

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

CONTRACT AWARD NOTIFICATION

Title	:	Group 79132 - License Monitor Inc. - Electronic On-Line Database
		Classification Code(s): 83
Award Number	:	NEG-18934
Contract Period	:	June 9, 2004 - June 8, 2009
Bid Opening Date	:	November 25, 2003
Date of Issue	:	June 15, 2004
Specification Reference	:	As Incorporated
Contractor Information	:	Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Dawn Curley Title : Purchasing Officer Phone : 518-486-6812 Fax : 518-486-6867 E-mail : dawn.curley@ogs.state.ny.us	Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.state.ny.us

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

Description

Delivery of instant driver license activity data and archived database for reporting and statistical analysis.

IMPORTANT NOTICE

Information collected from using the services of the above mentioned contractor are covered under certain federal regulations. Please contact the contractor for if you have questions or require further information regarding these regulations.

NOTE: See individual contract items to determine actual awardees.

<u>CONTRACT #</u>	<u>CONTRACTOR & ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED.IDENT.#</u>
PS61131 SB	License Monitor Inc. 162 Jericho Turnpike Floral Park, NY 11001 Attn: Sales Department	Phone: 800-303-8063 Fax: 516-437-9652 tmontagnino@licensemonitor.com	13-4187405

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

INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.

(See "Contract Payments" and "Electronic Payments" in this document.)

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

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters **SB** listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters **MBE** and **WBE** indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The Procurement Services Group supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

NOTE TO ALL CONTRACT USERS:

The terms and conditions of the bid solicitation which apply to the award appear at the end of this document. We strongly advise all contract users to familiarize themselves with all terms and conditions before issuing a purchase order.

FREQUENTLY ASKED QUESTIONS

Why monitor driver license activity?

Monitoring driver license activity is the optimal way for fleet operators to prevent crisis, manage risk exposure, and plan strategically for a safer fleet. However, most employers continue to check the license status of employees only at time of hire and once or twice a year thereafter. This creates long periods of unknown risk exposure as a driver's license may become invalidated at any time for a variety of reasons. License Monitor delivers continuous driver license monitoring.

What are the risks if I don't monitor my drivers?

The existing legal framework enforces the principles of negligent entrustment and vicarious liability in the case of motor vehicle related accidents involving drivers while operating vehicles on behalf of your organization. This places a tremendous amount of responsibility on the organization to demonstrate that it exercises adequate diligence in making sure all company drivers are valid while operating vehicles.

How does pro-active monitoring work?

By working with the New York State Department of Motor Vehicles, License Monitor receives license activity alerts for all drivers registered on the *Pro-Active License Monitoring*™ system. We then send notifications to our clients informing them of the new license activity or changes in their employees' driver license status.

How do I access the License Monitor information?

Each driver's *Pro-Active Motor Vehicle Record*™ (*P-MVR*™) can be accessed via our secure Internet portal 24 hours a day, 7 days a week. Together, these P-MVRs form License Monitor's powerful *Driver Data Management System*™ (*DDMS*™) – an intelligent data management system with built-in advanced report generation. The DDMS enables organizations to easily review driver records and quickly identify drivers that present the greatest risk to the organization.

What about driver privacy?

Driver privacy is of the utmost importance. You need to ensure that you have a permissible use in order to request driver license information and you must abide by the Driver's Privacy Protection Act and Fair Credit Reporting Act. Important information surrounding driver privacy can also be found on our website at www.licensemonitor.com.

**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT NO. PS61131
ELECTRONIC ON-LINE DATABASE PRODUCTS AND SERVICES
SERVICE AGREEMENT**

THIS AGREEMENT made this 23rd day of April, 2004 by and between the STATE OF NEW YORK, Office of General Services, having its principle place of business located at the Corning Tower Building, 41st floor, Albany, NY 12242, and License Monitor, Inc. (hereinafter "LMI" or "Contractor"), having its principle place of business located at 99 Tulip Avenue, Suite 408, Floral Park, New York, 11001.

