorine-free and composed of 100% post-consumer recycled content. EO-4 also requires state agencies and authorities, to the extent practicable, to implement effective programs to source separate recyclable materials, including paper, metal, glass and plastic, that will maximize materials recovery and reduce waste. The Lessee agrees to work to meet these requirements by, to the maximum extent practicable, making careful selection of janitorial paper and other paper supplies including, but not limited to, bathroom tissue and paper towels, in order to use products that are composed of 100% post-consumer recycled content and shall be processed chlorine-free.

Additional information on these requirements and EO-4 are available through OGS upon request.

The Lessee acknowledges an understanding of these state policies and pledges to cooperate with the State in their implementation.

The Lessee shall regularly monitor, and promptly pick up trash in the Demised Premises. The Lessee shall furnish trash collection equipment adequate for the Use and shall promptly, as needed, but no less than at the end of the Business Day, as that term is defined in Section 1(a) of this Lease, remove all garbage, debris, and trash from the interior of the Demised Premises, at its own expense, and deliver the same to a designated area **within the Plaza** (hereinafter referred to as the "Basement Level Loading Dock Dumpster").

The State and the Lessee shall also comply with local recycling laws enacted under General Municipal Law § 120-aa, requiring that solid waste be separated into recyclable, reusable or other components as well as OGS source-separation guidelines.

SECTION 16. NOTICES

- (a) Notices, requests, permissions, consents and approvals given or required to be given to or by either Party under this Lease Agreement, shall not be effective unless they are given in writing, and all such notices and requests shall be delivered to the Party or a duly designated officer or representative of such Party, via certified mail return receipt requested; via hand delivery; or via reputable overnight carrier such as Federal Express. Until further notice, the State hereby designates the Commissioner, and the Lessee designates _____, as its respective officers or representatives upon whom notices and requests may be served, and the State designates its office at the New York State Office of General Services, Real Estate Planning and Development, Corning Tower, 26th Floor, GNARESP, Albany, New York 12242, and the Lessee designates its office at the Concourse Level, GNARESP, Albany, New York 12242 **OR OTHER LOCATION** as their respective offices where notices and requests may be served.
- (b) If any notice is mailed or delivered, the giving of such notice shall be complete upon receipt, or, in the event of a refusal by the addressee, upon the first tender of the notice to the addressee or at the permitted address. If any notice is sent by telegraph, the giving of such notice shall be complete upon receipt or, in the event of a refusal by the addressee, upon the first tender of the notice by the telegraph company to the addressee or at the address thereof.

SECTION 17. RULES AND REGULATIONS

The Lessee shall observe and obey (and compel its officers, members, employees, agents, representatives, contractors, guests, invitees and those doing business with it to observe and obey) all reasonable rules and regulations to be promulgated by the State to govern the conduct of the private retail and business leases **at the Plaza** and all reasonable amendments and supplements to said rules and regulations, as may from time to time, and throughout the Term of this Lease, be promulgated by the State for reasons of safety, health or preservation of property, or for the maintenance of the good and orderly appearance of the Demised Premises **and the Plaza** or for the safe and efficient operation **of the Plaza**. The State agrees that such original rules and regulations governing the conduct of retail and business tenancies shall not be applicable or effective with relation to the Lessee until fifteen (15) calendar days after the same have been furnished to the Lessee, and that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation adopted by it at least fifteen (15) calendar days before the Lessee shall be required to comply therewith. In the event of a conflict between any such rules and regulations and the provisions of this Lease, the provisions of this Lease shall prevail. No changes or amendments to the rules and regulations shall materially increase Lessee's obligations hereunder or materially decrease Lessee's rights hereunder.

SECTION 18. EQUIPMENT, FURNITURE, FIXTURES

- (a) Any electrical appliance must be connected directly to an electrical outlet or fused power strip. Extension cords with multi plug adapters, splices or repairs are prohibited.
- (b) The Lessee, at its own cost, shall be solely responsible for the daily cleaning and maintenance of all fixed and non-fixed equipment and fixtures. When the Lessee believes that there is a need for repair, replacement or maintenance of any of the fixed and non-fixed equipment and fixtures it shall notify the State, in compliance with Section 16 of this Lease. The State shall then, in its sole discretion, and at its sole cost and expense, determine if a repair, replacement or maintenance is required, and cause the same to be performed in a timely manner.

SECTION 19. MAINTENANCE AND REPAIR

(a) The State's Responsibilities:

During the Term of this Lease, and any renewal, extension or holdover, the State shall furnish, and/or contract for pest control services.

The State shall make available a designated trash collection area (hereinafter referred to as the "Basement Level Loading Dock Dumpster") for the disposal of the Lessee's trash. The State shall be responsible for the removal of trash from the collection area.

The State shall also be responsible for repairs, replacements and maintenance related to: (a) the upkeep of the roof, roof membrane and roof systems (gutters, downspouts and the like), foundation, exterior walls, interior structural walls, and all structural components of the Demised Premises **and the Plaza**, and (b) the maintenance and repair of all parking areas, sidewalks, landscaping and drainage systems **at the Plaza** and all Utility, Mechanical, Electrical, Communication and Other Systems, as that term is defined in Section 1(e) of this Lease, **which serve the Plaza as a whole** and not a particular lessee's premises. In addition, the State, at its sole expense, shall provide and replace all electric lamps in lighting fixtures during the Term of the Lease.

(b) The Lessee's Responsibilities:

(1) During the Term of this Lease, and any renewal, extension or holdover, the Lessee shall, at its own cost and expense, maintain, repair and replace as needed, in the Demised Premises interior walls and partitions, floors, ceilings, columns, interior and exterior surfaces of windows, doors, glass of every kind, storefronts and all equipment, lighting and fixtures. The Lessee shall make all necessary non-structural repairs, replacements, rebuilding and painting (through the use of paint that meets the specifications of the State) necessary to keep the Demised Premises in the condition existing at the Commencement Date, reasonable wear and tear excepted, and to keep any improvements, additions and fixtures made or installed during the Term in the condition they were in when made or installed, except for reasonable wear and tear which does not adversely affect the watertight condition or structural integrity **of the Plaza** or adversely affect the efficient or proper utilization or the appearance of any part of the Demised Premises. Prior to the commencement of any work, the Lessee shall procure and maintain commercial general liability insurance, or, if the work is to be done by an independent contractor, the Lessee shall require such contractor to procure and maintain such insurance in the name of the contractor, in either case, in limits not lower than those set forth for such categories of insurance in Section 26, naming the State as an additional insured, and if not so set forth, then as may be reasonably specified in advance by the State. Proof of compliance shall be submitted to The New York State Office of General Services, Assistant Director, Real Estate Planning & Development, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 26th Floor, Albany, New York 12242 prior to the commencement of the work. In the event the Lessee fails to commence any repair, replacement, rebuilding or painting required by this Lease within a period of ten (10) calendar days after notice from the State, or fails diligently to continue to completion the repair, replacement, rebuilding or painting of all the Demised Premises required to be repaired, replaced, rebuilt or painted by the Lessee under the terms of this Lease, the State may, at its option, and in addition to any other remedies which may be available to it, repair, replace, rebuild all or any part of the Demised Premises included in the said notice, the State's cost thereof to be paid by the Lessee within twenty (20) days of demand. This option or the exercise thereof shall not be deemed to create or imply any obligation or duty to the Lessee or others.

(2) If the Demised Premises **or Plaza**, or any part thereof, is damaged or destroyed by the acts or omissions of the Lessee, its officers, members, employees, agents, representatives or contractors, the State shall repair, replace, rebuild and paint the same at Lessee's expense. The State's cost thereof shall be paid within twenty (20) days of the demand.

SECTION 20. SERVICES AND UTILITIES

(a) Subject to all the terms and conditions of this Lease Agreement, the State will furnish to the Lessee the following:

- (1) From 6:00 a.m. to 4:00 p.m., on Business Days, as that term is defined in Section 1(a) of this Lease, conditioned airflow to provide suitable and comfortable levels of heating, air conditioning and ventilation pursuant to the standards adopted by the State for the Plaza. No additional costs or charge shall be owed from and paid by the Lessee for the heating, air conditioning and ventilation described in this paragraph, the same being included in the Rent.
- (2) Hot and cold water, of the character furnished by municipality or utility company supplying the same to and generally available to and used by the State at the Plaza in reasonable quantities for use by the Lessee solely for sanitary purposes associated with the ordinary needs of the Use. No additional costs or charge shall be owed from and paid by the Lessee for the water supply described in this paragraph, the same being included in the Rent.
- (3) From 6:00 a.m. to 4:00 p.m., on Business Days, as that term is defined in Section 1(a) of this Lease, electric service distribution equipment, lighting fixtures, and electric service of sufficient amount and quality for the proper lighting of the Demised Premises and for the operation of the Lessee's Use including, in addition to normal building requirements, electrical services for office equipment, electrical equipment and appurtenances. The State shall have no obligation to increase or change the amount or type of service or equipment and fixtures. No additional costs or charge shall be owed from and paid by the Lessee for the electric service described in this paragraph, the same being included in the Rent.

Notwithstanding the foregoing, if the Lessee shall require electric, heating, ventilating or air conditioning service from any Utility, Mechanical, Electrical, Communication and Other Systems, as that term is defined in Section 1(e) of this Lease, at times other than from 6:00 a.m. to 4:00 p.m., on Business Days, as that term is defined in Section 1(a) of this Lease (hereafter referred to as the "After Hours Services"), the State shall furnish such After Hours Services upon reasonable advance notice from the Lessee (i.e., noon on the day such service is requested, if such service is requested on a Business Day or by noon on the preceding Business Day, as that term is defined in Section 1(a) of this Lease, if such service is requested for a day other than a Business Day), and the Lessee shall pay, as additional rent, the State's then standard charges therefore. The State's standard charges may increase from time to time in relation to increases in the State's costs to furnish such After Hours Services.

