AGREEMENT

by and between

NEW YORK STATE

OFFICE OF GENERAL SERVICES

and

NEXUS STAFFING

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STATE OF NEW YORK

OFFICE OF GENERAL SERVICES

AGREEMENT #PS65932

CENTRALIZED CONTRACT FOR THE ACQUISITION OF

ADMINISTRATIVE SERVICES

THIS AGREEMENT (hereinafter the "Contract" or the "Agreement") is made this 25th day of October, 2012, by and between the People of the State of New York, acting by and through the **Commissioner of the Office of General Services** (OGS), whose office is on the 41st Floor, Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the "State" or "OGS") and Nexus Staffing, having its principal place of business at 260 Evelyn Road, Mineola, NY 11501 (hereinafter referred to as the "Contractor"). OGS and the Contractor are collectively referred to as the "Parties."

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

WHEREAS, OGS has identified a need by New York State agencies and Authorized Users for Administrative Services, including a variety of occupations (also referred to as "job titles"), as further described herein, and

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

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

WHEREAS, as part of Governor Cuomo's Procurement Transformation, the Division of the Budget and OGS issued a procurement for Administrative Services to create centralized contracts for use by New York State agencies and Authorized Users that focuses on implementing best practices and identifying opportunities for savings, and is consistent with the administration's policy goals of encouraging small businesses and certified minority and women-owned business enterprises, and

WHEREAS, OGS conducted a competitive process to identify the Bidder(s) which could provide the Administrative Services at the best value, referred to as RFP #22559 (hereinafter the "RFP"), which was advertised on May 25, 2012 in the New York State Contract Reporter, as required by New York State Economic Development Law, and

WHEREAS, the RFP sought service personnel for a variety of occupations, categorized into the following "Lots":

Lot 1 - Clerical Occupations;

Lot 2 - Hearing Reporter Services;

Lot 3 - Transcription Services;

Lot 4 - Financial Occupations;

Lot 5 - Legal Occupations;

Lot 6 - Translation Services and Interpretation;

Lot 7 - Miscellaneous Health Occupations;

Lot 8 - Physicians and Nurses;

Lot 9 - Dental Services;

Lot 10 - Psychiatric Services;

Lot 11 - Light Industrial Occupations, and

WHEREAS, in accordance with State Finance Law §163(4)(b)(ii)(C) a decision was made to divide New York State into seven (7) geographic regions, and the RFP further provided that the Contracts will be awarded in a tiered approach by lot and region with up to three Contractors per lot and region, and

WHEREAS, the Bidder with the highest best value score in each respective lot and region shall be designated as the "Primary Contractor," the Bidder with the second-highest best value score in each respective lot and region shall be designated as the "Secondary Contractor," and the Bidder with the third-highest best value score in each lot and region shall be designated as the "Tertiary Contractor," and

WHEREAS, OGS conducted a competitive process to identify the Bidders that will provide the best value for the provision of services set forth in the RFP, as evidenced by achieving the highest total score among responsive and responsible Bidders using the evaluation criteria (60% financial and 40% technical) listed in the RFP, and

WHEREAS, the State has determined that the Contractor submitted a responsive proposal, had either the highest, second-highest, or third-highest best value score and is a responsible vendor, and the Contractor is willing to provide the services set forth herein,

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

SECTION I. OVERVIEW

I.1 SCOPE

This Contract sets forth the terms and conditions for the provision of Administrative Services by Contractor. The specific job titles to be provided by Contractor and the awarded Lot(s) and Region(s) are set forth in Appendix D, #1 – Awarded Lot(s) and Region(s); Contractor Status.

I.2 CONTRACTOR STATUS

Contractor's status (Primary, Secondary or Tertiary) and the corresponding Lot(s) and Region(s) are also identified in Appendix D, #1 – Awarded Lot(s) and Region(s); Contractor Status.

OGS shall maintain the controlling list of Contractor status by Lot and Region. OGS reserves the right to adjust Contractor status as a result of the Contractor status review process set forth in Appendix D, #7 – Required Service Levels.

A negative change in Contractor status shall not have any effect on Employees whose performance was not related to the change in Contractor status.

I.3 CONTRACT PERIOD

This Contract shall commence after receipt of all necessary approvals, and shall become effective upon mailing of final Contract Award Notice by OGS in accordance with Appendix B § 38(i). The Contract shall be in effect for five (5) years. Pricing submitted with Contractor's bid shall be binding for the INITIAL ONE (1) YEAR PERIOD of the Contract. Price adjustments may be allowed on each anniversary date of the Contract, in accordance with Section IV.3 PRICE ADJUSTMENT.

I.4 DEFINITIONS

"Authorized User(s)" As defined in Appendix B.

"Candidate" shall refer to an individual proposed by a Contractor in response to a request from an Authorized User. Upon completion of background check, determination of suitability by the Authorized User, and acceptance by Authorized User, a Candidate will become an Employee. Also see "Employee" and "Contractor."

"Capacity" shall mean the Contractor's ability to accommodate an Authorized User's request for Employees, measured by the total number of hours supplied by a Contractor for each job title in a lot over a sample year.

"Consecutive Interpreter" shall mean that the interpreter is physically present in the room and translates short utterances, normally a sentence or two at a time. Usually bi-directional between two languages, for example, interpreting French to a listener in English, and then translating the English back into French. This form of interpretation makes it possible for an interpreter to ask the speaker for an explanation if there is an understanding difficulty.

"Contract" as defined in Appendix B.

"Contractor" shall refer to a responsive and responsible Bidder who has attained a best value score for a respective lot and region and is working under an executed contract with New York State. Contractor is a general term and does not specify tier of award (Primary, Secondary or Tertiary). Also see "Bidder," "Primary Contractor," "Secondary Contractor" and "Tertiary Contractor."

"Contractor Deficiency Report" shall refer to a report that an Authorized User files centrally with OGS when a Contractor does not meet Required Service Levels or that is prepared by OGS in response to a Contractor's non-compliance or deficient performance.

"Contractor Status Reduction" shall mean the reduction of a Contractor's Primary or Secondary status resulting from three (3) Contractor Deficiency Reports, as a consequence of failure to maintain Required Service Levels. Procedures for Contractor Status Reduction are stated in Appendix D, #7 – Required Service Levels. Also see "Contractor Deficiency Report," "Required Service Level," "Primary Contractor," "Secondary Contractor," and "Tertiary Contractor."

"Delivery" within Lot 2 – Hearing Reporting and Lot 3 – Transcription shall constitute an original transcript arriving at the Authorized User's designated location.

"Desirable Services" within Appendix D, #5, Price Pages, shall refer to those job titles which the State wishes to contract for but which the Bidder was not required to bid on. OGS reserves the right to not make awards for Desirable Service titles. See also "Mandatory Services."

"Differential" shall refer to pay adjustment above prevailing hourly wage allowed when working shifts other than normal working hours. An Authorized User must verify the allowance and amount of differential pay with DOL Prevailing Wage rate guidelines and /or prevailing trade labor agreements. This definition applies only to titles in Lot 11 – Light Industrial Occupations.

"Employee" shall refer generically to any individual provided by a Contractor in response to a service request by an Authorized User and who is hired for the service requested. An Employee can be a direct Employee, a subcontractor or an agent. Also see "Candidate."

"Interpretation" shall mean one who translates orally for parties conversing in different languages, either in Simultaneous and/or Consecutive time. For the purpose of this Contract, Interpretation will mean on an as needed, if needed basis. Interpretation Services shall be provided at meetings, conferences, fair hearings, briefings and over the phone.

"Joint Venture" shall mean a contractual agreement joining together two or more business enterprises, for the purpose of performing on a State Contract. This is encouraged with certified minority- or woman-owned business enterprises and suppliers who specialize in providing certain job titles.

"Lateness" shall be defined as late arrival of an Employee to a scheduled engagement; also referred to as "late."

"**Lot"** shall mean an organization of job titles within a specified category of service.

"Mandatory Services" within Appendix D, #5 – Price Pages, shall refer to those job titles which the Bidder was required to bid on. Failure to bid on all titles marked mandatory within a lot and region will be considered an incomplete bid and shall be rejected. See also "Desirable Services."

"May" denotes the permissive in a contract clause or specification. "May" does not mean "required." Also see "Shall" and "Must."

"Must" denotes the imperative in a contract clause or specification. "Must" is synonymous with "required." Also see "Shall" and "May."

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

"Master File" shall mean an electronic file maintained by Contractor for each Candidate. The Master File must include for each Candidate a resume, qualifications, certifications, licenses and background checks.

"**Overtime Pay"** shall mean the additional payment above the hourly wage paid. Time and a half shall be paid above the base pay rate for time worked above 40 hours in a single week for Authorized Users regardless of time of day, day of the week or holidays. This requirement applies to Lots 1, 4, 5, 7, 8, 9, 10 and for the in-person translation titles contained in Lot 6 (Consecutive Interpreters, Simultaneous Interpreters and American Sign Language). There shall be no overtime for the non-location-specific titles in Lot 6 (Translation – Over the Phone and Written translation) as these services are billed by the minute and the word respectively. There shall be no overtime for Lots 2 and 3 as these services are billed by the page. Overtime Pay for Lot 11 – Light Industrial is determined by the relevant prevailing wage which the engagement is subject to. All overtime is to be allowed based on the sole discretion of the Authorized User and must receive prior written approval.

"Over the Phone Interpretation" shall mean interpreting normally done consecutively, but in some cases if the technology is available may be simultaneous.

"**Premium Pay"** shall mean the additional payment above the prevailing hourly wage paid for night/evening differentials, overtime pay and/or holiday pay. Premium Pay should be in accordance with DOL Prevailing Wage rate guidelines and /or prevailing trade labor agreements. This term only applies to Lot 11 – Light Industrial titles.

"Prevailing Wage Rate" shall mean that part of the requirements of Article 8 (Sections 220-223) and Article 9 (Sections 230-239) of the New York State Labor Law, which requires public work Contractors and subcontractors to pay laborers, workers or mechanics employed in the performance of a public work contract not less than the prevailing rate of wage and to provide supplements (fringe benefits) in accordance with prevailing practices in the locality where the work is performed. Prevailing wage requirements for this Contract are contained herein. This term only applies to titles in Lot 11 – Light Industrial Occupations.

"Primary Contractor" shall refer to a responsive and responsible Bidder who has attained the best value score for a respective lot and region or that has been promoted to this position through a change in Contractor status. Primary Contractor shall be the first selection among Contractors by an Authorized User for orders. Also see "Secondary Contractor" and "Tertiary Contractor."

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

"Required Service Levels" shall refer to the minimum levels of service that a Contractor is required to meet during the Contract. Failure to maintain Required Service Levels may result in Contractor Deficiency Reports and possible Contractor Status Reduction. Required Service Levels and Status Reduction procedures are contained in Appendix D, #7 – Required Service Levels. Also see "Contractor Status Reduction" and "Contractor Deficiency Report."

"Region" shall refer to the geographic grouping of counties by the State.

"Secondary Contractor" shall refer to a responsive and responsible Bidder who has attained the second-best value score for a respective lot and region or that has been promoted to this position through a change in Contractor status. Secondary Contractor shall be the second selection among Contractors by an Authorized User for orders. Also see "Primary Contractor" and "Tertiary Contractor."

"Shall" denotes the imperative in a contract clause or specification. "Shall" is synonymous with "required." Also see "Must" and "May."

"Simultaneous Interpretation" shall mean real time interpreting. The interpreter speaks at the same time as the speaker, usually in a conference or meeting. The interpreter listens to one language and speaks in another. The voices overlap as they are speaking at the same time.

"Standard Language" shall mean a language variety used by a group of people in their public discourse. Standard languages commonly feature: A recognized dictionary (standardized spelling and vocabulary); and a linguistic institution defining usage norms (e.g., Académie Française or the Royal Spanish Academy).

"Status Reduction" shall refer to an action taken when a Contractor is found to be in non-compliance with contractual Required Service Levels or other contractual clauses. Upon reduction of status, Contractor shall be replaced by the next qualified Contractor in the Tiered Structure.

"Suitability" refers to the Authorized User's review of identifiable character traits and past conduct which are reasonably sufficient to indicate whether a given individual is likely or not likely to be able to perform the requirements of a contract without undue risk to the interests of the Authorized User.

"Suitability determination" is a determination by the Authorized User that there are reasonable grounds to believe that a given individual will likely be able to perform the job title requirements without undue risk to the interests of the Authorized User.

"Tertiary Contractor" shall refer to a responsive and responsible Bidder who has attained the third-best value score for a respective lot and region or that has been demoted to this position through a change in Contractor status. Tertiary Contractor shall be the third selection among Contractors by an Authorized User for orders. Also see "Primary Contractor" and "Secondary Contractor."

"Tiered Structure" shall refer to the order with which Contractors are utilized by an Authorized User in a given region for a given lot. Also see "Primary Contractor," "Secondary Contractor," and "Tertiary Contractor."

"**Translation"** shall mean translation of written English concepts to the Authorized User Requested Language or the written translation of that Authorized User Requested Language to English written concepts. For the purposes of this Contract, services are to be provided on an as needed, if needed basis. To provide written conversions of source texts in one language into target texts written in another language, with the meaning and intent of the original source text retained. A rendering from one language to another.

"0 (Zero)" is both a number and the numerical digit used to represent that number in numerals. It is the integer immediately preceding 1 (one).

I.5. Order of Precedence

See § IV.7(A).

SECTION II CONTRACT REQUIREMENTS

This section sets forth the terms and conditions of the Contract.

II.1 GENERAL REQUIREMENTS

a. Appendix A, Standard Clauses For New York State Contracts, dated December 2011, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

Note: On March 30, 2012, Chapter 55 of the Laws of 2012 was signed into law by Governor Cuomo, amending State Finance Law section 112 to create an exception for contracts established as a centralized contract through OGS, and purchase orders or other procurement transactions issued under such centralized contracts, from the Office of the State Comptroller pre-approval and filing requirements. This amendment is not currently reflected in Appendix A. The statutory provisions govern over the contractual language.

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

c. (i) Appendix C – Article 15-A of the Executive Law, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

(ii) In accordance with Article 15-A of the New York State Executive Law and regulations adopted pursuant thereto and consistent with the objectives of Governor Andrew Cuomo's Executive Order No. 8 , an Authorized User that is a State Agency or State Authority (as defined in New York State Executive Law §310 and hereinafter referred to as "State Agency") should establish separate goals for each placement made against this Contract for participation of New York State Certified minority-owned business enterprises and women-owned business enterprises ("MWBEs") at the time of the acquisition, if the acquisition is (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction. Contractor agrees to be bound by a State Agency's implementation of the provisions of Article 15-A of the New York State Executive Law, including but not limited to the submission of a utilization plan, in the acquisition. State Agencies and Authorities will seek an overall 20 percent participation rate based on all acquisitions made throughout the term of the Contracts awarded hereunder.

d. Appendix D, Administrative Services Documents, attached hereto, is hereby expressly made part of this Contract as fully as if set forth at length herein.

   i. #1 – Awarded Lot(s) and Region(s); Contractor Status
   ii. #2 – Job Descriptions, Qualifications and Requirements
   iii. #3 – Background Check Requirements
   iv. #4 – Report of Contract Usage
   v. #5 – Price Pages
   vi. #6 – Contractor Insurance Requirements
   vii. #7 – Required Service Levels
   viii. #8 – Contractor Deficiency Report
   ix. #9 – Contractor Contact Information; Locations; Procurement Card; and Online Portal
   x. #10 – Outside Counsel Contracts Memorandum

e. Appendix E, Quality Control Procedures and Quality Assurance Plan, is hereby expressly made part of this Contract as fully as if set forth at length herein.

II.2 FULL SERVICE CONTRACT

This is a full service contract. For the purposes of this Contract, "full service" shall mean that the Contractor's bid price includes all costs of providing Employees, including but not necessarily limited to: all administrative requirements; all other additional costs such as necessary financial reports; all reporting or other requirements, all overhead costs and profit. It shall also include all parking fees, and any other ancillary fees and costs including permits, licenses, insurance, etc.; and services not explicitly stated in these specifications, but necessarily attendant thereto.

II.3 NO DRUGS OR ALCOHOL

No illegal drug use of any type, nor consumption of alcoholic beverages by the Contractor, its candidates, Employees or other personnel shall be permitted while performing any phase of work under this Contract.

II.4 TRAFFIC INFRACTIONS

The State shall not be liable for any expense incurred by the Contractor as a consequence of any traffic infraction or parking violations attributable to Contractor's Candidates or Employees.

II.5 INTERPRETATION OF SPECS

OGS's interpretation of all specifications required by this Contract shall be final and binding upon the Contractor.

II.6 ON-SITE WORK

Services performed on-site by Contractor's Employees shall be rendered in accordance with the following additional requirements:

a. Employee Sign-In: Contractor's Employees shall sign in and out in accordance with the Authorized User's security procedures and guidelines. Failure to sign in or out, whether intentional or not, may be understood to mean that the service was not performed;
b. Rules: A review of all facility use rules shall be conducted; and
c. Chain of Command: An introduction for each respective Agency organization, chain of command, etc shall be conducted.

II.7 TOLL-FREE NUMBER

Contractor shall maintain a toll-free telephone number for Authorized User usage. Contractor must staff this toll-free number at a minimum from 9:00am to 5:00pm Monday through Friday. Such number is set forth in Appendix D, #9 – Contractor Contact Information; Locations; Procurement Card; and, Online Portal.

II.8 CONTRACTOR AFFIRMATIONS AND AGREEMENTS

a. Contractor affirms that it is able and will continue to service all Lots and Regions for which it was awarded, as indicated in Appendix D, #1 – Awarded Lot(s) and Region(s); Contractor Status.
b. Contractor agrees to comply with any MWBE requirements requested by an Authorized User.
c. Contractor agrees that Contractor is obligated to perform all services under the Contract, including those services listed in Appendix D, #5 – Price Pages with a price and/or cost of zero (0).

II.9 CONTRACTOR CONTACT INFORMATION; LOCATIONS; PROCUREMENT CARD; AND ONLINE PORTAL

Contractor Contact Information and information on Contractor locations, acceptance of Procurement Cards, and Online Portal is set forth in Appendix D, #9 – Contractor Contact Information; Locations; Procurement Card; and, Online Portal.