WHEREAS, LMI provides electronic on-line products and services (hereinafter referred to as "services"), consisting of on-line databases and other on-line information services, and;

WHEREAS, The State of New York, has a need for and wishes to provide its Authorized Users with these services,

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

1. TERM:

The term of this agreement shall commence the first day after approval by the Office of the State Comptroller effective upon mailing by OGS (see Appendix B-2-D, Clause 38) and shall extend for five (5) years. The agreement may be further extended for one additional term of five (5) years upon mutual agreement of both parties and approval by the Office of the State Comptroller.

2. SCOPE:

The State of New York, seeks to license and obtain on-line access to databases and obtain electronic information products and advisory services on behalf of Authorized Users that cover a wide variety of subject categories including: general, business, social sciences, health, education, science, law and other subscription services as specified herein. Licensed access to the electronic databases includes on-line service from Authorized User locations to one or more remote Licensor locations or the option of local data loading with local storage. In addition, The State of New York seeks to license and obtain software and other related products and services for its Authorized Users.

It is the intent of The State of New York to award agreements to all eligible database publishers and/or resellers for their complete line of database products, including on-line service and magnetic tape or CD-ROM licensing.

3. INTENTIONALLY LEFT BLANK

4. 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 supercedes the order of precedence stated in Appendix B-2 D:

- Appendix A *Standard Clauses for NYS Contracts*
- Contract (This Document)
- Appendix B-2 D OGS General Specifications for On-line Database Access
- Appendix C License
- Appendix D Intentionally Left Blank
- Appendix E Mandatory: Contractor's Executive Law, Article 15-A (M/WBE) Requirements
- Appendix F Contract Update Form (For Product and Pricing Updates)
- Appendix G Required Contractor Submissions:
 - # 1 Mandatory Contractor Questionnaire
 - # 2 Contractor Information
 - # 3 NYS Net Prices (Prices for On-line Database Access and related electronic products)
 - # 4 Consulting and Training (Description of Services & Course Offerings and Pricing for the Consulting and Training)
- Appendix H Intentionally Left Blank
- Appendix I Service Agreement and attachments

5. EFFECT:

This Contract shall not be deemed executed, valid or binding unless and until approved in writing by the State Comptroller.

6. DEFINITIONS:

The definitions in Appendix B-2 D shall apply to this contract and shall be supplemented by the following additional definitions:

Agreement shall mean the writing(s), which contain the agreement of The State of New York and the Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law.

Archiving A Contractor that ceases on-line delivery of the Products shall provide to The State of New York a preservation copy of the material accessible online.

Authentication shall mean a network (whether a standalone network or a virtual network within the Internet) that is accessible only to End Users, either through IP addressing or through other means of user authentication.

Database shall refer to the specific electronic information or products maintained by a Licensor in various categories. For the purposes of this contract, a database shall include all forms of electronic information including but not limited to journals, newspapers in electronic form, books, titles, legal case studies, etc.

Database Publisher shall mean the owner of the database whom directly develops the information contained in the database and/or has the exclusive ownership of it. A database publisher may also refer to a firm that has the exclusive publishing rights from the owner of the database.

End User shall mean those persons who bear a valid End User identification card or equivalent (faculty or student ID, employer ID, borrower card, etc.). In addition, non-affiliated patrons of End User's library site(s) ("walk-ins") will be permitted reasonable access to the Licensed Materials.

Fair Use shall mean acceptable use under the Copyright Revision Act 1976 as amended subsequently provided that such rights are exercised in accordance with Section 108 of the Act and with the guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines) and published in U.S. Copyright Office Circular 21.

Products shall mean the deliverables under this Agreement, which may include services and/or technology. The term "Products" includes licensed software or electronic databases. Products shall also mean Licensed Materials.

Server shall mean the computer system(s) on which the Products reside and through which Authorized Users gain access to the Products, whether the server is maintained by the Contractor or by a third party designated by the Contractor.

Simultaneous or Concurrent Users shall mean the number of users that have access to a database at a given point in time and can mean either of the following:

- **Concurrent Sessions Definition:** Under this definition, concurrent user is interpreted to include any user station device which, at the point in time of measurement, has established a logical session path to the Licensor's on-line service, enabling an immediate search request to be made directly to the Licensor's search software. This is the common meaning of such expressions as being "signed on" or "logged on" to the on-line service. Under this

definition, any signed on terminal or user station device is counted as part of the concurrent use total, regardless of whether the user is at the user station; formulating a new search request; waiting for the Licensor's system to respond to a search request; or digesting the results of a previous request.