(b) If the Lessee, in accordance with Sections 23 and 24 of this Lease Agreement entitled "Finishes and Decoration by the Lessee" or "Construction by the Lessee," or otherwise, erects any partitions or makes any improvements which stop, hinder, obstruct or interfere with the cooling of the air or the heating of the Demised Premises, then no such action by the Lessee shall impose any obligations on the State to increase or augment the existing or presently contemplated supply of conditioned airflow for air cooling or for heating, and the Lessee shall not in any such event be relieved of any of its obligations hereunder because a comfortable temperature is not maintained. No consent or approvals given by the State in connection with the erection of partitions, the making of any improvements or the installation of any heating or air conditioning distribution systems shall be or be deemed to be a representation that the work consented to or approved will not stop, hinder, obstruct or interfere with either the cooling of the air or heating of the Demised Premises, or any portion thereof, or that any system is sufficient or adequate for the distribution of heating or air cooling of the Demised Premises. It is hereby understood further that the installation by the Lessee of any equipment which itself requires air cooling or which requires additional quantities of air cooling at the portion of the Demised Premises which such equipment is installed, or the concentration

in any portion of the Demised Premises of such a number of people so as to require additional quantities of air cooling, shall not impose any obligation on the State to increase the capacity or output of initially existing facilities, equipment or fixtures for the supply of air cooling, and the Lessee shall not in any such event be relieved of any of its obligations hereunder. If the Lessee erects any partitions or makes any improvements subject to this Section without the prior, written consent of the State, then, upon reasonable notice, the Lessee will remove the same, or, at the option of the State, cause the same to be changed to the satisfaction of the State, or the State may affect the removal or change, and the Lessee shall pay the cost thereof to the State on demand.

- (c) The Lessee shall not waste or dissipate air cooling or heating nor draw any of the same into the Demised Premises from public areas contiguous thereto.
- (d) The State, upon twenty-four (24) hours' notice to the Lessee (which may be given in person or by telephone), except in the event of an emergency, in which case no notice shall be required, shall have the right to discontinue temporarily the supply of any of the above services when necessary or desirable in the opinion of the State in order to make any repairs, alterations, changes or improvements in the Demised Premises or elsewhere in the Plaza or in order to conserve energy including, but not limited, to all systems for the supply of services. The State shall use commercially reasonable efforts to avoid such interference.
- (e) No failure, delay, interruption or reduction in any service or services shall be or shall be construed to be an eviction of the Lessee, shall be grounds for any diminution or abatement of the Rent payable hereunder, or shall constitute grounds, for any claim by the Lessee for damages, consequential or otherwise, unless due to the negligent acts of the State or its officers and employees, acting within the course and scope of their employment. If the Lessee shall be in default under any provisions of this Lease beyond any applicable notice and cure periods, the State shall be permitted to cease providing any service or services required to be provided by the State hereunder to the Lessee. The State may cease providing such services only during the period in which the Lessee remains in default hereunder.
- (f) The State shall be under no obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the use of any component necessary therefore shall be prohibited or rationed by any federal, state or municipal law, rule, regulation, requirement, order or direction and if the State deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order or direction may not be mandatory on the State as a public agency.
- (g) Anything to the contrary notwithstanding for the purposes of this Lease Agreement, the Lessee has reviewed the utilities installations and agrees that the currently installed utility systems, i.e. heat and air conditioning, electric and plumbing are adequate for its intended Use of the Demised Premises.
- (h) Notwithstanding anything contained herein to the contrary, if any utility or service to the Demised Premises, which is provided by the State or under the State's control, is interrupted for more than twenty-four (24) hours due to the negligence of the State or its officers and employees, acting within the course and scope of their employment, then Lessee's Rent and all other charges hereunder shall abate during the period such utility or service is interrupted.

SECTION 21. FORCE MAJEURE

- (a) The Parties shall not be liable for any failure, delay or interruption in performing their obligations hereunder due to Causes or Conditions Beyond the Control of the State or the Lessee, as defined in Section 1(b) of this Lease. Further, the State or the Lessee, as the case may be, shall not be liable unless the failure, delay or interruption shall result from failure on the part of the State or the Lessee to use reasonable care to prevent, or reasonable efforts to cure such failure, delay or interruption.

- (b) No abatement, diminution or reduction of the Rent or other charges payable by the Lessee, shall be claimed by or allowed to the Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom.

SECTION 22. CHANGES IN THE PLAZA

Subject to the provisions of this Lease Agreement, the State shall have the right at any time and from time to time, prior to and during the Term of this Lease, in the interest of the efficient operation of the Plaza of which the Demised Premises are a part, to close, move or alter any common way in the said Plaza, including but not limited to entrances, exits, passages, halls, corridors, aisles, stairways, elevators, or escalators, or to restrict or change the traffic on or through any such common way; and no such action by the State shall release the Lessee from any of its obligations under this Lease Agreement. In exercising its rights hereunder, the State shall use all commercially reasonable efforts to avoid interference with the Lessee's Use of the Demised Premises, access thereto and visibility thereof.

SECTION 23. FINISHES AND DECORATION BY THE LESSEE

- (a) The Parties acknowledge that the Lessee currently occupies the Demised Premises, and therefore, the State's delivery obligations hereunder shall mean delivery of the Demised Premises in "AS IS" condition. The Lessee shall perform, at its sole cost and expense, all other work required to finish off, decorate and maintain the Demised Premises. Prior to performing any work, the Lessee shall submit to the State for its approval, not to be unreasonably withheld, conditioned or delayed, a construction application, in the form required by the State and containing such terms and conditions as the State may include setting forth in detail and by appropriate plans and specifications the construction and installation work proposed by the Lessee to finish off and decorate the Demised Premises and the manner of and time periods for performing the same. The data to be supplied by the Lessee shall describe in detail the fixtures, equipment and systems to be installed by the Lessee including those for the emission handling and distribution of Utility, Mechanical, Electrical, Communication and Other Systems, as that term is defined in Section 1(e) of this Lease, and shall show the proposed method of tying in the same to the utility lines or connections provided by the State. The Lessee shall be responsible, at its sole expense, for retaining all architectural, engineering and other technical consultants and services and for developing, completing and submitting detailed plans and specifications for the work. The plans and specifications to be submitted by the Lessee to the State shall bear the seal of a qualified architect or professional engineer and shall be in sufficient detail for a contractor to perform the work. The Lessee shall not engage any contractor or permit the use of any subcontractor unless and until each such contractor or subcontractor has been reasonably approved by the State. The Lessee shall cause each such contractor or subcontractor to obtain and maintain in force such insurance coverage and performance bonds as the State shall reasonably specify based upon the work to be conducted. Prior to the commencement of any work contemplated by this section, proof of compliance with the insurance and performance bond requirements established by the State shall be submitted to The New York State Office of General Services, Assistant Director, Real Estate Planning & Development, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 26th Floor, Albany, New York 12242 and the State shall advise the Tenant when the same is acceptable so that work can begin. All work to be performed by the Lessee hereunder shall be done in accordance with the said construction application and final plans and specifications approved by the State, shall be subject to inspection by the State during the progress of the work and after the completion thereof and the Lessee shall redo or replace, at its own expense, any work not done in accordance therewith. Upon completion of the work, the Lessee shall supply the State with

as-built drawings in form and number reasonably requested by the State.

Without limiting the generality of the foregoing, the Lessee further recognizes that a common design and finish plan will be adopted for the construction, development and finishing of corridor and open areas on the level or floor in which the Demised Premises are located and for certain interior portions of the Lessee's Demised Premises and other Lessee areas located on the said level or floor. The Lessee will be required to adopt and incorporate in its plans and specifications the criteria for construction and for design, color, material and other finishing requirements which will be specified by the State prior to the full execution of this Lease Agreement. The Lessee agrees that the plans, drawings and specifications referred to above shall reflect all the requirements to be specified with respect to the precise color, type and other necessary aspects of the performance of the finishing work. In connection with carrying out the foregoing common design controls, the Lessee shall adopt such procedures and shall use appropriate labor and suppliers to perform the work so as to integrate and coordinate the Lessee's work with similar work being performed on behalf of other similar tenancies and the Lessee shall avoid any interference or obstruction of such other work.

The State shall either approve or disapprove, with reasonable explanation for such disapproval, any such plans submitted to the State, within twenty (20) days of submission. If the State fails to approve or disapprove within such time frame, the Lessee shall again submit such plans to the State and the State shall have an additional period of seven (7) days to either approve or disapprove, with reasonable explanation for such disapproval, or such plans shall be deemed approved.

- (b) No improvements, finishing or installation work shall be commenced by the Lessee until a building permit has been issued and the plans and specifications referred to in paragraph (a) above have been finally approved by the State.
- (c) The Lessee shall be solely responsible for the plans and specifications used by it, and for the adequacy or sufficiency of such plans, specifications and all the improvements depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the State or the incorporation therein of any State requirements, or recommendations. The State shall have no obligations or liabilities in connection with the performance of finishing, decorating or installation work performed by the Lessee, or on its behalf, or the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with aforesaid work shall be for the benefit of the State as well as the Lessee.
- (d) Without limiting or affecting any other term or provision of this Lease Agreement, the Lessee shall be solely responsible for the design, adequacy and operation of all Utility, Mechanical, Electrical, Communications and Other Systems, as that term is defined in Section 1(e) of this Lease, installed in the Demised Premises by the Lessee, and shall do all preventive maintenance and make all repairs, replacements, rebuilding and painting necessary to keep such systems and all other improvements, additions and fixtures, finishes and decorations made or installed by the Lessee (whether the same involves structural or non-structural) in the condition they were in when made or installed except for reasonable wear and tear which does not adversely affect the watertight condition or structural integrity of the Plaza or adversely affect the efficient or proper utilization or the appearance of any part of the Demised Premises. Prior to the commencement of any work, the Lessee shall procure and maintain commercial general liability insurance, or, if the work is to be done by an independent contractor, the Lessee shall require such contractor to procure and maintain such insurance in the name of the contractor, in either case, in limits not lower than those set forth for such categories of insurance in Section 26, naming the State as an additional insured, and if not so set forth, then as may be reasonably specified in advance by the State. Proof of compliance shall be submitted to The New York State Office of General Services, Assistant Director, Real Estate Planning & Development, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 26th Floor, Albany, New York 12242 prior to the commencement of the work.

- (e) The Lessee shall be permitted to make delivery of product to the Demised Premises at all times, at no additional cost to the Lessee.

