CONTRACT AMENDMENT #1 to PT63783
Centralized Contract for the Acquisition
of Enterprise Systems – Servers and Mainframes
Date: July 17, 2012

THIS AMENDMENT is made to Contract PT63783, by and between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") with its principal place of business at 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 and Oracle America, Inc. (formerly Sun Microsystems, Inc., hereinafter "Contractor") with its principal place of business at 500 Oracle Parkway, Redwood Shores, California 94065 ("Contract Amendment #1). OGS and Contractor are collectively referred to as the "Parties."

Whereas, the Parties entered into the above-referenced Contract effective February 28, 2008 (the "Contract") under which the Parties agreed to terms governing the acquisition of Contractor's server and mainframe hardware, software and related services by state agencies, local governments and other recognized entities (hereinafter "Authorized Users");

Whereas, maintenance and related services were previously acquired from a centralized contract, referred to as PS61989, which has expired;

Whereas, a decision was made to add maintenance/technical support services for such servers and mainframes to the existing Contract; and

Whereas, the Parties now wish to amend the Contract to allow for the provision of maintenance/technical support services and to amend other provisions of the Contract as outlined herein.

Therefore, in consideration of the promises, and the terms and conditions set forth in this amendment, the Parties agree to the following amendments to the Contract:

1. The Parties agree that Section 2 of the Contract is hereby deleted and replaced in its entirety with the following language:

2. <u>MERGER OF APPENDICES/CONFLICT OF CLAUSES</u>
This Contract shall incorporate the following appendices as if set forth herein at length. 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 between these documents shall be resolved in the following descending order of precedence, which supersedes the order of precedence stated in Appendix B.

Appendix A	Standard Clauses for NYS Contracts (dated December 2011)
Base Contract	Base Agreement of NYS Contract PT63783
Appendix B	OGS General Specifications
Appendix C	Contractor's Executive Law, Article 15-A (M/WBE) Requirements
Appendix D	Contract Update Form (For Product and Pricing Updates)
Appendix E	Required Contractor Submissions:
#1	Mandatory Contractor Questionnaire
#2	Contractor, Reseller & Distributor Information
#3	NYS Net Prices (Prices for all Product)
#4	Installation, Configuration, Extended Warranties, and Maintenance and Support (Schedule 1, Contractor Hardware and Systems Support Price List)
#5	Consulting and Training (Purchased at same time as Products and related directly to the purchase under this agreement)
#6	Contractor Order Forms or other order information
#7	Oracle Hardware and Systems Support Policies

2. The Parties agree that, in the absence of an express fee stated in Appendix E, Submission #4 to the Contract, the mere reference to a "fee" shall not apply to an Authorized User's purchase under this Contract or impose a duty to pay on the Authorized User. For avoidance of doubt, the Parties agree that no charge or fee can be imposed that is not expressly set forth in Appendix E, Submission #4 Installation, Configuration, Extended Warranties, and Maintenance and Support .

3. The Parties agree that subsections A, D, G, and I of Section 9 ("MAINTENANCE, GENERAL PROVISIONS") of the Contract are hereby deleted and replaced in their entirety with the following language:

A. The Contractor shall advise Authorized Users of the first year and renewal year maintenance options that may be ordered with the Product and the costs associated with each option. The initial maintenance term may survive expiration of the contract term as outlined in the second paragraph of Section 1. Contract Scope/Term.

D. Maintenance shall be provided upon expiration of the warranty or under circumstances not covered by said warranty. First year and renewal year maintenance options shall be included in Appendix E, Submission #4.

G. The Contractor shall not be obligated to repair damage caused by fire or other casualty (except that caused by the Contractor), or caused by the Authorized User's negligence or its operation, handling or use of the Product other than in accordance with such Product's Documentation (including failure to follow installation, system maintenance and environmental recommendations). Properly trained Authorized User's personnel may make software changes to Authorized User's configuration without the Contractor's prior written consent. Should the

Contractor's consent be required, it shall not be unreasonably withheld. The Authorized User shall be responsible for updating of all records associated with the modifications.

I. Authorized Users will pay quarterly in arrears for any services utilized for maintenance, service, and parts in accordance with the Contractor's established rates. Rates are to be adjusted quarterly in arrears by Contractor for increases and decreases in the quantity of the Product.

4. With respect to Paragraph 22 of Appendix A (dated December 2011) and as a clarification only, the Parties agree that the General Business Law (GBL) §899-aa(4) applies to this Contract to the extent that Contractor is required to maintain computerized data which includes private information (which Contractor does not own) in order to perform the services.

5. The Parties agree that Section 72 of Appendix B of the Contract is amended and the following Section j is added:

j. Services Warranty. Contractor warrants that the Services will be provided in a professional manner in accordance with industry standards. The Authorized User must notify Contractor of any Services warranty deficiencies within ninety (90) days from performance of the Services that gave rise to the warranty claim.

6. The Parties agree that the following new Section 87 is added to Appendix B:

87. FIRST YEAR AND RENEWALSUPPORT & MAINTENANCE
Technical Support consists of annual Technical Support services ordered by the Authorized User for the Authorized User's purchases hereunder. Contractor certifies that its Technical Support offering shall also comply with the requirements set forth in section 78(d) of this Appendix. Payment shall be due quarterly in arrears or as otherwise agreed to by the Contractor and Authorized User. If ordered, annual Technical Support (including first year and all subsequent years) is provided under the Contractor's Hardware and Systems Support Policies ("Support Policies") that are attached to this Contract as Submission #7 to Appendix E.

An Authorized User should review the Support Policies prior to ordering the applicable services.

Technical support is effective upon the effective date of the Order Form (the form of which is attached as Submission #6 to Appendix E) unless otherwise stated therein. The effective date of an order for Technical Support is set out on the Order Form. However, if the Product to receive Technical Support is subject to an acceptance period, as set forth in Section 7 and Appendix B,§79, then the effective date of the Technical Support will be upon acceptance of the Product to be supported.

Technical Support term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew. However, an Authorized User must

issue its purchase order prior to the expiration of the Centralized Contract to be a valid acquisition. In the event that Authorized User discontinues Technical Support as permitted under Section 9(J) of the Contract, it may, at any time thereafter, reinstate Technical Support in accordance with Appendix B, §78(d). The Contractor's Technical Support offering, entitled "Lifetime Support", is set forth in the Support Policies attached to this Contract as Submission #7 to Appendix E.

7. The Parties agree that the following sections of Appendix E, Submission #7, *Oracle Hardware and Systems Support Policies*, are amended as follows:

A. OVERVIEW, Paragraph 2:
This paragraph is hereby replaced with the following:

"You" and "your" refers to the Authorized User. All references to "Oracle" shall refer to the Contractor.

B. OVERVIEW, Paragraph 4.
Subparts (vii) through (x), which set forth export restrictions, are hereby deleted in their entirety. Additionally, a period is placed after the final word "resolution," and the word "or" is inserted before "(vi)."

C. OVERVIEW, Paragraph 7 and Paragraph 8:
These paragraphs are hereby deleted in entirety.

D. SUPPORT TERMS, "Technical Support Fees"
The first sentence of this paragraph is hereby deleted and replaced with the following:

Technical support fees are due and payable quarterly in arrears, unless otherwise stated in the relevant ordering document with Oracle or an Oracle affiliate.

E. SUPPORT TERMS, "Support Period"
This Section is hereby deleted and replaced with the following new Section:

Technical support is effective in accordance with Appendix B, section 87. Oracle technical support terms, including pricing, reflect a 12 month support period (the "support period"), unless stated otherwise in your ordering document. Oracle is not obligated to provide technical support beyond the end of the support period.

F. SUPPORT TERMS, "Matching Service Levels:
This Section is hereby deleted and replaced with the following new Section:

In accordance with section (9)(J) of the Contract and Appendix B section 78(d), an Authorized User is not obligated to acquire maintenance for Product. You agree and acknowledge that unsupported hardware systems will not receive or access any direct or indirect Technical Support, including but not limited to updates, patches, fixes, replacement parts, spare parts, break-fix, phone support or on-

line support accessible through a web browser or other connectivity tool. In the event you require Technical Support on an unsupported hardware system(s) or accesses such Technical Support on their unsupported hardware system(s), back Technical Support fees retroactive to the date the hardware system was not supported or the original acquisition date, whichever is shorter, shall be assessed on the unsupported hardware system(s).

G. SUPPORT TERMS, "Reinstatement of Oracle Technical Support"
Paragraph 1 is hereby deleted and replaced with the following:

Authorized User may discontinue technical support during or at the end of any current Technical Support term. In the event that an Authorized User discontinues Technical Support, it may, at any time thereafter, reinstate Technical Support in accordance with Appendix B, §78(d).

Paragraph 2 is hereby deleted and replaced with the following:

For Technical Support that was not originally purchased with your hardware system or if you are reinstating Technical Support, you must pay a technical support fee quarterly in arrears for a twelve month support period. This technical support fee is computed in accordance with Appendix B, §78.

H. SUPPORT TERMS, "Upgrading Your Support Level"
The existing paragraph is hereby deleted and replaced with the following:

In the event you have acquired Oracle Premier Support for Operating Systems and later choose to upgrade to Oracle Premier Support for Systems, your hardware system must be qualified as service-ready before the technical support can be upgraded. To qualify as service-ready you must acquire the Premier Support Qualification Service (at no fee) and meet all requirements set forth by the service team to obtain a qualification certificate for your hardware system. You will be subject to a support upgrade fee as outlined in Appendix E, Submission #4, Schedule 1, Section 2.

I. SUPPORT TERMS, "Pricing Following Reduction of Covered Hardware System or Service Level"
This Section is hereby deleted and replaced with the following:

Pricing for support is based upon the level of support and the volume of covered hardware systems for which support is ordered. In the event that (i) your hardware system reaches end of service life or (ii) you notify Oracle that you are retiring the hardware system, or (iii) you change service level for all of your systems, then Oracle will reduce your support fee at the next renewal for these reductions and any unused support during the renewal term would be credited or refunded to you, provided the advance invoice was paid and payment received by Oracle.

J. SUPPORT TERMS, "Technical Contacts"
Paragraph 1 is hereby deleted and replaced with the following:

Your technical contacts are the sole liaisons between you and OSS for technical support. Your technical contacts must have, at a minimum, initial basic product training and, as needed,

supplemental training appropriate for specific role or implementation phase, specialized product usage, and/or migration. Notwithstanding anything to the contrary herein, Oracle does not require specific training or certifications as prerequisites for the role of your technical contacts. It is your responsibility to ensure that your designated technical contacts possess the necessary knowledge about the Oracle hardware systems and the Oracle environment to be able to help resolve system issues and to assist Oracle in analyzing and resolving service requests. When submitting a service request, your technical contact must have a baseline understanding of the problem you are encountering and an ability to reproduce the problem in order to assist Oracle in diagnosing and triaging the problem. To avoid interruptions in support services, you must notify OSS whenever technical contact responsibilities are transferred to another individual.

Paragraph 2 is hereby deleted and replaced with the following:

With the order of Oracle Premier Support for Operating Systems and/or Oracle Premier Support for Systems, you may designate one (1) primary and four (4) backup individuals ("technical contact") per data center location, to serve as liaisons with OSS. With each USD$250,000 in net support fees per data center location, you have the option to designate an additional two (2) primary and four (4) backup technical contacts per data center location. Your primary technical contact shall be responsible for (i) overseeing your service request activity, and (ii) developing and deploying troubleshooting processes within your organization. The backup technical contacts shall be responsible for resolving user issues.

K. SUPPORT TERMS, "Payment Plan, Financing and Leasing Agreements"
This Section is hereby deleted in its entirety.

L. SUPPORT TERMS, "Third Party Products"
The last paragraph of this Section is hereby deleted and replaced with the following:

If it is determined that the third-party product is not the cause of the failure (i.e., if the problem would have occurred even if third-party product was not installed in or attached to the hardware system), then Oracle's service call will be addressed under the terms of any existing Oracle technical support contract.

M. ORACLE TECHNICAL SUPPORT LEVELS FOR SYSTEMS, "Replacement Hardware Parts"
This Section is hereby deleted and replaced with the following:

If Oracle determines that the replacement of a hardware part is necessary, Oracle will send a replacement part to your location. Oracle personnel will install the replacement part unless Oracle determines that you can install the replacement part yourself. If you request that Oracle replace a self service replacement part then you will be charged an additional fee for the installation based on the time and materials rates specified in Appendix E, Submission #4, Section 5A. Oracle will use commercially reasonable efforts to send replacement parts to you

consistent with the Onsite Response Times Targets for Hardware Support noted below. The part or component shall meet the requirements set forth in Appendix B, section 53.

N. ORACLE TECHNICAL SUPPORT LEVELS FOR SYSTEMS, "Return of Malfunctioning Parts

This Section is hereby deleted and replaced with the following:

If Oracle sends a replacement part to you and you execute the replacement, you shall return the defective part in the pre-paid, pre-addressed packaging provided by Oracle. If you fail to return such replaced part, such failure may be considered a non-material breach of contract and applicable remedies provided under the Contract will apply.

If Oracle is onsite performing the replacement, Oracle shall bear the sole responsibility for removing the defective part. If Oracle fails to remove the defective part at the conclusion of the replacement process, you may dispose of the replacement part as you deem appropriate and no remedy is applicable.

O. TOOLS USED TO PERFORM TECHNICAL SUPPORT SERVICES

The first sentence of this Section is hereby deleted and the following added to the beginning of this Section:

The Authorized User acknowledges that Contractor may make available software tools and web-based tools to aid in the resolution of service requests. OGS has not reviewed the associated licenses for acceptability; accordingly, the Authorized User is obligated to review and make an independent determination, with the advice of legal counsel as necessary, about the acceptability of a particular license before authorizing usage. If an Authorized User declines to agree to the license terms, Contractor may be limited in its ability to fully provide the Services necessary to resolve the problem.

P. GLOBAL CUSTOMER SUPPORT SECURITY PRACTICES

The last sentence is hereby deleted and replaced with the following:

To view changes that have been made, please refer to
http://www.oracle.com/us/support/library/gcs-security-practices-soc-186190.pdf

Q. ONSITE RESPONSE TIME TARGETS FOR HARDWARE SUPPORT

The last paragraph of this Section (the Note) is hereby deleted and replaced with the following:

Note:
The geographic location of your covered hardware system may cause on-site service to be unavailable. Oracle reserves the right, in its sole discretion, to adjust Severity 1, Severity 2 and Severity 3 on-site response times based on the location of the covered hardware system. Actual response times are subject to acts and conditions beyond Oracle's control and, therefore, Oracle's response may be delayed. Oracle is not responsible for response delays caused by

factors outside its control. You should contact an Oracle Support Sales representative for more details regarding availability for your covered hardware systems.

8. Except as amended herein, the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed on the date set forth below, effective on the date set forth above, and the persons signing represent and warrant that they are duly authorized to sign on behalf of the respective parties.

CONTRACTOR	**THE PEOPLE OF THE STATE OF NEW YORK**
Signature:	**Signature:**
Printed Name: Theresa Agee	**Printed Name:** Anne Sanson
Title: Manager, NA Supp. Services Contracts	**Title:** Assistant Director
Contractor Firm Name: Oracle America, Inc.	**Office of General Services**
Federal Tax Identification #: 94-2805249	
NYS Vendor ID# 1000032860	

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF TENNESSEE }
: **Sworn Statement:**
COUNTY OF RUTHERFORD }

On the 15 day of June in the year 2012, before me personally appeared Theresa Agee, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that she reside(s) in Rutherford County, Tennessee and further that:

[Check One]

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

(☒ **If a corporation, (☐ a partnership, ☐ a limited liability company): s**he is the Manager of North America Support Services Contracts, the *corporation* described in the above instrument; that, she is authorized to execute the foregoing instrument on behalf of the *corporation* for purposes set forth therein; and that, pursuant to that authority, she executed the foregoing instrument in the name of and on behalf of said *corporation*.

BAILEY HANNAH STATE OF TENNESSEE NOTARY PUBLIC WILSON COUNTY

EXP 12/27/15

Signature of Notary Public

Notary Public
Registration No._____ **State of:**_____

APPROVED AS TO FORM
NYS ATTORNEY GENERAL
JUN 21 2012
Lorraine I. Remo
LORRAINE I. REMO
PRINCIPAL ATTORNEY

APPROVED AS TO FORM
ERIC T. SCHNEIDERMAN
New York State Attorney General

APPROVED
DEPT. OF AUDIT & CONTROL
JUL 17 2012
THE STATE COMPTROLLER

APPROVED
THOMAS P. DINAPOLI
New York State Comptroller

Submission # 4

Maintenance & Support
(Description of Services,
including response times, severity level,
support phone numbers, hours of availability, etc.)

The Maintenance and support price list submitted must contain at least the following items in this format:

Part #	Description	Unit List Price	NYS Discount %	NYS Net Price	Other columns chosen by Contractor

(to be attached by Contractor)

To view the current maintenance pricelist at the Oracle America NYS Contract website, follow the link below, and then click on "Pricing Information":
http://www.ogs.state.ny.us/purchase/snt/awardnotes/7620021158can.HTM

Schedule 1
Oracle Hardware and Systems Technical Support Price List

The following notes apply to all Oracle first year and renewal year Technical Support services listed on Schedule 1 and described in Appendix E, Submission #7.

Notes:

1. No fee for Technical Support services can be imposed upon the Authorized User that is not expressly set forth in this Appendix E, Submission #4.

2. No payment plan, financing, or leasing options are available for the purchase of Technical Support services by Authorized Users.

3. Technical Support fees are due and payable quarterly in arrears, unless otherwise stated in the relevant ordering document with Oracle.

4. An Authorized User is allowed to discontinue Technical Support in the middle of a support term. Future invoices will be adjusted to accommodate the lower invoice price, as applicable.

5. Technical Support is effective as of the Effective Date set forth in the Order Form in Appendix E, Submission #6.

6. Unsupported hardware systems will not receive or access any direct or indirect Technical Support, including but not limited to updates, patches, fixes, replacement parts, spare parts, break-fix, phone support or on-line support accessible through a web browser or other connectivity tool. In the event an Authorized User requires Technical Support on an unsupported hardware system(s) or accesses such Technical Support on their unsupported hardware system(s), back Technical Support fees retroactive to the date the hardware system was not supported or the original acquisition date, whichever is shorter, shall be assessed on the unsupported hardware system(s).

7. If an Authorized User requests to place unsupported hardware system(s) under Technical Support, the unsupported hardware system(s) will be placed under a new Oracle Technical Support Service Contract. Service Contracts may be co-termed and consolidated at renewal time.

8. The Authorizer User acknowledges that Contractor may make available tools and web-based tools to aid in the resolution of service requests. OGS has not reviewed the associated licenses for acceptability; accordingly, the Authorized User is obligated to review and make an independent determination with the advice of legal counsel as necessary, about the acceptability of a particular license before authorizing usage. If an Authorized User declines to agree to the license terms, Contractor may be limited in its ability to provide the services necessary to resolve the problem.

9. The calculation for the pricing in Sections A and B in Schedule 1 includes all items set forth on the sales order or invoice.