- **Active Request Definition:** Under this definition, only users who have submitted a search request transaction to the Licensor's on-line service and have not yet received a response from the Licensor's system are considered to be active users.

User Station shall mean a personal computer, non-intelligent terminal, or other similar device to gain access to the database services.

7. STATEMENT OF INTENT:

This agreement is between The State of New York and the Contractor for the provision and delivery of Contractor's products to The State of New York, its agencies and departments, political subdivisions and all entities authorized to utilize New York State Office of General Services' centralized contracts, including educational institutions. Generally, the responsibilities and relationships of each party are as follows:

THE STATE OF NEW YORK, OFFICE OF GENERAL SERVICES:

Provide products to the Authorized Users through use of Statewide contracts.

CONTRACTOR:

- A. Agrees to provide specified databases on a non-exclusive basis pursuant to this Service Agreement. Services covered by this Service Agreement are delineated within this Agreement.
- B. Agrees to provide on line access to database for OGS Contract Administrator free of charge.
- C. Agrees to maintain and provide a highly stable and usable Product and Web server capable of serving the Authorized User population.
- D. Agrees to make every reasonable effort to cooperate with The State of New York to facilitate and promote the products and alert potential customers of the services provided by Contractor.
- E. Agrees to provide Semi-Annual Aggregate Usage Reports of Authorized User Volume to the State of New York Office of General Services on aggregate purchasing.
- F. Agrees that any attempt by Contractor to deviate from the terms and conditions of this Service Agreement shall not be enforceable as against an eligible Authorized User; except as regards the offering by Contractor and acceptance by Authorized User of a pricing modification in Appendix B-2 D.
- G. Agrees to service and support the use of the Products.
- H. Agrees to abide by an agreed upon schedule of publication testing.
- I. To the greatest extent possible, agrees to adhere to the ICOLC guidelines concerning statistics, technical issues and the purchase of electronic information resources.

EACH AUTHORIZED USER IS RESPONSIBLE FOR:

- A. Paying Authorized User fees to the Contractor. Authorized Users may participate in accordance with the terms and conditions set forth herein, and may directly authorize payment by the issuance of a purchase order for Contractor's services.
- B. The issuance of a purchase order shall indicate the Authorized User's acceptance and agreement to the terms and conditions set forth in this Service Agreement between the State of New York and the Contractor.

8. SEMI-ANNUAL REPORT OF CONTRACT PURCHASES

- A. Contractor shall be responsible for compiling and maintaining accurate, electronic records for Semi-Annual Report of Contract Purchases which shall reference the New York State Comptroller's Contract Number of this Service Agreement on its face. The Contractor shall be fully liable for inaccuracies contained therein. Said reports shall be kept for a minimum of five years and shall be furnished to the State on a semi-annual basis.
- B. The "Semi-Annual Report of Contract Purchases" shall, at a minimum, contain the following information:

MANDATORY CONTENTS OF SEMI-ANNUAL REPORT OF CONTRACT PURCHASES

- 1) Semi-Annual Breakdown for each Authorized User, including:
 - a. Total Volume Usage, broken out by databases classification
 - b. Total Number of Log-On Password ID's (when applicable)
 - c. Total Additional Charges, broken out by category of service
- 2) Semi-Annual Totals Aggregating Usage by All Authorized Users, including:
 - a. Total Volume Usage , broken out by database classification
 - b. Total Number of Log-On Password ID's (when applicable)
 - c. Total Additional Charges, broken out by categories of service
- C. The Contractor shall be responsible for furnishing said complete Semi-Annual Report of Contract Purchases within thirty days of the close of the reporting period to the State at the following address: "Office of General Services, Procurement Services Group, Corning Tower Building, 37th Floor, Albany, NY 12242". In the event that such report is not furnished within said timeframes, the State shall have the right to request the State Comptroller withhold payment for services rendered during the reporting period until such report is received and/or consider Contractor in breach of this agreement.
- D. At the States discretion, in lieu of the printed report, detailed transaction data shall also be generated from Contractor in electronic form capable of transmission directly to the OGS Procurement Services Group at no charge. The detailed data shall also be available in magnetic tape or diskette format, if requested, at no charge.