II.10 INSURANCE REQUIREMENTS

Contractor shall maintain insurance in accordance with Appendix D, #6 – Insurance Requirements.

SECTION III. SERVICE REQUIREMENTS

III.1 REQUIRED SERVICE LEVELS

The Contractor shall meet all Required Service Levels as outlined in Appendix D, #7 – Required Service Levels.

III.2 LEVEL OF PERSONNEL

For all Lots, the Authorized User reserves the right to select the level of personnel for the task to be performed, as well as to stipulate the length of time that such personnel will be retained, provided that the Authorized User provides the Contractor a reasonable estimate prior to the commencement of work. In the event of exceptionally complex assignments, a Contractor may propose to the Authorized User that resource levels be adjusted, subject to approval by the Authorized User.

III.3 QUALITY OF SERVICES

The Authorized User shall have the right to interview a Candidate to determine his/her qualifications. The qualifications must reflect the position of the specific job title requested. The Authorized User reserves the right to reject the Candidate if the Authorized User determines that the Candidate is not qualified based on the referenced job title. An Authorized User has the right to request a replacement Candidate if the original selected Candidate is deficient in the performance of an assignment.

To ensure that all services conform to Contract specifications, the Contractor shall implement quality control procedures and a quality assurance plan. Contractor shall warrant that the services acquired under this Contract will be provided in a professional manner in accordance with industry standards. Contractor's Quality Control Procedures and Quality Assurance Plan are set forth in Appendix E, Quality Control Procedures and Quality Assurance Plan.

III.4 DISQUALIFIED RESOURCES

Any Employee that an Authorized User deems unfit to perform a position at the time of suggestion or at any time in the future shall be recorded by alerting the Contractor in writing, and may result in that Employee being disqualified from performing future services for the Authorized User under this Contract.

III.5 LATE ARRIVAL

An Authorized User shall not pay for any scheduled time for the period the Employee was late. Repeated lateness by a single Employee is grounds for removal from a position based on the discretion of the Authorized User. In addition, repeated instances of lateness by multiple

Employees from a single Contractor may be considered an example of poor service and may result in a Contractor Deficiency Report.

III.6 MAINTENANCE OF A MASTER FILE

The Contractor shall maintain a Master File for each Candidate and keep it in electronic format (i.e., electronic or scanned documents). The Contractor shall provide a Candidate's Master File when suggesting a Candidate for a role.

III.7 BACKGROUND CHECKS

The Contractor shall provide appropriate background checks for each Candidate prior to the start of their employment**.** The Contractor shall pre-screen and qualify Candidates as defined in the respective job titles for all positions requested. Candidates must have the ability to reside in and be employed legally in the United States. Background Check Requirements are set forth in Appendix D, #3 – Background Check Requirements.

III.8 REPLACEMENT CANDIDATES

For job titles in Lots 1, 4, 5, 7, 8, 9 and 10, the Contractor must recommend a replacement Candidate within two (2) workdays of request from an Authorized User. For job titles in Lots 2, 6 and 11, the Contractor must recommend a replacement Candidate within one (1) workday of request from an Authorized User. The Authorized User may review Contractor's selection process and/or Candidate resumes.

A background check must be provided as per Appendix D, #3 – Background Check Requirements, on the replacement Candidate before they begin working. However, at the discretion of the Authorized User, the replacement Candidate may begin work before the background check is completed, with the issuance of a written waiver by the Authorized User to the Contractor.

If the Candidate's Master File contains educational background verification and social security number verification, then these items may be omitted from the initial background check at the discretion of the Authorized User. If the Master File contains employment verification from previous engagements with the State, then employment verification is only required to be updated going back to the previous verification included in the Master File.

III.9 REDUCE WORK

The Authorized User has the right to reduce the length of the work assignment and the Contractor shall be provided as much notice as is reasonably possible. A minimum of 24 hours notice will be given, except when reduction is due directly to acts of God, wars, acts of public enemies, strikes, fire or flood, or similar causes beyond the control of the Authorized User, or if Employee presents

a risk to the safety and well-being of his/herself or others. Contractors shall not assess any fees or penalties for reductions in work assignments.

III.10 TRAVEL

All Employee travel expenses must be pre-approved by the Authorized User. "Personal Vehicle Mileage Reimbursement" and "Ground Transportation via Common Carrier (Train and Bus Travel)", for work-related travel only, shall be provided in accordance with codes, rules, and regulations promulgated by the Office of the State Comptroller for Management/Confidential Employees. Any travel under 35 miles or any travel that is a standard commute between home and office is excluded, as per the policy. Any other travel expenses including Lodging, Meal Allowances, Rental Vehicles and Air Travel are specifically excluded from the scope of the Contract.

III.11 RATES AND MARKUPS

For Lots 1 through 10, the Contractor shall provide to the Authorized User, upon request, personnel at the contract rate, as set forth in Appendix D, #5 – Price Pages. The definitions of job titles are set forth in Attachment D, # 2 – Job Descriptions, Qualifications and Requirements.

The hourly rates for job titles in Lots 1, 4, 5, 7, 8, 9 and 10, will be considered straight time costs for work accomplished during 40 hours in a single week for an Authorized User regardless of time of day, day of the week or holidays. Any work performed at times other than the above is considered to be overtime and would be allowed only when approved by the Authorized User. The rates paid for overtime shall be 1.5 times the resource pay rate, with the appropriate markup. Markups do not apply to Lots 2, 3, and 6 (except in-person translations) as they are not based on hourly rates. Note: The overtime work assumes the Employee has worked a 40-hour week. Should the regular work shift of the Employee be other than normal hours, then the overtime rate is not paid until 40 hours is exceeded by an individual Employee for an Authorized User. If an employee is performing work for more than one Authorized User, the Contractor shall inform each of the Authorized Users of the employee's schedule and actual hours worked so that all parties are aware of when the employee will reach 40 hours worked and at what point overtime rates would begin. An Authorized User is responsible for overtime rates when an Employee has performed 40 hours of work for said Authorized User. An Authorized User shall not pay overtime rates if an Employee has performed less than 40 hours of work for the Authorized User, but more than 40 hours among several Authorized Users.

For Lot 11, the Contractor shall provide to the Authorized User, upon request, personnel at the percent markup rates offered over the current prevailing wage including supplemental benefits. The prevailing wage will be what is listed for the date the work is performed in the county it is completed.

Note: An Authorized User subject to a local law establishing a "living wage", such as Section 6-109 of the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law. If the pay rate(s) for a job title(s) as set forth in Appendix D, #5 – Price Pages is less than the local law "living wage," then the Authorized User subject to such local law cannot use this Contract for such job title(s). Local laws, however, are not a term and condition of the OGS contract.

III.12 OSHA TRAINING

For Lot 11, all Employees shall have completed the OSHA 10-hour Construction course and shall have completed additional training, including but not limited to, asbestos & lead awareness, lockout/tagout, hazard communication and confined space awareness. Upon first reporting to an Authorized User location assignment, the Employee MUST present the Authorized User with proof of the completion of the above listed courses, including all updates and renewals. Failure of the Employee to provide such documentation to the Authorized User when reporting for initial assignment shall result in the Authorized User rejecting the Employee.

III.13 PREVAILING WAGE

Prevailing wage shall apply to job titles in Lot 11 – Light Industrial Occupations. It is the Contractor's responsibility to ensure compliance with the current prevailing wage rates paid at the time work is performed under this Contract. The Prevailing Wage Schedule for the job titles in Lot 11 can be found at the following link: **http://www.labor.state.ny.us/workerprotection/publicwork/PWContents.shtm**.

III.14 NEW YORK STATE DESIGNATED HOLIDAYS

The following are New York State designated holidays:

New Years Day	Memorial Day	Columbus Day	Thanksgiving
Martin Luther King, Jr. Day	Independence Day	Election Day	Christmas
Lincoln's Birthday	Labor Day	Veteran's Day	
Washington's Birthday			

SECTION IV. SPECIAL TERMS AND CONDITIONS

This section sets forth additional terms and conditions.

IV.1 PERFORMANCE AND BID BONDS

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

IV.2 ADMINISTRATIVE AND REPORTING REQUIREMENTS

1. Contractor shall furnish a report of all services provided under the Contract during each quarterly period, no later than the 15th of the month following the close of each quarter. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. The template for such report is set forth in Appendix D, #4 – Report of Contract Usage. The report must be submitted electronically via electronic mail utilizing the template provided. All fields of information shall be accurate and complete. The report is to be submitted electronically in Microsoft Excel 2007 or 2003 (or as otherwise directed by OGS), via electronic mail to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the Group Number, the Award Number, Contract Number, sales period, and Contractor's (or other authorized agent) name, and all other fields required, using the report template.

2. Additional related sales information and/or detailed Authorized User purchases may be required by OGS and must be supplied upon request.

3. Failure to submit the required report shall be considered a service lapse and shall result in the issuance of a Contractor Deficiency Report.

4. In addition to the quarterly reports required by OGS, the Contractor shall also provide a copy of the report on a monthly basis to the Authorized User, (unless Authorized User requests reports on a less frequent basis) which shall be attached to the Invoice. This report shall detail all work completed that month for that Authorized User.

5. In addition to Contractor direct sales, Contractor shall submit information regarding any subcontractors used. A Contractor shall verify if each subcontractor is a NYS Certified Minority (MBE) or Women (WBE) Owned Businesses. A Contractor shall verify such status through the Empire State Development Minority and Women

Owned Businesses Database web site at: **http://www.nylovesmwbe.ny.gov/cf/search.cfm**.

6. **PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

I. General Provisions

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

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

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

II. Contract Goals

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

III. Equal Employment Opportunity (EEO)

A. Contractor agrees to be bound by the provisions of New York State Executive Law Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's

Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

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

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall:
   a. Submit an EEO policy statement to OGS with the bid, or
   b. If Contractor does not have an existing EEO policy statement, the Contractor shall sign and submit Appendix C, Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement annexed hereto; or
   c. Contractor shall certify and affirm that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy.
3. The Contractor's EEO policy statement shall include the following language:
   a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
   b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
   c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will

affirmatively cooperate in the implementation of the Contractor's obligations herein.

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

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

D. Form EEO 102 - Workforce Employment Utilization Report ("Workforce Report")

Contractor agrees it is responsible for updating and providing notice to the OGS of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

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

IV.3 PRICE ADJUSTMENTS

The following sets forth the requirements regarding price adjustments made to this Contract.

IV.3.1 PRICE ADJUSTMENT FOR LOTS 1- 10

For Lots 1 through 10, on each anniversary date of the Contract, the Contractor may be granted an increase or decrease to Contractor's bill rate dependent upon fluctuations in the latest published copy of the Consumer Price Index for all Urban Consumers as published by the U S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. It is the Contractor's

responsibility to request the price adjustment from the OGS Purchasing Officer. This request must be received no later than thirty (30) calendar days before the anniversary of the executed Contract. If the Contractor fails to submit the request on or before the specified date, then no adjustment will be made for that full year. The index is also available through the Internet at the Bureau of Labor Statistics web site at **http://stats.bls.gov/**. Go to "Inflation and Consumer Spending" then click "Consumer Price Index" and then click on "Tables created by BLS" then click on "Table Containing History of CPI-U U.S. All Items Indexes and Annual % Changes 1913 to Present"

Price adjustments using the CPI involve changing the Employee pay rate by the percent change in the level of the CPI between the reference period and a subsequent time period. This is calculated by first determining the index point change between the two periods and then the percent change. The price adjustment shall be calculated as follows. Take the CPI for the 3rd month prior to the month of the start date of the Contract and subtract this figure from the CPI value for the 3rd month prior to the anniversary date of the Contract. (e.g., if start date begins in December, use the September CPI). That sum is then divided by the CPI value for the original 3rd month prior to start date and this result is then multiplied by 100 to equal the percent change that is the price adjustment value. This percentage of increase or decrease shall be applied to the Contract year, effective on the latter of the anniversary date or upon notification by OGS/PSG.

The following example illustrates the computation of percent change:

CPI for current period	136.0
Less CPI for previous period	(-) 129.9
Equals index point change	= 6.1
Divided by previous period CPI	÷ 129.9
Equals	= 0.047
Result multiplied by 100	0.047 x 100
Equals percent change	= 4.7%

The Contractor has the sole responsibility to submit invoices at the OGS approved adjusted rate, after approved rates are issued by OGS.

IV.3.2 PRICE ADJUSTMENT FOR LOT 11 – PREVAILING WAGE RATES – PUBLIC WORKS AND BUILDING SERVICES CONTRACTS

Lot 11, Light Industrial, is subject to the prevailing wage rate provisions of New York State Labor Law. See "17. Prevailing Wage Rates - Public Works and Building Services Contracts" in Appendix B, OGS General Specifications.

Contractors are reminded that ALL PUBLIC WORKS AND BUILDING SERVICE CONTRACTS, REGARDLESS OF DOLLAR VALUE, REQUIRE THE PAYMENT OF PREVAILING WAGES AND SUPPLEMENTS AS ESTABLISHED BY LAW BY THE DEPARTMENT OF LABOR. Information indicating that prevailing wages are not being paid on a public works project shall be forwarded to the New York State Department of Labor for investigation. Willful violations of the prevailing wage provisions of the Labor Law may result in monetary fines or debarment from the bidding and award of Contracts.

NOTE: CONTRACTORS AND SUBCONTRACTORS ARE FURTHER REQUIRED TO POST THE PREVAILING WAGE RATES IN A PROMINENT AND ACCESSIBLE PLACE AT THE WORK SITE. Contractor is solely responsible for confirming subsequent changes to the posted rates and for paying the prevailing rates at all times during the Contract term.

For job titles in Lot 11, the prevailing wage rates will be considered straight time costs for work accomplished during regular hours between 7 a.m. and 5 p.m., Mondays through Fridays, excluding holidays so designated in the prevailing wage rates for the applicable trades. The rates paid to the Contractor will be the percent (%) bid over prevailing wage (which includes supplemental benefits and any other required benefits). Authorized User must check for current prevailing wages including overtime/afterhours/Saturdays/holiday rates to confirm prices charged by Contractor are accurate. Authorized Users should use the following link for verification of all wages for job titles in Lot 11. **http://www.labor.state.ny.us/workerprotection/publicwork/PWContents.shtm**.

Any differential, overtime or holiday pay billed to an Authorized User must be passed through to the Employee and shall not be subject to Contractor's mark-up. Please note that a Contractor cannot increase its respective mark-ups at any time after bid opening. However, a Contractor may offer a lower mark-up at anytime.

See example of applied pay below:

	10 % Differential	Overtime (1.5x base)	Sunday/Holiday (2x base)
Prevailing wage	$25.17	$25.17	$25.17
Supplemental benefits	$8.18	$8.18	$8.18
Total	$33.35	$33.35	$33.35
Mark-up 20% of $33.35	$6.67	$6.67	$6.67
Regular time hourly rate	$40.02	$40.02	$40.02
Premium pay	$2.52	$12.58	$25.17
Total hourly charge	$42.54	$52.60	$65.19

Where DOL Prevailing Rate schedule indicates a different method of calculation, the DOL schedule shall prevail for calculation of premium pay. Additional supplemental benefits identified by DOL Prevailing Rate schedule should be incorporated in the Contractor's percentage mark-up and cannot be added to an invoice.

NOTE: Section IV.3 does not apply to any item listed in Appendix D#5 – Price Pages, with a price and/or cost of zero (0).

IV.4 DISPUTE RESOLUTION POLICY

It is the policy of OGS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to bid solicitations or Contract awards. OGS encourages vendors to seek resolution of disputes through consultation with OGS staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of OGS's Dispute Resolution Procedures for Vendors may be obtained by contacting the Contract Administrator or through the OGS website (**http://ogs.ny.gov/default.asp**).

IV.5 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

If it is found by the State that the Contractor's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

IV.6 PREFERRED SOURCE PRODUCTS

NYS State Finance Law §162 requires that governmental entities afford first priority to the products/services of preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled, when such products/services meet the form, function and utility of the Authorized User. An Authorized User must determine if a particular job title is approved for a Preferred Source and follow the requirements of State Finance Law §162(4)(b) before engaging the Contractor.

IV.7 APPENDIX B AMENDMENTS

Appendix B is amended as follows:

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

The following documents shall be incorporated into the Contract. Only documents expressly enumerated below shall be deemed a part of this Contract, and references contained in those documents to additional Contractor documents not enumerated below shall be of no force and effect. Conflicts among the documents shall be resolved in the following order of precedence**:**

Appendix A, Standard Clauses for New York State Contracts (December 2011);

Base Contract – This Agreement exclusive of all other Appendices;

Appendix B, General Specifications (July, 2006);

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

Appendix D, Administrative Services Documents:

#1 Awarded Lot(s) and Region(s); Contractor Status

#2 Job Descriptions, Qualifications and Requirements

#3 Background Check Requirements

#4 Report of Contract Usage

#5 Price Pages

#6 Contractor Insurance Requirements

#7 Required Service Levels

#8 Contractor Deficiency Report;

#9 Contractor Contact Information; Locations; Procurement Card; and, Online Portal

#10 Outside Counsel Contracts Memorandum

Appendix E, Quality Control Procedures and Quality Assurance Plan

B. Section 33 (Equivalent or Identical Bids) is deleted and replaced with the following:

33. EQUIVALENT OR IDENTICAL BIDS:

In the event two offers are found to have tied scores, price shall be the basis for determining the award recipient. If two or more Bidders submit bids with tied scores for pricing, the Bidder with the greatest number of acceptable bids for Desirable titles shall be the deciding factor. Criteria from bids from other lots and regions will not be considered in breaking a tie.

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

62. CONTRACT BILLINGS AND PAYMENTS:

a) Billings. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an

Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

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

b) Payment of Contract purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at http://www.osc.state.ny.us/epay/index.htm or by e-mail at epayments@osc.state.ny.us. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.
Inquiries relating to OSC's Electronic Payments program should be directed to:
NYS Office of the State Comptroller
Vendor Management Unit
110 State Street Mail Drop 10-4
Albany, NY 12236
Telephone: (855) 233-8363
E-Mail: helpdesk@sfs.ny.gov

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

invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

IV.8 EMPLOYEE INFORMATION REQUIRED TO BE REPORTED BY CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning Contract Employees working under State Agency service and consulting contracts. State Agency consultant contracts are defined as "Contracts entered into by a state Agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*" ("covered consultant contract" or "covered consultant services"). The amendments also require that certain Contract Employee information be provided to the state Agency awarding such Contracts, the Office of the State Comptroller (OSC), the Division of the Budget and the Department of Civil Service (CS). The effective date of these amendments is June 19, 2006. The requirements will apply to covered Contracts awarded on and after such date.