Section 1:
Oracle Premier Support for Systems, Operating Systems & Pricing

A. First Year Technical Support and Renewal Technical Support pricing for Oracle hardware systems purchased post 5/14/2010

Technical Support will be priced using the net purchase price[1] of the supported hardware system at:

1. 12% of net for Premier Support for Systems
2. 8% of net for Premier Support for Operating Systems
3. 2% of net for Oracle Customer Data and Device Retention Service

B. Technical Support Reinstatement Pricing for Sun legacy hardware systems purchased pre 5/14/2010, but not covered under an active support contract on 5/14/2010:

Technical Support will be priced using the net purchase price of the supported hardware system, based upon Authorized User provided invoice or purchase order at:

1. 12% of net for Premier Support for Systems
2. 8% of net for Premier Support for Operating Systems
3. 2% of net for Customer Data and Device Retention Service

C. Technical Support Renewal pricing for Sun legacy systems purchased pre 5/14/2010:

NYS Authorized Users that held Sun legacy Support contracts that were active on 5/14/2010 may renew those support contracts, for the previously maintained Sun hardware system, for the life of Contract PT63783, at prices equal to the Sun support price last invoiced.

Section 2:
Upgrading Support Level Pricing

A. Upgrade Oracle Technical Support level from Oracle Premier Support for Operating Systems to Oracle Premier Support for Systems

1. System must be qualified as service-ready by an authorized Oracle technician (no fee charged to the Authorized Users under this Contract) and qualification approval received by and Oracle Support Renewal Sales Representative
2. Upgrade fee will be equal to the difference in price between Oracle Premier Support for Systems and Oracle Premier Support for Operating System:
   a) Upgrade fee will be 4% of Authorized User net hardware purchase order price
   b) Upgrade fee will be added at time of renewal, or;
   c) Upgrade fee will be prorated from the date that any prior System Support lapsed (or the hardware order date if System Support was never purchased).

[1] References to Net Purchase Price and Net, includes all items priced on the sales order or invoice

Section 3:
Lifetime Technical Support Policy Pricing[2]

A. Extended Support for Operating Systems

Extended Support for Operating Systems may be available for certain Oracle Solaris operating system software releases. When Extended Support for Operating Systems is offered, it is generally available for three years following the expiration of Oracle Premier Support for Operating Systems and only for the terminal codeline release of a program.

Oracle Solaris operating system software releases eligible for Extended Support for Operating Systems will receive Oracle Premier Support for Operating Systems but limited to the following:

- Major product and technology releases for Oracle Solaris operating system software
- Program updates, fixes, security patches, and security alerts
- Upgrade tools
- General maintenance releases, selected functionality releases, and documentation updates for Oracle Solaris operating system software
- Assistance with service requests 24 hours per day, 7 days a week
- Access to My Oracle Support (24 x 7 web-based customer support systems), including the ability to log service requests online
- Non-technical customer service during normal business hours

Extended Support for Operating Systems does not include:

- Certification with most new third-party products/versions or most new Oracle programs
- OpenSolaris, Trusted Solaris 8, Oracle Linux, Oracle VM, and Sun Ray Device Operating Software.

For a a current list of eligible system software product refer to Oracle and Sun System Software brochure at: http://www.oracle.com/us/support/lifetime-support/lifetime-support-software-342730.html

Extended Support for Operating Systems Pricing:

Year 1 (year 6 in the life of the product)

10% uplift to the current AU Premier Support Renewal Price

*(Ex.: Current AU Premier Support = $1000.00 *1.10 = $1100.00/12 mo.)*

Year 2 and 3 (years 7 and 8 in the life of the product)

20% uplift to the current AU Premier Support Renewal Price

*(Ex.: Current AU Premier Support = $1000.00 *1.20 = $1200.00/12 mo.)*

[2] Oracle Lifetime Support Policy, http://www.oracle.com/us/support/lifetime-support/index.html

B. Sustaining Support for Systems

Sustaining Support for Systems may be available for certain hardware systems, operating system software and integrated software (e.g., firmware).

Hardware Systems, operating system software and integrated software (e.g., firmware) eligible for Sustaining Support for Systems will receive Oracle Premier Support for Systems limited to the following:

- Onsite hardware support for Oracle/Sun server or storage systems eligible for Sustaining Support for Systems
- Program updates, patches, fixes, security patches, and security alerts created during the Oracle Premier Support for Systems period
- Upgrade tools created during the Oracle Premier Support for Systems period.
- General maintenance releases, selected functionality releases, and documentation updates created during the Oracle Premier Support for Systems period
- Assistance with service requests, on a commercially reasonable basis, 24 hours per day, 7 days a week
- Access to My Oracle Support (24 x 7 web-based customer support systems), including the ability to log service requests online
- 24x7 access to Oracle Unbreakable Linux Network
- Right to use Oracle Management Pack for Linux. To access and download the Oracle Management Pack for Linux, go to

  http://www.oracle.com/technetwork/oem/grid-control/omp-linux-091367.html
- Right to use Oracle Clusterware for Oracle Unbreakable Linux. To access and download Oracle Clusterware for Oracle Unbreakable Linux, go to

  http://www.oracle.com/technetwork/database/clusterware/overview/index-096607.html
- Non-technical customer service during normal business hours

Sustaining Support for Systems does not include:

- New program updates, patches, fixes, security patches, security alerts, general maintenance releases, selected functionality releases, documentation updates or upgrade tools
- Guaranteed availability of replacement parts
- Certification with most new third-party products/versions or most new Oracle products
- 24 hour commitment and response guidelines for Severity 1 service requests as defined in the Severity Level section below
- Hardware Certification
- Previously released fixes or updates that Oracle no longer supports

For a current list of eligible hardware and operating systems product refer to Oracle Hardware and Operating Systems Support brochure at:

http://www.oracle.com/us/support/lifetime-support/lifetime-support-hardware-337183.html

Sustaining Support for Systems Pricing:

If Sustaining Support for Systems support is available for Authorized User's hardware system(s), there is no uplift in price from Oracle Premier Support for Systems renewal pricing outlined in Section 1.

Section 4:
Pricing Following Reduction of Covered Hardware System or Service Level

Pricing for support is based upon the level of support and the volume of covered hardware systems for which support is ordered. In the event that (i) your hardware system reaches end of service life or (ii) you notify Oracle that you are retiring the hardware system, or (iii) you change service level for all of your systems, then Oracle will reduce your support fee at the next renewal for these reductions and any unused support during the renewal term would be credited or refunded to you, provided the advance invoice was paid and payment received by Oracle.

Section 5:
Advanced Customer Services (ACS) Pricing

For the purposes of the purchase of ACS Priority Services, "Premier Support Fees" means the Authorized User's combined annual spend for Oracle Premier Support for Systems, Operating Systems and Oracle Customer Data and Device Retention Services.

A. Time and Material (T&M) Resources

Assisted Services - Senior Engineer

Daily Rates	Time	Days=>	1-9	10-30	31-60	61-99	100-150	151-199	200+
		Disc =>	0%	5%	10%	15%	19%	23%	25%
		List							
Monday – Friday	8:00 am – 5:00 pm	$2,100	$2,100	$1,995	$1,890	$1,785.00	$1,701.00	$1,617.00	$1,575
Monday – Friday	5:00 pm – 8:00 am	$2,625	$2,625	$2,494	$2,363	$2,231.25	$2,126.25	$2,021.25	$1,969
Saturday – Sunday	12:00 am – 11:59 pm	$3,150	$3,150	$2,993	$2,835	$2,677.50	$2,551.50	$2,425.50	$2,363

(Daily Rate=8 hours)

Assisted Services - Specialized Engineer

Daily Rates	Time	Days=>	1-9	10-30	31-60	61-99	100-150	151-199	200+
		Disc =>	0%	5%	10%	15%	19%	23%	25%
		List							
Monday – Friday	8:00 am – 5:00 pm	$2,567	$2,567	$2,439	$2,310	$2,181.95	$2,079.27	$1,976.59	$1,925
Monday – Friday	5:00 pm – 8:00 am	$3,209	$3,209	$3,048	$2,888	$2,727.44	$2,599.09	$2,470.74	$2,407
Saturday – Sunday	12:00 am – 11:59 pm	$3,851	$3,851	$3,658	$3,465	$3,272.93	$3,118.91	$2,964.89	$2,888

(Daily Rate=8 hours)

Technical Account Management (TAM) & Expert

Daily Rates	Time	Days=>	1-9	10-30	31-60	61-99	100-150	151-199	200+
		Disc =>	0%	5%	10%	15%	19%	23%	25%
		List							
Monday – Friday	8:00 am – 5:00 pm	$2,200	$2,200	$2,090	$1,980	$1,870.00	$1,782.00	$1,694.00	$1,650
Monday – Friday	5:00 pm – 8:00 am	$2,750	$2,750	$2,613	$2,475	$2,337.50	$2,227.50	$2,117.50	$2,063
Saturday – Sunday	12:00 am – 11:59 pm	$3,300	$3,300	$3,135	$2,970	$2,805.00	$2,673.00	$2,541.00	$2,475

(Daily Rate=8 hours)

B. Priority Service

The fee for Priority Service is a tiered % uplift on State of New York Oracle Premier Support Renewal pricing as follows:

- 20% uplift fee on first $1million
- 10% uplift fee for $1,000,001 - $3,000,000
- 5% uplift fee for $3,000,001 and above

The minimum order that can be placed for Priority Service is $50,000

Additional information regarding this service go to

http://www.oracle.com/us/support/library/priority-service-069278.pdf

Submission # 6

Contractor Order Forms and Order Information

Schedule 1: Hardware, Programs and Support Services Order Form
Schedule 2: Technical Support Renewal Order Form

ORDER FORM

Oracle America, Inc.
500 Oracle Parkway
Redwood Shores, CA 94065

Your Name		**Your Contact**	
Your Location		**Phone Number**	
		Email Address	

Hardware and Hardware Support Services						
Item	**Part Number**	**Hardware Description**	**Quantity**	**List Fee**	**Discount %**	**Net Price**
.						
					Hardware and Hardware Support Fees	

Programs and Program Support Services				
Product Description/License Type	**Quantity**	**List Fee**	**Discount %**	**Net Price**
.				
			Program and Program Support Fees	

Other Fees	
Other Fees	

Fee Description	**Net Fee**
Oracle Hardware Fees Hardware Support Fees Program Fees Program Support Fees Other Fees	
Total Price	

A. Agreement

This order is governed by the terms of PT63783 and all amendments and addenda thereto (the "agreement") between you and Sun Microsystems, Inc. ("Sun").

The parties hereby agree that all references to "Sun Microsystems, Inc." and "Sun" contained in the agreement shall be changed to "Oracle America, Inc." and "Oracle", respectively.

B. General Terms

1. Summary of Fees

You have ordered hardware, programs and <12> months of technical support services. Listed above is a summary of net fees due under this order. These fees are in US Dollar and are exclusive of any applicable taxes.

2. Delivery

The hardware you have ordered will be delivered**:** FOB Destination

3. Maintenance: Service Level Agreement with Escalation Process (SLA)

If first year maintenance is ordered, the SLA attached hereto as Schedule 1 shall apply.

4. Waiver of Acceptance

The contract provides that, if you require installation of the product by Oracle, you may be entitled to an acceptance period. See, Contract, Section 7 and Appendix B.79.

With respect to products which require installation by Oracle:

[ ] [initials] By checking the first box and initialing the second box, you affirm acceptance of the products listed in this order and hereby waive the acceptance period.

5. Offer Validity

Oracle must receive your purchase order and a copy of this order on or before XX-XXX-2012 to be valid.

<Name of NY Entity>		**Oracle America , Inc.**	
Authorized Signature	_____	**Authorized Signature**	_____
Name	_____	**Name**	_____
Title	_____	**Title**	_____
Signature Date	_____	**Signature Date**	_____
Effective Date	(to be completed by Oracle)	_____	

SCHEDULE 1
SERVICE LEVEL AGREEMENT

In accordance with Section 6, Service Level Agreements (SLAs), and section 9, Maintenance, General Provisions, of NYS Contract #PT63783, the following sets forth the understanding of the Contractor and Authorized User with respect to the performance of maintenance services. In accordance with Section 6, this SLA (1) defines the services that the Contractor will provide, assigns priorities to these services, and establishes baseline standards, responsibilities, and commitments and (2) becomes the basis for performance measurement reporting and provides the opportunity to identify potential service level improvements.

1. The scope of services is set forth in this document and NYS Contract #PT63783, including without limitation Appendix E, Submission #4.

2. The delivery and acceptance timeframes and procedures are set forth in NYS Contract #PT63783, including without limitation Appendix B.

3. Time Commitments and Prioritization of Services:

SEVERITY DEFINITIONS

Service requests for your covered hardware system may be submitted by you online through Oracle's web-based customer support systems or by telephone. The service request severity level is selected by you and Oracle and should be based on the following severity definitions:

Severity 1

Your production use of the covered hardware system is stopped or so severely impacted that you cannot reasonably continue work. You experience a complete loss of service. The operation is mission critical to the business and the situation is an emergency. A Severity 1 service request has one or more of the following characteristics:

- ☐ Data corrupted
- ☐ A critical documented function is not available
- ☐ System hangs indefinitely, causing unacceptable or indefinite delays for resources or response
- ☐ System crashes, and crashes repeatedly after restart attempts
- ☐ System functionality failure causes data loss or renders system unstable
- ☐ System malfunction causes mission critical applications to restart, hang, or suspend

Reasonable efforts will be made to respond to Severity 1 service requests within one (1) hour.
24 Hour Commitment to Severity 1 Service Requests: OSS will work 24x7 until the issue is resolved or as long as useful progress can be made. You must provide OSS with a contact during this 24x7 period, either on site or by pager, to assist with data gathering, testing, and applying fixes. You are requested to propose this severity classification with great care, so that valid Severity 1 situations obtain the necessary resource allocation from Oracle.

Severity 2

You experience a severe loss of service. Important features are unavailable with no acceptable workaround, impaired or broken functionality with significant impact to applications, and/or frequent application failure but not data loss; however, operations can continue in a restricted fashion.

Severity 3
You experience a minor loss of service. The impact is an inconvenience, which may require a workaround to restore functionality.

Severity 4
You request information, an enhancement, or documentation clarification regarding your software but there is no impact on the operation of the software. You experience no loss of service. The result does not impede the operation of a system.

ONSITE RESPONSE TIME TARGETS FOR HARDWARE SUPPORT
Response time targets for hardware support are as specified below, except for Sun Ray Clients. The response time target for Sun Ray Clients, regardless of severity level, is limited to Advanced Parts Exchange with next business day delivery to your location.

Please refer to the attached document titled "Oracle Service Locations" (PDF) for a listing of service locations.

Severity 1
If Oracle determines, in its sole discretion, that onsite support is appropriate, an Oracle-dispatched engineer will generally arrive at your location within the time frames specified below.
Within 2 hours: Your covered hardware system must be within 25 miles/40 kilometers of a designated Oracle service location
Within 4 hours: Your covered hardware system must be within 26 – 49 miles/41 – 79 kilometers of a designated Oracle service location
Next Day: Your covered hardware system is greater than 50 mile/80 kilometers from a designated Oracle service location

Severity 2
If Oracle determines, in its sole discretion, that onsite support is appropriate, an Oracle-dispatched engineer will generally arrive at your location within the time frames specified below.
Within 4 hours: Your covered hardware system must be within 25 miles/40 kilometers of a designated Oracle service location
Within same business day: Your covered hardware system must be within 26 – 49 miles/41 – 79 kilometers of a designated Oracle service location
Next Business Day: Your covered hardware system is greater than 50 mile/80 kilometers from a designated Oracle service location

Severity 3
If Oracle determines, in its sole discretion, that onsite support is appropriate, an Oracle-dispatched engineer will generally arrive at your location the next business day from the close of local business hours or at a later mutually agreed-upon time (e.g., scheduled maintenance window).

Note:
The geographic location of your covered hardware system may cause on-site service to be unavailable. Oracle reserves the right, in its sole discretion, to adjust Severity 1, Severity 2 and Severity 3 on-site response times based on the location of the covered hardware system. Actual response times are subject to acts and conditions beyond Oracle's control and, therefore, Oracle's response may be delayed. Oracle is not

responsible for response delays caused by factors outside its control. You should contact an Oracle Support Sales representative for more details regarding availability for your covered hardware systems.

CONTACT INFORMATION
Phone numbers and contact information can be found on Oracle's support web site at http://www.oracle.com/us/support/contact-068555.html

4. Preventive and Corrective Maintenance Activities – The Contractor and Authorized User agree that there are no specific preventive and corrective maintenance activities required under this SLA.

5. Service Level Agreement Penalties/Rewards - The Contractor and Authorized User agree that there are no specific penalties or rewards incorporated into this SLA.

6. Reporting Requirements/Problem Escalation and Follow-up Procedures – The Contractor and Authorized User agree that service requests shall be made in accordance with section 3 above. If an Authorized User wishes to have its service request escalated, it shall follow the Escalation Process set out below:

Escalation Process for Oracle Premier Support:
Oracle resolves problems according to the priority or severity of an issue. The ability to assess the severity of an issue and assign a rating that drives the appropriate response is the cornerstone of the problem resolution process. Customers should escalate an issue when they:

- encounter a critical roadblock or showstopper to implementation or upgrade plans
- urgently need to communicate important business issues to managers in Oracle Support
- are dissatisfied with the resolution or response to a Service Request

Oracle Premier Support provides 24X7 support for mission critical issues. Anywhere or anytime, our support specialists around the world are available to help resolve your critical technical issues. Escalating an issue brings a heightened level of awareness to management and, when appropriate, more resources. It does not automatically change the severity rating of an issue. Therefore, clear communication is essential to bringing about a successful and timely resolution. If the business impact has changed, or was incorrectly set, customers should request a change of severity rather than escalation of the Service Request (SR). If heightened attention is required for a product defect, customers should request a bug escalation through the support engineer assigned to the Service Request. In situations where a heightened level of support for a Service Request is essential, Oracle has designed a phased escalation process. This process is the same regardless of the Oracle product family.

Initiating an Escalation
Step 1: Start the escalation process by updating the SR. Provide a thorough explanation about why you are escalating. Take a moment to complete the following template and enter it in the SR:

**********Escalation Request **********
Reason for escalation, including business impact of the problem that requires escalation, Business or implementation milestone, critical date(s) (milestone date or resolve by date), along with the type of business or implementation milestone, Name of the person requesting the escalation, contact information: phone number, pager, email address
**********Escalation Request**********

Step 2: Call the Oracle Premier Support number and select the menu option for an existing SR. After entering your SR number, follow the phone menu to the option to escalate your SR. Inform the answering support engineer that you would like to escalate your SR and speak with an escalation manager.

- The engineer will page the appropriate escalation manager, who will call you within approximately 30 minutes of the request. (It is important that you telephone us to ensure that an escalation manager is paged. Updating the SR via the web alone does not guarantee that you will receive a call from the escalation manager within approximately 30 minutes.)
- The manager will work with you to create an acceptable action plan.
- The manager will document the conversation and the action plan in the SR.
- The manager will follow up to ensure that the action plan is followed or reset expectations if necessary.
- The escalation manager owns the escalation until the issue is resolved or escalated to a higher management level. If a customer is dissatisfied with the progress made by the escalation manager, the SR can be escalated to a Senior Director followed by the Oracle Support Vice President, if necessary. As issues are escalated within Oracle's support management, a Director or VP from your company may be asked to be available for the discussions.

Working Effectively with Support:
Severity levels describe the impact a SR has on the customer's business and defines the resources to be engaged by both parties, as well as the rules of engagement for the resolution of the SR.

- Severity 1: Problem or product defect causes complete loss of service, regardless of the customer environment, and/or work cannot reasonably continue.
- Severity 2: Severe loss of service; no acceptable workaround; however, operations can continue in a restricted fashion.
- Severity 3: Minor loss of service; impact is an inconvenience that may require a workaround to restore functionality.
- Severity 4: No loss of service; minor error that does not impede operations or an enhancement request.