SECTION 24. CONSTRUCTION BY THE LESSEE

- (a) Except as herein expressly provided, during the Term of this Lease, the Lessee shall not without the prior, written approval of the State, which shall not be unreasonably withheld, conditioned or delayed, erect any structures, make any improvements or do any other construction work in the Demised Premises or elsewhere **at the Plaza**, or alter, modify, or make additions, improvements or repairs to or replacements of any structure now existing or built at any time, or install any fixtures (other than trade fixtures removable without irreparable injury to the Demised Premises); and in the event any construction, improvement, alteration, modification, addition, repair or replacement is made without such consent, then, upon reasonable notice, the Lessee will remove the same, or, at the option of the State, cause the same to be changed to the reasonable satisfaction of the State, or the State may affect the removal or change, and the Lessee shall pay the cost thereof to the State, as additional rent, on demand. The State shall either approve or disapprove, with reasonable explanation for such disapproval, any such plans submitted to the State, within twenty (20) days of submission. If the State fails to approve or disapprove within such time frame, the Lessee shall again submit such plans to the State and the State shall have an additional period of seven (7) days to either approve or disapprove, with reasonable explanation for such disapproval, or such plans shall be deemed approved. Notwithstanding anything contained herein to the contrary, the State shall have no approval rights over interior, non-structural alterations that do not affect any building systems and which cost less than \$50,000 in the aggregate, except for signage which will be approved in accordance with Section 25 of this Lease.
- (b) In the event that pursuant to Section 23 of this Agreement entitled "Finishes and Decoration by the Lessee," or otherwise, the Lessee is required or permitted to perform construction, finishing, decorating, alteration or improvement work to the Demised Premises or to make repairs thereto, all of the same shall be made or performed strictly in accordance with the following terms and conditions:
 - (1) The Lessee shall, to the extent allowed under the law, indemnify and hold harmless the State, its officers, agents and employees, against the following distinct and several risks, whether they arise from acts or omissions of the Lessee, of the State, their officers, agents and employees or of third persons, or from acts of God or of the public enemy, or otherwise excepting only risks to the extent resulting from the negligence of the State or its officers or employees, acting within the course and scope of their employment:
 - (i) The risk of loss or damage to all such construction, finishing, decorating, alteration, improvement or repair work prior to the completion thereof. In the event of such loss or damage, the Lessee shall forthwith repair, replace and make good the work without cost to the State.
 - (ii) The risk of death, injury or damage, direct or consequential to the State, its officers, agents and employees, and to its or their property, arising out of or in connection with the performance of the work. The Lessee shall indemnify the State, its officers, agents and employees, for all such deaths, injuries and damages, and for all loss suffered by reason thereof.
 - (iii) The risk of claims and demands, just or unjust, by third persons against the State, its officers, agents and employees arising or alleged to arise out of the performance of the work. The Lessee shall indemnify the State, its officers, agents and employees, against and from (and shall reimburse to the State for the State's costs or expenses, including reasonable legal expenses, incurred in connection with the defense of) all such claims and demands.

- (2) All work done pursuant to this Section shall be done in accordance with drawings and specifications to be submitted to and approved by the State prior to the commencement of the work, except as otherwise set forth herein, shall be done to its reasonable satisfaction and shall be subject to its inspection during the progress of such work and after completion thereof; and the Lessee shall redo or replace, at its own expense, any work not reasonably approved by the State. Unless otherwise expressly provided herein, all workmanship and materials are required to be "first class."
- (3) The Lessee shall pay all claims lawfully made against it by its contractors, subcontractors, material men and workmen and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the work and shall cause its contractors and subcontractors to pay all such claims lawfully made against them.
- (4) Prior to the commencement of any work, the Lessee shall procure and maintain commercial general liability insurance, or, if the work is to be done by an independent contractor, the Lessee shall require such contractor to procure and maintain such insurance in the name of the contractor, in either case, in limits not lower than those set forth for such categories of insurance in Section 26, naming the State as an additional insured, and if not so set forth, then as may be reasonably specified in advance by the State. Proof of compliance shall be submitted to The New York State Office of General Services, Assistant Director, Real Estate Planning & Development, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 26th Floor, Albany, New York 12242 prior to the commencement of the work.
- (5) As soon as such construction, finishing, decorating, alteration or improvement or repair shall have been completed to the reasonable satisfaction of the State, then title thereto and property therein shall immediately and without execution of any further instrument vest in the State (excluding personal property, trade fixtures and equipment), and all such construction, finishes, decorations, alterations, improvements or repairs shall thereupon become and thereafter be part of the Demised Premises and on request the Lessee shall execute such documents confirming the same as the State may require. The Lessee remains liable for any liens filed against the Demised Premises for the construction activities permitted herein.

SECTION 25. SIGNS

Except with the prior written consent of the State, which consent shall not be unreasonably withheld, conditioned or delayed and so long as such consent is not inconsistent with the standards and regulations of the Plaza, the Lessee shall not erect, maintain or display any signs, advertising, posters or similar devices at or on the exterior parts of the Demised Premises or in the Demised Premises, so as to be visible through the windows, glass walls or exterior doors thereof. Notwithstanding the foregoing, the State shall have no approval rights over the Lessee's interior signage which is professionally prepared. Upon the expiration or termination of the Lease, the Lessee shall remove, obliterate or paint out, as the State may direct, any signs, advertising, posters or similar devices, and in connection therewith shall restore the area affected to the condition requested by the State.

SECTION 26. INSURANCE REQUIREMENTS

Prior to the Commencement Date of this Lease, the Lessee shall be required to procure, at its sole cost and expense, all insurance required by this section. During the Term of this Lease, the Lessee shall maintain in force, at its sole cost and expense policies of insurance as required by this section. All insurance required by this section shall be written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and that have an A.M. Best Company rating of "A-," Class "VII" or better. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with an insurer licensed

or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Lessee shall deliver to the State evidence of the insurance required by this section in a form acceptable to the State. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by the State does not, and shall not be construed to, relieve the Lessee of any obligations, responsibilities or liabilities under this Lease.

The Lessee shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the Term of this Lease.

General Conditions

A. Conditions Applicable to Insurance. All policies of insurance required by this section shall comply with the following requirements:

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Lessee are specified below in Paragraph B-*Insurance Requirements*.
- 2. Policy Forms.** Except as otherwise specifically provided herein, or agreed to in writing by the State, all policies of insurance required by this section shall be written on an occurrence basis.
- 3. Certificate of Insurance/Notices.** The Lessee shall provide the State with a Certificate or Certificate of Insurance, in a form satisfactory to the State (i.e., an ACORD certificate), prior to the Commencement Date, and thereafter, within thirty (30) days after renewal or within three (3) business days of request. Certificates shall reference the Lease number and shall name the New York State Office of General Services, Assistant Director, Real Estate Planning & Development, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 26th Floor, Albany, New York 12242 as the certificate holder.

Policies shall be written so as to include the requirements for notice of cancellation contained in the New York State Insurance Law. The Lessee shall provide the State with a copy of any written notice of cancellation or non-renewal received from an insurer along with proof of replacement coverage that complies with the requirements of this section within ten (10) business days of receipt.

Certificates of Insurance shall:

- Be in the form acceptable to the State (i.e.: an ACORD Certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Lease;
- Refer to this Lease by number;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations/Locations/Vehicles section: The People of the State of New York, The New York State Office of General Services and their officers, agents, and employees are included as an additional insured on endorsement CG 20 10 11 85 (or endorsements that provide equivalent coverage), General liability coverage is provided on Commercial General Liability Coverage Form CG 00 01 01 (or a form that provides equivalent coverage). Insurance is primary and non-contributory to other insurance available to the State. A waiver of subrogation is granted in favor of The People of the State of New York, The New York State Office of General Services. All policies shall be written so as to include the requirements for notice of cancellation contained in the New York State Insurance Law.

Only original documents (an ACORD Certificate and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

4. **Primary Coverage.** All insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the State. Any other insurance maintained by the State shall be excess of and shall not contribute with the Lessee's insurance.
 5. **Breach for Lack of Proof of Coverage.** The Term of this Lease shall not commence if the coverage provisions and limits of the policies provided by the Lessee do not meet the provisions and requirements of this section or proof of compliance is not provided to the State. In addition, the failure to comply with the requirements of this section at any time during the Term of this Lease shall be considered a breach of the terms of the Lease and shall allow the State to avail itself of all remedies available under this Lease or at law or in equity.
 6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from the State. Such approval shall not be unreasonably withheld, conditioned or delayed. The Lessee shall be solely responsible for all claim expenses and loss payments with the deductibles or self-insured retentions.
 7. **Subcontractors.** Prior to the commencement of any work by a subcontractor, the Lessee shall require such subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that subcontractor.
 8. **Waiver of Subrogation.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Lessee shall cause to be included of each of its policies a waiver of the insurer's right to recovery or subrogation against The People of the State of New York, The New York State Office of General Services and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to the State within three (3) days of request.
 9. **Additional Insured.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Lessee shall cause to be included of each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage) naming as additional insureds: The People of the State of New York, The New York State Office of General Services and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to the State prior to the Commencement Date and within three (3) days of request.
- B. Insurance Requirements:** The Lessee shall, at its own expense, obtain and maintain in full force and effect during the Term of this Lease, 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** covering the liability of the Lessee for bodily injury, property damage and personal/advertising injury arising from all work and operations under this Lease. The limits under such policy shall not be less than the following:
 - Each Occurrence Limit-\$1,000,000.00
 - General Aggregate Limit-\$2,000,000.00
 - Products/Completed Operations Limit-\$2,000,000.00
 - Personal Advertising Injury Limit-\$1,000,000.00
 - Damage to Rented Premises Limit-\$500,000.00

- Medical Expenses Limit-\$5,000.00

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

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this Lease;
- Cross liability for additional insureds; and
- Explosion, collapse and underground hazards.

If at any time during the Term of this Lease, the Lessee owns more than one location, the policy shall contain an endorsement to the effect that the aggregate limit in the policy shall apply separately to each location owned by the Lessee.

2. **Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile used in connection with performance under this Lease, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies. If performance under this Lease shall require the removal of hazardous waste from the Plaza or the Demised Premises or other transporting of hazardous materials, pollution liability coverage for covered autos shall be provided by Form CA 9 48 03 06 or Form CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached to the policy.

In the event that the Lessee does not own, lease or hire any automobiles used in connection with performance under this Lease, the Lessee does not need to obtain Comprehensive Business Automobile Liability Insurance, but must attest to the fact that the Lessee does not own, lease or hire any automobiles used in connection with performance under this Lease on a form provided by the State. If, however, during the Term of the Lease, the Lessee acquires, leases or hires any automobiles that will be used in connection with performance under this Lease, the Lessee must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to the State within ten (10) days following the date the coverage is bound.