To meet these new requirements, the Contractor agrees to complete:

Form A - Contractor's Planned Employment Form, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information as part of its bid response.

Form B - Contractor's Annual Employment Report. Throughout the term of the Contract by May 15th of each year the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such Contract was in effect during such prior State fiscal year, Contractor reports the:

1. Total number of Employees employed to provide the consultant services, by employment category;
2. Total number of hours worked by such Employees; and
3. Total compensation paid to all Employees that performed consultant services under such Contract.*

*NOTE: The information to be reported is applicable only to those Employees who are directly providing services or directly performing covered consultant services. However, such

information shall also be provided relative to Employees of Subcontractors who perform any part of the service contract or any part of the covered consultant contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an Employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to the Department of Civil Service and the Office of the State Comptroller as designated below:

Department of Civil Service	Office of the State Comptroller
Alfred E. Smith State Office Building	Bureau of Contracts
Albany, NY 12239	State St., 11th Floor
	Albany, NY
	Attn: Consultant Reporting

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual Employee names or social security numbers are set forth on a document, the State Agency making such disclosure is obligated to redact both the name and social security number prior to disclosure

Further information is available in the Office of the State Comptroller's Bulletin G-226 regarding the Contractor Consultant Law requirements and report Forms A and B at **http://www.osc.state.ny.us/agencies/gbull/g-226.htm**.

INSTRUCTIONS FOR COMPLETING FORM A AND B:

Form A and Form B should be completed for contracts for consulting services in accordance with the Office of the State Comptroller's Bulletin G-226 and the following:

Form A - Contractor's Planned Employment Form (available from and submitted to the using Agency, if necessary.)

Form B - Contractor's Annual Employment Report (to be completed by May 15th of each year for each consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the Department of Civil Service, Office of the State Comptroller and procuring Agency.)

Scope of Contract: choose a general classification of the single category that best fits the predominate nature of the services provided under the Contract.

Employment Category: enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describes the Employees providing services under the Contract.

*(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at* ***http://www.onetonline.org/*** *to find a list of occupations.)*

Number of Employees: enter the total number of Employees in the employment category employed to provide services under the Contract during the report period, including part time Employees and Employees of subcontractors.

Number of Hours: enter the total number of hours worked during the report period by the Employees in the employment category.

Amount Payable under the Contract: enter the total amount paid by the State to the State Contractor under the Contract, for work by the Employees in the employment category, for services provided during the report period.

SECTION V. USE OF CONTRACT BY STATE AGENCIES, POLITICAL SUBDIVISIONS AND OTHER AUTHORIZED USERS

This section sets forth the procedures and methods Authorized Users will follow in order to utilize services from the ensuing Contract.

V.1 GENERAL DESCRIPTION OF CONTRACT

This Contract is for services which an Authorized User utilizes on an intermittent basis. Purchase orders under this Contract are issued either (a) to a given Contractor for a specific term; or (b) for either a fixed amount (if known) or for an estimated amount (if not known). Payments are then made each month against the purchase order for actual expenditures.

V.2 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS AND EXTENSION OF USE

New York State political subdivisions and others authorized by New York State law may participate in this Contract. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See "39. Participation in Centralized Contracts" in Appendix B, OGS General Specifications. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), services to be provided may include locations adjacent to New York State.

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

Upon request, all eligible non-State Agencies must furnish a Contractor with the proper tax exemption certificates and documentation certifying eligibility to use State Contracts. A list of categories of eligible entities is available on the OGS web site (**http://ogs.ny.gov/purchase/snt/othersuse.asp**). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services Group's Customer Services at 518-474-6717.

V.3 NEW YORK STATE PROCUREMENT CARD

Details regarding Contractor’s acceptance of the NYS Purchasing Card are set forth in Appendix D, #9 – Contractor Contact Information; Locations; Procurement Card; and Online Portal.

V.4 PROCUREMENT INSTRUCTIONS

1. An Authorized User shall review the list of locations to determine what region is applicable for the required service.
2. An Authorized User shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162 which requires that agencies afford first priority to the commodities/services of preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled, when such commodities/services meet the form, function and utility of the Authorized User.
3. An Authorized User is reminded that it must obtain approval from the State of New York Office of the Attorney General prior to engaging the services of outside counsel. Please refer to Appendix D, #10 – Outside Counsel Contracts Memorandum.
4. An Authorized User shall seek to engage the services of the Primary Contractor in the appropriate Lot for their region. An Authorized User shall submit a request to the Contractor by means of the contact information provided in Appendix D, #9 – Contractor Contact Information; Locations; Procurement Card; and, Online Portal, or other acceptable means established between the Contractor and the Authorized User. The request shall consist of:
    a. Job title(s);
    b. Location;
    c. Duration;
    d. Start date;
    e. Additional specifications;
    f. Authorized User information;
    g. Order priority (normal – 7 days, priority – 3 days, overnight – next day, immediate – same day); and
    h. Other information necessary for the particular engagement.
5. The Primary Contractor is required to recommend Candidate(s) according to the performance standards set forth in Appendix D, #7 – Required Service Levels. If the Primary Contractor is unable to fill the Authorized User's request in accordance with the Required Service Levels, the Secondary Contractor shall be engaged. If the Secondary Contractor is unable to fill the Authorized User's request in accordance with the Required Service Levels, the Tertiary Contractor shall be engaged.
6. The Contractor shall supply potential Candidates and the Master File for each Candidate. The Authorized User shall make a selection of the Candidate they prefer and request that a background check be completed for the Candidate. Contractor shall provide the Authorized User with the results of the background check. Upon receipt of the background check, the Authorized User shall make a suitability determination following the below guidelines.

In cases of Employee replacement, a background check must be run on the replacement Candidate before they begin working as provided in Appendix D#3 – Background Check Requirements. However, the Authorized User can elect to allow a Candidate to begin working prior to receiving their background check. The Authorized User must provide the Contractor with a written waiver if it elects to waive the completion of a background check before a replacement commences work.

Suitability Determination Guidelines

A. In making a suitability determination, the Authorized User shall consider the information obtained through the background check for the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to its organization in accordance with NYS Correction Law §752:

1) Any loyalty or terrorism issue;
2) Patterns of conduct (e.g., alcoholism/drug addiction, financial irresponsibility/major liabilities, dishonesty, unemployability for negligence or misconduct, criminal conduct);
3) Dishonorable military discharge;
4) Felony and misdemeanor offenses;
5) Drug manufacturing/trafficking/sale;
6) Major honesty issue (e.g., extortion, armed robbery, embezzlement, perjury);
7) Criminal sexual misconduct;
8) Serious violent behavior (e.g., rape, aggravated assault, arson, child abuse, manslaughter);
9) Illegal use of firearms/explosives;
10) Employment related misconduct involving dishonesty, criminal or violent behavior; and
11) Misrepresentation of information including educational and professional background, legal status or valid licensure

B. The Authorized User shall evaluate any adverse information about a Candidate by considering the following factors before making a suitability determination:

1) The nature, extent and seriousness of the conduct;
2) The circumstances surrounding the conduct;
3) The frequency and decency of the conduct;
4) The individual's age and maturity at the time of the conduct;
5) The presence or absence of rehabilitation and other pertinent behavior changes;
6) The potential for pressure, coercion, exploitation, or duress;
7) The likelihood of continuation of the conduct;
8) How, and if, the conduct bears upon potential job responsibilities; and
9) The Employee's employment history before and after the conduct.

A negative suitability determination must be supported by a finding that the adverse information has a direct bearing on the potential job duties or that it is deemed sufficiently serious to bar the Employee from a governmental site. The Authorized User should consult with its legal counsel regarding any questions on the suitability determination.

7. An Authorized User and the Contractor shall develop the exact cost or estimated cost if an exact cost cannot be determined at that time. An Authorized User shall issue a purchase order or other written order for work, which is effective and binding on the Contractor at time of order in accordance with Appendix B §44. A Contractor shall not initiate services until the order is issued, and an Authorized User shall not request performance of services until the purchase order has been issued. Note: for services, purchase orders may be issued for an estimate for the entire year.

8. An Authorized User shall monitor the Contractor's quality of work. A list of deficiencies and non-compliance that shall result in a Contractor Deficiency Report are set forth in Appendix D, #7 – Required Service Levels. In case of deficiencies, an Authorized User shall complete a Contractor Deficiency Report and send to OGS and the Contractor. Each Authorized User shall designate an individual who is authorized to submit Contractor Deficiency Reports to OGS for the Authorized User. Each Authorized User shall inform OGS of the individual authorized to submit Contract Deficiency Reports to OGS for the Authorized User. A template for the Contractor Deficiency Report is set forth in Appendix D, #8 – Contractor Deficiency Report.

V.5 METHOD OF PAYMENT

Invoicing and payment shall be made in accordance with the terms set forth in Section IV.7 amending Appendix B §62, Contract Billings and Payments. If the Contractor bills for services not specified in the Scope or Services, or at rates greater than those specified in the Contract,

an Authorized User shall submit a Contractor Deficiency Report. If a Contractor offers a discount for prompt payment, the Contractor shall include the terms of the discount on all invoices, the amounts which are due if the Authorized User meets the terms, and the date for which the prompt payment discount(s) expire.

VI. GENERAL PROVISIONS

VI.1 CONTRACT AMENDMENT PROCESS

During the term of the Contract, the Contract may be amended as changes occur within the industry. OGS reserves the right to consider amendments which are not specifically covered by the terms of the Contract but are judged to be in the best interest of the State. Examples of amendments may include, but are not limited to, new job titles under the Department of Labor Prevailing Wages, new categories of expertise, ancillary job classifications, on-going services, etc. The process by which amendments may occur is in accordance with the method outlined below. OGS, an Authorized User, or the Contractor may suggest amendments. Contractor may suggest the addition of new job titles or services it offers.

Contractor submitted requests for changes to the Contract during the Contract period or any extension period should include the following, as applicable:

1. A cover letter briefly describing the request for addition, stating the need for such service to be added;
2. If applicable, a statement from the Authorized User indicating the requirement for the addition, and the estimated usage (dollars);
3. A price incorporating all changes.

VI.2 NOTICES

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

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

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

VI. 3. CAPTIONS

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

VI.4 SEVERABILITY

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

VI. 5. COUNTERPARTS

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

VI. 6 ENTIRE AGREEMENT

This Contract and the referenced appendices constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein in accordance with the terms set forth in Appendix B Clauses 40, Modification of Contract Terms, and 44, Purchase Orders.

VI.7 IRAN DIVESTMENT ACT

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

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

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

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

CONTRACTOR	**THE PEOPLE OF THE STATE OF NEW YORK**
Signature: _____	Signature: _____
Printed Name:_____	Printed Name _____
Title: _____	Title:_____
Company Name: _____	Office of General Services
Federal ID:_____	
NYS Vendor ID_____	

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

CORPORATE ACKNOWLEDGMENT

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

On the _____ day of _____in the year 2012, before me personally came: _____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____; that he/she/they is (are) _____ (the President or other officer or director or attorney in fact duly appointed) of _____, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

_____

Notary Public Signature

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument,

providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

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

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

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

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

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

18. <u>PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS</u>. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public

benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
http://www.empire.state.ny.us

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
http://www.empire.state.ny.us

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

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

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

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

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

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

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include

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

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.
To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

APPENDIX B

GENERAL SPECIFICATIONS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

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GENERAL

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

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

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

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

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

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

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

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

i. Bid Specifications prepared by the Authorized User.

ii. Appendix B (General Specifications).

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

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

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

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

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

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

ATTORNEY GENERAL Attorney General of the State of New York.

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

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

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

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

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

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

COMPTROLLER Comptroller of the State of New York.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OGS The New York State Office of General Services.

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

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

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

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

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

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

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

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

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

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

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

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

STATE State of New York.

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

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

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

BID SUBMISSION

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

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

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

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

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

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

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

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

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

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

9. FACSIMILE SUBMISSIONS Unless specifically prohibited by the terms of the Bid Specifications, facsimile Bids may be SUBMITTED AT THE SOLE OPTION AND RISK OF THE

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

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

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

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

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

13. EXTRANEOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid. Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

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

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

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

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

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

14. CONFIDENTIAL/TRADE SECRET MATERIALS

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

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

Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary

emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

18. TAXES

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

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

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

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

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

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

21. PRODUCT REFERENCES

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

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

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

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

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

24. PRICING

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

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

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

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

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

f. Best Pricing Offer During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local

governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

Price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after:
(i) GSA Changes: Where NYS Net Prices are based on an approved GSA Schedule, the date the approved GSA Schedule pricing decreases during the Contract term; or
(ii) Commercial Price List Reductions: Where NYS Net Prices are based on a discount from Contractor's list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or
(iii) Special Offers/Promotions Generally: Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or Net Price otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and
(iv) Special Offers/Promotions to Authorized Users: Contractor may offer Authorized Users, under either this Contract or any other Contracting vehicle, competitive pricing which is lower than the NYS Net Price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

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

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

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

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

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

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

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

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

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

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

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

c. Enhanced Samples When an approved sample exceeds the minimum specifications, all Product delivered must be of the same

enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

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

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

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

BID EVALUATION

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

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

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

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

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

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

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

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

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

TERMS & CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

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

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

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

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

47. SHIPPING/RECEIPT OF PRODUCT

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

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

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

48. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

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

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

51. REJECTED PRODUCT When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification

shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar day period.

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

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

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

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

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

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

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

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

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

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

60. TERMINATION

a. For Cause: For a material breach that remains uncured for more than thirty (30) days or other specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User at the Contractor's expense where

Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

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

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

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

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

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

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

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

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

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

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

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

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

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

63. <u>DEFAULT – AUTHORIZED USER</u>

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

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

been made and assurances given by such entity for current and future Contract payments.

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

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

64. INTEREST ON LATE PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing),

Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

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

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

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

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

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

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

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

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

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

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

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

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

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly

from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

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

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Copy the Product;

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

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

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

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

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

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

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

81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

(i) For purposes of this paragraph, "Products." A deliverable furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or

maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

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

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

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

(i) Existing Products:

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

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

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

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

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

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

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

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

84. CHANGES TO PRODUCT OR SERVICE OFFERINGS

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

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

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

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

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

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

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

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

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

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CONTRACTOR'S EXECUTIVE LAW, ARTICLE 15-A (M/WBE) REQUIREMENTS

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

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

M/WBE

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

(1) Actively and affirmatively soliciting bids for subcontracts from qualified State certified MBEs or WBEs, including solicitations to MWBE contractor associations.
(2) Request a list of State-certified MWBEs from OGS and solicit bids from them directly.
(3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
(4) Where feasible, divide the work into smaller portions to enhanced participations by MWBEs and encourage the formation of joint venture and other partnerships among MWBE contractors to enhance their participation.
(5) Document and maintain records of bid solicitation, including those to MWBEs and the results thereof.
(6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided and provide appropriate support, including waiving bonding and other credit requirements where permissible, to encourage MWBE participation.

Agreed to this _____ day of _____,

20_____

By _____

Print: _____

Title: _____

EEO

(a) Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
(b) Contractor shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
(c) At the request of the contracting agency, Contractor shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of Contractor's obligations herein.
(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
(e) Contractor will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Appendix D #1
Awarded Lot(s) and Region(s); Contractor Status

Lot Number	Region Number	Status Position
1 – Clerical Occupations	1	Tertiary
1 – Clerical Occupations	2	Tertiary

Appendix D #2

Job Descriptions, Qualifications and Requirements

The following descriptions and qualifications contain the minimum job requirements. The Contractor shall be responsible for ensuring that each candidate possesses all the required licenses and certifications associated with each job title (e.g. a lawyer must have a license to practice law). The Contractor shall also be responsible for compliance with all applicable Federal or State laws (e.g. HIPAA compliance for medical professions). An Authorized User reserves the right to request candidates with additional qualifications. The information below is presented numerically by lot, then alphabetically within each lot. Some lots also have lot specific requirements in addition to the Job Descriptions and Qualifications. The lots applicable to Contractor are designated in Appendix D#1 – Awarded Lot(s) and Region(s); Contractor Status.

Lot 1 - "Clerical Occupations"

Bookkeeping, Accounting, and Auditing Clerks
Must have knowledge of basic bookkeeping, accounting and financial record keeping procedures. Some knowledge of financial terminology, payroll procedures, and budget preparation is also required; ability to compute, classify, and record numerical data to keep financial records complete. Perform any combination of routine calculating, posting, and verifying duties to obtain primary financial data for use in maintaining accounting records. May also check the accuracy of figures, calculations, and postings pertaining to business transactions recorded by other workers. May also perform a variety of analysis.

Computer Operators
Monitor and control electronic computer and peripheral electronic data processing equipment to process business, scientific, engineering, and other data according to operating instructions. Follow and understand instructions for development of final copy materials on word processing/computer equipment. Proofread and correct documents. Must have knowledge of business English, spelling, grammar, punctuation and arithmetic, knowledge of Office Suite software packages and ability to learn within a reasonable time. May develop graphs, spreadsheets, charts, web pages, etc.

Computer Support Specialists
Provide technical assistance to computer system users. Answer questions or resolve computer problems for clients in person, via telephone or from remote location. May provide assistance concerning the use of computer hardware and software, including printing, installation, word processing, electronic mail, and operating systems. May enter commands at a computer terminal and set controls on computer and peripheral devices. Monitor and respond to operating and error messages. Must have advanced computer and software skill/knowledge beyond those defined in Computer Operator including skills in multiple software.

Data Entry and Word Processing
Operate data entry equipment with alphabetic and numeric keyboard; enter, verify, update, correct and retrieve information; enter information with speed and accuracy. Use word processor/computer or typewriter to prepare letters, reports, forms, or other material from rough draft, corrected copy, or voice recording. Review and correct drafts for compliance with originals. Edit using knowledge of grammar, punctuation and spelling. Enter and retrieve data on computer terminals. Duties may include verifying data and preparing materials for printing. May perform other clerical duties as assigned.