Oracle Premier Support Phone Numbers
Oracle.....1.800.223.1711 CRM On Demand….1.866.853.8521
Link to all Support Phone #s:
http://www.oracle.com/support/contact.html

Useful Oracle Websites
My Oracle Support (MOS):
https://support.oracle.com/CSP/ui/flash.html#

Acquired Product Support:
http://www.oracle.com/support/support-integration.html

Additional Resources and Documentation
For complete definitions of severity levels, download the PDF titled Oracle's Technical Support Policies at:
http://www.oracle.com/support/policies.html.

Link to My Oracle Support (MOS) - Escalation Process Speed
Training: Recorded Training ID 603505.1

Technical Support Renewal Order Form

under the terms of PT63783, the Centralized Contract for the Acquisition of Enterprise Systems – Servers and Mainframes, between New York State Office of General Services and Oracle America, Inc., successor in interest to Sun Microsystems, Inc.

Authorized User Information: **Effective Date:**		Oracle Service Contract # (Needed for Renewal):	
Authorized User Name:		**Purchase Order #:**	
Quote To Address:		**Bill To Address:**	
(Not a P.O. Box)			
City, State ZIP		City, State ZIP	
Receiving Contact Name:		Bill Contact Name:	
E-mail:			
Telephone #:		Telephone #:	
Fax #:		Fax #:	
Technical Support Information:			
Technical Primary Contact:		Backup Contact:	
Address:		(if applicable)	
City, State ZIP		City, State ZIP	
Telephone #:		Telephone #:	
Fax #:		Fax #:	
Note: List additional Technical Support Contacts on attached sheet (if applicable).			
Customer Signature:		**Signature Date:**	
Oracle America, Inc. Signature:		**Signature Date:**	

See page two for Notes.

Notes:

1.) Effective Date means the start date of the service as specified in the Oracle Service Contract.

2.) See the attached Table: #1 for the Systems support being purchased by Authorized User.

3.) See the attached Table: #2 for the Service Level Agreement being approved by Authorized User.

4.) **Orders placed through this Order Form are placed under and incorporate the terms and conditions of NYS Contract #PT63783**. Unless otherwise mutually agreed by the Contractor and the Authorized User, the following must appear on each Purchase Order or standard ordering document issued by an Authorized User: "This Purchase Order is placed in accordance with the terms and conditions of the Contract. Accordingly, no other terms and conditions, including any preprinted terms on this Purchase Order, shall apply."

5.) **Technical Support Term:** Technical Support consists of annual Technical Support services the Authorized User may have ordered. Fees for Technical Support are due and payable quarterly in arrears. Technical Support acquired under this Order Form shall be for a period of 12 months.

6.) The Authorized User may discontinue support during or at the end of any current Technical Support term. In the event Authorized User discontinues Technical Support, it may, at any time thereafter, reinstate Technical Support in accordance with Appendix B Section 78(d) of the Contract.

TABLE 1 SYSTEMS SUPPORT RENEWAL

Oracle Support #(s)	Service Level: Oracle Premier Support for Systems	Start Date of Support	End Date of Support	Total Support Renewal Fee

Total Net Fees for Order Form: $0.00

TABLE 2
SERVICE LEVEL AGREEMENT

In accordance with Section 6, Service Level Agreements (SLAs), and section 9, Maintenance, General Provisions, of NYS Contract #PT63783, the following sets forth the understanding of the Contractor and Authorized User with respect to the performance of maintenance services. In accordance with Section 6, this SLA (1) defines the services that the Contractor will provide, assigns priorities to these services, and establishes baseline standards, responsibilities, and commitments and (2) becomes the basis for performance measurement reporting and provides the opportunity to identify potential service level improvements.

1. The scope of services is set forth in this document and NYS Contract #PT63783, including without limitation Appendix E, Submission #4.

2. The delivery and acceptance timeframes and procedures are set forth in NYS Contract #PT63783, including without limitation Appendix B.

3. Time Commitments and Prioritization of Services:

SEVERITY DEFINITIONS

Service requests for your covered hardware system may be submitted by you online through Oracle's web-based customer support systems or by telephone. The service request severity level is selected by you and Oracle and should be based on the following severity definitions:

Severity 1

Your production use of the covered hardware system is stopped or so severely impacted that you cannot reasonably continue work. You experience a complete loss of service. The operation is mission critical to the business and the situation is an emergency. A Severity 1 service request has one or more of the following characteristics:

- Data corrupted
- A critical documented function is not available
- System hangs indefinitely, causing unacceptable or indefinite delays for resources or response
- System crashes, and crashes repeatedly after restart attempts
- System functionality failure causes data loss or renders system unstable
- System malfunction causes mission critical applications to restart, hang, or suspend

Reasonable efforts will be made to respond to Severity 1 service requests within one (1) hour.

24 Hour Commitment to Severity 1 Service Requests: OSS will work 24x7 until the issue is resolved or as long as useful progress can be made. You must provide OSS with a contact during this 24x7 period, either on site or by pager, to assist with data gathering, testing, and applying fixes. You are requested to propose this severity classification with great care, so that valid Severity 1 situations obtain the necessary resource allocation from Oracle.

Severity 2
You experience a severe loss of service. Important features are unavailable with no acceptable workaround, impaired or broken functionality with significant impact to applications, and/or frequent application failure but not data loss; however, operations can continue in a restricted fashion.

Severity 3
You experience a minor loss of service. The impact is an inconvenience, which may require a workaround to restore functionality.

Severity 4
You request information, an enhancement, or documentation clarification regarding your software but there is no impact on the operation of the software. You experience no loss of service. The result does not impede the operation of a system.

ONSITE RESPONSE TIME TARGETS FOR HARDWARE SUPPORT
Response time targets for hardware support are as specified below, except for Sun Ray Clients. The response time target for Sun Ray Clients, regardless of severity level, is limited to Advanced Parts Exchange with next business day delivery to your location.
Please refer to the attached document titled "Oracle Service Locations" (PDF) for a listing of service locations.

Severity 1
If Oracle determines, in its sole discretion, that onsite support is appropriate, an Oracle-dispatched engineer will generally arrive at your location within the time frames specified below.
Within 2 hours: Your covered hardware system must be within 25 miles/40 kilometers of a designated Oracle service location
Within 4 hours: Your covered hardware system must be within 26 – 49 miles/41 – 79 kilometers of a designated Oracle service location
Next Day: Your covered hardware system is greater than 50 mile/80
kilometers from a designated Oracle service location

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Within 4 hours: Your covered hardware system must be within 25 miles/40 kilometers of a designated Oracle service location
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If Oracle determines, in its sole discretion, that onsite support is appropriate, an Oracle-dispatched engineer will generally arrive at your location the next business day from the close of local business hours or at a later mutually agreed-upon time (e.g., scheduled maintenance window).

Note:
The geographic location of your covered hardware system may cause on-site service to be unavailable. Oracle reserves the right, in its sole discretion, to adjust Severity 1, Severity 2 and Severity 3 on-site response times based on the location of the covered hardware system. Actual response times are subject to acts and conditions beyond Oracle's control and, therefore, Oracle's response may be delayed. Oracle is not responsible for response delays caused by factors outside its control. You should contact an Oracle Support Sales representative for more details regarding availability for your covered hardware systems.

CONTACT INFORMATION
Phone numbers and contact information can be found on Oracle's support web site at http://www.oracle.com/us/support/contact-068555.html

4. Preventive and Corrective Maintenance Activities – The Contractor and Authorized User agree that there are no specific preventive and corrective maintenance activities required under this SLA.

5. Service Level Agreement Penalties/Rewards - The Contractor and Authorized User agree that there are no specific penalties or rewards incorporated into this SLA.

6. Reporting Requirements/Problem Escalation and Follow-up Procedures – The Contractor and Authorized User agree that service requests shall be made in accordance with section 3 above. If an Authorized User wishes to have its service request escalated, it shall follow the Escalation Process set out below:

Escalation Process for Oracle Premier Support:
Oracle resolves problems according to the priority or severity of an issue. The ability to assess the severity of an issue and assign a rating that drives the appropriate response is the cornerstone of the problem resolution process. Customers should escalate an issue when they:

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- urgently need to communicate important business issues to managers in Oracle Support
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Oracle Premier Support provides 24X7 support for mission critical issues. Anywhere or anytime, our support specialists around the world are available to help resolve your critical technical issues. Escalating an issue brings a heightened level of awareness to management and, when appropriate, more resources. It does not automatically change the severity rating of an issue. Therefore, clear communication is

essential to bringing about a successful and timely resolution. If the business impact has changed, or was incorrectly set, customers should request a change of severity rather than escalation of the Service Request (SR). If heightened attention is required for a product defect, customers should request a bug escalation through the support engineer assigned to the Service Request. In situations where a heightened level of support for a Service Request is essential, Oracle has designed a phased escalation process. This process is the same regardless of the Oracle product family.

Initiating an Escalation

Step 1: Start the escalation process by updating the SR. Provide a thorough explanation about why you are escalating. Take a moment to complete the following template and enter it in the SR:

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**********Escalation Request**********

Step 2: Call the Oracle Premier Support number and select the menu option for an existing SR. After entering your SR number, follow the phone menu to the option to escalate your SR. Inform the answering support engineer that you would like to escalate your SR and speak with an escalation manager.

- The engineer will page the appropriate escalation manager, who will call you within approximately 30 minutes of the request. (It is important that you telephone us to ensure that an escalation manager is paged. Updating the SR via the web alone does not guarantee that you will receive a call from the escalation manager within approximately 30 minutes.)
- The manager will work with you to create an acceptable action plan.
- The manager will document the conversation and the action plan in the SR.
- The manager will follow up to ensure that the action plan is followed or reset expectations if necessary.
- The escalation manager owns the escalation until the issue is resolved or escalated to a higher management level. If a customer is dissatisfied with the progress made by the escalation manager, the SR can be escalated to a Senior Director followed by the Oracle Support Vice President, if necessary. As issues are escalated within Oracle's support management, a Director or VP from your company may be asked to be available for the discussions.

Working Effectively with Support:

Severity levels describe the impact a SR has on the customer's business and defines the resources to be engaged by both parties, as well as the rules of engagement for the resolution of the SR.

• Severity 1: Problem or product defect causes complete loss of service, regardless of the customer environment, and/or work cannot reasonably continue.
• Severity 2: Severe loss of service; no acceptable workaround; however, operations can continue in a restricted fashion.
• Severity 3: Minor loss of service; impact is an inconvenience that may require a workaround to restore functionality.
• Severity 4: No loss of service; minor error that does not impede operations or an enhancement request.

Oracle Premier Support Phone Numbers
Oracle.....1.800.223.1711 CRM On Demand….1.866.853.8521
Link to all Support Phone #s:
http://www.oracle.com/support/contact.html

Useful Oracle Websites
My Oracle Support (MOS):
https://support.oracle.com/CSP/ui/flash.html#

Acquired Product Support:
http://www.oracle.com/support/support-integration.html

Additional Resources and Documentation
For complete definitions of severity levels, download the PDF titled Oracle's Technical Support Policies at:
http://www.oracle.com/support/policies.html.

Link to My Oracle Support (MOS) - Escalation Process Speed
Training: Recorded Training ID 603505.1

Submission # 7

Oracle Hardware and Systems Support Policies

Oracle Hardware and Systems Support Policies

Effective Date: 22-April-2011

OVERVIEW

Unless otherwise stated, these Hardware and Systems Support Policies apply to technical support for all Oracle server and storage product lines.

"You" and "your" refers to the individual or entity that has ordered technical support from Oracle or an Oracle-authorized partner.

To receive technical support as provided by Oracle Support Services ("OSS") and described in the Oracle Technical Support Levels for Systems section below, you must: (i) provide Oracle with the serial number and/or other identification and entitlement information for all equipment manufactured by or for Oracle, including components, options, and spare parts ("hardware system") in the manner specified by Oracle; and (ii) pay a technical support fee. A hardware system meeting these two requirements and under contract to receive support is referred to as a "covered hardware system." Components, options and spare parts purchased separately from your original equipment purchase are included in the definition of hardware system for the purposes of determining the technical support fee. Oracle will make commercially reasonable efforts to provide the hardware support service as described below. (Note: These offerings are not available for non-Oracle/Sun hardware).

Oracle's obligations under these Hardware and Systems Support Policies do not apply to any malfunctions in a hardware system that could be avoided if you incorporate or implement a hardware or firmware update or any workaround previously provided by Oracle which would correct the malfunction or to a hardware system that has been (i) modified, altered or adapted without Oracle's written consent; (ii) mistreated or used in a manner other than in accordance with that hardware product's or software media's manual (including failure to follow Oracle's installation, system maintenance, and environmental recommendations); (iii) repaired by any third party in a manner which fails to meet Oracle's quality standards; (iv) improperly installed by any party other than Oracle or an authorized Oracle certified installation partner; (v) used with equipment or software not covered by the service offering, to the extent that problems are attributable to such use; (vi) relocated, to the extent that problems are attributable to the relocation; (vii) used directly or indirectly in supporting activities prohibited by U.S. or other national export regulations; (viii) used by parties appearing on the most current U.S. export exclusion list; (ix) relocated to countries subject to U.S. trade embargo or restrictions; or (x) used remotely to facilitate any activities in the countries referenced in (ix) above.

Oracle may use subcontractors in the performance of technical support and it warrants the quality of subcontractor work per the warranty terms of your agreement with Oracle/Sun.

Oracle will provide technical support in accordance with Oracle's services privacy policy available at http://www.oracle.com/us/legal/privacy/services-privacy-policy-078833.html.

These Technical Support Policies are subject to change at Oracle's discretion; however Oracle policy changes will not result in a material reduction in the level of the services provided for a hardware system during the support period (defined below) for which fees for technical support have been paid.

To view a comparison of these Oracle Hardware and Systems Support Policies and the previous version of the Oracle Hardware and Systems Support Policies, please refer to the attached *Statement of Changes* (PDF).

SUPPORT TERMS

Technical Support Fees

Technical support fees are due and payable annually in advance of a support period, unless otherwise stated in the relevant ordering document or financing or payment contract with Oracle or an Oracle affiliate. Your commitment to pay is required to process your technical support order with Oracle (e.g., purchase order, actual payment, or other approved method of payment). An invoice will be issued only upon receipt of your commitment to pay, and will be sent to a single billing address that you designate. Failure to submit payment will result in the termination of support.

Support Period

Technical support is effective upon the date of shipment of the hardware unless stated otherwise in your ordering document. Oracle technical support terms, including pricing, reflect a 12 month support period (the "support period"), unless stated otherwise in your ordering document. All technical support services ordered for a support period and the related fees are non-cancelable and non-refundable. Oracle is not obligated to provide technical support beyond the end of the support period.

Matching Service Levels

When acquiring technical support, all hardware systems must be supported (e.g., Oracle Premier Support for Systems or Oracle Premier Support for Operating Systems) or all hardware systems must be unsupported. For the purpose of this section, hardware systems include (i) all of your hardware systems running the Solaris Operating system release 10 Update 9 or later and (ii) all of your hardware systems running the Oracle Linux and Oracle VM operating system, and (iii) all hardware systems that benefit in any way from your support of a covered hardware system (e.g., including hardware systems that share updates, patches, fixes, security alerts, work-arounds, configuration/installation assistance or parts with a covered hardware system). If you have acquired your Oracle Linux and Oracle VM support services under a separate Oracle Linux and Oracle VM Services Agreement then that hardware system is a covered hardware system under this matching service level policy. Hardware systems that have reached an end of service life are excluded from the above policy, and hardware systems that you register with Oracle as retired are excluded from the above policy.

Reinstatement of Oracle Technical Support

In the event that technical support lapses for more than 90 days or was not purchased at the time you acquired your hardware system, then your hardware system must be qualified as service-ready before technical support can be reinstated. To qualify as service-ready you must acquire the Premier Support Qualification Service (at the then current fees) and meet all requirements set forth by the service team to obtain a qualification certificate for your hardware system.

Upon the commencement of technical support a reinstatement fee will be assessed. The reinstatement fee is equal to 150% of the last-paid technical support fee, or, if technical support was never acquired, 150% of the applicable technical support fee for the covered hardware system, prorated from the date technical support is being ordered back to the date technical support lapsed (or the hardware order date if technical support was never purchased). Applicable renewal adjustments are applied. Once the reinstatement fee has been assessed, technical support for the year following the reinstatement period may be purchased for an additional technical support fee as calculated based on how long the hardware system has been unsupported (“go-forward support fee”). If the lapsed support period is less than 6 months, the go-forward support fee is calculated based on the applicable percentage of the net purchase price paid to Oracle for the covered hardware system. If the lapsed support period is 6 months or greater, the go-forward support fee is calculated based on the last-paid technical support fee.

Upgrading Your Support Level

In the event you have acquired Oracle Premier Support for Operating Systems and later choose to upgrade to Oracle Premier Support for Systems, your hardware system must be qualified as service-ready before the technical support can be upgraded. To qualify as service-ready you must acquire the Premier Support Qualification Service (at the then current fees) and meet all requirements set forth by the service team to obtain a qualification certificate for your hardware system. You will be subject to an upgrade fee equal to the difference in price between the Oracle Premier Support for Systems and the Oracle Premier Support for Operating Systems with such difference being prorated from the date that any prior System Support lapsed (or the hardware order date if System Support was never purchased).

Pricing following Reduction of Covered Hardware System or Service Level

Pricing for support is based upon the level of support and the volume of covered hardware systems for which support is ordered. In the event that (i) your hardware system reaches end of service life or (ii) you notify Oracle that you are retiring the hardware system, or (iii) you change service level for all of your systems, then Oracle will reduce your support fee at the next renewal for these reductions.

Unsupported Hardware Systems

Customers with unsupported hardware systems are not entitled to download or receive updates, maintenance releases, patches, telephone assistance, or any other technical support services for unsupported hardware systems. Parts in a covered hardware system may not be transferred to an unsupported system. CD packs or programs purchased or downloaded for trial use, use with other supported programs, or purchased or downloaded as replacement media may not be used to update any unsupported hardware systems.

Technical Contacts

Your technical contacts are the sole liaisons between you and OSS for technical support of programs. Your technical contacts must have, at a minimum, initial basic product training and, as needed, supplemental training appropriate for specific role or implementation phase, specialized product usage, and/or migration. Your technical contacts must be knowledgeable about the Oracle hardware systems and your Oracle environment in order to help resolve system issues and to assist Oracle in analyzing and resolving service requests. When submitting a service request, your technical contact must have a baseline understanding of the problem you are encountering and an ability to reproduce the problem in order to assist Oracle in diagnosing and triaging the problem. To avoid interruptions in support services, you must notify OSS whenever technical contact responsibilities are transferred to another individual.

With the order of Oracle Premier Support for Operating Systems and/or Oracle Premier Support for Systems, you may designate one (1) primary and four (4) backup individuals ("technical contact") per data center location, to serve as liaisons with OSS. With each USD$250,000 in net support fees per data center location, you have the option to designate an additional two (2) primary and four (4) backup technical contacts per data center location. Your primary technical contact shall be responsible for (i) overseeing your service request activity, and (ii) developing and deploying troubleshooting processes within your organization. The backup technical contacts shall be responsible for resolving user issues. You may be charged a fee to designate additional technical contacts.

Oracle may review service requests logged by your technical contacts, and may recommend specific training to help avoid service requests that would be prevented by such training.