- E. If contractor has elected to have the Industrial Funding Fee remitted to the New York State Office of General Services, this payment will be due to the NYS OGS Finance office on the same schedule as the Semi-Annual sales reports. Reports and Industrial Funding Fee payments shall be delivered within thirty (30) days of the close of the semi-annual period. Semi-annual periods will end on December 31st and June 30th. If the contract period begins or ends in a fractional portion of a reporting period only the actual contract sales for this fractional period should be reported in that semiannual report. Similarly the Industrial Funding Fee payable to the New York State Office of General Services Finance office will only be due for the actual contract sales reported in that reporting period. The amount of the Industrial Funding Fee payment shall match the contract sales contained in the semi-annual report based on the percentage established by the GSA. This percentage is currently set at .75%. In the event that a Contractor utilizes resellers, it is the responsibility of Contractor to include all Contract revenues from these participants in the semi-annual report. The State shall have the right to verify said report and Industrial Funding Fee payments and to take any action(s) necessary to enforce its rights under this paragraph, including but not limited to the right to stop payments until such reports or payments are received, audit Contractor's applicable Contract books, to substitute, in its sole judgment, a good faith estimate of Contract usage upon failure of Contractor to deliver said report as required where pricing is based upon aggregate volume, or to terminate the Contract for cause or seek other judicial relief. In the event the contractor fails to submit reports the Industrial Funding Fee will become due based on the state's good faith estimate of sales.

9. ACCESS TO PRODUCTS; ARCHIVING; AUTHORIZED USERS:

- A. Access: Access to the Products by Authorized Users shall be via the World Wide Web from the Contractor's server(s). The Contractor shall insure that the Products are highly stable and usable (including average response time of less than 5 seconds, and uptime, except for scheduled maintenance, of 96.9%), and shall insure that the Web server(s) is (are) fully capable of serving Authorized Users. The Contractor will provide sufficient additional bandwidth and servers to ensure no degradation of services if necessary. Access shall be controlled by IP addresses, passwords or other appropriate authentication technology.
- B. Archiving: If at any time during the term of this Agreement, the Contractor should cease its on-line delivery of the Products, the Contractor shall provide to The State of New York a preservation copy of the material accessible online. The State of New York shall further retain an archival copy of the Products in an escrow account. The escrow copy shall be refreshed on a quarterly basis.
- C. Authorized Users: Will prepare and submit to the Contractor a list of End Users that shall include name, address, and contact information.

10. PAYMENT FOR PRODUCTS; RENEWALS:

- A. Rates payable by all Authorized Users during the first year of the contract term shall be as set forth in Appendix G.
- B. **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 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: the IFF is remitted directly to OGS, or the state contract prices be reduced, by an amount equivalent to the IFF. If the contractor elects to refund the Industrial Funding Fee established by GSA (currently set at .75%) to OGS, the amount determined shall be remitted to NYS on a semi-annual basis by the vendor. For further instructions please refer to Section 8.E of this Agreement. 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,
 - 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.
- C. Notwithstanding the term of the Agreement, individual Authorized Users may subscribe annually within the term of the Agreement, renewable by the Authorized User annually. By mutual agreement, the annual subscription period may be for a stated annual term for all Authorized Users, provided however, that additional End Users may be added any time during the contract period on a prorated basis.
- D. Authorized Users wishing to subscribe to the Products shall submit orders to the Contractor. Such orders shall be submitted via Purchase Order forms which will serve as acceptance by End User of the terms and conditions of this Service Agreement.
- E. Authorized Users may acquire consulting services, under this Contract, provided it is directly related to the installation and/ or provision of the selected electronic on-line information services. It is anticipated that Consulting services will be required only in rare instances and may be acquired from Contractor on a limited basis only. Consulting services may not exceed twenty (20%) percent of the "total order price" for the on-line information services services. "Total order price" shall be defined as the aggregate purchase order amount for non-consulting services placed by the Authorized User under this Contract in a twelve month period. Consulting services which exceed twenty (20%) may be procured competitively using the OGS Consulting, Systems Integration and Training mini-bid process or another procurement process selected by the Authorized User. Note: Advisory services that are an integral part of the electronic on-line subscription service (e.g.: Gartner Group) are not considered Consulting services and are not limited by the "20% rule."
- F. Unless expressly set forth to the contrary in Appendix G, 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.