Dispatchers - Police, Fire, and Ambulance
Receive reports from public concerning crimes and police emergencies. Broadcast orders to patrol units in vicinity of report to investigate. Operate radio, telephone, or computer equipment to receive reports of fires and medical emergencies and relay information or orders to proper officials.

Executive Secretaries and Administrative Assistants
Must provide high-level administrative support by conducting research, preparing statistical reports and handling information requests in addition to performing clerical functions such as preparing correspondence, receiving visitors, arranging conference calls and scheduling meetings. May also train and supervise lower-level clerical staff. Knowledge of office administration and management; proper grammar, punctuation and spelling; business communications and ability to take notes is necessary. May act as immediate supervisor's personal representative in dealing with public and in routine contacts with other State executives; perform special assignments, studies and routine administrative functions as specifically directed; screen incoming correspondence, refer to appropriate staff, and follow up to assure timely response. Perform related duties as required.

Executive Secretaries and Administrative Assistants Bi-Lingual Spanish/English
Must have full fluency in both English and Spanish language including reading, writing and speaking. Must provide high-level administrative support by conducting research, preparing statistical reports and handling information requests in addition to performing clerical functions such as preparing correspondence, receiving visitors, arranging conference calls and scheduling meetings. May also train and supervise lower-level clerical staff. Knowledge of office administration and management; proper grammar, punctuation and spelling; business communications and ability to take notes is necessary. May act as immediate supervisor's personal representative in dealing with public and in routine contacts with other State executives; perform special assignments, studies and routine administrative functions as specifically directed; screen incoming correspondence, refer to appropriate staff, and follow up to assure timely response. Perform related duties as required.

File Clerks
File correspondence, cards, invoices, receipts, and other records in alphabetical or numerical order or according to the filing system used. Locate and remove material from file when requested. Must be able to follow oral and written instructions.

Food Preparation Workers
Perform a variety of food preparation duties other than cooking, such as preparing cold foods and shellfish, slicing meat, and brewing coffee or tea.

Freight, Stock, and Material Movers, Hand
Load, unload and move materials at plant, yard, or other work site.

Legal Secretaries
Perform secretarial duties utilizing legal terminology, procedures, and documents. Prepare legal papers, complex legal reports and correspondence, such as summonses, complaints, motions, and subpoenas. May also assist with legal research. Must have knowledge of: legal terminology; business communications, and general clerical skills.

Mail Clerks, Except Mail Machine Operators and Postal Service
Prepare incoming and outgoing mail for distribution. Duties include time stamping, opening, reading, sorting, and routing incoming mail; sealing, stamping, and affixing postage to outgoing mail or packages; and keeping necessary records and completed forms.

Medical Secretaries
Perform secretarial duties utilizing specific knowledge of medical terminology and hospital, clinic or laboratory procedures. Duties include scheduling appointments, billing patients, and compiling and recording medical charts, reports and correspondence. The Authorized User may also require the ability to take and transcribe complex medical dictation. Knowledge of business communications including proper English usage and general clerical skills.

Personnel Recruiter

Seek out, interview, and screen applicants to fill existing and future job openings and promote career opportunities within an organization.

Public Relations Manager/Public Information Officer
Plan and direct public relations programs designed to create and maintain a favorable public image for employer or client; or if engaged in fundraising, plan and direct activities to solicit and maintain funds for special projects and nonprofit organizations. Establish and maintain effective working relationships with government officials and media representatives and use these relationships to develop new business opportunities. Write interesting and effective press releases, prepare information for media kits and develop and maintain company internet or intranet web pages. Develop and maintain the company's corporate image and identity, which includes the use of logos and signage. Respond to requests for information about employers' activities or status. Draft speeches for government officials, and arrange interviews and other forms of contact for them. Evaluate advertising and promotion programs for compatibility with public relations efforts.

Receptionists/ Secretaries, Except Legal, Medical, and Executive
Provide administrative support to program areas as well as perform routine clerical and administrative functions such as drafting correspondence, scheduling appointments, organizing and maintaining paper and electronic files, providing information to callers, receiving visitors, and arranging conference calls. Answer inquiries and obtain information for general public, customers, visitors, and other interested parties.

Stock Clerks, Stockroom, Warehouse, or Storage Yard
Receive, store, and issue materials, equipment, and other items from stockroom, warehouse, or storage yard. Keep records and compile stock reports.

Switchboard Operators, Including Answering Service
Operate telephone business systems equipment or switchboards to relay incoming, outgoing, and interoffice calls. May supply information to callers and record messages.

Lot 2 - "Hearing Reporter Service"

Hearing Reporter Service
Provide proceeding, session or meeting reporting either stenographically or electronically. For proceedings that are stenographically recorded, and transcribed, recording shall be mechanical or electronic keyboard-operated typing devices. Backup electronic verbal recording equipment shall be operating at all times while proceedings are being reported, unless prohibited by the Hearing Officer. For proceedings that are electronically recorded, and transcribed, the hearing reporter shall obtain an accurate verbatim electronic sound record of the entire proceeding session or meetings. No part of the proceedings shall be excluded from the verbation transcript for any reason unless the Hearing Officer so directs. Electronic recording of proceedings under this Contract shall be performed by a Hearing Reporter using four track electronic recording equipment or using an equivalent system of microphones, mixer, and electronic recorder. Backup taping is required.

Lot Specific Requirements
Proceedings are to be stenographically or electronically recorded, and transcribed as specified by the Authorized User.

The Contractor shall furnish all labor and materials required to provide proceeding, session or meeting reporting at Authorized User designated locations within the region of the Contract. A Hearing Reporter shall be at the scheduled proceeding, session, or meeting a minimum of ten (10) minutes prior to start time, and expected to stay until told they are able to leave.

Completion Requirements
Completion requirements will be agreed upon by the Authorized User and Contractor at the time of job scheduling and can only be changed with the consent of both parties.

A. Normal Completion:
The Contractor shall deliver transcripts to the Authorized User within seven (7) business days after the recorded proceeding, excluding Saturday, Sunday, and New York State designated holidays. Additional copies of public hearing proceeding transcripts shall be delivered to all ordering parties within seven (7) business days after purchase order from the ordering parties is received by the Contractor, excluding Saturday, Sunday, and New York State designated holidays.

B. Priority Completion:
The Contractor shall deliver transcripts, electronically or in hard copy as specified by the Authorized User, to the Authorized User within three (3) business days after the recorded proceeding, excluding Saturday, Sunday, and New York State designated holidays. Additional copies of public hearing proceeding transcript shall be delivered to all ordering parties within three (3) business days after purchase order for those additional copies is received by the Contractor, excluding Saturday, Sunday, and New York State designated holidays.

C. Overnight Completion:
The Contractor shall deliver transcripts to the Authorized User no later than 1:00 p.m. on the business day following the proceeding. Additional copies of proceeding transcripts shall be delivered to all ordering parties no later than 1:00 p.m. on the business day after receipt of purchase order by the Contractor.

D. Immediate Completion:
The Contractor shall deliver transcripts no later than 9:00 p.m. on the date of the proceeding. Additional copies of public hearing proceeding transcripts shall be delivered to all ordering parties no later than 9:00 p.m. on date of the receipt of the purchase order by the Contractor.

E. Proceeding Cancellation:
The Authorized User shall provide the Contractor with a minimum of 24 (twenty-four) hours written notice of cancellation of any proceeding. In the event of proceeding cancellation without specific notification, the Contractor shall be entitled to minimum payment as noted below.

Minimum Fees:
Contractor shall be entitled to a minimum payment equal to the value of 20 pages at the normal delivery rate. (i.e., applies per hearing scheduled or per facility visit).
.

Late Completion Payment Reductions
The following payment reductions shall be assessed by an Authorized User for late completion of transcription work:

a. One day late: Ten (10) percent per page rate reduction.
b. Two to five days late: Fifteen (15) percent per page rate reduction.
c. More than five days late: Thirty (30) percent per page rate reduction.

More than fifteen (15) percent of transcripts are returned late in any calendar month to any Authorized User shall result in a Contractor Deficiency Report.

In the event that volume-based discounts and/or tenure discounts are applied to transaction that includes late completion payment reductions, the late completion payment reductions shall be the last price reduction applied to services billed.

Recording Requirements
All instructions by the Hearing Officer to the Hearing Reporter with respect to the Hearing Reporter's conduct and participation in proceedings shall be followed without discussion. Except where inconsistent with general or specific instructions issued by the Authorized User, every word spoken during a proceeding, session or meeting shall be transcribed by the Hearing Reporter, unless designated specifically as "off the record" by the Hearing Officer. With specific permission of the Hearing Officer, certain "off the record" statements may be recorded.

Instructions from anyone other than the Hearing Officer, concerning what shall or shall not be included in the record, shall be ignored.

The Contractor shall furnish transcript proofread with all words correctly spelled, properly hyphenated and properly punctuated. Any corrections to spelling, hyphenation or punctuation requested by the Hearing Officer shall be made without additional cost.

All original notes or other records taken in connection with any proceeding shall be held in security by the contractor for a period of time as designated by the Authorized User, not to exceed one year. Proceedings are to be stenographically or electronically recorded and transcribed. Backup electronic verbal recording equipment shall be operating at all times while proceedings are being reported, unless prohibited by the Hearing Officer.

Stenographic recording shall be mechanical or electronic keyboard-operated typing devices, and shall meet the requirements of the State Administrative Procedure Act.

Transcribed Page Requirements
Paper: Shall be white 20 LB cotton bond, 8-1/2 inch wide by 11 inches long or Authorized User may designate recycled content paper with the same specifications as noted above. Either paper shall be furnished at no additional cost.

Type: Shall be black, ten letters to the inch size and reproducible by standard office copy equipment.

Type Spacing: Shall be 25 lines minimum double spaced between lines with ruled margin of 3/8 inch on right and 1-3/4 inches on left or not to exceed 2-1/8 inches in total.

Punches: Paper shall be un-punched unless designated by the Authorized User as punched, with punch specifications. There will be no additional charge for punched paper.

Format: All transcripts shall be formatted as noted below: If Authorized User format requirements deviate from below, the Authorized User shall furnish Contractor with a sample format.

Desktop publishing is excluded from the scope of the Contract.

All pages shall be paginated in consecutive order for each proceeding report and sequential from the first to the last volume. Page numbers shall be located in the upper right hand corner of each page. Pagination will not be considered a transcribed line unless located on a line with other transcribed material.

At the opening of each proceeding and as directed by the hearing officer, the Hearing Reporter shall record and insert, in a location as directed by the Authorized User, the names and addresses of persons representing parties and participants in the proceeding.

When directed by the hearing officer, after an extended recess, the Hearing Reporter shall place in the appropriate place in the transcript on the days preceding the cumulative list of appearances up to and including that day.

Each transcript for a proceeding shall include a table of contents or index indicating page numbers of opening statements and closing arguments by counsel, lists of witnesses testifying at the hearing and all persons making statements. The table of contents or index shall also include a tabulation consisting of the number and description of each exhibit marked for identification with the page number on which the exhibit is marked for identification, and in due course, the page on which it is either received in evidence, withdrawn or rejected. The index shall also include separate tabulations consisting of a description of each document offered in reference, public documents and matters to be officially noted, and the page on which each item or document was marked for identification or received in evidence. The table of contents or index shall note the page where offers of proof were made and such other matters as the presiding officer directs.

Upon Authorized User's request, the Contractor shall have rubber stamps manufactured, per Authorized User facsimile sample, to be used by the Hearing Reporter to stamp and date exhibits and copies as directed by the hearing officer for repetitive hearing requirements. Stamps will be provided at the expense of the Contractor.

The Contractor shall retain, safeguard or distribute, per instructions from the Hearing Officer, all exhibits. Additionally, the Contractor shall cause the reporter to collect appearance cards from all persons appearing on behalf of themselves or others. Hearing cards shall contain information as designated by the Hearing Officer, and the Contractor shall file all cards with the Authorized User at the close of the hearing day.

Electronic Mailing of Transcription

An electronic version of each transcript shall be electronically mailed to the Authorized User as an encrypted message, with encrypted document attached in addition to a hard copy if requested by the Authorized User.

The file shall be computer readable identical copy of original printed transcript including pagination, 100 percent equivalent upper/lower case text and matching page and line numbers in the same sequential order

Confidentiality Requirements
The Authorized User will communicate to the Employee if a hearing has been designated closed. All recorded and hard copy testimony and material will remain the property of the Authorized User. The Contractor shall maintain the confidentiality of all material, identity of any parties and content of any material related to the hearing.

Any requests for information on closed hearings from third parties shall be reported to the Authorized User in writing within twenty four hours of the request.

All original notes or other records taken in connection with any proceeding shall be held in security by the Contractor for a period of time as designated by the Authorized User, not to exceed one year.

Public Hearing (as designated by the Authorized User):
The Authorized User, or any other purchaser of transcript or document of any hearing, investigation, session, meeting, etc., may duplicate or otherwise reproduce any document for their own use, except for sale to other prospective purchasers, without compensation to the Contractor. Any transcript or documents received by the Authorized User are public documents accessible for public inspection and copying under the terms and provisions of NYS Public Officers Law §87.

Recording Medium
All transcripts shall be typewritten or mechanical reproduced if approved in writing by the Authorized User.

Transcript in Diskette or CD-ROM Format
The Contractor shall furnish computer diskette, CD-Rom or other media in addition to paper document original. Price additional shall include cost of diskette, CD, or other media.

The diskette shall be computer readable identical copy of original printed transcript including pagination, 100 percent equivalent upper/lower case text and matching page and line numbers in the same sequential order.

Each diskette or CD shall be clearly labeled on outside of cassette or CD per Authorized User instructions supplied with the purchase order and computer file identification shall be per Authorized User requirements.

Format shall be ASCII, or generic word processing ASCII.

Lot 3 - "Transcription Service"

Transcription Service
Transcribe judicial, administrative and criminal proceedings, including meetings, from audio cassettes, tapes, digital files, CD-Rom or other media to transcribed copy on paper or other media. Transcript shall be in verbatim form, proofread with all words spelled correctly, properly punctuated and hyphenated and grammatically correct. Shall transcribe verbatim all audible portions of the recorded proceeding. If any inaudible portions are encountered, the Contractor shall re-play the inaudible portions and if portions are still inaudible, the Contractor shall identify in the transcription the section as inaudible, and identify the length in minutes and seconds. Multilingual transcription is included in the scope of this Lot and is included in the Transcription Service job title.

Lot Specific Requirements
The Contractor shall furnish all labor and materials required to transcribe judicial, administrative and criminal proceedings, including meetings, from audio cassettes, tapes, digital files, CD-Rom or other media to transcribed copy on media specified by Authorized User.

Transcript shall be in verbatim form, proofread with all words spelled correctly, properly punctuated and hyphenated and grammatically correct. Any corrections to spelling, hyphenation or punctuation requested by Authorized User shall be made without additional cost.

Work Pick Up and Delivery
After notification by the Authorized User, the material to be transcribed will be sent via postal mail, overnight, hand delivery, or other agreed-upon method by the Contractor to the Authorized User. Alternately, the Contractor shall take delivery of audio cassettes, tapes, digital files, CD-Rom or other media at the Authorized User's designated location and times or as specified by the Authorized User.

Completed transcripts shall be sent via electronic mail, within designated times.

An electronic version of each transcript shall be electronically mailed to the Authorized User as an encrypted message, with encrypted document attached.

The file shall be computer readable identical copy of original printed transcript including pagination, 100 percent equivalent upper/lower case text and matching page and line numbers in the same sequential order

Transcription Completion Requirements

A. Normal Completion:
Work completion and delivery shall be required in seven (7) business days excluding Saturday, Sunday and New York State designated holidays.

B. Priority Completion:
Work completion and delivery shall be required in three (3) business days excluding Saturday, Sunday, and New York State designated holidays.

The first business day shall commence on the first business day after work pick-up; and work completion shall be after delivery to the Authorized User by close of business on the third business day.

C. Overnight Completion:
The Contractor shall deliver transcripts to the Authorized User no later than 1:00 p.m. on the business day following the proceeding. Additional copies of proceeding transcripts shall be delivered via electronic mail to all ordering parties no later than 1:00 p.m. on the business day after receipt of purchase order by the Contractor for those additional copies.

D. Immediate Completion:
The Contractor shall deliver transcripts no later than 9:00 p.m. on the date of the proceeding. Additional copies of public hearing proceeding transcripts shall be delivered to all ordering parties no later than 9:00 p.m. on date of the receipt of the purchase order by the Contractor for those additional copies.

Late Completion Payment Reductions
The following payment reductions shall be assessed by an Authorized User for late completion of transcription work:

a. One day Late: Ten (10) percent per page rate reduction.
b. Two to five days late: Fifteen (15) percent per page rate reduction.
c. More than five days late: Thirty (30) percent per page rate reduction

More than fifteen (15) percent of transcripts returned late in any calendar month: The State may arrange to have transcription work completed by another vendor and the Contractor shall be liable for costs incurred over contract costs as noted in Paragraph 63 of Appendix B – Remedies for Breach. More than fifteen (15) percent of transcripts returned late in any calendar month for an Authorized User is considered poor service and shall result in a Contractor Deficiency Report.

In the event that volume-based discounts and/or tenure discounts are applied to transaction that includes late completion payment reductions, the late completion payment reductions shall be the last price reduction applied to services billed.

Transcription Requirements
The Contractor shall transcribe verbatim all audible portions of the recorded proceeding. If any inaudible portions are encountered, the Contractor shall re-play the inaudible portions and if portions are still inaudible, the Contractor shall identify in the transcription the section as inaudible, and identify the length in minutes and seconds.

Not more than one out of every ten transcriptions delivered to a single Authorized User should have repeated reports of inaudible sections. Greater frequency may result in a Contractor Deficiency Report.

Desktop publishing is excluded from the scope of the Contract.

Recording Medium
Contractor shall have equipment to transcribe from audio cassettes, tapes, digital files, CD-Rom or other media.

Transcription in Diskette or CD-ROM Format
The Contractor shall furnish computer diskette, CD-Rom or other media in addition to paper document original.

The diskette shall be computer readable identical copy of original printed transcript including pagination, 100 percent equivalent upper/lower case text and matching page and line numbers in the same sequential order.