First and Second Line Support

You are required to establish and maintain the organization and processes to provide “First Line Support” for the supported hardware system(s) directly to your users. First Line Support shall include but not be limited to (i) a direct response to users with respect to inquiries concerning the

performance, functionality or operation of the supported hardware system(s), (ii) a direct response to users with respect to problems or issues with the supported hardware system(s), (iii) a diagnosis of problems or issues of the supported hardware system(s), and (iv) a resolution of problems or issues of the supported hardware system(s).

If after reasonable commercial efforts you are unable to diagnose or resolve problems or issues of the supported hardware system(s), you may contact Oracle for "Second Line Support". You shall use commercially reasonable efforts to provide Oracle with the necessary access (e.g., accept remote connections, provide Explorer Files and/or Core Files) required to provide Second Line Support. Oracle does not warrant its performance of the technical support described herein if you do not provide such access at Oracle's request.

Second Line Support shall consist of (i) a diagnosis of problems or issues of the supported hardware system(s) and (ii) reasonable commercial efforts to resolve reported and verifiable errors in supported hardware system(s) so that such supported hardware system(s) perform in all material respects as described in the associated documentation.

Oracle may review service requests logged by your technical contacts, and may recommend specific organization and process changes to assist you with the above recommended standard practices.

Program Updates

"Update" means a subsequent release of the program which Oracle generally makes available for program licenses to its supported customers at no additional license fee, other than shipping charges if applicable, provided you have ordered a technical support offering that includes software updates for such licenses for the relevant time period. Updates do not include any release, option or future program that Oracle licenses separately. Updates are provided when available (as determined by Oracle) and updates may not include all versions previously available for a program acquired by Oracle. Oracle is under no obligation to develop any future programs or functionality. Any updates made available will be delivered to you, or made available to you for download. If delivered, you will receive one update copy for each supported operating system for which your program licenses were ordered. You shall be responsible for copying, downloading and installing the updates.

Payment Plan, Financing and Leasing Agreements

Technical support fees due under payment plans, financing or leasing agreements between you and Oracle or an Oracle affiliate ("payment plan") are due and payable in accordance with the terms and conditions of such payment plan, but the technical support shall be ordered pursuant to the terms of the applicable ordering document.

Lifetime Support

Lifetime Support consists of the following service levels:

- Oracle Premier Support for Systems and Oracle Premier Support for Operating Systems
- Extended Support for Operating Systems(if offered)
- Sustaining Support for Systems and Sustaining Support for Operating Systems

A description of the services available under Oracle Premier Support for Systems, Oracle Premier Support for Operating Systems, Extended Support for Operating Systems, Sustaining Support for Systems, and Sustaining Support for Operating Systems is included in the Oracle Technical Support Levels section below.

When offered, Oracle Premier Support for Systems will be available for five years from the Last Ship Date of the hardware system. Based on availability, support may be extended with Sustaining Support for Systems, which will be available for as long as you maintain Oracle Premier Support for Systems for your Oracle hardware system.

When offered, Oracle Premier Support for Operating Systems will be available for eight years from the date a release of the operating system becomes generally available, except as noted below. Based on availability, support may be extended for an additional three years with Extended Support for Operating Systems for specific releases. Alternatively, support may be extended with Sustaining Support for Operating Systems, which will be available for as long as you maintain Oracle Premier Support for Operating Systems for your Oracle hardware system.

Refer to the attached document titled "Lifetime Support Policy: Coverage for Hardware and Operating Systems" (PDF) for specific hardware and operating systems that are, or will be, covered by the Lifetime Support Policy.

Refer to the attached "Lifetime Support Policy: Coverage for Oracle Linux and Oracle VM" (PDF) document for specific Oracle Linux and Oracle VM program releases that are, or will be covered by the Lifetime Support Policy.

Notes:

1 OpenSolaris - Program fixes and security patches for OpenSolaris will be provided for six (6) months from the date that a release of the OpenSolaris becomes generally available. This applies to program fixes and security patches released by Oracle and does not include freely available updates from the OpenSolaris Community.

Third-Party Products

Installation of non-Oracle product by you, or your representative (other than by Oracle), into an Oracle hardware system is strongly discouraged due to the serviceability implications outlined below.

Unless third-party product is expressly identified under the applicable technical support contract, Oracle's technical support applies only to those products that have been both (1) manufactured by or for Oracle, and (2) sold by Oracle (either directly or by and Oracle-authorized partner). Oracle does not support any other third-party products installed into or attached to Oracle hardware systems. Further, if third-party product is installed, or fails, in a manner that damages the Oracle hardware system, then the technical support will not cover such damage. Replacement or repair of any damaged components in these situations would be subject to additional charges.

Installation of non-Oracle product into an Oracle hardware system may also impede and/or add costs in obtaining technical support for certain failure conditions. Interoperability, timing, and intermittent failures are some examples of failure conditions that may require the removal or replacement of the third-party product from the Oracle hardware system.

For those failure conditions directly or indirectly related to third-party product (which would include any components accessing or connected to that product that are exhibiting failures), Oracle may, at its sole discretion, remove the third-party product, or require the customer to remove the third-party product, before commencing with the troubleshooting process. Oracle's services for removing the third-party product will be subject to additional charges.

If it is determined that the cause of the failure is the third-party product, then Oracle will charge for the entire service call.

If it is determined that the third-party product is not the cause of the failure (i.e, if the problem would have occurred even if third-party product was not installed in or attached to the hardware system), then Oracle's service call will be addressed under the terms of any existing Oracle technical support contract; provided that the removal of any third-party product by Oracle will be subject to additional charges.

Technology Refresh

If you acquire a new hardware system(s) and technical support from Oracle or an Oracle-authorized partner, you may be eligible to receive a credit for unused support on the decommissioned hardware system(s) currently under an active support contract with Oracle. In order to be eligible for the credit, you must complete the Hardware System Decommission Form which can be found here and submit it within one (1) year of the shipment date of the new hardware system(s). If a credit for unused support is due then such credit will be calculated from the date Oracle receives the Hardware System Decommission Form through the end of the current support period for the decommissioned hardware system(s). The credit for unused support will not exceed the total annual support fee for the new hardware system(s).

ORACLE TECHNICAL SUPPORT LEVELS FOR SYSTEMS

Oracle Premier Support for Systems

Oracle Premier Support for Systems consists of services in support of hardware systems, operating system software and integrated software (e.g., firmware). For hardware systems, this support is limited to Oracle/Sun hardware only. For Oracle/Sun servers, this support applies to the following operating system software: Oracle Solaris, OpenSolaris, Trusted Solaris 8, Oracle Linux, and Oracle VM. Oracle Premier Support for Systems consists of:

- Program updates, patches, fixes[1], security patches, and security alerts for operating system software and integrated software (e.g., firmware)
- Upgrade tools
- Certification with most new third-party products/versions
- Major product and technology releases for operating system software and integrated software (e.g., firmware), which includes general maintenance releases, selected functionality releases, and documentation updates
- Onsite hardware support for Oracle/Sun server or storage systems
- Field Change Orders – system modification recommendations
- Assistance with service requests 24 hours per day, 7 days a week
- Access to My Oracle Support (24 x 7 web-based customer support systems), including the ability to log service requests online
- 24x7 access to Oracle Unbreakable Linux Network
- Hardware Certification[2]
- Backport of fixes[1], using commercially reasonable efforts, for any Oracle Linux or Oracle VM program released from Oracle within the last six (6) months; the Backport Schedule is available at http://linux.oracle.com/backport-schedule.html
- Right to use Oracle Management Pack for Linux. To access and download the Oracle Management Pack for Linux, go to http://www.oracle.com/technetwork/oem/grid-control/omp-linux-091367.html.
- Right to use Oracle Clusterware for Oracle Unbreakable Linux. To access and download Oracle Clusterware for Oracle Unbreakable Linux, go to http://www.oracle.com/technetwork/database/clusterware/overview/index-096607.html
- Non-technical customer service during normal business hours

Notes:

1. Oracle will only provide bug fixes for certain versions of Oracle Linux and Oracle VM programs as provided on http://linux.oracle.com/supported.html.
2. Hardware certification will be provided for the first four (4) years from the date a release of the Oracle Linux and Oracle VM programs become generally available. After four (4) years, hardware certification may be provided at Oracle's sole discretion; however Oracle is under no obligation to provide such hardware certification.

System Maintenance
You agree to perform prescribed system maintenance, including but not limited to, installing software updates for system software or firmware, maintaining file systems, replacing air filters and batteries as needed, and tracking proactive diagnostic information.

Replacement Hardware Parts
If Oracle determines that the replacement of a hardware part is necessary, Oracle will send a replacement part to your location. Oracle personnel will install the replacement part unless Oracle determines that you can install the replacement part yourself. If you request that Oracle replace a self service replacement part then you will be charged an additional fee for the installation. Oracle will use commercially reasonable efforts to send replacement parts to you consistent with the Onsite Response Times Targets for Hardware Support noted below. Replacement parts will be of new or like-new quality.

Return of Malfunctioning Parts
If Oracle sends a replacement part to you, you will ensure that the malfunctioning part is returned to Oracle in accordance with all shipping instructions from Oracle (unless you have an agreement with Oracle allowing you to retain the malfunctioning part). If Oracle delivers a replacement part to you, you must have the malfunctioning part ready for immediate exchange upon delivery. All malfunctioning parts become Oracle's property upon removal from your site. If you fail to return or exchange any malfunctioning part, you will be charged the then-current fee.

Oracle Premier Support for Operating Systems

Oracle Premier Support for Operating Systems consists of services in support of (i) operating system and virtualization software for Oracle Solaris, OpenSolaris, Trusted Solaris 8, Oracle Linux, Oracle VM, and Sun Ray Device Operating Software and (ii) integrated software (e.g., firmware). Oracle Premier Support for Operating Systems consists of:

- Program updates, patches, fixes[1], security patches, and security alerts for operating system software and integrated software (e.g., firmware)
- Upgrade tools
- Certification with most new third-party products/versions
- Major product and technology releases for operating system software and integrated software (e.g., firmware), which includes general maintenance releases, selected functionality releases, and documentation updates
- Assistance with service requests 24 hours per day, 7 days a week
- Access to My Oracle Support (24 x 7 web-based customer support systems), including the ability to log service requests online
- 24x7 access to Oracle Unbreakable Linux Network
- Hardware Certification[2]
- Backport of fixes[1], using commercially reasonable efforts, for any Oracle Linux or Oracle VM program released from Oracle within the last six (6) months; the Backport Schedule is available at http://linux.oracle.com/backport-schedule.html
- Right to use Oracle Management Pack for Linux. To access and download the Oracle Management Pack for Linux, go to http://www.oracle.com/technetwork/oem/grid-control/omp-linux-091367.html.
- Right to use Oracle Clusterware for Oracle Unbreakable Linux. To access and download Oracle Clusterware for Oracle Unbreakable Linux, go to http://www.oracle.com/technetwork/database/clusterware/overview/index-096607.html
- Non-technical customer service during normal business hours

Notes:

1. Oracle will only provide bug fixes for certain versions of Oracle Linux and Oracle VM programs as provided on http://linux.oracle.com/supported.html.

2. Hardware certification will be provided for the first four (4) years from the date a release of the Oracle Linux and Oracle VM programs become generally available. After four (4) years, hardware certification may be provided at Oracle's sole discretion; however Oracle is under no obligation to provide such hardware certification.

Extended Support for Operating Systems

Extended Support for Operating Systems may be available for certain Oracle Solaris operating system software releases. When Extended Support for Operating Systems is offered, it is generally available for three years following the expiration of Oracle Premier Support for Operating Systems and only for the terminal codeline release of a program.

Oracle Solaris operating system software releases eligible for Extended Support for Operating Systems will receive Oracle Premier Support for Operating Systems but limited to the following:

- Major product and technology releases for Oracle Solaris operating system software
- Program updates, fixes, security patches, and security alerts
- Upgrade tools
- General maintenance releases, selected functionality releases, and documentation updates for Oracle Solaris operating system software
- Assistance with service requests 24 hours per day, 7 days a week
- Access to My Oracle Support (24 x 7 web-based customer support systems), including the ability to log service requests online
- Non-technical customer service during normal business hours

Extended Support for Operating Systems does not include:

- Certification with most new third-party products/versions or most new Oracle programs

Extended Support for Operating Systems is not available for OpenSolaris, Trusted Solaris 8, Oracle Linux, Oracle VM, and Sun Ray Device Operating Software.

Sustaining Support

Sustaining Support for Systems - Sustaining Support for Systems may be available for certain hardware systems, operating system software and integrated software (e.g., firmware).

Hardware Systems, operating system software and integrated software (e.g., firmware) eligible for Sustaining Support for Systems will receive Oracle Premier Support for Systems limited to the following:

- Onsite hardware support for Oracle/Sun server or storage systems eligible for Sustaining Support for Systems
- Program updates, patches, fixes, security patches, and security alerts created during the Oracle Premier Support for Systems period.
- Upgrade tools created during the Oracle Premier Support for Systems period.
- General maintenance releases, selected functionality releases, and documentation updates created during the Oracle Premier Support for Systems period
- Assistance with service requests, on a commercially reasonable basis, 24 hours per day, 7 days a week
- Access to My Oracle Support (24 x 7 web-based customer support systems), including the ability to log service requests online
- 24x7 access to Oracle Unbreakable Linux Network
- Right to use Oracle Management Pack for Linux. To access and download the Oracle Management Pack for Linux, go to http://www.oracle.com/technetwork/oem/grid-control/omp-linux-091367.html

- Right to use Oracle Clusterware for Oracle Unbreakable Linux. To access and download Oracle Clusterware for Oracle Unbreakable Linux, go to http://www.oracle.com/technetwork/database/clusterware/overview/index-096607.html
- Non-technical customer service during normal business hours

Sustaining Support for Systems does not include:

- New program updates, patches, fixes, security patches, security alerts, general maintenance releases, selected functionality releases, documentation updates or upgrade tools
- Guaranteed availability of replacement parts
- Certification with most new third-party products/versions or most new Oracle products
- 24 hour commitment and response guidelines for Severity 1 service requests as defined in the Severity Level section below
- Hardware Certification
- Previously released fixes or updates that Oracle no longer supports.

Sustaining Support for Operating Systems - Sustaining Support for Operating Systems may be available for certain Oracle Premier Support for Operating Systems program releases.

Program releases eligible for Sustaining Support for Operating Systems will receive Oracle Premier Support for Operating Systems limited to the following:

- Program updates, patches, fixes, security patches, and security alerts for operating system software and integrated software (e.g., firmware) created during the (i) Oracle Premier Support for Operating Systems period, and created during the (ii) Extended Support for Operating Systems period for those customers who purchased Extended Support for Operating Systems. Customers who do not maintain Extended Support for Operating Systems but acquire Sustaining Support will receive the items listed in (i) immediately above, as well as items listed in (ii) but only after the Extended Support period ends.
- Upgrade tools created during the Oracle Premier Support for Operating Systems period.
- General maintenance releases, selected functionality releases, and documentation updates Assistance with service requests, on a commercially reasonable basis, 24 hours per day, 7 days a week
- Access to My Oracle Support (24 x 7 web-based customer support systems), including the ability to log service requests online
- 24x7 access to Oracle Unbreakable Linux Network
- Right to use Oracle Management Pack for Linux. To access and download the Oracle Management Pack for Linux, go to http://www.oracle.com/technetwork/oem/grid-control/omp-linux-091367.html
- Right to use Oracle Clusterware for Oracle Unbreakable Linux. To access and download Oracle Clusterware for Oracle Unbreakable Linux, go to http://www.oracle.com/technetwork/database/clusterware/overview/index-096607.html
- Non-technical customer service during normal business hours

Sustaining Support for Operating Systems does not include:

- New program updates, patches, fixes, security patches, security alerts, general maintenance releases, selected functionality releases, documentation updates
- New upgrade tools
- Certification with most new third-party products/versions or most new Oracle products
- 24 hour commitment and response guidelines for Severity 1 service requests as defined in the Severity Level section below
- Hardware Certification
- Backport of fixes
- Previously released fixes or updates that Oracle no longer supports.

Because program releases supported by Sustaining Support are no longer fully supported, information and skills regarding those releases may be limited.

Oracle Priority Service for Sun Ray Peripherals

Oracle Priority Service for Sun Ray Peripherals consists of:

- Advanced Parts Exchange for keyboards, monitors and country kits; with next business day delivery to your location
- Access to My Oracle Support (24 x 7 web-based customer support systems), including the ability to log service requests online

Oracle Customer Data & Device Retention Service

Oracle Customer Data & Device Retention Service permits you to retain disk drive(s), flash cache and/or parts that may contain sensitive, confidential, or classified data that have been removed from your hardware system. For the purposes of this service, (i) a disk drive is defined as a spinning media device that stores data accessed by the server, storage array, or tape system, (ii) flash cache is defined as any device having the ability to store information on a solid state media that is re-writable, and (iii) a part is defined as any item in a server, storage device, or network device containing non-volatile random access memory.

Oracle Customer Data & Device Retention Service consists of the following:

- If Oracle, in its sole discretion, determines that a disk drive(s), flash cache and/or parts need to be replaced, Oracle will send a replacement disk drive(s), flash cache, and/or parts to your location. Oracle personnel will install the replacement disk drive(s), flash cache and/or part and return the failed memory component to you. Oracle will use commercially reasonable efforts to send replacement parts to you consistent with the Onsite Response Time Targets for Hardware Support noted below.

If you acquire Oracle Customer Data & Device Retention Service, you will:

- Provide access to your facilities, systems, and operating environment, including root access.
- Provide access to your personnel, including IT and operational staff
- Provide a designated point of contact
- Be responsible for the proper disposal/destruction of replaced disk drive(s), flash cache and/or parts.

If you add Oracle Customer Data & Device Retention Service, you must maintain Oracle Premier Support for Systems; you must acquire Oracle Customer Data & Device Retention Service for (i) all servers of the same model number, (ii) all storage devices of the same model number, and/or (iii) all networking devices of the same model number.

Oracle Advanced Customer Services Onsite Spares

Oracle Advanced Customer Services Onsite Spares provides you with delivery and maintenance of parts at your designated location(s). This service includes only those parts that are specified on your order.

Oracle Advanced Customer Services Onsite Spares consists of the following:

- Parts
- Maintenance and replacement of parts
- Setup of parts onsite
- Semi-annual cycle counts
- Retrieval of parts at end of Support Period

If you acquire Oracle Advanced Customer Services Onsite Spares, you will:

- Provide a secure storage area for parts clearly marked “Property of Oracle. You will ensure that (i) entry to such secure area is restricted to your personnel directly involved in shipping and receiving parts, and (ii) all vehicle and pedestrian access to your warehouse premises is secured against unauthorized access.
- Provide a designated point of contact

In order to acquire Oracle Advanced Customer Services Onsite Spares, you must maintain Oracle Premier Support for Systems.

Oracle will maintain title to and ownership of parts unless or until any such part is exchanged with a damaged or faulty part and installed on a hardware system. Also, with the transfer of title to a part to you, title to the identical damaged or faulty part is transferred to Oracle.

Oracle Standard Installation Services

Oracle Standard Installation Services consist of services to install and configure hardware system(s). Oracle Standard Installation Services is comprised of the following three (3) services:

Oracle Standard Installation Services Exhibit - Basic
Oracle Standard Installation Services Exhibit - Standard
Oracle Standard Installation Services Exhibit - No site visit required

If you acquire any of the above Oracle Standard Installation Services on your order, Oracle will provide the services described in the applicable exhibit(s) specified above.