G. All changes to product offerings must be in accordance with the procedures set forth below and require the advance approval of OGS.

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.
3. Price Decreases: Shall be calculated in Accordance with Appendix B-2 D, Clause 43.
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 G 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 which 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 Comptroller, and may not be posted on the Internet prior to receipt of final approval.

11. DESIGNATED CONTACT PERSON/ RESPONSIBILITY FOR PAYMENTS:

- A. The State, Contractor and each Authorized User will designate a contact person to administer their participation under this Service Agreement.
- B. Contractor shall bill each Authorized User monthly for the Services and equipment, including adjustments, unless Authorized User has prepaid for one year service in advance. Each Authorized User shall make separate application for services and is responsible for payment for those services, subject to legislative appropriations.
- C. The Office of General Services is the lead agency in awarding this Service Agreement and assumes no liability for payment for any services rendered under this agreement to

Authorized Users, except as OGS may itself subscribe to use Services, in which case it shall be liable directly for such use, subject to legislative appropriations.

12. INTENTIONALLY LEFT BLANK

13. CLAIMS AND REPRESENTATIONS:

Contractor warrants and agrees that all statements, whether oral, written or electronic, regarding the features, content and capabilities of its Products are true and accurate and that the Products will operate, in normal usage as so represented by Contractor.

14. AMENDMENTS TO CONTRACT:

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-2-D, Section 40.*

The following guidelines and Appendix F, Contract Update Form attached to this Contract are subject to change at the discretion of OGS.

(1) TYPES OF CONTRACT UPDATES: 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 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-2, Clause 80 (“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 previously approved under the Contract. Regular Adds include rebundled 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. Price increases or new product offerings may not be electronically posted by Contractor until after receipt of OGS approval of the "Regular Add".

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) **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 G, Submission # 2 and Contract Update Form.

(2) CONTRACTOR'S SUBMISSION OF CONTRACT UPDATES: 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

(3) PRICE JUSTIFICATION – FORMAT: 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 the NYS Net Price appendix 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):

- Price increases
- 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.

(4) 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.

(5) COVER LETTERS: A Contract update must be accompanied by three (3) copies of the Contract Update Form set forth in Appendix F 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 (see below).

15. CONTRACTOR'S PERFORMANCE OBLIGATIONS:

- A. The Contractor will provide and maintain help files and other appropriate user documentation for the Products to be accessible to all Authorized Users free of charge.
- B. If applicable, 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 and supplied in Appendix G, Submission #4.

If applicable, 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. The Contractor shall use reasonable efforts to ensure that the Contractor's server or servers have sufficient capacity and rate of connectivity to provide all Authorized Users and their End Users with a quality of service comparable to current standards in the on-line information provision industry in the Authorized User's locale. The Contractor shall use reasonable efforts to restore access to the Products as soon as possible in the event of an interruption or suspension of service. In the event that access to the Products is not restored in a reasonable time, the Contractor will provide appropriate reimbursement to the Authorized User in an amount proportional to the total fee for the Products had they been available to the Authorized User.
- D. Authorized User understands that from time to time the Products may be added to, modified, or deleted by the Contractor and/or that portions of the Products may migrate to other formats. The Contractor shall give prompt notice of any such changes to Authorized User. Failure by the Contractor to provide such reasonable notice shall be grounds for immediate termination of the Agreement by Authorized User.
- E. The Contractor will ensure regular system and project updates to Authorized Users as they become available. The Contractor will provide additional training to Authorized User staff made necessary by any updates or modifications to the Products or any of the Contractor software.
- F. The Contractor will offer free on-line help to the End User. Prompts will be available for the End User to guide the End User through the steps in acquiring information. Training materials must also be available in print and/or electronic form.