3. **Commercial Property Insurance** covering the Demised Premises (including coverage for Property of Others so that the policy insures State owned equipment) in an amount not less than the Full Insurable Value of the Demised Premises covering, at a minimum, the perils insured under the ISO Basic Causes of Loss Form CP 10 10. Full Insurable Value shall mean actual replacement cost of the real property (exclusive of the cost of non-insurable portions thereof, such as excavation, foundations and footings). **The policy must include The People of the State of New York, The New York State Office of General Services and their officers, agents, and employees as loss payees on the property on which those entities maintain an insurable interest.**

SECTION 27. WORKERS' COMPENSATION INSURANCE & DISABILITY BENEFITS COVERAGE

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for leases, permits, licenses or contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original issuances and renewals, whether the governmental agency is having the work done or is simply issuing the lease, permit, license or contract. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of this**

Lease. Therefore, prior to the Commissioner executing this Lease, the Lessee must submit proof to the State that it has workers' compensation and disability benefits coverage as required by the New York State Workers' Compensation Law, or proof that it is legally exempt from obtaining such coverage in compliance with the New York State Workers' Compensation Law. Proof of compliance must be submitted on one of the forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

Proof of Compliance with the Workers' Compensation Coverage Requirements:

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, the Lessee shall provide one of the following forms to the State prior to execution of the Lease by the Commissioner:

- A) Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website (www.wcb.ny.gov);
- B) Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to the State by the Lessee's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to the State upon request; 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 Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Lessee's Group Self-Insurance Administrator.

Proof of Compliance with the Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, the Lessee shall provide one of the following forms to the State prior to execution of the Lease by the Commissioner:

- A) Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website (www.wcb.ny.gov);
- B) Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to the State by the Lessee's insurance carrier upon request; or
- C) Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

Proof of compliance shall be submitted to The New York State Office of General Services, Assistant Director, Real Estate Planning & Development, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 26th Floor, Albany, New York 12242.

SECTION 28. INJURY AND DAMAGE TO PERSON OR PROPERTY

The State shall not be liable to the Lessee or others for any personal injury, death or property damage from falling material, water, rain, hail, snow, gas, steam, dampness, explosion, smoke, radiation, and/or electricity whether the same may leak into or fall, issue, or flow from any part of the Premises of the Facility **or the Plaza**, including without limitation thereto any Utility, Mechanical, Electrical, Communication or Other Systems therein, or from any other place or quarter.

Notwithstanding the foregoing with respect to this Section 28, subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, the State shall hold the Lessee harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State or of its officers or employees when acting within the course and scope of their employment.

SECTION 29. NON-LIABILITY OF INDIVIDUALS

Neither the OGS Commissioner nor any officer, agent or employee of the State shall be charged personally by the Lessee with any liability or held liable to it under any term or provision of this Lease Agreement or because of its execution or attempted execution or because of any breach or attempted or alleged breach thereof.

SECTION 30. CASUALTY

- (a) In the event that, as a result of a casualty, whether (i) insured against by the State or (ii) intended and deemed by the State to be the subject of its general plan to provide against and cover such casualty or loss by self-insurance, the Demised Premises is damaged without the fault of the Lessee, its officers, members, employees, customers, guests, invitees or other persons who are doing business with the Lessee, or who are at the Demised Premises with the Lessee's consent, so as to render the Demised Premises untenable in whole or part, then:
- (1) If the State finds that the necessary repairs or rebuilding can be completed within ninety (90) days after the occurrence of the damage, the State shall repair or rebuild with due diligence, and the Rent hereunder shall be abated only for the period from the occurrence of the damage to the earlier of: (i) sixty (60) days after the completion of the repairs or rebuilding, or (ii) the Lessee's reopening for business at the Demised Premises, whether or not the work of repair or rebuilding is actually completed within the said ninety (90) days; or
 - (2) If the State finds that such repairs or rebuilding cannot be completed within ninety (90) days after the occurrence of the damage, or if the State concludes that areas other than the Demised Premises also require rebuilding, then the State shall have the options: (i) to proceed with due diligence to repair or to rebuild the Demised Premises as necessary; or (ii) to terminate this Lease as to the entire Demised Premises; and in the case of (i), the Rent hereunder shall be abated either as the case may require for the period from the occurrence of the damage to the earlier of: (i) sixty (60) days after the completion of the repairs or rebuilding, or (ii) the Lessee's reopening for business at the Demised Premises, or for the period from the occurrence of the damage to the effective date of termination.
- (b) The Parties do hereby stipulate that neither the provisions of Section 227 of the Real Property Law of the State of New York nor those of any other similar statute shall be extended or apply to this Lease Agreement.
- (c) The Lessee shall give the State immediate notice, in compliance with Section 16 of this Lease, in case of fire, accident or casualty to the Demised Premises or elsewhere **in the Plaza** if the occurrence elsewhere **in the Plaza** is known to and involves the Lessee, its officers, members, employees, agents, representatives, contractors, or is known to any of them and involves customers, guests or invitees of the Lessee.
- (d) In the event of a partial or total destruction of the Demised Premises, the Lessee shall immediately remove any and all of its property and debris from the Demised Premises or

the portion thereof destroyed, and if the Lessee does not promptly so remove, the State may remove the Lessee's property to a public warehouse for deposit or retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second to any sums owed by the Lessee to the State, with any balance remaining to be paid to the Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the State upon demand.

- (e) The Lessee shall have the right to terminate this Lease if the damage is such that: (a) the Demised Premises cannot be (or are not) restored within one hundred eighty (180) days from the date of damage; (b) the damage or destruction is caused by a peril not required to be insured against hereunder; or (c) the damage or destruction occurs during the last two (2) years of the Term (or any extension term) and the Lessee has not previously exercised any option rights it may have for succeeding extension or renewal terms.
- (f) Regardless of fault, all structural repairs and repairs to the building systems **of the Plaza** and the Demised Premises shall be done by the State, at its cost and expense.

SECTION 31. INDEMNITY

Excluding the gross negligence of the State, or its officers or employees, acting in the course and scope of their employment, the Lessee shall indemnify and hold harmless the State, its officers, agents and employees from (and shall reimburse the State for the State's costs or expenses, including reasonable legal expenses incurred in connection with the defense of) all claims and demands of third persons including, but not limited to, those for death, for personal injuries, or for property damages, arising out of any default of the Lessee in performing or observing any term or provision of the Lease, or out of the Use or occupancy of the Demised Premises, by the Lessee or by others with its consent, or out of any of the acts or omissions of the Lessee, its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and other persons who are doing business with the Lessee's consent where such acts or omissions are on the Demised Premises, or arising out of any acts or omissions of the Lessee, its officers, members, employees, agents and representatives where such acts or omissions are elsewhere **in the Plaza**. If so directed, the Lessee shall, at its own expense, defend any suit based upon any such claim or demand even if such suit, claim or demand is groundless, false or fraudulent.

Notwithstanding the foregoing with respect to this Section 31, subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, the State shall hold the Lessee harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State or of its officers or employees when acting within the course and scope of their employment.

SECTION 32. RENEWAL

Provided and on the condition that the Lessee is not in default, beyond any applicable notice and cure period provided for in this Lease, with respect to any requirement of the terms, covenants and conditions of this Lease by the Lessee to be observed or performed, the Lessee shall, subject to the consent of the State, have the option to renew this Lease for an additional _____ () year period, upon the same terms and conditions set forth in this Lease, except that the base rent shall be negotiated and agreed to by the Parties prior to the expiration of the Term. In the event that the Parties cannot agree upon a base rent for the renewal term, this Lease shall terminate on the Termination Date.

The renewal term shall commence on the day immediately following the Termination Date, as that term is defined in Section 5 of this Lease, and terminate on the ____ _ () anniversary of the Termination Date, as that term is defined in Section 5 of this Lease. The Lessee shall give the State written notice of its intention to renew this Lease, in accordance with Section 16 of this Lease, ninety (90) days prior to the Termination Date of this Lease, time being of the essence.

SECTION 33. NEW LESSEE/NON ASSIGNMENT

Subject to the other provisions of this Section, in the event this Lease or the interest or estate of the Lessee under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, or if the Lessee shall sell, convey, transfer or assign this Lease or Rents due under this Lease, or if for any reason there shall be a change in the manner in which Rent reserved hereunder shall be paid to the State, prior, written notice of such change shall be given immediately by the Lessee to the State, in compliance with Section 16 of this Lease. Such notice shall include submission of properly completed and executed Consent to Assignment Form, attached hereto as Exhibit "3," and all necessary documentation (Substitute W-9, attached hereto as Exhibit "4," and the Retail Disclosure Sheet, attached hereto as Form "1"). No assignment of this Lease shall be made without the prior, written approval of OGS as required by Section 138 of the New York State Finance Law, provided such approval shall not be unreasonably withheld, conditioned or delayed.

In addition, in the event that the Lessee changes its name, but not its federal identification number, the Lessee is required to notify the State of the change within ten (10) business days of the effective date of such change. The Lessee shall submit a Lessee Change of Address Form, attached to this Lease as Exhibit "5," to the State in accordance with Section 16 of this Lease. The Lessee shall also be responsible for making all necessary changes to its profile in the Statewide Financial System by contacting the Statewide Financial System Vendor Management Unit. The web address for the Statewide Financial System is: http://www.osc.state.ny.us/vendor_management/.