Each diskette or CD shall be clearly labeled on outside of cassette or CD per Authorized User instructions supplied with the purchase order and computer file identification shall be per Authorized User requirements.

Format shall be ASCII, or generic word processing ASCII.

Lot 4 - "Financial Occupations"

Accountant 1
Knowledge of Generally Accepted Accounting Principles (GAAP) is necessary. Knowledge of automated accounting systems is expected. Prepare, examine, or analyze accounting records, financial statements, or other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards. Report to management regarding the finances of establishment. Establish tables of accounts and assign entries to proper accounts. Develop, implement, modify, and document recordkeeping and accounting systems, making use of current computer technology. Compute taxes owed and prepare tax returns, ensuring compliance with payment, reporting or other tax requirements. Maintain or examine the records of government agencies. Advise clients in areas such as compensation, employee health care benefits, the design of accounting or data processing systems, or long-range tax or estate plans. Develop, maintain, and analyze budgets, preparing periodic reports that compare budgeted costs to actual costs. Analyze business operations, trends, costs, revenues, financial commitments, and obligations, to project future revenues and expenses or to provide advice. Requires 24 undergraduate and/or graduate semester credit hours in accounting and/or auditing and minimum of two years experience in accounting or finance. Experience in financial statement preparation and analysis, cash flow analysis, internal control policies and procedures, and consolidations is expected.

Accountant 2
In addition to Accountant 1 requirements, shall be responsible for helping to implement and maintain accounting control policies and procedures. Provide reports on operating performance; financial reporting policies; tax reporting; audit control; revenue and expense analysis; and forecasting (budgeting) of financial results and cost standards. Must have some knowledge of governmental accounting. Requires a B.S. or B.A. degree in accounting or finance, with a M.B.A. or C.P.A. /C.M.A. preferred. Minimum of four years experience in accounting or finance.

Auditors
Examine, analyze, and interpret accounting records for the purpose of giving advice or preparing statements. Install or advise on systems of recording costs or other financial and budgetary data.

Statistical Assistants
Compile and compute data according to statistical formulas for use in statistical studies. May perform actuarial computations and compile charts and graphs for use by actuaries. Include actuarial clerks.

Lot 5 - "Legal Occupations"

Paralegals and Legal Assistants
Assist lawyers by researching legal precedent, investigating facts or preparing legal documents. Conduct research to support a legal proceeding, to formulate a defense, or to initiate legal action. Works under the direct supervision of an attorney. Must have knowledge of basic legal processes; legal terminology and legal forms; legal research techniques; ability to read, understand and interpret laws, legal documents and other written material. Paralegals must possess paralegal certification. Legal assistants must possess a minimum of an Associates' degree in legal assistance OR an Associate's degree and a certificate of completion of a Legal Assistant Certificate Program from an accredited college. Both titles should have a minimum of two years' of experience providing complex clerical level legal support services to an attorney OR on contested cases overseen by an attorney This category is intended to exclude attorneys.

Lawyers
Represent clients in criminal and civil litigation and other legal proceedings, draw up legal documents, and manage or advise clients on legal transactions. May specialize in a single area or may practice broadly in many areas of law. Posses a valid degree, New York State bar admission and licensure is required.

Authorized Users are reminded that approval from the State of New York Office of the Attorney General is required prior to engaging the services of outside counsel. Please refer to "Appendix D#10 – Outside Counsel Contracts Memorandum".

Lot 6 - "Translation Services and Interpretation"

Translation - American Sign Language Interpreters
Must be able to effectively convey the messages being voiced by a hearing person in sign language to hearing impaired individuals and to voice to the hearing person what is being communicated in sign language by the hearing impaired individual. Shall ensure all interpretation is done accurately without embellishment or omission and ensure that the most accurate interpretation of each statement is used. Interpreted communication must be conveyed effectively, accurately, impartially and in a culturally competent manner. **I**nterpreters must have received Registry of Interpreters for the Deaf (RID) certification (www.rid.org).

Translation - Consecutive Interpreters
The interpreter is physically present in the room and translates short utterances, normally a sentence or two at a time. Usually bi-directional between two languages, for example, interpreting French to a listener in English, and then translating the English back into French. This form of interpretation makes it possible for an interpreter to ask the speaker for an explanation if there is an understanding difficulty.

Translation - Simultaneous Interpreters
The interpreter speaks at the same time as the speaker, usually in a conference or meeting. The interpreter listens to one language and speaks in another. The voices overlap as they are speaking at the same time.

Translation - Over the Phone
Interpretation is done over the phone. Interpretation usually done consecutively or in some cases if the technology is available may be simultaneous.

Translation - Written Translation
To provide written conversions of source texts in one language into target texts written in another language, with the meaning and intent of the original source text retained.

Translation Services Requirements – Written Translation
The Contractor shall provide written conversations of source texts in one language into target texts written in another language, with the meaning and intent of the original source text (Translation). Contractor must be familiar with different variations and dialects of languages. Services shall include translation of documentation by technically qualified and experienced native-speaking language specialists, proofing, and editing and output in the required media format (i.e., hardcopy or electronic). Projects may include sending completed work to another party for review at the expense of the Authorized User. The Contractor must be able to provide documentation as to how accuracy is ensured and a quality product delivered. In addition, the Contractor shall provide comprehensive support services to Authorized Users by providing project management, consultation and deliverables. Required field of expertise includes, but not limited to, the translation of business, legal and technical documents, manuals and audio in multilingual translations that are accurate, clear and are culturally and politically sensitive to the social environment of the target reader/audience. The translation must be formatted to match the original version. A template may be provided by the Authorized User in English for conversion to requested language. Bidder must be able to provide versions that provide languages that include other characters such as Chinese, Japanese, and Cyrillic alphabet characters. Accuracy and consistency is critical in the published work. The document shall be translated in a format specified by the Authorized User and delivered via electronic mail over a secure server or provided on CD as specified by the Authorized User. The person designated by the Contractor to provide translation services must possess sufficient education, training, and experience to proficiently translate written communication from English to the Authorized User's requested language and Authorized User's requested language/target language to English. A single translator shall be used to complete each document to ensure continuity and consistency in terminology, ethnically sensitive tone, and appropriate marketing dialogue. In the event that an order is exceptionally large and requires the work of more than one translator to maintain timeliness it is acceptable for multiple translators to work on the order, but each individual document of

the order shall be assigned to a single translator. The Contractor shall translate documents at the same reading level as the source material. Although there may be times when it is appropriate to write in regional or class dialect, such as targeted advertising, business communications must always be written in Standard Language.

Services may be performed at any location mutually agreed to by the Contractor and the Authorized User. The Authorized User shall determine the format and specific requirements for the written translations. Every major language has regional and class variations which must be correctly included in the translation for accuracy. Completion time and estimated total cost based on the number of words and the speed of translation will be agreed upon between the Authorized User and the Contractor prior to each assignment.

Desktop publishing is excluded from the scope of the Contract.

After notification by the Authorized User, the Contractor shall take delivery of written translation as specified by the Authorized User. Completed transcripts shall be delivered to the Authorized User within designated times. Written translation shall be billed by the word.

Translated documents needed quicker than three days will be considered rush delivery, and an additional rush charge may apply. Contractor must be willing to provide the percentage amount or dollar amount for the request to rush in this document.

Contractor will be paid for any performance completed at their proposed per word rate for:

- Any assignment canceled by the Authorized User prior to completion by the Contractor provided the Contractor is performing within the stated parameters of the assignment.
- Any assignment modified by the Authorized User prior to completion by the Contractor.
- Other unusual circumstances approved by the requesting Authorized User.

A Bidder must provide documentation to indicate how translations are determined to be accurate. Examples included back translation and a written explanation of Bidder's internal review process. An Authorized User may ask for this information at its discretion. The documents should be translated at the same grade or literacy level.

<u>Translation Services Requirements – Over the Phone Translation</u>

The Contractor shall provide support services to an Authorized User by providing oral multilingual interpretation (Simultaneous and/or Consecutive as specified) services over the phone for meetings, conferences, or other forms of over the phone voice communication from a source language to the target language. Bidder must be familiar with different variations and dialects of all languages bid. Services shall be performed by professional and experienced interpreters that possess demonstrated proficiency levels that range from the ability to speak the language with sufficient structural accuracy and vocabulary, to effective participation in most formal and informal conversations on practical, social and professional topics. The maximum proficiency level will demonstrate that of a highly articulate well-educated native speaker which reflects the cultural standards of the country where the language is natively spoken.

The requesting Authorized User will specify in writing the language requirement, dates and times and any required certifications or accreditation necessary. Services may be performed on any phone line mutually agreed to by the Contractor and the Authorized User.

Authorized User testing may be required to determine qualified proficiency level for some tasks. The Contractor shall provide consultation and planning assistance to an Authorized User for conference interpretation services to determine interpretation requirements, when necessary.

Contractor shall provide qualified Candidate(s) for interpretation services for any and all languages requested by the Authorized User within a one week time frame. Failure to do so more than twice in a

month for a single Authorized User will count as a service level failure and will result in a Contractor Deficiency Report by that Authorized User, unless the Contractor is not able to provide an interpreter for a specific language (other than Spanish, Chinese, Italian, Russian, French or French Creole), in which case the Contractor shall notify the Authorized User as soon as possible so that the Authorized User may request those services from the next highest priority Contractor (Primary, Secondary, Tertiary), as necessary.

Arriving at Scheduled Location for Performance – An Interpreter is required to be present on the line at the start of the scheduled appointment. The Contractor is responsible for taking all necessary actions to maintain accurate times, locations, directions, telephone numbers, contact person(s) and any other information or actions to ensure that they are present at the proper location and on time.

Interpretation Services Requirements – Simultaneous and Consecutive

The Contractor shall provide support services to an Authorized User by providing oral multilingual interpretation (Simultaneous and/or Consecutive as specified) services for meetings, conferences, seminars, litigation proceedings, briefings, training, escort and other forms of voice communication requirements from a source language to the target language. A Bidder must be familiar with different variations and dialects of all languages bid. Services shall be performed by professional and experienced interpreters that possess demonstrated proficiency levels that range from the ability to speak the language with sufficient structural accuracy and vocabulary, to effective participation in most formal and informal conversations on practical, social and professional topics. The maximum proficiency level will demonstrate that of a highly articulate well-educated native speaker which reflects the cultural standards of the country where the language is natively spoken.

The requesting Authorized User will specify in writing the language requirement, location, dates and times and any required certifications or accreditation necessary.

Authorized User testing may be required to determine qualified proficiency level for some tasks. The Contractor shall provide consultation and planning assistance to an Authorized User for conference interpretation services to determine interpretation requirements, when necessary.

Contractor shall provide qualified Candidate(s) for interpretation services for any and all languages requested by the Authorized User within a one week time frame. Failure to do so more than twice in a month for a single Authorized User will count as a service level failure and will result in a Contractor Deficiency Report by that Authorized User, unless the Contractor is not able to provide an interpreter for a specific language (other than Spanish, Chinese, Italian, Russian, French or French Creole), in which case the Contractor shall notify the Authorized User as soon as possible so that the Authorized User may request those services from the next highest priority Contractor (Primary, Secondary, Tertiary), as necessary.

Interpretation Services will be performed “on-site” at the location indicated by the Authorized User and may be required at virtually any time and in any location within a region.

Arriving at Scheduled Location for Performance – Unless an Authorized User has specified a longer period, an Interpreter is required to arrive at least fifteen (15) minutes prior to the scheduled time of on-site performance to receive any instructions from the Authorized User. The Contractor is responsible for taking all necessary actions to obtain adequate transportation, accurate times, locations, directions, telephone numbers, contact person(s) and any other information or actions to ensure that they are present at the proper location and on time. Contractor must be aware of and adhere to any security clearances if applicable at Authorized User’s location, which may include providing photo identification.

Late Arrival Payment Reductions

Late Arrival Payment Reductions – Lateness is defined as late arrival to the scheduled engagement that does not result in the cancellation of the event. For Consecutive and Simultaneous Interpretation,

Employees must arrive 15 minutes prior to the scheduled event and any time after is considered a late arrival. For Over the Phone Interpretation, interpreters must be present on the line at the start of the scheduled appointment and any time after is considered a late arrival. An Authorized User shall not pay for any time for the period the Employee was late from the total period scheduled. More than three late arrivals in a one month period by the same Employee may result in removal from a position based on the discretion of the Authorized User. In addition, more than seven late arrivals by multiple employees from a single Contractor provided to a single Authorized User may be considered a failure to meet the Required Service Level and may result in a Contractor Deficiency Report.

Late Arrival Payment Reductions that results in the cancellation of the event – Some projects require interpretation as a critical step in serving the project's mission. For these projects the late arrival of an interpreter may result in the cancellation of the event. An Authorized User is required to notify the Contractor if late arrival of an interpreter will result in the cancellation of the event and with the duration of lateness that results in service cancellation. Such notice shall be in writing to the Contractor with a copy to the purchasing officer for this Contract. That notification results in higher penalties for late arrivals which cause an event cancellation. Late arrivals which force the event being interpreted to be cancelled are not acceptable. Two or more occurrences of late arrivals resulting in cancellation for the same Authorized User shall result in a Contractor Deficiency Report.

In the event that volume-based discounts and/or tenure discounts are applied to transaction that includes late completion payment reductions, the late completion payment reductions shall be the last price reduction applied to services billed.

Performance Time – Performance time for Consecutive and Simultaneous Interpretation shall consist of the total time the Interpreter is on-site performing services under the Contract. This time shall include the fifteen (15) minutes preceding the scheduled time for performance or any longer time requested by the Authorized User until the time the Authorized User expressly tells the Interpreter that they are finished for the day and should leave, inclusive of any waiting time by the Interpreter. Performance time for Over the Phone Interpretation shall consist of the total time the Interpreter is on the line performing services under the Contract. This time shall begin at the start of the scheduled time for performance until the time the Authorized User expressly tells the Interpreter that they are finished and may disconnect from the line, inclusive of any waiting time by the Interpreter.

Repeated instances (3 in a quarter) of early departure by the same interpreter shall result in that interpreter being disqualified from serving the State. More than five early departures in a one month period by interpreters from the same Contractor shall be result in a Contractor Deficiency Report.

At any time following interpretation services the Contractor may be required by the Authorized User to answer questions or receive additional instructions. The Contractor must keep an accurate record of all performance time. The Authorized User, upon the completion of performance, will verify this record.

In person translation services shall be billed in thirty minute increments based on the Contractor's hourly rates. Payment will be made for the total time rounded to the next thirty minute increment.

Over the phone translation shall be billed by the minute.

Minimum Fees:
A Contractor will be paid a minimum of one hour of their proposed rate for the following:

- Any appointment canceled with less than a twenty-four (24) hour notice from the scheduled appointment time.
- Any appointment where performance time for services is for less than one full hour.
- Other unusual circumstances approved by the Authorized User.

Contractor will be paid for a minimum of one hour for on-site work, unless Contractor is late for the scheduled appointment. For unplanned services requested outside an Authorized User's normal

operating hours (8am to 5 pm, Monday through Friday), an interpreter may be compensated one additional hour. This requirement applies to all in-person interpretation services.

Translating and Interpreting Event Cancellation:

In the event of proceeding cancellation without specific notification, the Contractor shall be entitled to minimum payment as noted above. As long as on-time, Contractor will be paid for any performance completed at their proposed per word rate for:

- Any assignment canceled by the Authorized User prior to completion by the Contractor provided the Contractor is performing within the stated parameters of the assignment.
- Any assignment modified by the Authorized User prior to completion by the Contractor.
- Other unusual circumstances approved by the requesting Authorized User.

Lot 7 - "Miscellaneous Health Occupations"

Audiologists
Assess and treat persons with hearing and related disorders. May fit hearing aids and provide auditory training. May perform research related to hearing problems. May also complete medical necessity reviews for requests for hearing aids.

Dietitians & Nutritionists
Plan and conduct food service or nutritional programs to assist in the promotion of health and control of disease. May supervise activities of a department providing quantity food services, counsel individuals, or conduct nutritional research.

Home Health Aides
Provide routine, personal healthcare, such as bathing, dressing, or grooming, to elderly, convalescent, or disabled persons in the home of patients or in a residential care facility.

Medical and Clinical Laboratory Technicians
Perform routine medical laboratory tests for the diagnosis, treatment, and prevention of disease. May work under the supervision of a medical technologist.

Mental Health & Substance Abuse Social worker
Assess and treat individuals with mental, emotional, or substance abuse problems, including abuse of alcohol, tobacco, and/or other drugs. Activities may include individual and group therapy, crisis intervention, case management, client advocacy, prevention, and education.

Occupational Therapist Assistants
Assist occupational therapists in providing occupational therapy treatments and procedures. May, in accordance with State laws, assist in development of treatment plans; carry out routine functions, direct activity programs, and document the progress of treatments. Generally requires formal training.

Occupational Therapists
Assess, plan, organize, and participate in rehabilitative programs that help restore vocational, homemaking, and daily living skills, as well as general independence, to disabled persons. May also complete medical necessity reviews for requests for highly complex durable medical equipment, supplies and OT services. Possess a valid degree and New York State licensure.

Pharmacist
Compound and dispense medications following prescriptions issued by physicians, dentists, or other authorized medical practitioners. Possess a valid degree and New York State licensure.

Physical Therapist Assistants
Assist physical therapists in providing physical therapy treatments and procedures. May, in accordance with State laws, assist in the development of treatment plans, carry out routine functions, document the progress of treatment, and modify specific treatments in accordance with patient status and within the scope of treatment plans established by a physical therapist. Generally requires formal training.

Physical Therapists
Assess, plan, organize, and participate in rehabilitative programs that improve mobility, relieve pain, increase strength, and decrease or prevent deformity of patients suffering from disease or injury. May also complete medical necessity reviews for requests for durable medical equipment and supplies as well as develop coverage criteria, maintain provider manuals and assist beneficiaries and providers in obtaining necessary services. Possess a valid degree and New York State licensure.

Physician Assistants
Provide healthcare services typically performed by a physician, under the supervision of a physician. Conduct complete physicals, provide treatment, and counsel patients. May, in some cases, prescribe medication. Must graduate from an accredited educational program for physician assistants.