16. INTERNET ACCESS TO CONTRACT & PRICING INFORMATION:

Access by Authorized Users to Contract terms and pricing information may be made available and posted on the Internet. To that end, the Contractor may be required to host the complete Contract 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) during the Contract term, in accordance with the following requirements:

- 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 Authorized 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 on the 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 will be at the sole discretion of OGS and if installed, is provided solely for convenience in carrying out the business operations of the State. OGS reserves the right to install, 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. Contractor agrees to comply with **Office for Technology Policy 99-3** <<http://www.oft/policy/99-3.htm>>, **Universal Accessibility for NYS Web Sites (Supplement to 96-13** <<http://www.oft/policy/96-13.htm>>), dated, September 30, 1999, which requires that all New York State agencies' web sites provide universal accessibility 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 99-3 <<http://www.oft/policy/99-3.htm>>.

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.

17. AUTHORIZED USER PERFORMANCE OBLIGATIONS:

Authorized Users acknowledge that the copyright and title to the information content and organization of the Products are and remain with the Contractor. Authorized User shall use reasonable efforts to inform its End Users and walk-in patrons of any restrictions on the use of the Products. Authorized User shall use reasonable efforts to protect the Products from any use that is not permitted under this Agreement, and shall notify the Contractor of any such use of which it learns or is notified. In the event of any unauthorized use of the Products, (a) the Contractor may terminate the access of the Internet Protocol ("IP") address (es) from which such unauthorized use occurred, and/or (b) the Contractor may request that Authorized User terminate access of the persons making such unauthorized use to the Products. The Contractor shall take none of the steps described in this paragraph without first providing reasonable notice to Authorized User and working with the Authorized User to avoid recurrence of any unauthorized use.

18. INTENTIONALLY LEFT BLANK

19. WARRANTIES:

Subject to the Limitations set forth elsewhere in this Agreement.

20. ASSIGNMENTS AND TRANSFER:

No party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other parties, which consent shall not be unreasonably withheld or delayed. Notwithstanding the above, State agencies may transfer all or

part of its rights or obligations under this Agreement to other NYS agencies so long as said agencies agree to abide by all of the provisions of this Agreement and prior notice is provided to the contractor.

21. GOVERNING LAW:

This Agreement shall be interpreted and construed according to, and governed by, the laws of the State of New York, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in New York shall have jurisdiction to hear any dispute under this Agreement.

22. DISPUTE RESOLUTION POLICY:

- A. In the event any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement, which are not affected by the dispute.
- B. Should the dispute not be resolved amicably or in accordance with the procedures set forth in this Agreement, each party shall use the legal procedures as governed by New York State Law.

23. SEVERABILITY:

If any provision or provisions of this Agreement shall be held to be invalid, illegal, and unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

24. WAIVER OF CONTRACTUAL RIGHT:

Waiver of any provision herein shall not be deemed to be a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

25. ENTIRE AGREEMENT:

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

26. NOTICES:

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within five (5) business days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by U.S. Mail or hand delivery to the specified address. Any party may from time to time change its Notice Address by written notice to all other parties.

27. EXTENSION OF USE:

This agreement may be extended to additional states or government jurisdictions upon mutual written agreement between New York State (the lead contract State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extension.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

TABLE OF CONTENTS

1. Executory Clause
2. Non-Assignment Clause
3. Comptroller's Approval
4. Workers' Compensation Benefits
5. Non-Discrimination Requirements
6. Wage and Hours Provisions
7. Non-Collusive Bidding Certification
8. International Boycott Prohibition
9. Set-Off Rights
10. Records
11. Identifying Information and Privacy Notification
12. Equal Employment Opportunities For Minorities and Women
13. Conflicting Terms
14. Governing Law
15. Late Payment
16. No Arbitration
17. Service of Process
18. Prohibition on Purchase of Tropical Hardwoods
19. MacBride Fair Employment Principles
20. Omnibus Procurement Act of 1992
21. Reciprocity and Sanctions Provisions
22. Purchases of Apparel

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 \$15,000 (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 \$30,000 (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 warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants 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, AESOB, 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

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
<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.