SECTION 34. TERMINATION

(a) If any one or more of the following events shall occur, that is to say:

- (1) The Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
- (2) By order or decree of a court, the Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors or, if the Lessee is a corporation by any of the stockholders of the Lessee, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
- (3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed within thirty (30) days after the filing thereof; or
- (4) The Lease or the interest or estate of the Lessee under this Lease shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation without the consent of State, to the extent required hereunder; or
- (5) The Lessee, if a corporation, shall, without the prior consent of the State, make a change that results in a change in the Federal Identification Number of the Lessee by becoming (i) a possessor or merged corporation in a merger; or (2) a constituent corporation in a consolidation; or (3) a corporation in a dissolution; or
- (6) The Lessee is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its partners or any of them, or by operation of law or by order or decree of any court having jurisdiction or for any other reason whatsoever; or

- (7) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all the property of the Lessee, or any execution or attachment shall be issued against the Lessee or any of its property, whereupon possession of the Demised Premises shall be taken by someone other than the Lessee, and any such possession or control shall continue in effect for a period of fifteen (15) calendar days; or
- (8) Any lien is filed against the Demised Premises because of any act or omission of the Lessee and is not removed or bonded against to stay the effect of the lien, within thirty (30) calendar days; or
- (9) The Lessee shall voluntarily abandon, desert, vacate or discontinue its operations (excluding permitted closures as set forth herein) in the Demised Premises, or, after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of thirty (30) calendar days by action of any governmental agency from conducting its business in the Demised Premises, regardless of the fault of the Lessee; or
- (10) The Lessee shall fail duly and punctually to pay the Rent or to make any other payment required hereunder within seven (7) days after written notice that same is due to the State; or
- (11) The Lessee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Lease on its part to be kept, performed, or observed, within thirty (30) calendar days after receipt of notice of default thereunder from the State except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after receipt of notice and continues such performance without interruption except for Causes or Conditions Beyond the Control of the State or the Lessee, as defined in Section 1(b) of this Lease; or
- (12) If this Lease shall require a guarantor of one or more of the Lessee's obligations under this Lease and any of the events described in subparagraphs (1), (2), (3) or (7) above shall occur to or with respect to the guarantor (whether or not they shall also occur to or with respect to the Lessee);

Then, upon the occurrence of any such event or at any time thereafter during the continuance thereof, the State may by five (5) calendar days' notice terminate this Lease, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

Notwithstanding anything to the contrary contained in this Lease, the State shall also have the right to terminate this Lease in accordance with the following:

- i. **For Cause:** For a material breach that remains uncured for more than thirty (30) calendar days or any other specified period after written notice has been provided to the Lessee, in accordance with Section 16 of this Lease, this Lease may be terminated by the Commissioner, at the Lessee's expense where the Lessee becomes unable or incapable of performing or meeting any requirements or qualifications set forth in this Lease, or for non-performance, or upon a determination that the Lessee is non-responsible. Such termination shall be upon written notice to the Lessee, in accordance with Section 16 of this Lease. In such event, the Commissioner fulfill the Use allowed by of this Lease in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
- ii. **For Convenience:** By written notice, provided in accordance with Section 16 of this Lease, this Lease may be terminated at any time by convenience upon sixty (60) calendar days' written notice or other specified period without penalty or

other early termination charges due. The Lessee shall use due diligence and provide outstanding deliverables.

- iii. **For violation of Sections 139-j and 139-k of the State Finance Law:** The Commissioner reserves the right to terminate this Lease in the event that it is found that certification filed by the Lessee in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Lessee in accordance with Section 16 of this Lease.
 - iv. **For Non-Responsibility:** The Lessee agrees that if it is found by the State that the Lessee's responses to the Retail Disclosure Sheet were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate this Lease. Upon written notice to the Lessee, and a reasonable opportunity to be heard with appropriate OGS officials, this Lease may be terminated by the Commissioner or his or her designee at the Lessee's expense where the Lessee is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may fulfill the Use allowed by this Lease in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach. In no case shall such a termination of the Lease 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 vendor as a result of such a termination.
 - v. **Upon Conviction of Certain Crimes:** The Commissioner reserves the right to terminate the Lease in the event that it is found that a member, partner, director or officer of the Lessee is convicted of one or more of the following: Bribery involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.
- (b) If any of the events enumerated in paragraph (a) of this Section shall occur prior to the Commencement Date, the State, upon the occurrence of any such event or at any time thereafter during the continuance thereof by twenty-four (24) hours' notice, provided in compliance with Section 16 of this Lease, may cancel the interest of the Lessee under this Lease Agreement, such cancellation to be effective upon the date specified in such notice and the Lessee shall be required to immediately vacate the Demised Premises.
- (c) No acceptance by the State of Rent, fees, charges or other payments in whole or in part for any period or periods after a default in any of the terms, covenants and conditions to be performed, kept or observed by the Lessee shall be deemed a waiver of any right on the part of the State to terminate this Lease.
- (d) No waiver by the State of any default on the part of the Lessee in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the Lessee shall be or be construed to be a waiver by the State of any other or subsequent default in performance of any of the said terms, covenants and conditions.
- (e) The rights of termination described above shall be in addition to any other rights of termination provided in this Lease Agreement and in addition to any rights and remedies that the State would have at law or in equity consequent upon any breach of this Lease by the Lessee, and the exercise by the State of any right of termination shall be without prejudice to any other such rights and remedies.
- (f) The Lessee shall not interpose any non-compulsory counterclaims in any summary proceeding or action for non-payment of Rent which may be brought by the State.

The Lessee shall not be subject to any consequential damages as a result of a Lessee default hereunder, other than with respect to a holdover by the Lessee.

Notwithstanding any other provision hereof, the State shall reasonably mitigate any damages incurred as a result of the Lessee's default hereunder. The State's duty to mitigate

damages shall be deemed satisfied if the State reasonably markets the Demised Premises and State subsequently deals with any Lessee prospects in a reasonable manner.

The State shall have thirty (30) days after the receipt of written notice from the Lessee to cure a failure to do, observe, keep and perform any of the terms, covenants, conditions, agreements or provisions of this Lease (except if the nature of the State's obligation is such that more than thirty (30) days are required for its performance, then the State shall not be deemed in default if it commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion).

SECTION 35. LABOR DISTURBANCE

If any type of strike, boycott, picketing, work stoppage, slow down or other labor activity is directed against the Lessee **at the Plaza** or against the Lessee's Use pursuant to this Lease Agreement which in the reasonable opinion of the State adversely affects or is likely to adversely affect the operation **of the Plaza** or the operations of other lessees or permittees, whether or not the same is due to the fault of the Lessee or is caused by the employees of the Lessee or of others, the Lessee shall reasonably cooperate with the State to put an end to such actions as soon as possible.

SECTION 36. REMEDIES AND SUITS AGAINST THE LESSEE

All remedies provided in this Lease Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the State at law or in equity. In the event of a breach or threatened breach by the Lessee of any term, covenant, condition or provision of this Lease Agreement, the State shall have the right of injunction and the right to invoke any other remedy allowed by law or in equity as if termination, re-entry, summary proceedings and any other specific remedies including without limitation thereto, indemnity and reimbursement, were not mentioned herein, and neither the mention thereof nor the pursuance or exercise or failure to pursue or exercise any right or remedy shall preclude the pursuance or exercise of any other right or remedy.

SECTION 37. SURRENDER

- (a) The Lessee shall promptly yield and deliver peaceably to the State possession of the Demised Premises on the date of the termination of this Lease, whether such termination be by expiration or otherwise. The Demised Premises shall be returned to the State in the condition in which the Lessee is required to maintain the Demised Premises hereunder, reasonable wear and tear excepted, or in compliance with any agreement reached between the Parties at the time of surrender.
- (b) Notwithstanding the foregoing, requirements pertaining to the removal of personal property are set forth in Section 8 of this Lease, in the event that the Lessee leaves any personal property in the Demised Premises **or the Plaza**, after the termination of this Lease, the State shall have the same rights with respect to such property as it has in the event of casualty under paragraph (d) of Section 30 of this Lease Agreement entitled "Casualty."

SECTION 38. ACCEPTANCE OF SURRENDER OF LEASE

No agreement of surrender or to accept a surrender shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the State and of the Lessee. Except as expressly provided in this Section, neither the doing of, nor any omission to do, any act or thing, by any of the officers, agents or employees of the State, shall be deemed an acceptance of a surrender of this Lease Agreement. Without limiting the foregoing, no employee or officer of the State shall be authorized to accept the keys to the Demised Premises prior to the Termination Date of the Lease as fixed in Section 5(b) of this Agreement entitled "Term," and no delivery of keys by the Lessee shall constitute a termination of this Lease Agreement or acceptance of surrender.

SECTION 39. WAIVER OF REDEMPTION

The Lessee hereby waives any and all rights of redemption, granted by or under any present or future law, arising in the event it is evicted or dispossessed for any cause, or in the event the State obtains or regains possession of the Demised Premises in any lawful manner.

SECTION 40. CONTINUITY OF OPERATIONS

To assure continuity of the Use covered hereunder, upon the Termination Date or any other termination hereunder, the Lessee shall be able to continue its occupancy as a month-to-month tenancy at the option of the State upon the Lessee's consent. During the term of such temporary extension, the Lessee shall be bound by all of the terms and conditions of this Lease Agreement.

SECTION 41. HOLDING OVER

If the Lessee remains in possession of all or any part of the Demised Premises after the Termination Date, without the express or implied consent of the State: (a) such tenancy will be deemed to be a periodic tenancy from month-to-month only; (b) such tenancy will not constitute a renewal or extension of this Lease for any further term; and (c) such tenancy may be terminated by the State upon the earlier of thirty (30) days' prior, written notice or the earliest date permitted by law. In such event, monthly Rent may be increased to an amount equal to one hundred twenty-five percent (125%) of the monthly Rent payable for the last month of the Term, and any other sums due under this Lease will be payable in the amount and at the times specified in this Lease Agreement. Such month-to-month tenancy will be subject to every other term, condition, and covenant contained in this Lease Agreement. Notwithstanding the above, upon written notice from the State and subject to the approval of the Office of the State Comptroller, the increase in Rent shall be waived through the date of commencement of any lease with a successor lessee in order to assure continuity of service.

SECTION 42. STATE REMEDIES FOR SERVICES NOT PERFORMED

- (a) If the Lessee shall fail or refuse to perform any of its obligations under this Lease after the expiration of any applicable notice and cure period, the State in addition to all other remedies available to it, shall have the right to perform any of the same and the Lessee shall pay the State's cost thereof, or if the State is required or elects to pay any sum or sums or incurs any obligations, expense or cost which the Lessee has agreed to pay or reimburse the State for, or if the State is required or elects to pay any sum or sums or incurs any obligations, expense or cost by reason of the failure, neglect or refusal of the Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Lease, or as a result of an act or omission of the Lessee contrary to the said conditions, covenants and agreements, including any legal expense or cost in connection with any actions or proceedings brought by the State against the Lessee or by third parties against the State, the Lessee agrees to pay the sum or sums so paid or the expense and the State's cost so incurred, including all interest costs, damages and penalties, and the same may be added to any installment of Rent thereafter due hereunder and each and every part of the same shall be and become additional rent, recoverable by the State in the same manner and with like remedies as if it were originally a part of the Rent as set forth in Section 6 of this Lease Agreement entitled "Rent."
- (b) "Cost" or "Costs" of the State in this Lease shall mean and include (i) cost of the participation in other pension plans or systems, insurance costs, sick leave pay, holiday, vacation, authorized absence pay or other fringe benefits; (ii) cost of materials, supplied and equipment used (including rent thereof); (iii) payments to contractors; and (iv) any other direct costs.
- (c) Whenever any default, request, action, or inaction by the Lessee causes the State to incur fees or any other expenses, the Lessee agrees that it shall pay and/or reimburse the State for such fees, costs or expenses within twenty (20) calendar days after being billed therefor.