Speech-Language Pathologists
Assess and treat persons with speech, language, voice, and fluency disorders. May select alternative communication systems and teach their use. May perform research related to speech and language problems.

Lot 8 - "Physicians and Nurses"

Family and General Practitioners
Diagnose, treat, and help prevent diseases and injuries that commonly occur in the general population. Provide comprehensive medical services for members of family, regardless of age or sex, on continuing basis: Examine patients, using medical instruments and equipment. Elicit and record information about patient's medical history. Order or execute various tests, analyses, and diagnostic images to provide information on patient's condition. Analyze reports and findings of tests and examination, and diagnose condition of patient. Administer or prescribe treatments and medications. Promote health by advising patients concerning diet, hygiene, and methods for prevention of disease. Inoculate and vaccinate patients to immunize patients from communicable diseases. Provide prenatal care to pregnant women, deliver babies, and provides postnatal care to mothers and infants. Perform surgical procedures commensurate with surgical competency. Refer patients to medical specialist for consultant services when necessary for patient's well-being. Possess a valid license to practice medicine in the State of New York. Possess and maintain a valid Federal Narcotics Number**.**

Nurses, Licensed Practical and Licensed Vocational
Provide nursing care under the direction of an RN, physician, or other authorized health care provider. Administer medications as directed. Provide bedside nursing care, including services requiring sterile techniques. Observe, measure, record, and report indications of patient health status. Perform more specialized tasks routinely, such as catheterizations and suctioning and others sparingly, such as IV therapy, with additional training. Administer blood and blood products. Licensing required. Licensed Practical Nurses and Licensed Vocational Nurses must have a minimum of one year work experience post licensure.

Nurses, Registered
Diagnose and treat a patient's health problems. Perform health assessments to identify new symptoms of possibly undiagnosed conditions or complications. Administer medication. Manage and deliver restorative or palliative care to the ill, disabled and dying. Teach and counsel patients about maintenance of health and prevention of illness or complications. Contribute as a member of an interdisciplinary health care team and as a consultant on health related committees to plan and implement the health care needs of consumers. Execute medical regimens as prescribed by licensed physicians, dentists, nurse practitioners, physician assistants, and podiatrists, and dentists. Includes advance practice nurses such as: clinical nurse specialists, certified nurse midwives, and certified registered nurse anesthetists. Advanced practice nursing is practiced by RNs who have specialized formal, post-basic education and who function in highly autonomous and specialized roles. Registered nurses must be licensed and have a minimum of one year work experience post licensure.

Nurses, Registered Bi-Lingual Spanish/English
Same requirements as for "Nurses, Registered" position. Must have full fluency in both English and Spanish language including reading, writing and speaking.

Nurse Practitioner
Perform physical examinations, diagnose illnesses and conditions and prescribe a plan of corrective care, exclusively within their specialty area of practice in collaboration with a licensed physician. Order, interpret and evaluate diagnostic tests to identify and assess patient's clinical problems and health care needs. Record physical findings, and formulates plan and prognosis, based on patient's condition. Discuss case with physician and other health professionals to prepare comprehensive patient care plan. Submit health care plan and goals of individual patients for periodic review and evaluation by physician. Prescribe or recommend drugs or other forms of treatment such as physical therapy, inhalation therapy, or related therapeutic procedures. May refer patients to physician for consultation or to specialized health resources for treatment. May be designated according to field of specialization as Pediatric Nurse Practitioner. Must have a New York State License to practice as a Registered Professional Nurse; and certification by the New York State Education Department in a specialty area to practice as a Nurse Practitioner.

Nursing Aides, Orderlies, and Attendants
Provide basic patient care under direction of nursing staff. Perform duties, such as feed, bathe, dress, groom, or move patients, or change linens.

Lot 9 - "Dental Services"

Dental Assistants
Assist dentist, set up patient and equipment, and keep records.

Dental Hygienists
Clean teeth and examine oral areas, head, and neck for signs of oral disease. May educate patients on oral hygiene, take and develop X-rays, or apply fluoride or sealants. May also review requests for services and make recommendations to the staff dentists for final determination of prior authorization.

Dentists, General
Diagnose and treat diseases, injuries, and malformations of teeth and gums and related oral structures. May treat diseases of nerve, pulp, and other dental tissues affecting vitality of teeth. May also review complex requests and make clinical determinations for procedures and services which require prior authorization. Possess a valid dental degree and New York State licensure.

Lot 10 - "Psychiatric Services"

Psychiatrist

Screen patients to determine need for psychiatric treatment/admission to program. Obtain medical information from the other treatment providers. Patient screening, evaluations, treatment planning, education management, consultation to staff, education and training for the staff and related duties. Order laboratory tests and other routine diagnostic procedures in coordination with treatment plan. Evaluate laboratory tests and history to determine if findings are within normal limits and, when necessary, refer cases to primary physicians, noting abnormalities, recommendations for additional diagnostic procedures, possible diagnosis and treatment recommendations and plans. Formulate diagnosis and treatment plans. Refer patients to other treatment providers based on diagnostic and treatment needs. Explain to and answer questions from patients, their caregivers and families about treatment plans, test procedures and psychiatric diagnosis. Comply with American Medical Association, Joint Commission, Federal, State and local standards relating to patient care and related activities. Prescribe medications in accordance with the guidelines of the program, OMH/Facility policy. Counsel and instruct patients and caregivers about their conditions and health issues, such as effects of nutrition, exercise, drugs, alcohol. Be board-certified or board-eligible Child and/or Adult psychiatrist by the American Board of Psychiatry and Neurology. Possess a valid license to practice medicine in the State of New York. Possess and maintain a valid Federal Narcotics Number**.**

Psychologists, Clinical

Diagnose or evaluate mental and emotional disorders of individuals through observation, interview, and psychological tests, and formulate and administer programs of treatment.

Lot 11 - "Light Industrial Occupations"

Asbestos Removal Worker
Remove asbestos from ceilings, walls, beams, boilers, and other structures, following hazardous waste handling guidelines. Assemble scaffolding and seal off work area, using plastic sheeting and duct tape. Position mobile decontamination unit or portable showers at entrance of work area. Build connecting walkway between mobile unit or portable showers and work area, using hand tools, lumber, nails, plastic sheeting, and duct tape. Position portable air evacuation and filtration system inside work area. Spray chemical solution over asbestos covered surfaces, using tank with attached hose and nozzle, to soften asbestos. Cut and scrape asbestos from surfaces, using knife and scraper. Shovel asbestos into plastic disposal bags and seal bags, using duct tape. Clean work area of loose asbestos, using vacuum, broom, and dust pan. Place asbestos in disposal bags and seal bags, using duct tape. Dismantle scaffolding and temporary walkway, using hand tools, and place plastic sheeting and disposal bags into transport bags. Seal bags, using duct tape, and load bags into truck.

Boiler Makers
Construct, assemble, maintain, and repair stationary steam boilers and boiler house auxiliaries. Align structures or plate sections to assemble boiler frame tanks or vats, following blueprints. Work involves use of hand and power tools, plumb bobs, levels, wedges, dogs, or turnbuckles. Assist in testing assembled vessels. Direct cleaning of boilers and boiler furnaces. Inspect and repair boiler fittings, such as safety valves, regulators, automatic-control mechanisms, water columns, and auxiliary machines.

Carpenters
Construct, erect, install, or repair structures and fixtures made of wood, such as concrete forms; building frameworks, including partitions, joists, studding, and rafters; wood stairways, window and door frames, and hardwood floors. May also install cabinets, siding, drywall and batt or roll insulation. Include brattice builders who build doors or brattices (ventilation walls or partitions) in underground passageways to control the proper circulation of air through the passageways and to the working places.

Electrician
Plan layout, install, and repair wiring, electrical fixtures, apparatus, and control equipment. Plan new or modified installations to minimize waste of materials, provide access for future maintenance, and avoid unsightly, hazardous, and unreliable wiring, consistent with specifications and State and local electrical codes. Prepare sketches showing location of wiring and equipment, or follow diagrams or blueprints, ensuring that concealed wiring is installed before completion of future walls, ceilings, and flooring. Measure, cut, bend, thread, assemble, and install electrical conduit, using tools, such as hacksaw, pipethreader, and conduit bender. Pull wiring through conduit. Splice wires by stripping insulation from terminal leads, using knife or pliers, twisting or soldering wires together, and applying tape or terminal caps. Connect wiring to lighting fixtures and power equipment, using hand tools. Install control and distribution apparatus, such as switches, relays, and circuit-breaker panels, fastening in place with screws or bolts, using hand tools and power tools. Connect power cables to equipment, such as electric range or motor, and install grounding leads. Test continuity of circuit to ensure electrical compatibility and safety of components, using testing instruments, such as ohmmeter, battery and buzzer, and oscilloscope. Observe functioning of installed equipment or system to detect hazards and need for adjustments, relocation, or replacement. May repair faulty equipment or systems

Laborers
Perform tasks involving physical labor at building, highway, and heavy construction projects, tunnel and shaft excavations, and demolition sites. May operate hand and power tools of all types: air hammers, earth tampers, cement mixers, small mechanical hoists, surveying and measuring equipment, and a variety of other equipment and instruments. May clean and prepare sites, dig trenches, set braces to support the sides of excavations, erect scaffolding, clean up rubble and debris, and remove asbestos, lead, and other hazardous waste materials. May assist other craft workers.

Masons
Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, roads, or curbs using a variety of hand and power tools. Align forms for sidewalks, curbs, or gutters; patch voids; use saws to cut expansion joints.

Painter
Apply coats of paint, varnish, stain, enamel, or lacquer to decorate and protect interior or exterior surfaces, trimmings, and fixtures of buildings and other structures. Read work order or receive instructions from supervisor regarding painting. Smooth surfaces, using sandpaper, brushes, or steel wool, and remove old paint from surfaces, using paint remover, scraper, wire brush or blowtorch to prepare surfaces for painting. Fill nail holes, cracks, and joints with caulk, putty, plaster, or other filler, using caulking gun and putty knife. Select premixed paints, or mixes required portions of pigment, oil, and thinning and drying substances to prepare paint that matches specified colors. Remove fixtures, such as pictures and electric switchcovers, from walls prior to painting, using screwdriver. Spread dropcloths over floors and room furnishings, and covers surfaces, such as baseboards, door frames, and windows with masking tape and paper to protect surfaces during painting. Paint surfaces, using brushes, spray gun, or paint rollers. Simulate wood grain, marble, brick, or tile effects. Apply paint with cloth, brush, sponge or fingers to create special effects. Erect scaffolding or set up ladders to perform tasks above ground level.

Plumber
Assemble, install and repair pipes, fittings, and fixtures of heating, water, and drainage systems, according to specifications and plumbing codes: Study building plans and working drawings to determine work aids required and sequence of installations. Inspect structure to ascertain obstructions to be avoided to prevent weakening of structure resulting from installation of pipe. Locate and mark position of pipe and pipe connections and passage holes for pipes in walls and floors, using ruler, spirit level, and plumb bob. Cut openings in walls and floors to accommodate pipe and pipe fittings, using hand tools and power tools. Cut and threads pipe, using pipe cutters, cutting torch, and pipe-threading machine. Bend pipe to required angle by use of pipe-bending machine or by placing pipe over block and bending it by hand. Assemble and install valves, pipe fittings, and pipes composed of metals, such as iron, steel, brass, and lead, and nonmetals, such as glass, vitrified clay, and plastic, using hand tools and power tools. Join pipes by use of screws, bolts, fittings, solder, plastic solvent, and caulks joints. Fill pipe system with water or air and read pressure gauges to determine whether system is leaking. Install and repair plumbing fixtures, such as sinks, commodes, bathtubs, water heaters, hot water tanks, garbage disposal units, dishwashers, and water softeners. Repair and maintain plumbing by replacing washers in leaky faucets, mending burst pipes, and opening clogged drains. May weld holding fixtures to steel structural members.

Roofers
Cover roofs of structures with shingles, slate, asphalt, aluminum, wood, and related materials. May spray roofs, sidings, and walls with material to bind, seal, insulate, or soundproof sections of structures.
Align roofing materials with edges of roofs. Apply alternate layers of hot asphalt or tar and roofing paper to roofs, according to specification.
Apply gravel or pebbles over top layers of roofs, using rakes or stiff-bristled brooms.
Apply plastic coatings and membranes, fiberglass, or felt over sloped roofs before applying shingles.
Cement or nail flashing-strips of metal or shingle over joints to make them watertight.
Cover exposed nailheads with roofing cement or caulking to prevent water leakage and rust.
Cover roofs and exterior walls of structures with slate, asphalt, aluminum, wood, gravel, gypsum, and/or related materials, using brushes, knives, punches, hammers and other tools.
Cut felt, shingles, and strips of flashing; and fit them into angles formed by walls, vents, and intersecting roof surfaces.
Cut roofing paper to size using knives; and nail or staple roofing paper to roofs in overlapping strips to form bases for other materials.
Glaze top layers to make a smooth finish, or embed gravel in the bitumen for rough surfaces

Sheet-Metal Worker
Plan, lays out, fabricate, assemble, install, and repair sheet metal parts, equipment, and products, utilizing knowledge of working characteristics of metallic and nonmetallic materials, machining, and layout

techniques, using hand tools, power tools, machines, and equipment: Read and interprets blueprints, sketches, or product specifications to determine sequence and methods of fabricating, assembling, and installing sheet metal products. Select gauge and type of sheet metal, such as galvanized iron, copper, steel, or aluminum, or nonmetallic material, such as plastics or fiberglass, according to product specifications. Lay out and marks dimensions and reference lines on material, using scribers, dividers, squares, and rulers, applying knowledge of shop mathematics and layout techniques to develop and trace patterns of product.

Welder
Assembles and tack-welds steel frames and other component parts of machinery and equipment in preparation for final welding: Measures and marks locations for metal components on assembly table, following blueprints. Lifts and positions components on assembly table, using electric crane, jacks, and shims. Verifies position of metal components in assembly, using straightedge, combination square, calipers, and rule. Clamps metal components to assembly table for welding. Removes rough spots from castings, using portable powered grinder and hand file, to fit and assemble parts. Tack-welds parts in preparation for final welding. Moves assembly to storage area, using electric crane.

Lot 11 Specific Requirements
All levels within a specific job title (i.e., Apprentice, Journeyman, Foreman) as outlined in the current Prevailing Wage Schedule are included in this Lot.

A Bidder shall bid a percentage above Prevailing Wage. The same percentage shall apply to all levels within a job title.

Work being bid in Lot 11 – Light Industrial Occupations is subject to the prevailing wage rate provisions of New York State Labor Law.

A Contractor is reminded that workers for all tiles in this lot must be paid the current prevailing wage at the time work is performed. ALL PUBLIC WORKS AND BUILDING SERVICE CONTRACTS, REGARDLESS OF DOLLAR VALUE, REQUIRE THE PAYMENT OF PREVAILING WAGES AND SUPPLEMENTS AS ESTABLISHED BY LAW BY THE DEPARTMENT OF LABOR.

NOTE: CONTRACTORS AND SUBCONTRACTORS ARE FURTHER REQUIRED TO POST THE PREVAILING WAGE RATES IN A PROMINENT AND ACCESSIBLE PLACE AT THE WORK SITE. Contractor is solely responsible for confirming subsequent changes to the posted rates and for paying the prevailing rates at all times during the contract term.

Appendix D # 3

Background Check Requirements

Requirements

As set forth below Contractor shall be obligated to undertake and complete the following background checks for each Candidate it proposes after such Candidate has been tentatively selected by the Authorized User but prior to the start of the engagement. The Contractor's cost for performing background checks shall be compensated as per the agreed upon pricing listed in the Contract. Background checks are required for all Job titles which are performed in person, including Lots 1, 2, 4, 5, 7, 8, 9, 10, and 11. All Lot 3 and Lot 6 titles do not require background checks.

At the discretion of the Authorized User, a replacement Candidate may begin work before the background check is completed, if there is the issuance of a written waiver by the Authorized User to the Contractor.

If the Candidate's Master File contains educational background verification and social security number verification, then these items may be omitted from the initial background check at the discretion of the Authorized User. If the Master File contains employment verification from previous engagements with the State, then employment verification is only required to be updated going back to the previous verification included in the Master File.

A. Background Check

(1) When a Contractor proposes a Candidate, any previously completed background check shall be furnished with such Candidate's resume and Master File at the time of proposal. If the Authorized User tentatively selects such Candidate, and the prior background check was completed more than six months before the Authorized User's tentative selection, then the Contractor shall perform an updated background check and provide the results thereof to the Authorized User. If there was no previous background check, the Contractor shall perform a complete background check and provide the results thereof to the Authorized User.

(2) The Contractor is responsible for completing background checks on each Candidate prior to such Candidate beginning work. The completion of a background check of a given candidate shall not provide a given candidate with clearance to secured areas. A Contractor is required to maintain records of background checks for the Contract term, to include them in the Candidate's Master File, and make such records available to the State when requested.

(3) At a minimum, the background check must include the following steps:

i. Undertaking a criminal history record check including a) a national criminal history check, and b) state and county criminal checks using the NYS Office of Court Administration (NYSOCA) and comparable searches of states where the person lived, worked or attended school during the past five years. In the alternative, a Contractor may elect to obtain the record of convictions from NYSOCA directly and from their equivalents from other states where the person lived, worked or attended school during the past 5 years;
ii. For positions in which the Candidate may be working directly or indirectly with minors, the elderly, or incapacitated individuals, determine if the Candidate is listed on the NYS Sex Offender Registry. The Authorized User is responsible for communicating these circumstances to the Contractor;
iii. Verification of previous employment for the past five years;
iv. Verification of educational background;
v. Verification of social security number and U.S. citizenship or legal resident status;
vi. For Lot 11 job titles where driving a vehicle may be a job requirement, review of the NYS Department of Motor Vehicles driving records; and
vii. Any other check requested by the Authorized User as necessary.

After the completion of the background check, the Contractor shall provide the results to the Authorized User. The Authorized User shall review the information and make a determination about the suitability of the Candidate for the position in accordance with the relevant statutory and contractual provisions.