WEB-BASED CUSTOMER SUPPORT SYSTEMS

My Oracle Support is Oracle’s customer support web site for hardware support. Access to My Oracle Support is governed by the Terms of Use posted on the My Oracle Support web site. The Terms of Use are subject to change and a copy of these terms is available upon request. Access to My Oracle Support is limited to your designated technical contacts. Access to My Oracle Support is included with Oracle Premier Support for Systems, Oracle Premier Support for Operating Systems, Extended Support, and Sustaining Support.

Oracle Unbreakable Linux Network

Access to the Oracle Unbreakable Linux Network is included with Oracle Premier Support for Systems and Oracle Premier Support for Operating Systems.

TOOLS USED TO PERFORM TECHNICAL SUPPORT SERVICES

Oracle may make available software tools (such as tools to assist in the collection and transmission of configuration data) and web-based tools (such as tools that enable Oracle, with your consent, to access your computer system) to aid in the resolution of service requests. The tools are licensed under the My Oracle Support Terms of Use, and may be subject to additional terms provided with the tools. Some of the tools are designed to collect information concerning the configuration of your hardware and software environment (“tools data”). The tools will not access, collect or store any personally identifiable information (except for technical support contact information) or business data files residing in your software environment. By using the tools, you consent to the transmission of your tools data to Oracle for the purposes of providing reactive and proactive technical support services. In addition, the tools data may be used by Oracle to assist you in managing your Oracle product portfolio, for license and services compliance and to help Oracle improve upon product and service offerings. Further details about some of the current tools Oracle uses to provide technical support services, and the data collected and how it is used, are described in the Oracle technical support policies, the Global Customer Support Security Practices and My Oracle Support. You may contact your Oracle sales representative or call your local Customer Support office for more details regarding the tools and availability.

If Oracle expressly provides in the tools documentation, technical support policies, an ordering document, or readme that the tool is provided under separate license terms ("Separate Terms") then the Separate Terms shall govern your access and use of the tool. Similarly, embedded third party software, or third party software, licensed under Separate Terms (for example Mozilla and LGPL) may be required to access or run the tools per the tools documentation or readme. Your rights to use a tool or software licensed under Separate Terms shall not be restricted or modified in any way by your agreement with Oracle.

Auto Service Request

Auto Service Request ("ASR") allows Oracle products which are ASR-enabled to automatically initiate a service request when specific hardware faults occur by sending fault information to Oracle. To implement ASR, you must utilize the ASR software made available via electronic download or such other means as Oracle may elect. For ASR enabled hardware, ASR will send specific hardware fault telemetry information to Oracle. If the ASR enabled hardware is entitled to service, a service request will be initiated on your behalf. Oracle will notify the Technical Contact to arrange error resolution as appropriate. You are responsible to maintain the telecom gateway through which ASR communicates with Oracle regarding your hardware system.

ASR is subject to availability on selected systems and local conditions may apply. You may go to http://www.oracle.com/asr/index.html or contact your Oracle sales representative for more details regarding availability. The specific hardware faults detected by ASR vary by product type, product version and operating system. Not all hardware faults are detected or sent to Oracle. The ASR fault coverage is subject to change by Oracle at any time and without prior notice.

GLOBAL CUSTOMER SUPPORT SECURITY PRACTICES

Oracle is deeply committed to the security of its technical support services. In providing standard technical support services, Oracle will adhere to the Global Customer Support Security Practices, which are available at http://www.oracle.com/us/support/policies/index.html. The Global Customer Support Security Practices are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of security specified in the Security Practices during the period for which fees for technical support have been paid. To view changes that have been made, please refer to the attached *Statement of Changes* (PDF).

SEVERITY DEFINITIONS

Service requests for your covered hardware system may be submitted by you online through Oracle's web-based customer support systems or by telephone. The service request severity level is selected by you and Oracle and should be based on the following severity definitions:

Severity 1

Your production use of the covered hardware system is stopped or so severely impacted that you cannot reasonably continue work. You experience a complete loss of service. The operation is mission critical to the business and the situation is an emergency. A Severity 1 service request has one or more of the following characteristics:

- Data corrupted
- A critical documented function is not available
- System hangs indefinitely, causing unacceptable or indefinite delays for resources or response
- System crashes, and crashes repeatedly after restart attempts
- System functionality failure causes data loss or renders system unstable
- System malfunction causes mission critical applications to restart, hang, or suspend

Reasonable efforts will be made to respond to Severity 1 service requests within one (1) hour.

24 Hour Commitment to Severity 1 Service Requests: OSS will work 24x7 until the issue is resolved or as long as useful progress can be made. You must provide OSS with a contact during this 24x7 period, either on site or by pager, to assist with data gathering, testing, and applying fixes. You are requested to propose this severity classification with great care, so that valid Severity 1 situations obtain the necessary resource allocation from Oracle.

Severity 2
You experience a severe loss of service. Important features are unavailable with no acceptable workaround, impaired or broken functionality with significant impact to applications, and/or frequent application failure but not data loss; however, operations can continue in a restricted fashion.

Severity 3
You experience a minor loss of service. The impact is an inconvenience, which may require a workaround to restore functionality.

Severity 4
You request information, an enhancement, or documentation clarification regarding your software but there is no impact on the operation of the software. You experience no loss of service. The result does not impede the operation of a system.

ONSITE RESPONSE TIME TARGETS FOR HARDWARE SUPPORT

Response time targets for hardware support are as specified below, except for Sun Ray Clients. The response time target for Sun Ray Clients, regardless of severity level, is limited to Advanced Parts Exchange with next business day delivery to your location.

Please refer to the attached document titled "Oracle Service Locations" (PDF) for a listing of service locations.

Severity 1
If Oracle determines, in its sole discretion, that onsite support is appropriate, an Oracle-dispatched engineer will generally arrive at your location within the time frames specified below.

Within 2 hours:	Your covered hardware system must be within 25 miles/40 kilometers of a designated Oracle service location
Within 4 hours:	Your covered hardware system must be within 26 - 49 miles/41 - 79 kilometers of a designated Oracle service location
Next Day:	Your covered hardware system is greater than 50 mile/80 kilometers from a designated Oracle service location

Severity 2
If Oracle determines, in its sole discretion, that onsite support is appropriate, an Oracle-dispatched engineer will generally arrive at your location within the time frames specified below.

Within 4 hours:	Your covered hardware system must be within 25 miles/40 kilometers of a designated Oracle service location
Within same business day:	Your covered hardware system must be within 26 - 49 miles/41 - 79 kilometers of a designated Oracle service location
Next Business Day:	Your covered hardware system is greater than 50 mile/80 kilometers from a designated Oracle service location

Severity 3
If Oracle determines, in its sole discretion, that onsite support is appropriate, an Oracle-dispatched engineer will generally arrive at your location the next business day from the close of local business hours or at a later mutually agreed-upon time (e.g., scheduled maintenance window).

Note:
The geographic location of your covered hardware system may cause on-site service to be unavailable or may require additional charges or longer Severity 1, Severity 2 and Severity 3 response times. Oracle reserves the right, in its sole discretion, to adjust Severity 1, Severity 2 and Severity 3 on-site response times or charge additional fees based on the location of the covered hardware system. Actual response times are subject to acts and conditions beyond Oracle's control and, therefore, Oracle's response may be delayed. Oracle is not responsible for response delays caused by factors outside its control. You should contact an Oracle Support Sales representative for more details regarding availability for your covered hardware systems.

CONTACT INFORMATION

Phone numbers and contact information can be found on Oracle's support web site at http://www.oracle.com/us/support/contact-068555.html.

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES

CENTRALIZED CONTRACT FOR THE ACQUISITION OF ENTERPRISE SYSTEMS – SERVERS AND MAINFRAMES

New York State Contract #

AGREEMENT BETWEEN

THE NEW YORK STATE OFFICE OF GENERAL SERVICES

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INTRODUCTION

THIS CONTRACT for the acquisition of Enterprise systems server and mainframe hardware, software and related services (hereinafter "Product") is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law, § 163, and _____ (hereinafter "Contractor"), with its principal place of business at:
_____

In accordance with Procurement Lobbying, the designated contacts for this procurement are:

DESIGNATED CONTACTS: Team #	
James Patrick, Purchasing Officer Telephone No. (518) 486-6036 E-mail: james.patrick@ogs.state.ny.us	Barbara Henderson, Team Leader Telephone No. (518) 473-9057 E-mail: Barbara.henderson@ogs.state.ny.us

Please refer to Section 3 below.

The bid 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 INVITATION FOR BIDS, Appendix A (Standard Clauses For New York State Contracts), Appendix B-3 (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). Information may be accessed at:
Procurement Lobbying: http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html

BASE CONTRACT

1. CONTRACT SCOPE/TERM

This document (hereinafter "Contract") sets forth the terms and conditions governing the acquisition of Enterprise Systems Servers and Mainframes hardware and software, including installation, configuration, extended warranties, first year maintenance, support and other incidental services (including, but not limited to, consulting [analysis and implementation] and training purchased at the same time as the products). Terms used in this document shall have the meanings set forth in Appendix B. Amendments or modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties with the approval of the New York State Attorney General and the New York State Comptroller.

The term of this Master Contract shall be five (5) years commencing on the date of approval by the New York State Attorney General (OAG) and the New York State Office of State Comptroller (OSC), effective upon mailing by OGS (See Appendix B, clause 38). Upon expiration of the original term, the parties may renew the Contract, with the approval of the Office of the State Comptroller, for one (1) additional five (5) year term or until a new contract is approved by the Office of the State Comptroller, whichever is first. Upon termination of the Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made or individual licenses granted to Authorized Users prior to such termination See section 23 below and Appendix B clause 60.

This Contract is available for use by all Authorized Users (See: Appendix B, Clause 5 (Definitions), and Clause 39 (Participation in Centralized Contracts) and may be extended with the joint approval of the Contractor and the Commissioner for joint purchasing by any department, agency or instrumentality of the United States government and/or any state including political subdivisions thereof ("other Authorized Users "). In the event that this Contract is so extended, such other Authorized Users shall be solely responsible for liability and performance under the Contract and Contractor agrees to hold them solely responsible for such liability and performance.

2. MERGER OF APPENDICES/CONFLICT OF CLAUSES

This Contract shall incorporate the following appendices as if set forth herein at length. 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 between these documents shall be resolved in the following descending order of precedence, which supersedes the order of precedence stated in Appendix B.

Appendix A		Standard Clauses for NYS Contracts
Base Contract		This Document
Appendix B		OGS General Specifications
Appendix C		Contractor's Executive Law, Article 15-A (M/WBE) Requirements
Appendix D		Contract Update Form (For Product and Pricing Updates)
Appendix E		Required Contractor Submissions:
	# 1	Mandatory Contractor Questionnaire
	# 2	Contractor, Reseller & Distributor Information
	# 3	NYS Net Prices (Prices for all Product)
	# 4	Installation, Configuration, Extended Warranties, and Maintenance and Support, (Description of Services)
	# 5	Consulting and Training (Purchased at same time as Products and related directly to the purchase under this agreement)
	# 6	Contractor Order Forms or other order information

3. PROCUREMENT LOBBYING LAW (effective January 1, 2006)

PROCUREMENT LOBBYING TERMINATION:

OGS reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, OGS may exercise its termination right by providing written notification to the Offerer/Bidder in accordance with the written notification terms of this contract.

SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING:

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

4. ENTERPRISE SYSTEMS

Manufacturer's Product Line: **Enterprise Systems - Server & Mainframe hardware**, software products, ancillary equipment and accessories offered by the Contractor in its US Commercial Price List or GSA Supply Schedule may be included under this contract. Appendix E, which lists Manufacturer's Product and NYS Net pricing, includes the Product, standard warranty, instruction manuals/documentation, shipping costs and delivery FOB destination inside storeroom door. **These products include but are not limited to: Large and Midrange Mainframes, RISC & Wintel Servers, Blade Servers, Workgroup & Appliance Servers, ancillary equipment applicable to the function of these servers, mainframes and other high end systems (proprietary & open systems and their corresponding operating and application software items)** (Note: This Contract does not include Storage System Products, PC / Microcomputers, **Imaging,** printers or the accessories for these items.) The State reserves the right at a later date to consolidate other contracts then held by the manufacturer into this Contract or into another or new contract. The State further

reserves the right to expand the scope to include other types of products not currently covered herein. This Contract is currently limited to sale, installation and maintenance of Product. Leasing is not permitted at this time. The Commissioner reserves the right to amend the Contract at any time to incorporate lease offerings.

B. Third Party Products: Only third party Products, which are available under Contractor's standard commercial price list, may be offered for sale under this Contract. Appendix E, which lists such third party products and NYS Net pricing, includes the Product, standard warranty, instruction manuals/documentation, shipping costs and delivery FOB destination inside storeroom door.

To the extent that the Contractor's price list includes components and/or services which overlap other State contracts, the Office of General Services reserves the right, in its sole judgment: 1) to exclude or delete overlapping items from this Contract, or 2) to include such items under this Contract if the Contractor offers such items at or below the alternative contract price.
Use of this contract may be restricted at any time during the contract term by the Commissioner of General Services, in his sole discretion, to permit the acquisition of third party products (including software and accessories) only in conjunction with an acquisition of hardware, not separately. Additions of Third Party Products to the Contract are subject to the Regular Add process outlined in section 16 b, Regular Add.

C. EPA Energy Star Program: The Federal EPA in cooperation with manufacturers, continues a program to foster the manufacture of energy efficient equipment. New York State fully supports this effort and requires all products offered to comply with EPA Energy Star guidelines for energy efficiency. The State may discontinue use of and/or delete from contract selected products as mandated by any NYS energy legislation that is enacted during the term of this contract. The contractor shall have no recourse with the State for such discontinuance/deletion.

D. Instruction Manuals/Software & Documentation: Product shall be furnished, at no extra charge, with one complete set of standard operator instruction manuals and documentation (hard copy or CD Rom) as would normally accompany such Product(s). If these documents are subject to a separate cost and are not normally supplied free with the Product, the Contractor must so advise the Authorized User. Contractor shall also ensure that the part numbers and net prices associated with the documentation are available to the Authorized User and included in Appendix E. Authorized Users may purchase additional sets of technical manuals, if needed. Where software documentation is provided in electronic or CD-ROM format, Authorized User shall be entitled to make copies to the extent necessary to fully enjoy the rights granted under this Contract.
Provided that Authorized Users reproduce the copyright notice and any other legend of ownership on any copies made.

5. SPECIFICATIONS

During the term of the contract, the OGS may request Product specifications for particular items that have been included by the Contractor in the State Net price list. These specifications will be for the sole use of OGS and will be provided by the Contractor at no cost.

A. All equipment delivered for installation will:
1) Conform to the manufacturer's testing standards at the time of purchase under this contract, and
2) Incorporate the most recent design changes from the manufacturer as of the scheduled delivery dates for that technology.

B. The Products must be commercially released products and available for customer purchase through the contractor's normal marketing channels. Experimental or unannounced equipment shall not be offered.

C. Where accessories, adjuncts or ancillary equipment are to be supplied, the Authorized User has the responsibility of providing the Contractor with sufficient specifications regarding installed, existing equipment, or software to ensure that the Contractor can determine that the additions are compatible with the User's existing equipment.

Use of Recycled Material: New York State as a member of the council of Great Lakes Governors, supports and encourages vendors to use recycled 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, unless such use is precluded due to health and welfare or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this contract. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when re-manufacturer does not offer new equipment.

6. SERVICE LEVEL AGREEMENTS (SLAs)

Authorized Users will be encouraged to enter into formal written Service Level Agreements (SLAs) with the Contractor prior to placing orders for Product under this Contract, particularly for mission critical, high availability systems. It will be further recommended that the purchase order specifically reference the SLA. The SLA will serve, at a minimum, the following important functions:

a) Defines the services that the Contractor will provide, assigns priorities to these services, and establishes baseline standards, responsibilities, and commitments.
b) Becomes the basis for performance measurement reporting and provides the opportunity to identify potential service level improvements.

The SLA may be viewed as a "living" document and should be periodically reviewed and changed based upon mutual agreement to better-fit then current business requirements.

At a minimum SLA's may include the following sections:

1. Scope Of Services
2. Delivery and Acceptance Timeframes and Procedures
3. Time Commitments & Prioritization of Services
4. Preventive and Corrective Maintenance Activities
5. Service Level Agreement Penalties/Rewards
6. Reporting Requirements/Problem Escalation and Follow-up Procedures

7. EQUIPMENT AND/OR SOFTWARE - DROPSHIP ONLY

In the event that an Authorized User requests the purchase of Product and does not require installation by the Contractor, Appendix B, section 79 does not apply. The Contractor delivers the Product under manufacturer's warranty on an FOB destination (Appendix B section 47b) basis and issues an invoice. Upon receipt, the Authorized User can authorize payment.

8. CONFIGURATION SERVICES

Configuration Services are an option and may include, but are not limited to, the following:

A. System Set-Up - Set time and date
B. Board-Level Enhancements - Memory upgrades; I/O Boards; etc.
C. System Integration (configure install and integrate products acquired from the Contract)
D. Customized Configurations
E. Hardware and Software Management (including hardware and software asset tracking and tagging if requested)

Contractor may provide configuration services, including installation of third party software or ancillary options, in order that Authorized Users shall be able to take delivery of completed systems. Unless Contractor separately enumerates a fee for basic configuration services, it shall be presumed that the pricing set forth in Appendix E includes basic software configuration for software that is acquired from Contractor under this Contract. Where third party Product is not acquired under the Contract but from alternative contract vehicles, Contractor may charge Authorized Users, in addition to the hardware price, the additional configuration fee(s) as set forth in Appendix E for configuration of non-contract third party software. Contractor shall be required to coordinate with other contract holders for delivery of such Products and shall comply with all proprietary or copyright restrictions while such Products are in their possession.

9. MAINTENANCE, GENERAL PROVISIONS

A. The Contractor shall advise Authorized Users of the first year maintenance options that may be ordered with the Product and the costs associated with each option. Authorized Users will have the option of selecting a monthly/annual maintenance contract or maintenance on a time and materials basis. The Purchase Order, or equivalent, shall identify which option has been selected. The initial maintenance term may survive expiration of the contract term as outlined in the second paragraph of Section 1. Contract Scope/Term.

B. Warranty will become effective subsequent to Acceptance of the Product.

C. Where Authorized User elects support and maintenance services, Contractor shall maintain the Product so as to provide Authorized User with the ability to utilize the Product without interruption, delay, or significant functional downtime to the Authorized User's ongoing business operations during the maintenance term in accordance with the terms and conditions of the applicable service descriptions.

D. Maintenance shall be provided upon expiration of the warranty or under circumstances not covered by said warranty. First year maintenance options shall be included in Appendix E. Complete details of each type of maintenance option shall be provided in Appendix E, Submission 4.

E. Unless the agreement (SLA) between the Authorized User and the Contractor specifies otherwise and so long as the malfunction is attributable to Contractor's Product, Contractor guarantees that within forty-eight (48) continuous hours of its response for any maintenance as provided above that repairs will be successfully completed and that system service will be fully restored.

F. If at any time during the warranty period or the first year maintenance period, service is performed on the Product by anyone other than the Contractor, without the Contractor's consent, or if the Product is removed from the premises without the Contractor's supervision and consent, then at the option of the Contractor, the warranty agreement or maintenance contract may become null and void for those items of Product affected by the prohibitions. The Contractor shall notify the OGS Procurement Services Group of any such cancellation. OGS reserves the right to review the validity of such cancellation with the Contractor and Authorized User and take appropriate action.

G. The Contractor shall not be obligated to repair damage caused by fire or other casualty (except that caused by the Contractor), or willful or grossly negligent operation or handling of the Product by the Authorized User's employees. Properly trained Authorized Users' personnel may make software changes to Authorized Users' configuration without the Contractor's prior written consent. Should the Contractor's consent be required, it shall not be unreasonably withheld. The Authorized User shall be responsible for updating of all records associated with the modifications.