If any monies owing by the Lessee under this Lease Agreement are not paid in accordance with the payment provisions set forth herein, the Lessee shall pay to the State, as additional rent under this Lease, the greater of (i) interest thereon, at the rate of five percent (5%) of the amount due; or (ii) a Fifty and 00/100 Dollar (\$50.00) late charge which shall be enforceable at any time after the payment of such monies shall become due without the necessity of any billing therefore, and the same shall be in addition to such other remedies the State may have for the nonpayment of Rent.

Notwithstanding the foregoing, for the first two (2) times in any calendar year that the Lessee has failed to pay any such monthly installment of Rent or additional rent, such interest and late charge shall not apply unless the Lessee has failed to make such payments within ten (10) days of receipt of the State's written notice of such delinquency. The State shall not be required to give the Lessee such notice more than twice in any calendar year prior to assessing such interest and late charge.

SECTION 43. RIGHTS OF ENTRY RESERVED

- (a) The State, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times upon reasonable advance notice (except in an emergency situation) to enter upon the Demised Premises for the purpose of inspecting the same, for observing the performance by the Lessee of its obligations under this Lease Agreement, and for the doing of any act or thing which the State may be obligated or have the right to do under this Lease Agreement or otherwise. The Lessee upon request from the State shall demonstrate or operate any equipment, appliances, fixtures or machinery used in connection with its operations hereunder.
- (b) Without limiting the generality of the foregoing, the State, by its officers, employees, representatives and contractors, shall have the right, for the benefit of the Lessee or for the benefit of others **at the Plaza**, to maintain initially existing and future Utility, Mechanical, Electrical, Communication and Other Systems, as that term is defined in Section 1(e) of this Lease, or portions thereof on the Demised Premises and to enter upon the Demised Premises at all reasonable times upon reasonable advance notice, to make such repairs, alterations and replacements as may, in the reasonable opinion of the State, be deemed necessary or advisable and, from time to time, to construct or install over, in, under or through the Demised Premises new lines, pipes, mains, wires, conduits, equipment and other such encroachments and to use the Demised Premises for access to other portions **of the Plaza** not otherwise conveniently accessible, provided, however, that such repair, alteration, replacement, construction or access shall not unreasonably interfere with the Use of the Demised Premises by the Lessee.
- (c) In the event that any property of the Lessee shall obstruct the access of the State, its employees, agents or contractors to any of the existing or future Utility, Mechanical, Electrical, Communication and Other Systems, as that term is defined in Section 1(e) of this Lease, and thus shall interfere with the inspection, maintenance, repair or modification of any such systems, the Lessee shall use reasonable efforts to move such property as reasonably requested by the State, in order that access may be had to the system or part thereof for its inspection, maintenance repair, or modification.
- (d) Nothing in this section shall or shall be construed to impose upon the State any obligations to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be in exclusive control and possession of the Demised Premises and the State shall not in any event be liable for any injury or damage to any property or to any person happening on or about the Demised Premises or for any injury or damage to the Demised Premises or any property of the Lessee or of any other person located therein or thereon. Notwithstanding the foregoing, subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, the State shall hold the Lessee harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State or of its officers or employees when acting within the course and scope of their employment with respect to this section.

- (e) At any time and from time to time during Normal Business Hours, as that term is defined in Section 14 of this Lease, within the six (6) months next preceding the expiration of the Term, the State, by its agents and employees, whether or not accompanied by prospective lessees, occupiers or users of the Demised Premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same.
- (f) The Lessee shall not make any unreasonable claim or demand for damages based upon the exercise of any or all of the foregoing rights by the State or others. The State shall not be subject to consequential damages.

SECTION 44. RIGHT OF RE-ENTRY

The State shall, as an additional remedy upon the giving of a notice of termination as provided in Section 34 of this Lease Agreement entitled "Termination," have the right to re-enter the Demised Premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Lease Agreement, and shall in no event constitute an acceptance of surrender.

SECTION 45. SURVIVAL OF THE OBLIGATIONS OF THE LESSEE

- (a) In the event that this Lease shall have been terminated in accordance with a notice of termination as provided in Section 34 of this Lease Agreement entitled "Termination," or the interest of the Lessee canceled pursuant thereto, or in the event that the State has re-entered, regained or resumed possession of the Demised Premises in accordance with the provisions of Section 44 of this Lease Agreement entitled "Right of Re-entry," all the obligations of the Lessee under this Lease Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full Term of this Lease Agreement, and the amount of damages or deficiency shall become due and payable, as more specifically stated in paragraph (b) below, to the State to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or possession had taken place.
- (b) Immediately upon any termination or cancellation pursuant to Section 34 of this Lease Agreement entitled "Termination," or upon any reentry, regaining or resumption of possession in accordance with Section 44 of this Agreement entitled "Right of Re-entry," there shall become due and payable by the Lessee to the State, in addition to Rent accrued prior to the effective date of termination, without notice or demand and as damages, the sum of the following:
 - (1) the amount of all unfulfilled monetary obligations of the Lessee under this Lease Agreement, including without limitation thereto, all sums constituting additional rent hereunder and the cost to and expenses of the State for fulfilling all other obligations of the Lessee which would have accrued or matured during the balance of the Term or on the Termination Date originally fixed or within a stated time after expiration or termination; and
 - (2) an amount equal to the cost to and the expenses of the State in connection with the termination, cancellation, regaining possession and restoring and reletting the Demised Premises, the State's legal expenses and cost, and the State's cost and expenses for the care and maintenance of the Demised Premises during any period of vacancy, and any brokerage fees and commissions in connection with any reletting; and
 - (3) subject to the provisions of paragraph (c) below,
 - (i) on account of the Lessee's Rent obligation, an amount equal to the then present value of all Rent provided for in this Lease Agreement for the

entire Term, discounted to present value at five percent (5%), following the effective date of termination, less the rent received by the State from any successor lessee for the balance of the Term, as originally fixed in Section 5 of this Lease Agreement entitled "Term," less the amount thereof which may have been actually paid to the State by the Lessee;

- (ii) It is understood and agreed that the statement of damages under the preceding subparagraph (3) shall not affect or be construed to affect the State's right to damages in the event of termination or cancellation (or re-entry, regaining or resumption of possession) where the Lessee has not received any actual Gross Receipts under this Lease.
- (c) The State may at any time bring an action to recover all damages as set forth above not previously recovered in separate actions, or it may bring separate actions to recover the items of damages set forth in subparagraphs (1) and (2) of paragraph (b) above, and separate actions periodically to recover from time to time only such portion of the damages set forth in paragraph (3) of paragraph (b) above as would have accrued as Rent up to the time of the action if there had been no termination or cancellation. In any such action the Lessee shall be allowed a credit against its survived damages obligations equal to the amounts which the State shall have actually received from any lessee, licensee, permittee or other occupier of the Demised Premises or a part thereof during the period for which damages are sought, and if recovery is sought for a period subsequent to the date of suit a credit equal to the market rental value of the Demised Premises during such period (discounted to reflect the then present value thereof). If, at the time of such action the State has re-let the Demised Premises, the rent for the Demised Premises obtained through such re-letting shall be deemed to be the market rental value of the Demised Premises or be deemed to be the basis for computing such market rental value if less than the entire Demised Premises were re-let. In no event shall any credit allowed to the Lessee against its damages for any period exceed the then present value of the Rent which would have been payable under this Lease Agreement during such period if a termination or cancellation had not taken place. In determining the present value of Rent, an interest rate of five percent (5%) per annum shall be used.

SECTION 46. RE-LETTING BY THE STATE

The State, upon termination or cancellation pursuant to Section 34 of this Lease Agreement entitled "Termination," or upon any re-entry, regaining or resumption of possession pursuant to Section 44 of this Lease Agreement entitled "Right of Re-entry," may occupy the Demised Premises or may re-let the Demised Premises and shall have the right to permit any person, firm or corporation to enter upon the Demised Premises and use the same. The State may grant free rent or other concessions, and such re-letting may be for only part of the Demised Premises or of the Demised Premises or a part thereof, together with other space which is not part of the Demised Premises, and for a period of time the same as or different from the balance of the Term hereunder remaining, and on terms and conditions and for purposes the same as or different from those set forth in this Lease Agreement. The State shall also, upon termination or cancellation pursuant to Section 34 of this Lease Agreement entitled "Termination," or upon its re-entry, regaining or resumption of possession pursuant to Section 44 of this Lease Agreement entitled "Right of Re-entry," have the right to repair or to make structural or other changes in the Demised Premises, including changes which alter the character of the Demised Premises and the suitability thereof for the purposes of the Lessee under this Lease Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any re-letting or of any actual use and occupancy by the State (the mere right to use and occupy not being sufficient however), there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier as the rent or fee for the use of the said Demised Premises or portion thereof during the balance of the Term as the same is originally stated in this Lease Agreement, or from the market value of the use and occupancy, all expenses, costs and disbursements incurred or paid by the State in connection therewith. No such re-letting or such use and occupancy shall be or be construed to be an acceptance of a surrender.

SECTION 47. CONDEMNATION

- (a) In any action or proceeding instituted by any United States governmental or other authorized agency or agencies for the taking for a public use of any interest in all or any part of the Demised Premises, or in case of any deed, lease or other conveyance in lieu thereof (all of which are in this Section referred to as "Taking or Conveyance"), the Lessee shall not be entitled to assert any claim to any compensation, award or part thereof made or to be made therein or therefor or any claim to any consideration or Rent or any part thereof paid therefor, or to institute any action or proceedings or to assert any claim against such agency or agencies or against the State for or on account of any such Taking or Conveyance, except for the possible claim to an award for trade fixtures owned and installed by the Lessee, it being understood and agreed between the State and the Lessee that the State shall be entitled to all the compensation or awards made or to be made or paid and all such consideration or Rent, free of any claim or right of the Lessee. No taking by or delivery to any governmental authority under this paragraph (a) shall be or be construed to be an eviction of the Lessee or be the basis for any claim by the Lessee for damages, consequential or otherwise.
- (b) In the event of a Taking or Conveyance of the entire Demised Premises by any governmental or other authorized agency or agencies, then this Lease shall, as of the date possession is taken from the State by such agency or agencies, cease and terminate in the same manner and with the same effect as if the Term of the Lease had on that date expired and all obligations of the Lessee to pay Rent hereunder shall terminate on the date of the taking of conveyance. In addition, the Lessee shall be entitled to a refund for any Rent paid in advance for any part of the Term following such termination.
- (c) In the event of a Taking or Conveyance by any governmental or other authorized agency or agencies of a part of the Demised Premises then this Lease, as to such part only, shall, as of the date possession thereof is taken from the State by such agency or agencies, cease and terminate, and the Rent thereafter to be paid by the Lessee to the State shall be abated from and after the date of such taking or conveyance.
- (d) In the event that the Taking or Conveyance or the delivery by the Lessee or Taking by the State pursuant to Section 48 of this Lease entitled "Governmental Compliance" covers twenty-five percent (25%) or more of the total usable area of the Demised Premises, then the Lessee and the State shall each have an option exercisable by notice given within ten (10) Business Days, as that term is defined in Section 1(a) of this Lease, after such Taking or Conveyance, to terminate this Lease, as of the date of such Taking, and such termination shall be effective as if the date of such Taking were the original date of expiration hereof.