B. Employee Removal

If a Contractor becomes aware that any Employee it has provided to work for an Authorized User under an OGS contract becomes a potential unacceptable risk to the State, the Contractor shall immediately notify the Authorized User, and jointly decide if it is necessary to remove that Employee from the site. If an Employee is removed, the Contractor will notify OGS that such a removal has taken place, and propose a qualified substitute Candidate. An Authorized User may waive the removal of an Employee by providing a written waiver to the Contractor. Should an Authorized User find an Employee to be an unacceptable risk to the State, the Authorized User shall notify the Contractor and may request that the Contractor provide a replacement Candidate.

Appendix D #4
Report of Contract Usage

Please refer to the embedded Excel file.

Appendix D #4
Report of Contract U

Appendix D #5
Contractor Pricing

I. Contractor Pricing:

Nexus Staffing Inc

LOT 1 REGION 1 Tertiary

JOB TITLE	PAY RATE	MARKUP %	BILL RATE	OVERTIME MARKUP %	OVERTIME BILL RATE	PAYROLL ONLY MARKUP %
Bookkeeping, Accounting, and Auditing Clerks	$10.80	19.63%	$12.91	19.63%	$19.37	19.63%
Computer Operators	$12.10	19.63%	$14.48	19.63%	$21.71	19.63%
Computer Support Specialists	$14.19	19.63%	$16.98	19.63%	$25.46	19.63%
Data Entry and Word Processing	$9.62	19.63%	$11.50	19.63%	$17.25	19.63%
Executive Secretaries and Administrative Assistants	$14.63	19.63%	$17.50	19.63%	$26.25	19.63%
File Clerks	$8.58	19.63%	$10.26	19.63%	$15.40	19.63%
Freight, Stock, and Material Movers, Hand	$10.00	19.63%	$11.96	19.63%	$17.94	19.63%
Legal Secretaries	$12.09	19.63%	$14.46	19.63%	$21.69	19.63%
Mail Clerks, Except Mail Machine Operators and Postal Service	$8.99	19.63%	$10.75	19.63%	$16.13	19.63%
Medical Secretaries	$12.00	19.63%	$14.36	19.63%	$21.53	19.63%
Public Relations Manager/Public Information Officer	$25.00	19.63%	$29.91	19.63%	$44.86	19.63%
Receptionists/Secretaries, Except Legal, Medical, and Executive	$10.00	19.63%	$11.96	19.63%	$17.94	19.63%
Stock Clerks, Stockroom, Warehouse, or Storage Yard	$9.70	19.63%	$11.60	19.63%	$17.41	19.63%

LOT 1 REGION 2 Tertiary

JOB TITLE	PAY RATE	MARKUP %	BILL RATE	OVERTIME MARKUP %	OVERTIME BILL RATE	PAYROLL ONLY MARKUP %
Bookkeeping, Accounting, and Auditing Clerks	$10.78	19.63%	$12.90	19.63%	$19.34	19.63%
Computer Operators	$12.10	19.63%	$14.48	19.63%	$21.71	19.63%
Computer Support Specialists	$17.52	19.63%	$20.96	19.63%	$31.44	19.63%
Data Entry and Word Processing	$9.16	19.63%	$10.95	19.63%	$16.43	19.63%
Executive Secretaries and Administrative Assistants	$16.00	19.63%	$19.14	19.63%	$28.71	19.63%
Legal Secretaries	$11.25	19.63%	$13.46	19.63%	$20.19	19.63%
Switchboard Operators, Including Answering Service	$8.75	19.63%	$10.47	19.63%	$15.70	19.63%

II. Contractor Additional Discounts:

VOLUME DISCOUNT - HOURLY POSITIONS	
TOTAL SPEND RANGE	**% DISCOUNT FROM TOTAL BILLED**
0 - $5.0 Million	0.00%
> $5.0 - $7.5 Million	0.50%
> $7.5 - $10.0 Million	0.75%

> $10.0 Million	1.15%

III. Background Check Fees:

STANDARD INITIAL CHECKS	
TYPE OF BACKGROUND CHECK	**FEE PER BACKGROUND CHECK**
NATIONAL CRIMINAL BACKGROUND CHECK	**$ 12.00**
STATE & COUNTY CRIMINAL HISTORY	**$ 75.00**
SEXUAL OFFENDER REGISTRY QUERY	**$ 15.00**
EMPLOYMENT VERIFICATION	**$ 15.00**
EDUCATIONAL BACKGROUND VERIFICATION	**$ 15.00**
SOCIAL SECURITY NUMBER VERIFICATION	**$ 15.00**
DEPARTMENT OF MOTOR VEHICLES CHECK	**$ 20.00**
TOTAL	**$ 167.00**

Appendix D # 6

Contractor's Insurance Requirements

Contractor must provide proof of current insurance throughout the contract term if requested by an Authorized User or OGS Procurement Services Group. The Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York ("admitted" carriers) with an A.M. Best Company rating of "A-" Class "VII" or better or as acceptable to the New York State Office of General Services ("OGS"). If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OGS and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. OGS may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require OGS to accept insurance placed with a non-authorized carrier under any circumstances.

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

General Conditions

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

1. Coverage Types and Policy Limits. The types of coverage and policy limits required from the Contractor are specified in Paragraph B *Insurance Requirements* below.

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

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

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

Certificates of Insurance shall:

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

e. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit, and
f. Be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance and other attachments) will be accepted.

4. Primary Coverage. All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from the Contractor 's **w**ork under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance" clause contained in OGS or the Authorized User's own policy of insurance.

5. Policy Renewal/Expiration. At least two weeks prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to OGS than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph A.3. *Certificates of Insurance/Notices* above. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OGS or Authorized Users may withhold further contract payments, treat such failure as a breach or default of the contract.

6. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductible/self insured retention on each policy. Deductibles or self-insured retentions above $100,000 are subject to approval from OGS. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

7. Subcontractors. Should the Contractor engage a Subcontractor, the Contractor shall endeavor to impose the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to OGS.

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

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

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

a) Commercial General Liability Insurance with a limit of not less than $2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent

contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

1. If such insurance contains an aggregate limit, it shall apply separately on a per job basis.
2. Contractors providing services strictly for Lot 1 are exempt from obtaining coverage for explosion, collapse & underground liabilities.

b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included. The Alternate Employer Endorsement WC 00 03 01A must be included on the policy naming The People of the State of New York as the alternate employer for this contract. See section C below.

c) Comprehensive Business Automobile Liability Insurance with a limit of not less than $2,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned (if applicable), leased, hired and non owned automobiles. If Contractor does not own any business automobile(s) at the time of Contract execution but takes ownership of any business automobile(s) during the Contract term, Contractor will be required to provide such coverage at such time.

d) If providing professional occupation job titles, the Contractor shall maintain errors and omissions liability insurance with a limit of not less than $2,000,000 per loss.

1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.

2. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to OGS prior to the policy's expiration or cancellation.

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

C. Workers' Compensation Insurance and Disability Benefits Requirements

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

1. Proof of Compliance with Workers' Compensation Coverage Requirements:

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

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

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

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

2. Proof of Compliance with Disability Benefits Coverage Requirements:

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

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

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

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

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

Appendix D # 7

Required Service Levels

The following are the General and Lot Specific Service Level Requirements the Contractor is required to meet during the Contract. Failure to meet the Requirements below shall result in the Authorized User submitting a Contractor Deficiency Report to the Office of General Services. This list is intended to set out sample infractions and is not inclusive of all contractual requirements. In the event of a conflict between a General Service Level Requirement and a Lot Specific Service Level Requirement, the Lot Specific Service Level Requirement shall control.

General Service Level Requirements

1. The Contractor is required to recommend quality Candidate options in response to the titles requested by Authorized Users. The Contractor shall only propose Candidates who meet the requirements set forth in "**Appendix D, #2 – Job Descriptions, Qualifications and Requirements."** Contractor shall verify that each Candidate recommended possesses the minimum qualifications for the job title. The Contractor shall also be responsible for ensuring that each Candidate possesses all the required licenses and certifications associated with each job title (e.g., a lawyer must have a license to practice law). Unless a special request for additional Candidate criteria is made by an Authorized User, Contractor must provide a Candidate that meets the Authorized User's requirements within the first five suggested. If a Contractor is unable to provide one qualified Candidate out of five suggestions within two days of the request, the Authorized User will consider the request unfulfilled and make the same request of the Secondary Contractor in accordance with the Procurement Instructions. The Contractor shall maintain a Master File for each Candidate including: resume, qualifications, certifications, licenses, and any previous background checks completed for the Candidate. The Master File shall be kept in electronic format (i.e., scanned documents). The Contractor shall provide a Candidate's Master File when suggesting them for consideration of a role.
2. The Contractor shall provide appropriate background checks as detailed in "**Appendix D, #3 – Background Check Requirements."** The Contractor shall pre-screen Candidates as defined in the respective job descriptions for all positions requested. Failure to do so will result in a Contractor Deficiency Report.
3. Late Arrival Payment Reductions – Lateness is defined as late arrival to the scheduled engagement that does not result in the cancellation of the event. Late arrival shall be determined at the Authorized User's discretion. An Authorized User shall not pay for any time for the period the Employee was late from the total period scheduled. More than three late arrivals in a one month period by the same Employee may result in removal from a position based on the discretion of the Authorized User. In addition, more than seven late arrivals by multiple employees from a single Contractor provided to a single Authorized User may be considered a failure to meet the Required Service Level and may result in a Contractor Deficiency Report.
4. The Contractor is obligated to submit accurate and complete bills. If the Contractor bills for services not specified in the Scope or Services, or at rates greater than those specified in the Contract, an Authorized User shall submit a Contractor Deficiency Report. If a Contractor offers prompt payment discounts, Contractor shall include the terms of the discount on all invoices, the amounts which are due if the Authorized User meets the terms, and the date for which the prompt payment discount(s) expire.

5. The Contractor is obligated to submit accurate, complete and timely Contract Usage Reports in accordance with the Contract. The failure to submit accurate, complete and timely Contract Usage Reports to Authorized Users or OGS will result in a Contractor Deficiency Report.
6. The Contractor shall be available to accept orders between the hours of 9:00 a.m. and 5:00 p.m. seven days a week. Failure to do so will result in a result in a Contractor Deficiency Report. Additional hours for accepting orders are at the discretion of the Contractor.

Replacement Candidates

7. For job titles in Lots 1, 4, 5, 7, 8, 9 and 10, the Contractor must propose a replacement Candidate within two (2) workdays of request from an Authorized User. For job titles in Lots 2, 6 and 11, the Contractor must propose a replacement Candidate within one (1) workday of request from an Authorized User. The Authorized User may review Contractor's selection process and/or Candidate resumes. A background check must be run on the replacement Candidate before they begin working. However, at the discretion of the Authorized User, the replacement Candidate may begin work before the background check is completed as long as the Authorized User provides the Contractor with a waiver in writing. The Authorized User has the right to reduce the length of the work assignment and the Contractor shall be provided as much notice as is reasonably possible. A minimum of 24 hours' notice will be given, except when reduction is due directly to acts of God, wars, acts of public enemies, strikes, fire or flood, or similar causes beyond the control of the Authorized User.

Lot Specific Service Level Requirements

The lots applicable to Contractor are designated in **Appendix D, #1 – Awarded Lot(s) and Region(s); Contractor Status.**

LOT 2 - Hearing Reporters

8. A Hearing Reporter shall be at the scheduled proceeding, session, or meeting a minimum of ten (10) minutes prior to start time, and expected to stay until told they are able to leave. More than three latenesses or early departures in a one month period by the same Hearing Reporter from the same Contractor provided to the same Authorized User may result in that Hearing Reporter being disqualified from serving that Authorized User. More than seven latenesses or early departures in a one month period by Hearing Reporters from the same Contractor provided to the same Authorized User will result in a Contractor Deficiency Report.
9. More than fifteen (15) percent of transcripts returned late in any calendar month for a specific Authorized User: The Authorized User may arrange to have transcription work completed by another vendor and the Contractor shall be liable for costs incurred over Contract costs as noted in Paragraph 63 of Appendix B – Remedies for Breach. This is considered an example of poor service will result in a Contractor Deficiency Report.

LOT 3 - Transcription Service

10. More than fifteen (15) percent of transcripts returned late in any calendar month for a specific Authorized User: The Authorized User may arrange to have transcription work completed by

another vendor and the Contractor shall be liable for costs incurred over Contract costs as noted in Paragraph 63 of Appendix B – Remedies for Breach. More than fifteen (15) percent of transcripts returned late in any calendar month is considered poor service will result in a Contractor Deficiency Report.

11. A Contractor is obligated to provide a transcription services in a professional manner. Absent extenuating circumstances, the Contractor and Authorized User agree that no more than one out of every ten transcriptions should have repeated reports of inaudible sections. If more than one out of ten transcriptions have repeated reports of inaudible section, such Authorized User shall submit a Contractor Deficiency Report.

LOT 6 - Translation Services

12. Contractor shall recommend qualified interpreter(s) for any and all languages requested by the Authorized User within a one week time frame. Failure to do so more than twice in a month for a single Authorized User shall count as a service level failure and will result in a Contractor Deficiency Report by that Authorized User, unless the Contractor is not able to provide an interpreter for a specific language (other than Spanish, Chinese, Italian, Russian, French or French Creole), in which case the Contractor shall notify the Authorized User as soon as possible so that the Authorized User may request those services from the next highest priority Contractor (Primary, Secondary, Tertiary), as necessary.
13. Late Arrival – Lateness is defined as late arrival to the scheduled interpretation that does not result in the cancellation of the event. For Consecutive and Simultaneous Interpretation, interpreters must arrive 15 minutes prior to the scheduled translation event and any time after is considered a late arrival. For Over the Phone Interpretation, interpreters must be present on the line at the start of the scheduled appointment and any time after is considered a late arrival. An Authorized User shall not pay for any time for the period the Interpreter was late from the total period scheduled. More than three late arrivals in a one month period by the same interpreter may result in that interpreter being disqualified from the centralized Contracts serving the State. A Contractor whose employees are consistently late may be terminated from the Contract for poor performance. More than seven late arrivals in a one month period by interpreters from the same Contractor for the same Authorized User shall result in a Contractor Deficiency Report.
14. Late Arrival that results in the cancellation of the event – Some projects require interpretation as a critical step in serving the project's mission. For these projects the late arrival of an interpreter may result in the cancellation of the event. An Authorized User is required to notify the Contractor if late arrival of an interpreter will result in the cancellation of the event and with the duration of lateness that results in service cancellation. Such notice shall be in writing to the Contractor with a copy to the purchasing officer for this Contract. That notification results in higher penalties for late arrivals which cause an event cancellation. Late arrivals which force the event being interpreted to be cancelled are not acceptable. Two or more occurrences of late arrivals resulting in cancellation for the same Authorized User shall result in a Contractor Deficiency Report.

CONSEQUENCES OF CONTRACTOR NON-COMPLIANCE WITH REQUIRED SERVICE LEVELS

1. The tiered structure of this Contract is maintained through enforcement of the Required Service Levels. Deficient or non-compliant service levels will result in a Contractor Deficiency Report (CDR). The submission of a CDR is not limited to a failure by the Contractor to meet the Required Service Levels as stated in this Attachment. At the discretion of the Authorized User, a CDR may be submitted at any time the Authorized User identifies a Contractor performance issue or other non-compliance with contractual requirements.

2. The CDR Process is in addition to and does not impair or limit any other rights an Authorized User has under the Contract.

3. The receipt of three (3) (CDR) from Authorized Users within time period specified below shall result in a review of the Contractor's status by OGS as set forth herein.

4. When a service level is not met or an Authorized User identifies a performance issue or other non-compliance with contract requirements by a Contractor the Authorized User(s) shall alert OGS to the deficiency or non-compliance using the CDR, where it will be recorded centrally. The Authorized User shall at the same time provide a copy of the Contractor Deficiency Report to the Contractor.

5. Upon the receipt of three Contactor Deficiency Reports from Authorized Users within the first quarter (i.e., three month period) of the Contract, or within any twelve month period after that commencing on the first day of the fourth quarter of the Contract, OGS will advise the Contractor that three CDRs have been filed against the Contractor and that OGS will be commencing a Contractor Status Review. OGS shall provide the Contractor with copies of the CDRs.

6. During the Contractor Status Review Contractor retains its status as "Primary", "Secondary" or "Tertiary" Contractor" and all associated rights under the Contract. Provided, however, OGS reserves the right to issue a Suspension Notice under Appendix B section 59 based on the severity of the CDRs as to the ability of the Contractor to receive new orders or perform any work under the Contract until the conclusion of the Contract Status Review. During the suspension period the Contractor would not be eligible to receive new orders. The issuance of a Suspension Notice shall not affect any other rights either OGS or an Authorized User has under the Contract.

7. After OGS provides the Contractor with notice, it will provide the Contractor with an opportunity to be heard at the Contractor Status review. The Contractor Status Review shall include a discussion with the Contractor and the Authorized User(s) who submitted the CDRs regarding the specific incidents as recorded in the CDRs. The time and manner of these meetings shall be at OGS's sole discretion. As a result its discussions with the Contractor and the Authorized User(s) OGS may, at its sole discretion, provide for the development of an improvement and monitoring plan ("Plan") for the Contractor to correct the service issues identified in the CDRs.

8. The Plan shall set forth the actions Contractor is required to take to address the issues identified in the CDRs. The Plan shall specify the level of documentation Contractor shall provide to OGS as to its compliance with the Plan and a timeline for submission of such documents.

9. OGS shall in its sole discretion prescribe the length of time the Contractor shall be allowed to address the issues. OGS in establishing the length of time shall consider the severity of the deficiencies or non-compliance. OGS may consult with the Authorized User(s) to seek their input as to the length of time Contractor should be allowed to address the issues. The Plan will be issued in a form and manner determined by OGS.

10. At the end of the time period specified in the Plan OGS shall review the Contractor's actions and documentation submitted according to the Plan. OGS may also consult with the Authorized User(s) who filed the CDRs. Following its review OGS shall make a determination of the Contractor's Contract Status Level. A determination of consistently poor service or a failure to adequately meet the Required Service Levels shall result in the reduction of the Contractor's status. OGS shall advise the Contractor and the Authorized Users of the results of its review and whether there is a reduction in Contractor's Contract Status Level.

11. Contract Status Reduction shall not affect the status of Employees. Provided, however, in addition to any other rights under the Contract, in the event of a Contract Status Reduction the Authorized User(s) having filed the CDR(s) shall have the discretion to remove any Employee who was the subject of a CDR(s) and seek a replacement from the Contractor that becomes the Primary Contractor as result of the Contract Status Reduction.