H. If preventive maintenance (PM) is recommended by the manufacturer, PM shall be performed during the Authorized User's working hours at a time acceptable to the Authorized User.

I. Authorized Users will pay monthly in arrears for any services utilized for maintenance, service, and parts in accordance with the Contractor's established rates. Prepaid Annual Maintenance will be available <u>only</u> with an additional 5% or greater discount. Rates are to be adjusted monthly in arrears by Contractor for increases and decreases in the quantity of the Product.

J. Authorized Users shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon 30 days written notice to Contractor prior to the end of the term.

K. Nothing in this Contract shall be construed to prevent Authorized User from acquiring Ancillary equipment from a Third Party.

L. To assist authorized users in complying with the HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) requirements, contractors are required to work with users who wish to either destroy the information on hard drives or retain possession of the drive when trading equipment or receiving maintenance/warranty replacement. The State is seeking alternatives to insure a purchaser has the right to maintain ownership of the hard drive at time of warranty replacement and/or when trading in equipment. Contract Users are encouraged to address this requirement prior to placing orders with contractors. Contractors are asked to include such options as part of their warranty service and trade-in programs or as an extra, chargeable item. While all users may not wish to exercise this/these option(s), they should be available as contract options.

M. Contractor shall comply with all security procedures of the Authorized User clearly communicated to it in the performance of this Agreement. Contractor acknowledges that such security procedures may vary based on the specific facility at which the Contractor is providing services including but not limited to maintenance and installation

10. REMOTE ADMINISTRATION/MAINTENANCE

Appendix E Submission #4 must include a description of any Remote Administration and/or Maintenance Service arrangements if provided with the Product. The description must include the frequency of the interrogations and the resulting data. The cost for any equipment required to perform this function and the cost of the service, must be borne by the Contractor, as part of the cost of maintenance. Connections to networks must be performed in a secure manner to preserve the integrity of the network, confidentiality and integrity of information transmitted over that network, and the availability of the network.

11. MAINTENANCE RESPONSIBILITY

Malfunctions that cannot be immediately diagnosed and pinpointed to a certain piece of equipment or service will require the participation of the Contractor until the responsibility for the problem has been unequivocally established.

In no instance shall the failure to resolve the issue of responsibility relieve any Contractor of their obligation to restore Product operation. The Authorized User shall have the right to adjust such matters after the fact and validate charges and/or maintenance credits applicable to the provisions of the maintenance agreement. As a part of maintenance responsibilities, the Contractor shall represent the Authorized User with other involved equipment and service providers in order to identify and correct the malfunction. The specific maintenance responsibilities are described in the maintenance agreement and must include the delineation of responsibility for any charges received from other involved equipment and service providers as a result of the use of Contractor supplied Products.

12. MAINTENANCE/SERVICE SHEETS

Upon request, the Contractor shall furnish the Authorized User with a maintenance service sheet for all maintenance requests. The maintenance service sheet shall include, as a minimum, the following data for each request for service:

- Date and time notified
- Date and time of arrival
- Description of malfunction reported
- Diagnosis of failure and work performed
- Date and time failure was corrected
- Charges for the service, if applicable
- Name of person performing the service

The maintenance service report must be supplied upon completion of maintenance whenever it is performed on the system.

13. TRAINING SERVICES

Training Services may include pre-packaged training Products, and/or customized training programs as requested, including Live Training, Computer Based/Multi-Media Training that encompasses Internet-Delivered Training, and/or Video Based Training. This service needs to be related directly to the Products purchased under this agreement and must be purchased at the same time as the Product.

Training Services are restricted to the 20% rule in that these services must not exceed 20% of the total of the Purchase Order placed for these Products under this agreement.

14. CONSULTING SERVICES

Consulting Services may include qualified, professional analysis, recommendations, design expertise, and implementation to the Authorized User relating to Enterprise Systems - Main Frame and Server hardware and software. Said expertise must include a current knowledge of the technology marketplace, related Enterprise Systems issues and trends, and may include the ability to:

A. Analyze existing technological environment, including hardware, software, and live operations and transaction volumes as it relates to the implementation and design of the Products purchased under this agreement.

B. Develop functional and/or design specifications, technical writing, and documentation as it relates to the Products purchased under this agreement.

Note: Any Contractor who assists an Authorized User with the preparation of specifications that will become a part of any solicitation document used by the Authorized User to solicit "best and final" offers among contractors, may not be eligible to bid on that project pursuant to NY State Finance Law § 163-a. This generally prohibits any vendor who prepares and furnishes a specification to an Authorized User (by means of consulting services under any contract or under the OGS IT Services backdrop contracts) from subsequently bidding on the acquisition as a prime or subcontractor. Therefore, the preparation of specifications service is not allowed under this contract.

Consulting Services are restricted to the 20% rule in that these contracted services must not exceed 20% of the total of the Purchase Order placed for Products under this agreement. Consulting Services need to be purchased at the same time as the products. The service must be needed in order for the authorized user to understand the use of the products or needed in order for the authorized user to utilize the products purchased under this agreement.

15. CONTRACT ADMINISTRATION

A. **Contract Administrator**: Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Administrator shall be set forth in Appendix E.

B. "**Toll Free" Number**: Contractor must provide a toll-free telephone number for order tracking/delivery schedule information, Contract administration issues, as well as other questions by Authorized Users related to the day-to-day operation and use of the Contract other than Product support. The toll-free number must be available Monday through Friday on State business days between the hours of 8 a.m. to 5 p.m., Eastern Time. The number shall be set forth in Appendix E, (Submission #3).

Contractor may additionally offer an online e-mail or Internet site for order tracking/delivery schedule information for those customers who have electronic access.

C. Sales & Support Staff: Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall insure that sufficient resources are available directly, or through use of Resellers/distributors in accordance with Section 5, to insure maximum service capability throughout the State. OGS reserves the right to require Contractor to add additional Resellers to this Contract to insure that Authorized Users receive adequate coverage and service.

D. Procedures for Updating Contract Price & Product Listings:

NOTE: THE FOLLOWING PROCEDURES ARE NOT APPLICABLE TO CONTRACTOR PROPOSED CHANGES TO CONTRACT TERMS AND CONDITIONS.
Any implied or express request for changes in or additions to existing Contract terms and conditions, including new terms and conditions associated with a specific Product line being added to the Contract for the first time, requires a formal Contract amendment and requires the approval of OGS, the NYS Attorney General and the NYS Comptroller. New or revised Contract terms and conditions are subject to the restrictions set forth in Appendix B, Section 40.
The following guidelines and Appendix E, Contract Update Form attached to this Contract are subject to change at the discretion of OGS.

16. TYPES OF CONTRACT UPDATES:

A Contract update must be accompanied by three (3) copies of the Contract Update Form set forth in Appendix E. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, to restructure the pricing to its Licensees generally, and/or for new Products or services which fall into a new group or category that did not exist at the time of approval of the Contract by the New York State Comptroller, etc.). Each of the three copies of the Contract Update Form must contain original signatures by an individual authorized to sign on behalf of Contractor, and an original corporate acknowledgment

In connection with any Contract update, OGS reserves the right to:

- request additional information
- reject Contract updates
- remove Products from Contracts
- remove Products from Contract updates
- request additional discounts for new or existing Products

Contractor is required to submit the Product and price information for the update in an Excel spreadsheet format in hard copy in triplicate and on a floppy disk or electronically via e-mail to the OGS Purchasing Officer. The list must be dated and the format should be consistent with the format of the price list(s) included in Appendix E of this Contract. The price list should separately include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):

1. Price increases
2. Products being added

The State reserves the right to require a revised NYS Net Price List at any time during the Contract period, and it will be requested if there have been numerous updates since the last complete update. Each updated price list must include the date the price list was prepared.

In order to expedite processing of a change request, where proposed changes involve more than one category below, they should be submitted to OGS as totally separate requests.

a) Auto Adds / Deletions – "Auto Adds/Deletions" are Contract changes and updates made in accordance with the previously approved Contract pricing formula; e.g., a "discount from list" or pricing based on an approved GSA-based price Schedule. "Auto Adds" do not include any price increases. "Auto Adds/Deletions" include: i) adding new products within the established, previously approved pricing structure, ii) lowering pricing for Products previously incorporated under the Contract, and iii) deleting Products previously incorporated under the Contract. For categories (i) and (ii) Auto Adds: Contractor shall automatically update the Contract price list and may proceed with selling Products without prior approval of either OGS or the Office of the State Comptroller. Contractor should note, however, that all "Auto Adds" approved by OGS are subject to a post audit by the Office of the State Comptroller. For category (iii) Auto Deletions, at the end of and subject to the period specified in Appendix B, Clause 84 ("Changes in Product or Service Offerings"); Contractor may automatically update the Contract price list by deleting the Product(s), without prior approval of either OGS or the Comptroller. All "auto adds" must be immediately posted electronically by the Contractor at the Contract web site.

b) Regular Add - "Regular Adds" are requests for i) price increases for Products which are already incorporated under the Contract, and ii) addition of new products to the Contract which do not fall under the previously established price structure or discounts for Product types already approved under the Contract. Regular Adds include re-bundled Products or Services. Regular Adds must be submitted to OGS for prior approval, and must be accompanied by a justification of reasonableness of price. Regular Adds are subject to pre-audit by the Comptroller. If approved, OGS staff will notify Contractor in writing. Contractor may not electronically post new product offerings until after notification of OGS approval of the "Regular Add" submission. When the Contract pricing is based on GSA prices, the revised prices or prices of new Products must reflect current GSA prices adjusted as necessary for any additional discounts.

c) Special Add - Contract changes and updates that do not fall within either of the above categories will be processed as "Special Adds". Special Adds are changes that are not specifically covered by the terms of the Contract but inclusion is found to be in the best interest of the State. Contractor must provide a justification of reasonableness of the prices offered and a statement explaining why it is in the best interest of the State to approve the new Products. Special Adds are subject to pre-audit by the Office of the State Comptroller. Contractor may not electronically post new offerings until after notification of OGS approval of the "Special Add" submission.

Supporting Documentation:
Each update request must include the current U.S. commercial price list relevant to the Products included in the update. If the NYS Net Prices are based on a GSA Schedule, the current GSA Schedule must also be included with the update request. Requested price increases not based on an approved GSA schedule must also include a copy of the current National Consumer Price Index as described in the "Payments/Pricing" section of the Contract.

17. UTILIZING RESELLERS / DISTRIBUTORS

Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall insure that sufficient resources are available directly, or through Resellers/Distributors to insure maximum service capability throughout the State. The State agrees to permit Contractor to utilize approved, designated value added resellers (VARs), distributors and dealers ("Resellers") to participate as alternate distribution sources for Contractor. Such participation is subject to the following conditions:

A. Designation of Reseller(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering, billing addresses and Federal Identification numbers in the format provided in Appendix E (Submission #2).

B. Conditions of Participation: Reseller(s) must be approved in advance by the State as a condition of eligibility under this section. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time.

Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by product line, contracting program (i.e., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that: i) such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; ii) all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term, and iii) those qualifying criteria met by the Reseller must be identified on the

form provided in Appendix E (Submission #2) at the time that Reseller approval is requested under this paragraph; and iv) immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Except as otherwise set forth in Appendix E (Submission #2), Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order.

C. Responsibility for Reporting/Performance: Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions. Product purchased through Reseller(s) must be reported by Contractor in the required Semi-Annual Reports to the State as a condition of payment, and where applicable, to Third Party Developer(s) in accordance with the reporting requirements of this Contract. In addition to inclusion of Reseller(s) volume in the Contractor's semi-annual reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with semi-annual reports of the individual Authorized User's Contract activity with Reseller.

D. Changes in Reseller List - If the Contractor allows resellers to participate in the contract in accordance with the Use of Resellers/Distributors clause of this Contract, requests to add or delete resellers or to modify reseller information must be submitted for prior approval of the State. Contractor may request changes to the designated Reseller List by submission of a completed, revised Appendix E, Submission # 2.

E. Applicability of Contract Terms: Product ordered directly through Reseller(s) shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

18. PAYMENTS/PRICING

Prices shall be calculated and paid in accordance with this section and Appendix E (Submission # 3) in effect at the time of order placement. Pricing set forth in Appendix E (Submission # 3) includes all applicable documentation, media, shipping, delivery, and handling charges. (Hereinafter "*NYS Net Price*") Contractor may, however, upon mutual agreement of the Authorized User, negotiate more advantageous pricing for particular orders. Orders placed under this Contract will additionally be governed by purchasing procedures included in the "Contract Award Notification".

A. Travel, Meals & Lodging Unless expressly set forth to the contrary in Appendix E (Submission # 3), **NYS net prices set forth in the Contract shall be deemed inclusive of travel, meals and lodging, wherever applicable.** Where travel, meals and lodging are allowed over and above the NYS Net Prices, reimbursement to Contractor for such costs for employees who do not reside in the local commuting area for the work site, shall be made in accordance with the State's Travel Reimbursement Manual published by the New York State Office of the State Comptroller. It will be the responsibility of the Authorized User to provide Contractor the most recently published reimbursement guidelines and rates.

B. Subsequent Changes to Product Offerings All changes must be in accordance with the conditions set forth below and in accordance with the Procedures outlined in Section 18.

(1) **Adding New Products:** Where future Products become commercially available during the Contract term and are offered to New York State, the Contract may be updated to include such offerings.

(2) **Deletion of Products:** OGS reserves the right to delete any Product from the Contract at its discretion at any time. (See also Section 17-D, 18-A)

(3) **Price Decreases:** Shall be calculated in accordance with Appendix B, Clause 24.f

(4) **Price Increases (Pricing not Benchmarked to GSA Supply Schedule):** Additionally, where pricing submitted for Products or services is **not** benchmarked to an approved GSA Supply Schedule:

a) First Twelve Months: Fixed Pricing offered shall be fixed for the first twelve (12) months of the Contract term from the date of Comptroller approval.

b) Price Increase Requests: Contractor may thereafter request an increase in the pricing contained in Appendix E a maximum of once in any twelve month period provided that Contractor certifies in writing that the price change for Product applies to its U.S. Commercial Price List, and that Contractor documents the request to the satisfaction of the State.

c) Escalation Cap: Contractor has the sole responsibility to submit to OGS a rate adjustment request that must include a copy of the index or other supporting documentation necessary to support the request. Such adjustment shall in no

event exceed the lesser of five (5%) percent or the percent increase in the latest copy of the "National Consumer Price Index for All Urban Consumers (CPI-U)", as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. In no event can prices exceed the Contractor's published U.S. Commercial List price.

d) Effective Date of Increase: Price increases shall be effective upon final approval by the State, and may not be posted on the Internet prior to receipt of final approval. (See Section 18-B (Regular Add))

C. GSA Benchmarked Pricing

Additionally, where the NYS Net Price is based upon an approved GSA Supply Schedule:

(1) **Associated Discounts:** The State is entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to, discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in this NYS Contract or GSA schedule, when calculating the NYS Net Price; and

(2) **Industrial Funding Fee:** GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee". OGS reserves the right to require either that: **a)** the IFF is remitted directly to OGS or **b) (OSG preferred option)** the state contract prices are reduced, by an amount equivalent to the IFF. If the latter, the NYS Net Price shall be calculated by reducing the published GSA price, after the discounts, if any, set forth in paragraph (1), above, downward by the amount of the Industrial Funding Fee, currently set at .75%. Therefore, the "NYS Net Price" shall be calculated by multiplying 0.9925 times the GSA price, and

(3) **Pricing Increases:** Price increases shall be effective upon final approval by the State, and may not be electronically posted by Contractor prior to receipt of final approval. (See Section 16-B)(Regular Add)

D. Trade-Ins - Authorized Users may trade-in equipment when making purchases from this Contract. Trade-in's must be negotiated between the Authorized User and the Contractor as there is no mandatory trade-in policy established for this Contract. Contractor is prohibited from imposing any mandatory requirements or restrictions on Product disposal (e.g., prohibiting cross-brand trade-ins), other than generic environmental safety concerns. Users are obligated to actively seek current fair market value when trading equipment and must keep accurate records in the file verifying the process. For State Agencies, it may be necessary to provide this documentation to the Office of the State Comptroller. (See Section 9-L)

19. DISTRIBUTION OF CONTRACTOR PRICE LIST & APPENDICES

Contractor shall bear the cost of and shall effect distribution of copies of the Contract, including price lists and appendices, upon request. Contractor shall not, however, distribute Contract information unless OGS has approved it in advance. Contractor shall also be required to furnish OGS with additional copies of the approved price lists (electronic submission, CD or paper copy, at the State's discretion) upon request as may be necessary in the normal course of business.

20. CURRENT AGREEMENTS BETWEEN CONTRACTOR AND ELIGIBLE AUTHORIZED USERS

Eligible Authorized Users with independent contracts for the same Contractor products and services may, at any time, convert any existing contract(s) with Contractor to participate under this Contract and upon doing so shall have all rights of an "Authorized User", provided that notice of such migration shall be forwarded to the Contractor.

Contractor has an affirmative responsibility to inform eligible Authorized Users who hold another contract for the same products, via e-mail or other formal communications, of the terms, conditions, and pricing of this Contract at the earliest opportunity after approval of this Contract by all parties. (See Also Appendix B, Section 39 e).

21. INTERNET ACCESS TO CONTRACT & PRICING INFORMATION

It is the intent of the parties to facilitate access by Authorized Users to contract offerings and pricing information primarily electronically via the Internet. To that end, OGS shall host and update the Contract terms and conditions throughout the Contract term. The Contractor is required to host the Contract NYS NET pricing and Product offerings at Contractor's Internet site, at Contractor's sole expense, including all subsequent changes in the Contract offerings (adds, deletes, price revisions) throughout the Contract term. Contractor may not password protect or otherwise restrict access to the site. This Contract, and Contractor's NYS Contract page, or pages required by this agreement, constitute public documents under the laws of the State of New York and Contractor cannot restrict access (e.g., through use of restrictive technology or passwords) to the data, or records, and or information required to be maintained by the Contractor for the State.

A. Warranty: Contractor warrants and represents that Contract and related information will be accurately and completely posted, maintained, and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-Contract offerings at Contractor's web site. Contractor shall indemnify the State and Contract users for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph.

B. Price Data Retention & Audit: Information at web site should reflect the pricing information for the preceding twelve-month period. At the end of each twelve-month period, the Contractor shall either electronically archive the information at the web site in a manner which allows the State to access the information or electronically transmit the information to the State. This does not relieve the Contractor from any audit requirements imposed by Appendix A, Clause 10, nor does it shorten the retention periods for information stated therein. In addition, annual audits of the information posted at Contractor's web site may be conducted by OSC, or by an independent auditor at Contractor's expense.