If this Lease is not terminated, then it shall remain in full force and effect as to the portion of the Demised Premises remaining, provided the Rent shall be reduced in the same proportion that the area taken bears to the total area of the Demised Premises prior to the Taking. If this Lease is not terminated, then the State agrees, at the State's sole cost, to restore the Demised Premises as soon as reasonably possible to a complete unit of like quality, character and utility for the Lessee's purposes as existed prior to the condemnation. Notwithstanding anything contained herein to the contrary, if the Demised Premises are not repaired and restored within one hundred eighty (180) days from the date of the condemnation, then the Lessee may terminate this Lease at any time after the one hundred eightieth (180th) day and before the two hundred tenth (210th) day following the date of condemnation. If the State is aware the Demised Premises cannot be repaired and restored within one hundred eighty (180) days, the State shall notify the Lessee within a reasonable time after it learns of such delay, and the Lessee shall have the option to terminate this Lease within sixty (60) days of such notice. The State shall return any deposits, all prepaid Rent and other prepaid additional rent to the Lessee within thirty (30) days from the date of termination of the Lease.

SECTION 48. GOVERNMENTAL COMPLIANCE

In the event that all or any portion of the Demised Premises is required by the State to comply with any present or future governmental law, rule, regulation, requirement, order or direction, the State shall give the Lessee notice that all or any such portion of the Demised Premises is so required, and the Lessee shall deliver all or any such portion of the Demised Premises so required on the date specified in such notice and, if the Lessee does not so deliver, the State may take the same. No such taking or delivery shall be or be construed to be an eviction of the Lessee or a breach of this Lease Agreement. In the event that the Lessee has received a notice hereunder it shall deliver all or any such portion of the Demised Premises so required in the same condition as that required hereunder for the delivery of the Demised Premises on the Termination Date. In the event of the taking or delivery of all the Demised Premises, this Lease Agreement shall on the day of such taking or delivery cease and expire as if that day were the Termination Date, originally stated in this Lease Agreement; and, in the event of the taking or delivery of any portion of the Demised Premises, then, from and after such taking or delivery, such portion of the Demised Premises shall cease to be a part of the Demised Premises hereunder. There shall be an abatement of the Rent in the event of any such taking or delivery of a portion of the Demised Premises.

SECTION 49. NON-PUBLIC PERSONAL INFORMATION SECURITY BREACH

The Lessee 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). The Lessee shall be liable for the costs associated with such breach if caused by the Lessee's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Lessee's agents, officers, employees or subcontractors.

SECTION 50. BROKERAGE

The State represents to the Lessee that it did not consult or negotiate with any broker or finder with regard to the Premises and that no other broker, finder or consultant participated with State in procuring this Lease. Subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, the State shall hold the Lessee harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State or of its officers or employees when acting within the course and scope of their employment with respect to this section.

The Lessee represents and warrants that no broker has been consulted in the negotiation of this Lease Agreement, and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the State from any claims for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Lease Agreement.

SECTION 51. PARKING

As of the Commencement Date, the State shall provide the Lessee with a total of _____ () parking space(s) in the **Plaza Parking Lot**. The current parking rate, if applicable, shall be paid by the Lessee. The State reserves the right to change the location of the Lessee's parking space as necessary, but in no event shall the total number of parking spaces allocated to the Lessee decrease below the number provided at the Commencement Date. However, in the event that the Lessee no longer needs the parking space, it shall notify the State so that the space may be reallocated. The Lessee shall comply with all applicable rules and procedures established by the OGS Bureau of Parking Services.

SECTION 52. ENTIRE AGREEMENT

The following appendices, exhibits, schedules and form are being attached and made part of the Lease:

- | | |
|-------------|-----------------------------------------|
| Exhibit "1" | Leased area plan (Section 3) |
| Exhibit "2" | Executive Order No. 4 (Section 15) |
| Exhibit "3" | Consent to Assignment Form (Section 33) |

Exhibit “4”	Substitute W-9 (Section 33)
Exhibit “5”	Lessee Change of Address Form (Section 33)
Schedule A	Cleaning Standards (Section 15)
Appendix A	Standard Clauses for New York State Contracts
Form 1	Retail Disclosure Sheet (Sections 33 and 55)

The above constitutes the entire agreement of the Parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the State and the Lessee and approved by the New York State Attorney General, as to form, and the Office of the State Comptroller. The Lessee agrees that no representations or warrants shall be binding upon the State unless expressed in writing in this Lease Agreement.

In the event of a conflict between the terms of this Lease and the exhibits, schedules and form hereto, the terms of the Lease shall control. In the event of a conflict between the terms of this Lease (including the exhibits, schedules and form) and Appendix A hereto, the terms of Appendix A shall control.

SECTION 53. STANDARD CLAUSES FOR STATE CONTRACTS

The Lessee acknowledges and agrees that the terms and provisions of Appendix A, Standard Clauses for New York State Contracts, attached hereto and forming a part of this Lease Agreement, shall be incorporated herein and constitute fully effective and binding obligations upon the Lessee.

SECTION 54. ENCOURAGING USE OF NEW YORK STATE BUSINESSES

New York State businesses have a substantial presence in state leases and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, lessees are strongly encouraged and expected to consider New York State businesses, including small, minority- and women-owned business enterprises, in the fulfillment of the requirements of leases. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Lessees are also strongly encouraged, to the maximum extent practicable and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology.

Utilizing New York State businesses in state leases will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the Lessee and its New York State business partners. New York State businesses will promote the Lessee’s optimal performance under the Lease.

The State encourages lessees to provide maximum assistance to New York State businesses in their use of State leases. The potential participation by all kinds of New York State businesses will deliver great value to the State and its taxpayers.

SECTION 55. VENDOR RESPONSIBILITY

OGS conducts a review of prospective lessees to provide reasonable assurance that the lessee is responsive and responsible. The Retail Disclosure Sheet, attached hereto as Form 1, is designed to provide information to assess a lessee’s responsibility to conduct business in New York State based upon its financial and organizational capacity, legal authority, business integrity, and past performance history. The Lessee agrees to fully and accurately complete the Retail Disclosure Sheet. The Lessee acknowledges that the State’s execution of the Lease will be contingent upon the State’s determination that the Lessee is responsible, and that the State will be relying upon the Lessee’s responses to the Retail Disclosure Sheet when making its responsibility determination.

In order to assist the State in determining the responsibility of a lessee prior to the award of a lease, the Lessee must complete and certify (or recertify) the Retail Disclosure Sheet no more

than six (6) months prior to the date of execution of the Lease. The Lessee should become familiar with all of the requirements of the Retail Disclosure Sheet in order to accurately complete the Retail Disclosure Sheet.

The Lessee agrees that if it enters into this Lease with OGS, it shall at all times during the Lease Term remain responsible. The Lessee agrees, if requested by the OGS Commissioner, or her designee, to present evidence of its continuing legal authority to do business in New York State and its business integrity, legal authority, experience, ability, prior performance, and organizational and financial capacity.

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IN WITNESS WHEREOF, the Parties hereto have caused this Lease Agreement to be executed in duplicate originals the day and year first written above.

The Lessee certifies that all information provided to the State of New York with respect to Retail Disclosure Sheet and State Finance Law §139-k is complete, true and accurate. The State reserves the right to terminate this Lease in the event it is found that the certification filed by the Lessee in accordance with New York State Finance Law §139-j or §139-k was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Lessee in accordance with the written notification terms of the Lease.

(Lessee's Name)

By _____
(Its Member)

STATE OF NEW YORK }
 : SS.:
COUNTY OF }

On the day of _____, in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public, State of New York
Qualified in County of:
My Commission Expires

THE PEOPLE OF THE STATE OF NEW YORK
Acting by and Through the Commissioner
of General Services

Approved: 20__

By: _____
Real Estate Planning and Development

By _____
RoAnn M. Destito
Commissioner

APPROVED AS TO FORM
Attorney General

By _____

Approved:
Assistant Attorney General

Thomas P. DiNapoli
State Comptroller

By _____

Date _____

EXHIBIT "2"

EXECUTIVE ORDER No. 4:

ESTABLISHING A STATE GREEN PROCUREMENT AND AGENCY SUSTAINABILITY PROGRAM

WHEREAS, the State of New York ("State") is dedicated to the simultaneous pursuit of environmental quality, sound public health, economic prosperity and social well-being; and

WHEREAS, the production, use and disposal of materials, and the generation and use of energy, can have significant impacts on environmental quality and public health; and

WHEREAS, State government is a major consumer of materials and energy; and

WHEREAS, the State's policies include conserving, improving and protecting natural resources and the environment; preventing water, air and land pollution; and enhancing the health, safety and welfare of State residents and their overall economic and social well-being; and

WHEREAS, it is the State's policy to promote cost effective methods to reduce energy and resource consumption, and reduce or eliminate the use of hazardous substances and the generation of hazardous substances, pollution and waste at the source; and

WHEREAS, the State's solid waste management priorities include reducing the generation of solid waste, reusing materials, and recycling materials that cannot be reused; and

WHEREAS, by making sound choices in the course of their daily activities, such as the commodities, services, and technology they consume, and the amount of waste they generate, State agencies and public authorities can minimize potential environmental and health impacts on workers and the public; and

WHEREAS, the State's procurement of commodities, services and technology can be enhanced through State agency and public authority choices that minimize the potential environmental and health impacts of their activities; and

WHEREAS, State government can be a leader in environmental stewardship through the use of green procurement and sustainable management practices.