12. Contract Status Reduction shall be on a per lot, per region basis based on the CDRs. Issues that span across multiple regions and/or lots shall result in status reduction of all applicable regions and lots. In the case of Contractor Status Reduction, Contractor status shall be adjusted per the following procedures:
    a. Status Reduction of Primary Contractor shall mean:
        i. Primary Contractor becomes Tertiary Contractor;
        ii. Secondary Contractor becomes Primary Contractor;
        iii. Tertiary Contractor becomes Secondary Contractor.
    b. Status Reduction of Secondary Contractor shall mean:
        i. Secondary Contractor becomes Tertiary Contractor;
        ii. Tertiary Contractor becomes Secondary Contractor;
        iii. Primary Contractor maintains status.

13. OGS shall compile a record of each Contract Review Status proceeding.

Appendix D #8
Contractor Deficiency Report

Please refer to Appendix D #7, Required Service Levels, for additional information on the requirements imposed on the Contractor.
Please forward the completed form to the OGS-Procurement Services Group.

As a user of the centralized contract, you are required to submit reports to OGS regarding deficient performance by a Contractor. A copy of this report must also be submitted to the Contractor at the time of submission to OGS. Please provide as much detail as possible regarding the deficient performance, including the name(s) of Contractor's Employees involved in the circumstances. Please attach additional documents as needed. The submission of a Contractor Deficiency Report is not limited to a failure by the Contractor to meet the Required Service Levels as stated in Attachment D, #7 of this Contract. At the discretion of the Authorized User, a Contractor Deficiency Report may be submitted at any time the Authorized User identifies a Contractor performance issue.

Contractor Name:_____ **Contract Number**:_____

Lot Number:_____ **Region Number**:_____

Job Title(s):_____

Type of Deficiency:_____

Please provide details/comments: _____

_____

_____

_____

_____

Agency:_____ **Prepared by**:_____

Phone:_____ **E- mail**:_____

Date:_____

PLEASE RETURN VIA EMAIL TO THE PURCHASING OFFICER
LISTED ON THE FIRST PAGE OF THE CONTRACT AWARD OR MAIL/FAX TO:

OGS PROCUREMENT SERVICES GROUP
38thFloor Corning Tower - Empire State Plaza
Albany, New York 12242
Telephone No. (518) 474-6717
Fax (518) 474-2437

Appendix D #9
Contractor Contact Information, Locations, Procurement Card, and Online Portal

I. Contractor Contact Information:

Contact Person	Finny Varghese
Contact Telephone Number	516-216-5860
Contact Fax Number	516-908-3949
Contact email	fvarghese@nexusstaff.com
Contactor Toll-free Number	(888) 997-2772

II. Contractor Locations:

Address	260 Evelyn Road
City	Mineola
State	NY
Zip Code	11501-2128

III. Procurement Card: Contractor does not accept NYS Procurement Card

A. Contractor Dollar Limit for Acceptance of Procurement Card: N/A
B. Contractor Discount for Use of Procurement Card: N/A

IV. Contractor Online Portal Information:

Contractor has an online portal that can be customized to meet New York's needs and reflect Contract terms.

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

April 5, 2006

TO: All State Agencies & Departments

FROM: Pete Favretto
Contract Approval Unit

RE: Outside Counsel Contracts

Pursuant to Section 63 of the Executive Law, the Attorney General is the chief legal officer of the State of New York. In accordance therewith, this memorandum restates the documentation requirements of the Office of the Attorney General ("OAG") for all contracts involving the use by State agencies of outside counsel. This supersedes the memorandum of November 8, 1999 on this subject.

All outside counsel contracts must be accompanied by a letter or memorandum containing the following information:

1. The nature of the services to be performed;

2. The reasons why agency counsel or the OAG cannot handle the matter;

3. The reasons for selecting the attorney or firm and the process used in making the selection. Be sure to provide evidence that State Finance Law Section 163 has been complied with. Include copies of the REP and all proposals;

4. The fee schedule (hourly rates for partners, associates and paralegals) and expenses. The total contract amount should be stated, preferably in a "not to exceed" form.

5. Whether there have been discussions with the OAG concerning the use of outside counsel in this matter and, if so, with whom;

6. A list of all contracts between your agency and the attorney or firm within the past 3 years, including the OSC number, the start and end dates and the amounts thereof, and

7. The Comptroller's contract number, if known.

8. If the contract involves litigation, the letter or memorandum must also state:

a) the name of the action or proceeding (including the Index number or other Court docket number);
b) its venue; and

c) a description of the nature of the action or proceeding.

Amendments or extensions to outside counsel contracts must explain all changes being made and the reasons therefore. Please consecutively number each amendment. If the amendment was authorized by the original agreement, please cite the relevant contract clause.

Please be specific in supplying information. General statements may result in approval delays when the OAG requests further information from you.

All outside counsel contracts must also contain the following clauses:

a) "Opinions prepared by retained attorneys or law firms construing the statutes or Constitution of the State of New York do not constitute the opinion of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Appeals and Opinions Bureau, Department of Law, State Capitol, Albany, New York."

b) "The retained attorney or law firm will represent the State of New York in judicial litigation related to the services to be provided under this agreement only when such services are specifically requested by the State agency's counsel and approved by the Attorney General. Such approval must be requested separately for each matter to be litigated and must be received prior to the commencement of services therefore,

Please be advised that <u>all</u> outside counsel contracts, even those not requiring prior OSC approval, must have the prior approval of the OAG.

Authorities, boards, corporations and other quasi-State agencies requiring OAG approval should cite their statutory authority to hire outside counsel.

Please send your memo with the contract to the Contract Approval Unit, Office of the Attorney General, The Capitol, Albany, NY 12224.

For any questions pertaining to outside counsel contracts, please call Peter Favretto at (518) 474-1697.

Thank you for your consideration.

Appendix E
Contractor Quality Control Procedures and Quality Assurance Plan

	Quality Control	Contractor's Information
1	Describe your firm's selection, screening and hiring processes for temporary workers.	Our staff interviews each candidate to ensure that they match the job requirement. Depending on your specific needs we check employee: *Soft skills *Review resume/CVs and work experiences *References * Test candidates knowledge and competency for the specific job *Rate the candidates' resume against the task order *Education, Licenses and Certification *Criminal background check * Drug Testing *Drivers License *US citizen
2	Describe your testing, training and orientation program for your temporary workers.	All our employee testing and training is completed using web based programs. We can test and train our people using canned tests for virtually any kind software or skill. We can also produce custom testing for those assignments which fall out of the main stream parameters offered for very specific client needs. Our employee orientation program begins by the new employee completing our employee at will, and employer and client Confidentiality Agreement. We also provide a NWP employee manual outlining all company polices and procedures.
3	Define the background checks you conduct for screening temporary workers (nature of the checks, kinds of records reviewed, number of years covered by the background check, etc.).	We use ADP screening and selection services to perform all our Back Ground Checks. They perform the following Background check on all staff provided to OGS: *7 Year National, Federal, State and County Criminal history check *Sexual Offender risk *Past Employment Verification *Educational Reference Check *Social Security Number Verification *Department of Motor Vehicle Check. Please visit ADPS web site for further information at www.adpselect.com.
4	How do you track individual resource performance? How does your firm reward good job performance by your temporary workers? Conversely, what types of disciplinary action does your firm use?	All of our employee tracking is completed using GO4 recruiting and placement software. NWP assigns a manager to you when you hire an NWP employee. During that period will customize a quality control plan and establish checks and balances that ensure that your requirements are being met. The contract manager will serve as your single point of contact and source of accountability. As such, the contract manager will monitor performance, take corrective action as needed and manage timelines and effectiveness of this action. Where problems arise, our contract manager will meet with key staff internally to address the issue and work with your representative to quickly resolve the matter. If the resolution involves employee termination we will move immediately to find a replacement for the position since all our employee's are "AT WILL". By assigning a project manager for each project is the

		program we use to ensure customer satisfaction with NWP contractors.
5	Describe the program(s) your firm has in place for quality assurance, customer satisfaction, and performance measurement.	We measure job performance by utilizing the clients Statement of Work "SOW" breaking it down into a performance matrix chart which becomes our Quality Control Plan "QCP" which is monitored by the Project Manager on a quarterly basis and rated and managed accordingly.
6	Describe two major cost saving projects that your firm implemented for clients.	By offering OGS competitive rates we have saved the State a considerable amount of its contracting budget during the course of the last five years both in the Health care Hospitality sectors. If selected for the new contract It is our intention to continue our effort and expand the sectors the State utilizes.
7	What process do you follow to ensure the proposed resumes meet your client's request?	See question one and two.
8	How do you schedule engagements?	All engagements are scheduled using our GO4 system. The systems provides a three prong approach regarding the candidate the client and the employee.
9	Do you have an electronic system for scheduling?	Yes.
10	Provide descriptions of the processes used to ensure seamless service by subcontractors to NYS.	Quality Control Plan NWP requires extensive testing and interviewing with our application process. Each applicant must show evidence of licenses, certifications, education and training. One year current experience in their area of expertise is a minimum standard. NWP requires a minimum of two satisfactory references from previous employers to verify work experience and when possible to verify skill proficiency, ability to organize, consistent work quantity, professional appearance, interpersonal relationships, cooperation, initiative, adaptability, reliability, punctuality, and attendance. All applicants shall meet Joint Commission requirements and hold the following credentials when applicable: • All applicants must possess at least one-year general acute care experience in their specialty area or area of expertise in the last three years. • Board Certified or Eligible in their respected fields. • Advanced cardiac life support (ACLS) for Emergency Room, Intensive Care Unit, Direct Observation Unit, Post-Anesthesia Care Unit, and Telemetry Units. ATLS for all Trauma. • Basic cardiac life support certification (American Heart Association is required). • Fetal monitoring certification for all Labor & Delivery. • Neonatal resuscitation certification (NRP) for all

		Neonatal Intensive Care Unit. • Pediatric advanced life support (PALS) for all Pediatric Intensive Care Unit. • Annual health clearance with a negative PPD or chest x-ray when PPD is positive. • Rubella, Rubeola and Mumps titer or MMR vaccination is required. • Varicella titer. • Proof of having received the Hepatitis B vaccine series, Hepatitis B titer or signed declination form. NWP employment files contain the following,when applicable: • Employment application or CV which includes work experience and educational background. • Proof of current licensure and/or certification verified by state board. • Proof of current CPR certification. • Additional certifications as required for specialty area. • Minimum of 2 satisfactory references. • Appropriate Specialty Skills checklist. • Competency exam with a passing score of at least 80% in the appropriate specialty area (if required by client). • Job description appropriate to job. • Standards and policy acknowledgment. • Annual In-services with a passing score of at least 80%, including Joint Commission/OSHA modules (body mechanics, fire and electrical safety, infection control, MSDS, etc). • Orientation and Annual Educational Update (annually) • Performance evaluations • Authorization and Release • I-9 • W-4 • Identification Photo • Criminal background check including OIG and EPLS NWP confidential health file contain the following: • Drug Screen Consent and Results • Annual Physical/Health Clearance • Annual TB test or negative chest x-ray (every 3 years) and TB Questionnaire • MMR immunization and/or Rubella, Rubeola and Mumps titers • Varicella titer or documentation of disease • Hepatitis B declination and/or Hepatitis B immunization series and/or Hepatitis B titer NWP maintains two different classifications or status of each employee - active or inactive. An "active" employee is anyone that is currently on assignment,

		(or who will be starting within the next two weeks), has all credentials current and up to date, or one that has just finished an assignment. An "inactive" employee is someone who is no longer assigned to a job order/assignment or whose credentials have fallen out of compliance. Inactive employees will not be allowed to work at any facility until all credentials are current and up to date. Qualifications Control Management of the qualifications of healthcare personnel and the maintenance of appropriate records are the responsibility of the Director of Recruitment. Our Qualification process runs parallel with the regulations of Health Boards, Regulatory Agencies and community industry standards. NWP attempts to provide a comprehensive and thorough pre-employment orientation and in-service training that reflects current compliance and promotes safe healthcare delivery. The program includes, but is not limited to the following: • Body Mechanics • Disaster Preparedness • Environmental Safety • Fire Safety • Hazardous Chemicals • HIPAA • Infection Control/Blood borne Pathogens • Age Specific • Cultural Diversity • Ethics for Healthcare • National Patient Safety Goals • Patient Rights Competency Review and Verification of Qualifications NWP follows strict guidelines to evaluate the clinical skills of the applicant and of current nurses, according to the following criteria: • CV/ Application • Verification of work experience/State License and applicable ID numbers • Satisfactory professional references • Verification of licensure using primary source verification • Appropriate certifications • Applicants are placed only in areas of practice that are within the scope their license, certification, or area of clinical competence • Ongoing performance assessments/feedback is requested on a regular basis from clients where health care professionals are on assignment to assure ongoing competency and satisfactory performance of nursing skills. Reactivation of Employees Any healthcare employee that has not worked in the

		last 12 months will be required to complete the reactivation process prior to being placed on an assignment. A criminal background check and drug screen will be required. All other credentials must be brought to current status prior to assignment. Maintaining Joint Commission Standards NWP ensures that all personnel provided to Client facilities meet or exceed the Joint Commission standards. NWP maintains both extensive and comprehensive files on every healthcare provider, displaying appropriate evidence that such standards are met and makes such evidence available to any client facility upon request. Health Screening NWP enforces a strict health screen which includes, but is not limited to the following. • Pre-employment health exam • Annual negative TB test or Chest X-ray and health questionnaire. • Rubella titer/Immunization • Mumps titer/Immunization • Varicella titer/Immunization • Hepatitis B screen/Immunization or declination • Drug Screen consent and results Background Check Policy NWP completes Criminal Background checks using a third party vendor, ADP. The following criminal convictions will disqualify an applicant from employment with NWP • All felony convictions • Misdemeanor convictions that have the potential to negatively impact the delivery of safe patient care; assault/battery, abuse/neglect, theft/robbery, crimes involving a child, elderly, etc., drug-related crimes, crimes involving weapons and sex crimes. • A DUI in the last year. Multiple DUIs within the last 7 years may disqualify an applicant for hire. • All other convictions will be reviewed individually. NWP utilizes an escalation process to review criminal convictions to determine if an applicant is eligible for hire. The Director of Recruitment and Project Manager reviews the criminal background results, if needed the results will be escalated to the CEO/President. The CEO/President will make the final eligibility decision. Orientation NWP will provide all new employees with an orientation to the company's policies and procedures. Each nurse will receive an Employee Handbook. Some facilities require some form of orientation. The amount of time required by each

		facility varies. Some facilities require computer training classes and orientation prior to the first shift worked. The staffing coordinator will explain required orientation to all nurses prior to scheduling their first shift with the facility. Employee Performance Review • Every healthcare professional employed by NWP, who has worked two or more contracts in the last year, will have an annual performance evaluation carried out by the Director of Recruitment or Project Manager. • NWP will attempt to obtain feedback from client representative regarding clinical staff competence and ongoing performance. Unfortunately, some clients will choose not cooperate with NWP in this regard, so NWP follows a competence by exception philosophy. In the absence of client feedback, unless there is evidence of a performance issue, we assume that our health care professional are meeting performance expectations. • Feedback from our clients regarding clinical and/or professional performance is addressed immediately. Follow-up with our clients is completed within an appropriate time frame. • Annual skills checklists which apply to their area of work will be completed by every health professional employed by NWP. • When training needs are identified, an opportunity to complete the training will be provided at the earliest possible occasion. • The company assesses aspects of competence at hire, at performance evaluation and as needed or required by state licensing agencies, to ensure that our health care professionals have the skills to perform their duties. • The Director of Recruitment is responsible to ensure that any areas of development are identified and addressed.
11	Describe your company's process and criteria for selection of subcontractors/ suppliers.	See question ten.
12	Describe your company's process to manage and ensure subcontractors' quality of work and adherence to deadlines.	See question ten.
13	How do you maintain and track unallowed and preferred resource lists for your clients?	All unallowed and preferred resources are tracked in GO4.
14	Describe your implementation plan for initiating this program at NYS if awarded a contract. Include in the response your company's plan for taking on a large volume of requests during the first phase of the contract.	We have been working with the NYS for almost five years and have the programs in place to meet the needs of the various agencies, see question ten regarding our process.

	Such a plan may include transferring employees from other contractors to your company's internal resource pool, partnering with additional subcontractors to meet NYS's needs and implementing the program.	
15	Please list your escalation and resolution policy in case a issue or emergency arises.	Emergency escalation from our client to our project manager is immediately transmitted to the President and CEO of New Wave People for resolution between all parties.
16	Describe your process for providing a replacement if a temporary employee is rejected by the client. Please include details on time to replace and a training plan for the new temporary employee.	All of the requirements we recruit have a minimum of three qualified candidates whom go through our complete vetting process, as outlined above. The reason we recruit in this fashion is to make sure if a replacement is needed, we can turnaround a contractor quickly.
17	Does your company have a formal, published quality assurance program (measuring employee retention, employee and job matching, performance of employee on the job, etc.)? If yes, please provide details of the program and attach program documentation. If no, describe in detail the process your company intends to employ to ensure that NYS receives the best service and candidates as possible.	No we don't have a formal QCP we build them for our clients on an individual client basis. Please see question ten.
18	Detail your order entry process to track and monitor all service orders from inception through completion. (Including time from receipt of order through acknowledgement, candidate offering, background checks, placement, etc)	Transmitted requests are immediately entered into GO4 *Client receives transmission receipt *Project posted on job boards *Project searched in internal database *Selection process begins *Interested candidates are vetted and tested *Send resumes to client for input *Background checks completed on selection *NWP submits candidates for interviews *Final selection completed *Contract information completed *Contractor start date established *Contactor QCP established
19	How long (in hours) will it take for your company to acknowledge receipt of a temporary labor request? (N/A for lots 2, 3, and partially 6)	Less than one Hour.
20	How long (in hours) will it take for your company to deliver resumes for a request from the time of receipt? (N/A for lots 2, 3, and 6)	24 Hours.
21	How and when does your company know it cannot fill a position? What is your process to notify the customer that you cannot fill a request?	48 Hours.