C. Site Changes: Contractor hereby consents to a link from the OGS web site to the Contractor's web site in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State, and OGS reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. OGS will provide Contractor with subsequent notice of link termination or removal. Contractor shall provide OGS with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

D. Use of Access Data Prohibited: If Contractor stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by Contractor for the purpose of implementing or marketing the State Contract, and shall not be disseminated to third parties or used for other marketing purposes. This Contract constitutes a public document under the laws of the State of New York and Contractor cannot restrict access to the Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

E. Responsibility for Content: Contractor is solely responsible for administration, content, intellectual property rights, and all materials at Contractor's web site. Contractor is solely responsible for its actions and those of its agents, employees, resellers, subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. When building their page delivered pursuant to this Contract, Contractor agrees to comply with **Office for Technology Policy # PO4-002**, (http://www.oft.state.ny.us/policy/p04-002/index.htm), **Accessibility of State Agency Web-based Intranet and Internet Information and Applications** dated June 21, 2004, (as such policy may be amended, modified or superseded) which requires that state government web sites be accessible to persons with disabilities. The State of New York has adopted the W3C Web Content Accessibility Guidelines <http://www.w3.org/TR/WAI-WEBCONTENT/> as a means to provide optimal access to State agency web sites and the content therein. The Contractor agrees to apply the most current version of these guidelines in the design, creation, and maintenance of its linked website. Contractor agrees that its Web content shall conform with level "A", satisfying all priority one checkpoints. In addition, Contractor agrees that its site will have a contact mechanism so individuals who might have trouble accessing any portion of the site can report the problem. The Contractor agrees that the Web Accessibility Guidelines and the checkpoints and guidelines referenced therein will be used in the development of all new pages and will be the basis for bringing existing pages into compliance as required by the **Office for Technology Policy # PO4-002.**

F. On-line Price Configurator: If applicable, Contractor may be required to make available, an on-line configurator at its Contract web site. Directions and assistance in using the configurator and web site in general must be available at entry. This configurator must enable Authorized Users to:

(1) view the options available for the type Product requested;
(2) search and find Products under the approved Contract list;
(3) calculate complete acquisition costs

Information about payment, shipping, delivery terms, and special pricing should be available. Authorized Users should have the option of printing their "shopping cart" choices; and for those users, who are positioned to use it, an option for on-line secure ordering should also be available.

G. Access By Non-Electronic Means: Notwithstanding the foregoing, where an Authorized User does not have the capability to access contract information electronically, it shall be the Contractor's responsibility to configure the transaction in accordance with the above, and to configure and print out the configured transaction screen and furnish by means of FAX or hardcopy the configured transaction summary to the Authorized User upon request.

22. REPORTING

A. Contractor shall electronically provide OGS with verified semi-annual detailed reports in a form to be prescribed by OGS. Such reports shall show, at a minimum, dollar volume of Products and Services provided to each Authorized User under the Agreement. In addition to contractor direct sales, contractor shall submit sales information for all resellers, dealers, distributors or any other authorized distribution channels, where such contract sales are provided by other than the contractor. Contractors shall verify if any of the above is a NYS Certified Minority (MBE) or Women (WBE) Owned Businesses. Contractors shall verify such status through the Empire State Development Minority and Women Owned Businesses Database web site at: http://205.232.252.35/.

B. Such reports shall be compiled and delivered electronically by Contractor to OGS within thirty (30) days of the close of the semi-annual period. The State reserves the right to verify said reports and to take any action(s) necessary to enforce its rights under this section, including the right to audit Contractor's applicable contract books or terminate the Agreement.

C. In the event that the Contractor fails to deliver the abovementioned report(s) and the failure cannot be resolved pursuant to the Dispute Resolution procedures set forth in Appendix B Section 65 the State and Authorized Users shall have the right to suspend all payments for failure to deliver said report(s) within the required time frames.

D. Upon delivery of a report or reports that Contractor failed to deliver within the required time frames, the State and Authorized Users shall, subject to the exercise of the rights, described in paragraph B, above, resume payments. In exercising their rights under this Section, the State and the Authorized Users agree to act in good faith and to take any necessary actions as expeditiously as possible.

E. Where applicable, the Industrial Funding Fee (IFF) payable to the New York State Office of General Services will also be due on the same 30 day schedule as the sales reports identified in 14-B. The same rights afforded the State and contractor, in section 14-C, 14-D, shall also pertain to the required submittal of any IFF payments.*

* Note: All IFF checks shall be made payable to the Office of General Services and shall be sent directly to the address referenced below. Sales reports shall continue to be sent directly to the referenced Procurement Team for this contract. Sales reports can still be submitted electronically.

IFF Check Submittal	**Sales Report Submittal**
NYS Office of General Services Division of Financial Administration PO Box 2117 Empire State Plaza Station Albany, NY 12220-0117	NYS Office of General Service Procurement Services Group Systems & Peripherals Team 8 Corning Tower, 38th Floor Empire State Plaza, Albany, NY 12242

23. TERMINATION

The Agreement shall be subject to the following termination provisions as well as those specified in Appendix B Section 60:

A. Starting with the third anniversary of the contract term, either party shall have the option to terminate this contract upon thirty (30) days notice prior to the Contract anniversary date. This provision should not be understood as waiving the OGS's right to terminate the Agreement for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Authorized User Purchase Orders.

B. If the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Agreement in accordance with this Agreement and as permitted by law or exercise such other remedies as shall be available under this Agreement, at law or equity.

C. In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion of this Agreement.

D. In the event that the Agreement is terminated for any reason, then within ten (10) days after such termination, Contractor shall make available, upon request, to OGS all OGS and Authorized User records, documents and data in Contractor's custody that pertain to Services rendered under the Agreement.

24. CHARGES

A. Payments to the Contractor shall be based on the prices and/or rates set forth in the Appendix E submissions attached hereto. For Authorized Users that are State agencies, invoicing shall be submitted by the Contractor on a Standard New York State Voucher in a form acceptable to the State. For other Authorized Users, invoicing shall be submitted by the Contractor on a form prescribed by the Authorized User.

B. Consistent with Paragraph 15 of Appendix A, the payment obligations of Authorized Users that are State agencies shall be governed by the provisions of Article 11-A the New York State Finance Law (SFL).

C. Contractor acknowledges that the terms of Article 11-A apply only to procurements by and the consequent payment obligations of State agencies. Neither expressly nor by any implication is the statute applicable to other Authorized Users. Neither OGS nor OSC is responsible for payments on any purchases made by an Authorized User that is not covered by Article 11A of the NY State Finance law. Except as otherwise provided in a Purchase order, payment obligations of Authorized Users that are not State agencies shall be due upon receipt of an invoice for product or completed Services.

D. 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 Article 2 section 18 of the SFL.

25. NYS STANDARD RESPONSIBILITY QUESTIONNAIRE (Appendix 1)

Contractor agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire, which is attached as Appendix 1 (hereinafter the "Questionnaire"). The Contractor acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Contractor is responsible, and that the State will be relying upon the Contractor's responses to the Questionnaire in making that determination. The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract by providing ten (10) days written notification to the Contractor. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

26. TAX LAW 5-A (Appendix 2)

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

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

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

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

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

27. INFORMATION SECURITY BREACH AND NOTIFICATION ACT

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Disclosure of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after necessary measures to determine the scope of the breach and to restore integrity, but with delay if law enforcement determines it impedes a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: http://www.cscic.state.ny.us/security/securitybreach/

28. 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 these contracts shall not be changed, modified or altered in any manner except by an instrument in writing executed by authorized representatives of both parties hereto. Such parties include Contractor, the Commissioner of OGS, the Attorney General, and the Comptroller on behalf of the State of New York. Authorized Users shall not have the authority to modify the terms of the Contract, except as to acceptance of better terms and pricing for a particular procurement than that set forth under the Contract.

29. NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address set forth below, and (ii) if to Contractor, addressed to Contract Administrator at the address set forth in Appendix G. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. The New York State Contract Administrator for this Contract is:

James Patrick
Procurement Services Group
38th Floor, Corning Tower
Empire State Plaza
Albany, New York 12242
Phone: (518) 486-6036
Fax: (518) 486-6867
Email: james.patrick@ogs.state.ny.us

30. 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.

31. SEVERABILITY

In the event that one or more of the provisions of this Contract, shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Agreement, which shall then be construed as if such unenforceable provision was never contained in this Agreement.

SIGNATURES

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

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 , 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). Further information about these requirements can be found on the OGS website**: http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html

CONTRACTOR

By:_____

Name:

Title:

Federal Tax Identification #:

Date:

THE PEOPLE OF THE STATE OF NEW YORK

By:_____

Name:

Title:

OGS Procurement Services Group

Date:

APPROVED AS TO FORM
Andrew M. Cuomo
New York State Attorney General

APPROVED
Thomas P. DiNapoli
NYS Office of the State Comptroller

CORPORATE ACKNOWLEDGMENT FORM

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF }
: **SS.:**
COUNTY OF }

On the ____ day of _____ in the year 20 __ , before me personally appeared _____ , known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides at _____,
Town of _____ , County of _____ ,
State of _____ ; and further that:

[Check One]

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

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

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

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

_____

Notary Public
Registration No._____ **State of:**_____

Appendix 1

{Revised: December 2006}

New York State

Standard Vendor Responsibility Questionnaire
(Use the Uniform Contracting Questionnaire CCA-1, for all construction contracts)

Each Contracting Agency conducts a review of prospective contractors ("vendors") to provide reasonable assurances that the vendor is responsible. This questionnaire is used for all non-construction contracts with a contract value of $100,000.00 or more and is designed to provide information to assess a vendor's authorization to do business in New York State, as well as your business integrity, financial and organizational capacity, and performance history. (Review of construction contractors will be based upon the Uniform Contracting Questionnaire developed by the Council of Contracting Agencies.)

Each vendor must answer every question contained in this questionnaire. Where a response requires additional information, the vendor must attach a written response that adequately details the requested information. Please number each response to match the question number. The completed questionnaire and attached responses will become part of the procurement record.

In order to expedite the required review, when providing additional information for a "YES" answer to Questions 14 a-s, or any other response which requires additional explanation, your information and responses should address the relationship of the issue to the proposed contract. Be brief, concise and to the point. Discuss as appropriate the following:

- Provide a description of the issue and identify the actions taken or currently being implemented to ensure that the issue will not occur again.
- State whether the staff and/or organizational component involved in the identified issue(s) will work on the proposed contract. If so, provide information to assure the agency that the issue will not be repeated.
- Identify the relationship (or lack thereof) between the product/services involved in the issue and the type of product/services proposed for this contract.
- State whether the issue will affect your financial or organizational ability to perform under the proposed contract.
- Provide copies of relevant documents or any other information that would assist the agency in its vendor responsibility evaluation.

It is imperative that the person completing the vendor responsibility questionnaire be knowledgeable about the proposing vendor's business and operations, as an owner or officer of the vendor must attest to the questionnaire information. Please be advised that at the end of this questionnaire, you must certify, under oath, all responses given.

New York State

Standard Vendor Responsibility Questionnaire

1. LEGAL BUSINESS NAME: _____

2. FEDERAL EMPLOYER ID NO. (FEIN): _____

3. D/B/A — Doing Business As (if applicable): _____
   COUNTY FILED: _____

4. WEBSITE ADDRESS (if applicable): _____

5. PRINCIPAL PLACE OF BUSINESS ADDRESS: _____

6. TELEPHONE NUMBER: _____ 7. FAX NUMBER: _____

8. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE:
   Name: _____
   Title: _____
   Telephone Number: _____ Fax Number: _____
   E-mail: _____

9. TYPE OF BUSINESS: (please check appropriate box and provide additional information)
   a) ☐ Corporation — State of Incorporation: _____
   b) ☐ Sole Proprietor — State/County filed in: _____
   c) ☐ General Partnership — State/County filed in: _____
   d) ☐ Not-for-Profit Corporation — Charities Registration Number: _____
   e) ☐ Limited Liability Company (LLC) — Jurisdiction filed: _____
   f) ☐ Limited Partnership — State/County filed in _____
   g) ☐ Other — Specify: — Jurisdiction Filed (if applicable) _____

10. IF NOT INCORPORATED OR FORMED IN NEW YORK STATE, PLEASE PROVIDE A CURRENT CERTIFICATE OF GOOD STANDING FROM YOUR STATE OR APPLICABLE LOCAL JURISDICTION.

11. LIST NAME AND TITLE OF EACH PRINCIPAL, OWNER, OFFICER, MAJOR STOCKHOLDER (10% OR MORE OF THE VOTING SHARES FOR PUBLICLY TRADED COMPANIES, 25% OR MORE OF THE SHARES FOR ALL OTHER COMPANIES), DIRECTOR AND MEMBER, as applicable:
    a) _____
    b) _____
    c) _____
    d) _____
    e) _____
    f) _____
    g) _____
    h) _____

12. AUTHORIZED CONTACT FOR THE PROPOSED CONTRACT:
    Name: _____
    Title: _____
    Telephone Number: _____ Fax Number: _____
    E-mail: _____

New York State

Standard Vendor Responsibility Questionnaire

VENDOR FEIN:_____

13. DOES THE VENDOR USE, OR HAS IT USED IN THE PAST FIVE (5) YEARS, ANY OTHER BUSINESS NAME, FEIN, OR D/B/A OTHER THAN WHAT IS LISTED IN QUESTIONS 1-3 ABOVE? ☐ Yes ☐ No
    If yes, provide the name(s), FEIN(s) and d/b/a(s) and the address for each such company and d/b/a on a separate piece of paper and attach to this response.

14. WITHIN THE PAST FIVE (5) YEARS, HAS THE VENDOR, ANY PRINCIPAL, OWNER, OFFICER, MAJOR STOCKHOLDER (10% OR MORE OF THE VOTING SHARES FOR PUBLICLY TRADED COMPANIES, 25% OR MORE OF THE SHARES FOR ALL OTHER COMPANIES), AFFILIATE[1] OR ANY PERSON INVOLVED IN THE BIDDING, CONTRACTING OR LEASING PROCESS BEEN THE SUBJECT OF ANY OF THE FOLLOWING:
    (a) a judgment or conviction for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct? ☐ Yes ☐ No
    (b) a criminal investigation or indictment for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct? ☐ Yes ☐ No
    (c) an unsatisfied judgment, injunction or lien for any business related conduct obtained by any federal, state or local government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any federal, state or local government agency? ☐ Yes ☐ No
    (d) an investigation for a civil or criminal violation for any business related conduct by any federal, state or local agency? ☐ Yes ☐ No
    (e) a grant of immunity for any business-related conduct constituting a crime under federal, state or local governmental law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct? ☐ Yes ☐ No
    (f) a federal, state or local government suspension or debarment from the contracting process? ☐ Yes ☐ No
    (g) a federal, state or local government contract suspension or termination for cause prior to the completion of the term of a contract? ☐ Yes ☐ No
    (h) a federal, state or local government denial of a lease or contract award for non-responsibility? ☐ Yes ☐ No
    (i) an administrative proceeding or civil action seeking specific performance or restitution in connection with any federal, state or local contract or lease? ☐ Yes ☐ No

[1]"Affiliate"meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

New York State

Standard Vendor Responsibility Questionnaire

VENDOR FEIN:_____

(j) a federal, state or local determination of a willful violation of any public works or labor law or regulation? ☐ Yes ☐ No

(k) a sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license? ☐ Yes ☐ No

(l) a consent order with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local laws? ☐ Yes ☐ No

(m) an Occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful? ☐ Yes ☐ No

(n) a rejection of a bid on a New York State contract or a lease with the State for failure to comply with the MacBride Fair Employment Principles? ☐ Yes ☐ No

(o) a citation, violation order, pending administrative hearing or proceeding or determination issued by a federal, state or local government for violations of: ☐ Yes ☐ No
- health laws, rules or regulations ☐ Yes ☐ No
- unemployment insurance or workers' compensation coverage or claim requirements ☐ Yes ☐ No
- ERISA (Employee Retirement Income Security Act) ☐ Yes ☐ No
- human rights laws ☐ Yes ☐ No
- federal U.S. Citizenship and Immigration Services laws ☐ Yes ☐ No
- Sherman Act or other federal anti-trust laws ☐ Yes ☐ No

(p) entered into an agreement to a voluntary exclusion from contracting with a federal, state or local governmental entity? ☐ Yes ☐ No

(q) a denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status? ☐ Yes ☐ No

(r) a rejection of a low bid on a federal, state or local contract for failure to meet statutory affirmative action or Minority or Women's Business Enterprise or Disadvantaged Business Enterprise status requirements on a previously held contract? ☐ Yes ☐ No

(s) a finding of non-responsibility by an agency or authority due to a violation of State Finance Law §139-j? ☐ Yes ☐ No

FOR EACH YES ANSWER TO QUESTIONS 14 a-s, PROVIDE DETAILS ON ADDITIONAL SHEETS REGARDING THE FINDING, INCLUDING BUT NOT LIMITED TO CAUSE, CURRENT STATUS, RESOLUTION, ETC.

15. DURING THE PAST THREE YEARS, HAS THE VENDOR FAILED TO:

(a) FILE RETURNS OR PAY ANY APPLICABLE FEDERAL, STATE OR LOCAL GOVERNMENT TAXES? ☐ Yes ☐ No

If yes, identify the taxing jurisdiction, type of tax, liability year(s) and tax liability amount the company failed to file/pay and the current status of the liability:

_____

(b) FILE RETURNS OR PAY NEW YORK STATE UNEMPLOYMENT INSURANCE? ☐ Yes ☐ No

If yes, indicate the years the company failed to file/pay the insurance and the current status of the liability:

_____

New York State

Standard Vendor Responsibility Questionnaire

VENDOR FEIN:_____

16. HAVE ANY BANKRUPTCY PROCEEDINGS BEEN INITIATED BY OR AGAINST THE VENDOR OR ITS AFFILIATES WITHIN THE PAST SEVEN YEARS (WHETHER OR NOT CLOSED) OR IS ANY BANKRUPTCY PROCEEDING PENDING BY OR AGAINST THE VENDOR OR ITS AFFILIATES, REGARDLESS OF THE DATE OF FILING? ☐ Yes ☐ No

    If yes, indicate if this is applicable to the submitting vendor or one of its affiliates: _____
    If it is an affiliate, include the affiliate's name and FEIN: _____
    Provide the court name, address and docket number: _____
    Indicate if the proceedings have been initiated, remain pending or have been closed: _____
    If closed, provide the date closed: _____

17. DOES VENDOR HAVE THE FINANCIAL RESOURCES NECESSARY TO FULFILL THE REQUIREMENTS OF THE PROPOSED CONTRACT? ☐ Yes ☐ No

New York State

Standard Vendor Responsibility Questionnaire

VENDOR FEIN:_____

State of)
) **ss:**
County of)

CERTIFICATION:

The undersigned, personally and on behalf of the vendor identified in questions 1-3 above, does hereby state and certify to the New York State Office of General Services that the information given above is true, accurate and complete. It is further acknowledged that the State of New York and the Office of General Services will rely upon the information contained herein and in any attached pages for purposes of evaluating our company for vendor's responsibility for contract award and the State may, in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein. It is further acknowledged that intentional submission of false or misleading information may constitute a felony under Penal Law Section 175.35 or may constitute a misdemeanor under Penal Law Sections 175.30, 210.35 or 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in contract termination.

_____	_____
Name of Business	Signature of Officer
_____	_____
Address	Typed Copy of Signature
_____	_____
City, State, Zip	Title

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

_____
Notary Public:_____
Registration No:_____
State: _____

Appendix 2

New York State Department of Taxation and Finance

Contractor Certification (ST-220-TD)
Contractor Certification to Covered Agency (ST-220-CA)

ST-220-TD

(6/06)

New York State Department of Taxation and Finance

Contractor Certification

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Question and Answers Concerning Tax Law Section 5-a (see Need help? below).*

Contractor name			
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)			
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )	
Covered agency name **OGS PSG**	Contract number or description	Estimated contract value over the full term of the contract (but not including renewals) $ **N/A**	
Covered agency address **Corning Tower, The Governor Nelson A. Rockefeller Plaza, Albany, NY 12242**		Covered agency telephone number	

General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than $100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006),* available at *www.nystax.gov.* Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need Help?