NOW, THEREFORE, I, DAVID A. PATERSON, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

A. Definitions

1. "State agency" or "agency" shall mean any State agency, department, office, board, commission or other instrumentality of the State, other than a public authority.
2. "Public authority" or "authority" shall mean a public authority or public benefit corporation created by or existing under any State law, a majority of whose members is appointed by the Governor (including any subsidiaries of such public authority or public benefit corporation), other than an interstate or international authority or public benefit corporation.

B. Interagency Committee on Sustainability and Green Procurement

1. There is hereby established an Interagency Committee on Sustainability and Green Procurement (the "Committee"). The Committee shall be comprised of the Director of the Budget, the Commissioner of General Services, the Commissioner of Environmental Conservation, the Commissioner of Health, the Commissioner of Economic Development, the President of the Urban Development Corporation, the Commissioner of Transportation, the President of the Environmental Facilities Corporation, the President of the New York State Energy, Research and Development Authority, the Chair of the Power Authority of the State of New York, and the Executive Director of the Dormitory Authority of the State of New York. The Commissioner of

General Services and the Commissioner of Environmental Conservation shall serve as co-chairs of the Committee.

2. Members of the Committee may designate an executive staff member to represent them and participate on the Committee on their behalf. A majority of the members of the Committee shall constitute a quorum, and all actions and recommendations of the Committee shall require approval of a majority of the total members of the Committee.

C. Green Procurement Lists and Specifications

1. The Committee, no later than September 1, 2008, and annually thereafter, shall select a minimum of three “priority categories” of commodities, services or technology, and at least twelve “priority commodities, services and technology” within each of the priority categories, for which the Committee shall develop “green procurement lists” (“procurement lists”) and “green procurement specifications” (“procurement specifications”) for use by State agencies and public authorities in the procurement of commodities, services and technology. The Committee shall focus on commodities, services and technology that reasonably will: (a) reduce or eliminate the health and environmental risks from the use or release of toxic substances; (b) minimize risks of the discharge of pollutants into the environment; (c) minimize the volume and toxicity of packaging; (d) maximize the use of recycled content and sustainably managed renewable resources; and (e) provide other environmental and health benefits.

2. The Committee, no later than December 1, 2008, shall develop: (a) procurement specifications to be used for the development and issuance of new contracts and new solicitations for priority commodities, services and technology; and (b) procurement lists of priority commodities, services and technology that are available under existing procurement arrangements that satisfy the requirements of this order.

3. In developing the procurement lists and procurement specifications, the Committee shall consider the following factors: (a) protection of the public health and the environment, including the health of children and other vulnerable populations; (b) avoidance of risks from the use or release of toxic substances; (c) pollution reduction and prevention; (d) sustainable resource management and use, and sustainable manufacturing and production processes; (e) reduction of greenhouse gases; (f) the use of renewable resources, remanufactured components and recycled content; (g) waste reduction, recyclability and compostability; (h) quality, durability and utility; (i) minimizing adverse impacts throughout a commodity’s or technology’s life cycle; (j) cost; (k) extended producer liability; and (l) legal and regulatory requirements applicable to the use and procurement of commodities, services and technology.

4. The Committee may review the priority categories, priority commodities, services and technology, procurement lists and procurement specifications periodically and revise or supplement them as appropriate in a manner consistent with the requirements of this section.

5. The Committee shall establish specific goals to achieve reasonable reductions in the amount of solid waste generated and paper consumed annually by State agencies and authorities. The Committee shall also develop and implement strategies to assist State agencies and authorities to achieve such reduction goals.

D. Sustainability and Environmental Stewardship Programs

1. Each State agency and authority shall develop and implement a Sustainability and Environmental Stewardship Program, which shall include:

(a) specific projects, programs and policies designed to achieve compliance with the requirements of this Order; and

(b) specific projects, programs and policies designed to reduce the public health and environmental impacts of the activities and operations of the agency or authority, including: (i) the reduction or elimination of the use and generation of toxic substances, pollution and waste; (ii) the reduction, reuse, recycling and composting of solid waste; (iii) increasing energy efficiency; (iv) increasing the use of renewable energy sources; (v) conserving water and other natural resources; and (vi) maximizing the use of environmentally preferable or “green” commodities, services and technology.

2. Commencing no later than July 1, 2008, all copy paper, janitorial paper and other paper supplies purchased by each State agency or authority shall be composed of 100% post-consumer recycled content to the maximum extent practicable, and all copy and janitorial paper shall be process chlorine-free to the extent practicable, unless such products do not meet required form, function or utility, or the cost of the product is not competitive.

3. Commencing no later than July 1, 2008, all State agency and authority publications shall be printed on 100% post-consumer recycled content paper. Where paper with 100% post-consumer recycled content is not available, or does not meet required form, function and utility, paper procurements shall use post-consumer recycled content to the extent practicable. Non-recycled content shall be derived from a sustainably-managed renewable resource to the extent practicable, unless the cost of the product is not competitive.

4. State agencies and authorities shall rely on and use the procurement lists and specifications issued by the Committee when developing new solicitations and contracts for the procurement of commodities, services and technology, and for the procurement of commodities, services and technology under existing contracts, unless the head of the agency or authority determines: (a) that such commodities, services or technology will not meet required form, function or utility; (b) the cost of the commodities, services or technology is not competitive; or (c) there is an emergency or other compelling public health or safety reason not to purchase such commodities, services or technology. Such form, function, utility or other determination shall be presented in the procurement record, and notice of the determination shall be provided to the Committee Chairs.

5. All State agencies and authorities shall, to the extent practicable: (a) implement effective programs to source separate recyclable materials, including paper, metal, glass and plastic, that will maximize materials recovery; (b) implement effective programs to reduce waste; (c) use locally available compost, mulch and soil amendments produced from secondary materials; and (d) utilize secondary materials in construction.

E. Training and Staff

1. State agencies and authorities, no later than September 1, 2008, shall assign an employee to serve as a Sustainability and Green Procurement Coordinator (“Coordinator”). Coordinators shall be given full management support and provided with the necessary resources to enable the agency or authority to comply with this order.

2. The Committee shall design and implement training and outreach programs for Coordinators and assist them with the training of appropriate staff, vendors and contractors.

3. The Commissioner of General Services, no later than September 1, 2008, shall select an employee to serve as Director of Green Procurement, who shall assist the Commissioner of General Services in carrying out his or her duties under this order.

4. The Office of General Services, the Department of Environmental Conservation, the Environmental Facilities Corporation, and the New York State Energy Research and Development Authority are authorized to assist State agencies and authorities in complying with this order, including through the development and implementation of Sustainability and Environmental Stewardship Programs.

F. Reporting

1. The Committee, no later than December 1, 2008, shall develop a format for a progress report to be used by State agencies and authorities to inform the Committee of: (a) the progress each agency and authority has made toward achieving the goals described in or established pursuant to this order; (b) the effectiveness of the procurement lists and specifications; and (c) the specific sustainability projects that have been implemented and the effectiveness of such programs.
2. Each State agency and authority, no later than March 1, 2009, and on March first each year thereafter, shall submit a progress report to the Committee in the form and containing the information specified by the Committee. At a minimum, such report shall describe the agency or authority's efforts regarding waste reduction and recycling activities, recycled products procurement, quantities of waste generated and materials recycled, incentives and disincentives to waste reduction and recycling, and recommendations for additional measures to encourage efficient use of the State's resources.
3. The Committee, on or before June 1, 2009, and on June first each year thereafter, shall submit a report to the Governor, which shall compile the information submitted by State agencies and authorities pursuant to this section and report on progress made on the implementation of this order.

G. Sustainability and Green Procurement Advisory Council

There is hereby established a Sustainability and Green Procurement Advisory Council ("Council"), which shall consist of 11 members appointed by the Governor who have experience in the fields of green procurement, public health, waste prevention and recycling, energy efficiency, workplace safety, labor relations, environmental protection, environmental justice, or chemical manufacturing. The Governor shall select a Chair of the Council from among its members. The Council shall meet at the times requested by the Committee and provide such advice and assistance as the Committee may require.

H. Miscellaneous

1. Every agency and public authority of this State shall furnish such information and assistance as the Committee determines is reasonably necessary to accomplish its purposes.
2. Executive Order 142, issued on January 16, 1991, is hereby revoked and superseded by this Executive Order.

Given under my hand and the Privy Seal of the State in the City of Albany this twenty-fourth day of April in the year two thousand eight.

David A. Paterson



Exhibit 5

Tenant Change of Address Form

REQUEST TO:
STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
Real Estate Planning & Development
Corning Tower 26th Floor
Empire State Plaza
Albany NY 12242
Phone: (518) 474-7676 Fax: (518) 474-7866

DATE: _____

TO: OGS Lease Processing Unit, 26th Floor, Corning Tower, ESP, Albany, NY 12242

FROM:

Tenant ID# _____

OSC Contract # _____

Building Address/City _____

Tenant New Address:

Street Number and Street _____

City-State-Zip Code _____

Contact Name/Phone: _____

Email Address: _____

SCHEDULE "A"

CLEANING STANDARDS

Floors: Resilient Tiles: Clean with good luster; scuffing and black marking to be minimal; without noticeable wear areas.

Floors-Carpeted: Carpeted areas are to be clean, free of surface dirt and dust.

Furniture and Counters: All surfaces must be clean and dust free, including desk accessories and equipment.

Light Fixtures: To be clean and free of dust.

Walls, Ceilings, Entrances, Metal Trim, Doors, etc.: High dusting, free of dust. Walls, metal trim and doors free of spots and metal to be polished. Entrance mats to be clean and presentable. Entrance glass to be clean.

Windows: To be cleaned on the following schedule:

Interior	Exterior	Entrance Door
Wash once a week	Minimum of 2 times per week	Daily, both sides

Windowsills and Window Trim: Will be clean and dry.

Woodwork: (Natural Wood Finish): Clean and lustrous unless finish is normally flat.

Rubbish: All wastepaper baskets, trash cans are to be emptied and all trash removed from the Plaza daily. Wastepaper baskets are to be clean, odor free, and lined each day.

Cigarettes: The Lessee shall enforce a no smoking policy in the Plaza and Demised Premises.

Exterminating Service: The State shall contract for effective exterminator services, when and as necessary.

All of the above described services shall be adequate and effective to keep the Demised Premises and all equipment and materials used by the Lessee, at all times, clean, sanitary, and free from rubbish, refuse, dust, dirt, offensive or unclean material, insects, rodents, and vermin.