Internet access: *www.nystax.gov*
(for information, forms, and publications)

Fax-on-demand forms: 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-8100

Sales Tax Information Center: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

I, _____ , hereby affirm, under penalty of perjury, that I am _____
(*name*) (*title*)
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Make only one entry in each section below.

Section 1 - Contractor registration status

☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.

☐ The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 - Affiliate registration status

☐ The contractor does not have any affiliates.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 - Subcontractor registration status

☐ The contractor does not have any subcontractors.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this_____ day of _____, 20 ____

_____ _____
(sign before a notary public) *(title)*

Schedule A - Listing of each person (contractor, affiliate, or subcontractor) exceeding $300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such person exceeded the $300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to Contractor	B Name	C Address	D Federal ID Number	E Sales Tax ID Number	F Registration In Progress

Column A - Enter ***C*** in column A if the contractor; ***A*** if an affiliate of the contractor; or ***S*** if a subcontractor.

Column B - Name - If person is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If person is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If person has a different DBA (doing business as) name, enter that name as well.

Column C - Address - Enter the street address of person's principal place of business. Do not enter a PO box.

Column D - ID number - Enter the federal employer identification number (EIN) assigned to the person or person's business, as applicable. If the person is an individual, enter the social security number of that person.

Column E - Sales tax ID number - Enter only if different from federal EIN in column D.

Column F - If applicable, enter an X if the person has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the _____ day of _____ in the year 20___, before me personally appeared _____ known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____ ; and further that:

[Mark an ***X*** in the appropriate box and complete the accompanying statement.]

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

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

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

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

_____
Notary Public

Registration No. _____

ST-220-CA

(6/06)

New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Question and Answers Concerning Tax Law Section 5-a (see Need Help? on back).*

Contractor name				*For covered agency use only Contract number or description*
Contractor's principal place of business	City	State	ZIP code	
Contractor's mailing address *(if different than above)*				*Estimated contract value over the full term of contract (but not including renewals)*
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)			$
Contractor's telephone number ( )	Covered agency name			
Covered agency address				*Covered agency telephone number*

I, _____ , hereby affirm, under penalty of perjury, that I am _____
(*name*) (*title*)
of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:
(Mark an X in only one box)

☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)
and, to the best of the contractor's knowledge, the information provided on that previously filed Form T-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this_____ day of _____, 20 ____

_____ _____
(sign before a notary public) *(title)*

Instructions

General Information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency,* with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);

ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and

iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of $100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the day _____ of _____ in the year 20___, before me personally appeared ___
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____ ; and further that:

[Mark an **X** in the appropriate box and complete the accompanying statement.]

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

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

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

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

_____
Notary Public

Registration No._____

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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11. **Identifying Information and Privacy Notification**
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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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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.

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION**.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. 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 Governor's Office of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (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. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

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APPENDIX B

GENERAL SPECIFICATIONS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

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GENERAL

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

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

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

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

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

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

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

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

i. Bid Specifications prepared by the Authorized User.

ii. Appendix B (General Specifications).

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

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

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

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

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

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

ATTORNEY GENERAL Attorney General of the State of New York.

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

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

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

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

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

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

COMPTROLLER Comptroller of the State of New York.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OGS The New York State Office of General Services.

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

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

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

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

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

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

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

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

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

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

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

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

STATE State of New York.

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

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

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

BID SUBMISSION

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

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

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

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

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

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

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

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

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

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

9. FACSIMILE SUBMISSIONS Unless specifically prohibited by the terms of the Bid Specifications, facsimile Bids may be SUBMITTED AT THE SOLE OPTION AND RISK OF THE BIDDER. Only the FAX number(s) indicated in the Bid Specifications may be used. Access to the facsimile machine(s) is on a "first come, first serve" basis, and the Commissioner bears no liability or responsibility and makes no guarantee whatsoever with respect to

the Bidder's access to such equipment at any specific time. Bidders are solely responsible for submission and receipt of the entire facsimile Bid by the Authorized User prior to Bid opening and must include on the first page of the transmission the total number of pages transmitted in the facsimile, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Commissioner. Facsimile Bids are fully governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the format required in the Bid Specifications, including the executed signature page and acknowledgment.

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

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

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

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

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

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

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

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

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

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

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

14. CONFIDENTIAL/TRADE SECRET MATERIALS

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

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

15. RELEASE OF BID EVALUATION MATERIALS Requests concerning the evaluation of Bids may be submitted under the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

18. TAXES

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

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

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

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

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

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

21. PRODUCT REFERENCES

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

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

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

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

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

24. PRICING

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

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

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

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

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

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

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

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

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

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

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

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

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

25. DRAWINGS

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

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

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

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

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

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

28. SAMPLES

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

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

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

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

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

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

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

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

BID EVALUATION

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

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

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

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

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

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

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

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

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

TERMS & CONDITIONS

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

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

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

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

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

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

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

40. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor. The Contractor may, however, offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User(s) and Commissioner by the Contractor at the time of such offer.

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

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

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

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

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

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

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

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

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

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

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

47. SHIPPING/RECEIPT OF PRODUCT

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

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

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

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

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

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

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

and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar day period.

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

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

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

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

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

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

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

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

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

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

60. TERMINATION

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

complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

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

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

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

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

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

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

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

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

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

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

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

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

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

63. DEFAULT – AUTHORIZED USER

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

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

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

User of the specific facts, circumstances and grounds upon which a breach will be declared.

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

64. INTEREST ON LATE PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

71. CONTRACT TERM - RENEWAL In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by the Commissioner may be extended by the Commissioner for an

additional period(s) of up to one year with the written concurrence of the Contractor and Comptroller. Such extension may be exercised on a month to month basis or in other stated periods of time during the one year extension.

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

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

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

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

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

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

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

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

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

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

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

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

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

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or

Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

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

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

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

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

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

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

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

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

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

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

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

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

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

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; ii) reproducing a reasonable number of copies of the Product and related

Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

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

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

(i) Copy the Product;

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

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

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

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

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

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

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

81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

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

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

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

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

(i) Existing Products:

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

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

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

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

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

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

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

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

84. CHANGES TO PRODUCT OR SERVICE OFFERINGS

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

charge to enable Authorized User to continue use and maintenance of the Product.

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

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

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

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

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

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

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

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

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APPENDIX C

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

CONTRACTOR'S REQUIREMENT UNDER ARTICLE 15-A

In July of 1988, Article 15-A of the Executive Law was passed by the New York State Legislature. This legislation provides specific rules, regulations and procedures for minority and women-owned enterprise participation in certain State Contracts.

The Office of General Services (OGS) is required to implement the provisions of Article 15-A for all of its Contracts (1) in excess of $25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing and (2) for Contracts in excess of $100,000 for real property renovation and construction. For purposes of this Contract, OGS hereby establishes a goal of 4% for minority business enterprises (MBE) participation and 2% for women-owned business enterprises (WBE) participation.

In order to be awarded an OGS Contract, every bidder must comply with the requirements, rules and regulations outlined in Article 15-A.

POLICY AND PROVISIONS

It is the policy of the State of New York to promote equality of economic opportunity for minority and women-owned business enterprises (M/WBEs) in State Contracting. In order to comply with the State's objectives, the Contractors shall use "good faith efforts" to provide meaningful participation by M/WBE Subcontractors or suppliers in the performance of this Contract.

For the purpose of determining a Contractor's good faith effort to comply with the requirements of Article 15-A or to be entitled to a waiver therefrom, the Contracting agency shall consider:

(a) Whether the Contractor has advertised in general circulation media, trade association publications, minority-focus and women-focus media. In such event,

(i) whether or not certified minority or women-owned businesses which have been solicited by the Contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and

(ii) whether certified businesses which have been solicited by the Contractor have responded in a timely fashion to the Contractor's solicitations for timely competitive bid quotations prior to the Contracting agency's bid date; and

(b) Whether there has been written notification to appropriate certified businesses that appear in the Directory of Certified M/WBE prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and

(c) Whether the Contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.

A. ***GOALS*** - The MBE and WBE participation goals as stated earlier are based on the availability of M/WBEs currently certified by New York State and geographically located to be able to perform the work in the region where the project is located. The total dollar value of the Contract, scope of work, the supplies and equipment necessary to perform the project, are also considerations used to determine the percentage goals.

B. ***UTILIZATION*** - The Contractor may count as M/WBE participation: subcontracting part of the Contract to certified firms or purchasing supplies and equipment used to perform the terms and conditions of the Contract from certified firms.

Upon a showing by the Contractor of every good faith effort to achieve the goal for M/WBE participation in the work, the State will waive a Contractor's failure to achieve the goal M/WBE participation.

C. ***MINORITY AND WOMEN-OWNED BUSINESS OFFICER*** - The Contractor shall designate an Affirmative Action officer and assign the officer the responsibility and authority to monitor the M/WBE program for this Contract. The OGS' Office of Minority and Women-owned Business Enterprises' staff is available to help in identifying certified M/WBEs.

D. ***REQUIRED REPORTS*** - The Contractor is required to submit a Utilization Plan (BDC-328) to the NYS Office of General Services within five (5) days after the opening of bids for construction Contracts exceeding $100,000 and 14 days after notification of award for commodity and service Contracts exceeding $25,000. The Contractor must also submit the MBE/WBE Letter of Intent to Participate (BDC-49). The Letter MBE/WBE of Intent to Participate is a commitment by the Contractor and the subcontractor/supplier that the terms and conditions for M/WBE participation on this Contract are agreed to. Any modifications or changes to the agreed participation by certified M/WBEs, over the term of the Contract, must be reported on a revised Utilization Plan.

E. ***NONDISCRIMINATION*** - The Contractor agrees not to discriminate on the basis of race, creed, color, national origin, gender, age, disability, or marital status, in any respect, against any potential subcontractor, supplier, other company, firm, or enterprise in any manner relating to the performance of this Contract.

POST AWARD

The Contractor must submit to the Office of Minority and Women-owned Business Enterprises after notification of award, the following forms, by the 10th day of each month:

1. (BDC-58) Cumulative Monthly Payment Statements
2. (BDC-25) Monthly Affirmation of Income Payments

All questions regarding compliance to Article 15-A requirements or copies of the forms should be addressed to:

New York State Office of General Services
Office of Minority and Women-owned Business Enterprises
35th Floor, Room 3580
Corning Tower Building
Empire State Plaza
Albany, NY 12242

The telephone numbers and addresses for New York State Department of Economic Development are as follows:

New York State Department of Economic Development
633 Third Avenue
New York, NY 10017

Telephone: (212) 803-2414

New York State Department of Economic Development
Division o f Minority and Women's Business Development
30 South Pearl Street
Albany, New York 12245
Telephone: (518) 292-5250

APPENDIX D

CONTRACT UPDATE FORM

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

CONTRACT UPDATE FORM	
OGS CONTRACT NO.:_____	**DATE OF SUBMISSION:**_____
CONTRACT PERIOD: From: _____To: _____ **GROUP NO. & DESCRIPTION:**_____ _____	**VENDOR CONTACT:** NAME:_____ PHONE NO:_____ FAX NO.:_____ E-MAIL:_____
NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).	

INSTRUCTIONS:

1. This form is to be used for all contract updates. The form is to be completed **in triplicate** and submitted to the OGS Procurement Services Group for final approval. Vendors shall complete, sign, and notarize where indicated, and attach this form to a cover letter written on standard company letterhead. Any submission that is not complete or signed **in triplicate** will be rejected.

2. *Contractor may be required to submit the Product and price information for the update in an Excel spreadsheet format in hard copy and on a floppy disk and/or electronically via e-mail to the OGS Purchasing Officer.*

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

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

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

COMPLETE STATEMENTS 1 THROUGH 8 BELOW:

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

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

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

_____
Signature of Authorized Vendor Representative:

CORPORATE ACKNOWLEDGMENT

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

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

_____
Notary Public

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

APPENDIX E

CONTRACTOR'S REQUIRED SUBMISSIONS

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

1. Are you a New York State resident business?	**Yes_____**	**No_____**
2. Total number of people employed by your firm:	_____	
3. Total number of people employed by your firm in New York State:	_____	
4. Is your company independently owned and operated?	**Yes_____**	**No_____**
5. Place of manufacture or development of Product(s) offered (Please indicate "Yes" or "No" for A, B or C): A. All NYS manufacture/development? **OR** B. All manufactured/developed outside NYS? **OR** C. Manufactured/developed in NYS and outside NYS?	 **Yes_____** **Yes _____** **Yes_____**	 **No_____** **No_____** **No_____**
6. Is your firm at least 51% owned and controlled by women, or 51% owned and controlled by minority group members, i.e., Black Hispanic, Asian, Pacific Islander, American Indian, Alaskan Native? **If yes, _____Minority Owned _____Women Owned** **If yes**, have you been certified or registered? **____Yes _____No** **If yes**, List certification or registration authority: _____ _____	**Yes_____**	**No_____**
7. Do any of the Products offered herein incorporate recycled materials?	**Yes_____**	**No____ N/A___**
8. Do any of the Products offered herein contain remanufactured components?	**Yes_____**	**No____ N/A ___**
9. Are any of the Products offered herein Energy Star Compliant? If yes, which Products?_____ _____	**Yes_____**	**No____ N/A ___**

10. **BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS** Pursuant to Procurement Lobbying Law (SFL §139-j)		
A. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?	**Yes**_____	**No**_____
If yes, please answer the following question:		
B. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?	**Yes**_____	**No**_____
C. If yes, was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?	**Yes**_____	**No**_____
If yes, please provide details regarding the finding of non-responsibility:		
Governmental Entity:	_____	
Date of Finding of Non-responsibility:	_____	
Basis of Finding of Non-Responsibility: (add additional pages if necessary)	_____	
D. Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?	**Yes**_____	**No**_____
If yes, please provide details:		
Governmental Entity:	_____	
Date of Termination or Withholding of Contract:	_____	
Basis of Termination or Withholding: (add additional pages if necessary)	_____ _____	
11. "NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MacBRIDE FAIR EMPLOYMENT PRINCIPLES" In accordance with Section 165 of the State Finance Law, the Developer, by submission of this contract, certifies that it or any individual or legal entity in which the Developer holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the Developer, either: (answer Yes or No to one or both of the following, as applicable), A. have business operations in Northern Ireland: If yes, B. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles	*Yes*_____	*No*_____

relating to non-discrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such Principles.	*Yes*_____	**No**_____
13. Are prices quoted the same as or lower than those quoted other corporations, institutions and government agencies (including GSA/VA contracts) on similar products, quantities, terms and conditions? See "Best Pricing Offer" in Appendix B-3 D, OGS General Specifications. If "NO", please explain on a separate sheet.	**Yes**_____	**No**_____
F. Do you have a contract with the General Services Administration (GSA) or Veterans Affairs (VA) for products offered? (Check all that apply.)	**Yes**_____ **GSA**____ **VA** ____	**No**_____
G. If yes, will you offer New York State your GSA or VA pricing or better?	**Yes**_____ **GSA**____ **VA** ____	**No**_____
H. If yes, a copy of the GSA or VA schedule is required. Have you included a copy?	**Yes**_____ **GSA**____ **VA** ____	**No**_____
14. If awarded a contract, will bidder accept the New York State Procurement Card?	**Yes**_____	**No**_____
B. If yes, state any dollar limit on orders for which you will accept the NYS Procurement Card?	Up to **$**_____	
C. Additional discount for purchases made with the NYS Procurement Card:	**Yes**_____ _____ %	**No**_____
15. Will you offer a Cash Discount for payment within 15 days of delivery and/or receipt of voucher?	**Yes**_____ _____ %	**No**_____
16. Will you offer a Cash Discount for payment within 30 days of delivery and/or receipt of voucher?	**Yes**_____ _____ %	**No**_____

*** * * ALL VENDORS PLEASE TAKE NOTICE OF NUMBERS 17 & 18 BELOW * * ***

17. NON-COLLUSIVE BIDDING CERTIFICATION

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

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

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

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

18. MERCURY-ADDED CONSUMER PRODUCTS:

Bidders are advised that effective January 1, 2005, Article 27, Title 21 of the Environmental Conservation Law bans the sale of fever thermometers containing mercury and the sale of elemental mercury for other than research purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Bidders are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at (518) 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Bidders may also visit the Department's web site for additional information: http://www.dec.state.ny.us/website/dshm/redrecy/c145home.html

Submission # 2
Contractor & Reseller/Distributor Information

Contractor Information (for Ordering and Contract Administration Purposes)

1. CONTRACTOR/COMPANY INFORMATION	
Company Name:	
Address: (From first page of Contract)	
FEDERAL ID #:	
Source Code Escrow Agent: Name: Address: Phone Number:	

2. CENTRALIZED CONTRACT	
Contract Administrator Name:	
Title:	
Mailing Address:	
Telephone Number:	
E-mail:	
FAX:	

3. SALES/BILLING	
Contact Name:	
Title:	
Address:	
Telephone Number:	
E-mail:	
FAX:	

4. MAINTENANCE/ SERVICE			
Contact Name:			
Title:			
Address:			
E-mail:			
WWW Address:			
Telephone Number:		FAX:	
Contract "Toll" Free Support Phone Number:		Hours of Availability:	

Reseller/Distributor Information	
Contractor's General Commercial Qualifying Criteria for Resellers/Distributors:	1. Attach a description of all reseller criteria following this page; or 2. If Contractor does not market or distribute product through resellers/distributors in the normal course of business, Contractor must attach a statement to that effect following this page. 3. Attach Additional Sheets, If Necessary.

Reseller/Distributor	
(#1) Company Name:	
Address:	
FEDERAL ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
MWBE Certification	☐ Women owned ☐ Minority owned ☐ Both
Reseller is Authorized to:	☐ Take Orders ☐ Ship Direct ☐ Receive Payment
Qualifying Criteria Applicable to this Reseller:	

Reseller/Distributor	
(#2) Company Name:	
Address:	
FEDERAL ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
MWBE Certification	☐ Women owned ☐ Minority owned ☐ Both
Reseller is Authorized to:	☐ Take Orders ☐ Ship Direct ☐ Receive Payment
Qualifying Criteria Applicable to this Reseller:	

Reseller/Distributor	
(#3) Company Name:	
Address:	
FEDERAL ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
MWBE Certification	☐ Women owned ☐ Minority owned ☐ Both
Reseller is Authorized to:	☐ Take Orders ☐ Ship Direct ☐ Receive Payment
Qualifying Criteria Applicable to this Reseller:	

Submission # 3

NYS Contract Net Price List

(NYS Net Prices For: Enterprise Systems Servers & Mainframes, Installation, Configuration, Extended Warranties, Maintenance, Support, Consulting, & Training)

The price list submitted must contain at least the following items in this format:

Part #	Description	Unit List Price	NYS Discount %	NYS Net Price	Other columns chosen by Contractor

(to be attached by Contractor)

Pricing is Based On:

☐ US Commercial List, Dated _____

☐ GSA Supply Schedule Number _____.
Dated _____

☐ Other: _____

Submission # 4

Maintenance & Support

(Description of Services,
including response times, severity level,
support phone numbers, hours of availability, etc.)

The Maintenance and support price list submitted must contain at least the following items in this format:

Part #	Description	Unit List Price	NYS Discount %	NYS Net Price	Other columns chosen by Contractor

(to be attached by Contractor)

Submission # 5

Consulting Services
(Description of Services)

(to be attached by Contractor)

The Consulting Services price list submitted must contain at least the following items in this format:

Part #	Description	Unit List Price	NYS Discount %	NYS Net Price	Other columns chosen by Contractor

Submission # 6

Contractor Order Forms and Order Information
(Description of Forms and Use)

(to be attached by Contractor)