APPENDIX B-2 D

GENERAL SPECIFICATIONS (Negotiated On-Line Database Access Contracts)

*(Applicable to Procurements of
On-Line Database Access, other Related Electronic Products & Related Services)*

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

TABLE OF CONTENTS

GENERAL

1. Applicability
2. Governing Law
3. Appendix A
4. Ethics Compliance
5. Conflict of Terms
6. Definitions

BID SUBMISSION

- 7-14 Reserved
15. Confidential/Trade Secret Materials
16. (Reserved)
17. Taxes
- 18-22. (Reserved)
23. Pricing
24. Drawings
25. (Reserved)
26. Procurement Card
27. (Reserved)

BID EVALUATION

- 28-32 (Reserved)
33. Performance Qualifications
34. Disqualification for Past Performance
- 35- 37. (Reserved)

TERMS & CONDITIONS

38. Contract Creation/Execution
39. Participation in Centralized Contracts
40. Modification of Contract Terms
41. Scope Changes
42. Estimated Quantity Contracts
43. Best Pricing Offer
44. Purchase Orders

TERMS & CONDITIONS - Cont'd

- 45-50 (Reserved)
- 51-54. (Reserved)
55. Employees/Subcontractors/Agents
56. Assignment/Subcontractors
57. (Reserved)
58. Suspension of Work
59. Termination
60. Savings/Force Majeure
61. Contract Billings
62. Default - Authorized User
63. Interest on Late Payments
64. Remedies for Breach
65. Assignment of Claim
66. (Reserved)
67. Independent Contractor
68. Security/Confidentiality
69. Cooperation With Third Parties
70. Contract Term - Renewal
71. Warranties
72. Limitations on Warranties
73. Date and Time Change Warranty
- 74-76. (Reserved)
77. Proof of License
78. Migration to Centralized Contract
79. (Reserved)
80. Changes to Product or Service Offerings
- 81-82. (Reserved)
83. Indemnification & Limitation of Liability

**NEW YORK STATE OFFICE OF GENERAL SERVICES
ON-LINE DATABASE SERVICES**

GENERAL

1. APPLICABILITY The terms and conditions set forth in this Appendix B-2 D are expressly incorporated in and applicable to all On-Line Database Access and related service contracts let by the Office of General Services Procurement Services Group, or by any other Issuing Entity where incorporated by reference. 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. APPENDIX A Appendix A (*Standard Clauses for New York State Contracts*) is expressly incorporated and made a part of this Contract.

4. ETHICS COMPLIANCE All Contractors and their employees must comply with the requirements of NYS *Public Officers Law*, (§ 73 & 74) and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. In signing the Contract, Contractor certifies full and continuing 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 Contract termination, and/or other civil or criminal proceedings as required by law.

5. CONFLICT OF TERMS Conflicts between Contract documents shall be resolved in the following order of precedence:

- **Appendix A** (*Standard Clauses for NYS Contracts*)
- **Negotiated Contract/Clarification Documents** Writing(s) setting forth the final agreement of the parties, excluding incorporated appendices.
- **Appendix B-2 D** (**This document**)
- **Incorporated Contract Appendices, if any, following order of precedence stated in the negotiated Contract**

6. DEFINITIONS Terms used in this Contract shall have the following meanings:

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, and other entities 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.

COMMISSIONER Commissioner of OGS, or in the case of a Contract or specifications issued by an Issuing Entity, the head of such Issuing Entity or their authorized representative.

COMPROLLER Comptroller of the State of New York

CONTRACT The writing(s) which contain the agreement of the Commissioner and the Contractor setting forth the total legal

obligation between the parties as determined by applicable rules of law.

CONTRACT AWARD NOTIFICATION An announcement by the Office of General Services to Authorized Users that a Contract has been established.

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

DOCUMENTATION The complete set of manuals (e.g., user or instruction 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.

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 made in accordance with the terms of this Contract of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order.

ISSUING ENTITY The Office of General Services or the Authorized User who issues the Contract documents for a procurement.

LICENSED DATABASE Database licensed upon the terms and conditions set forth in the Contract. "Licensed Database" includes deliverables due under a service Contract.

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, 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.

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

OGS The New York State Office of General Services

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

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

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

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

STATE State of New York

**NEW YORK STATE OFFICE OF GENERAL SERVICES
ON-LINE DATABASE SERVICES**

TERMS OF LICENSE The terms and conditions set forth in the Contract which 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, which 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.

7 - 14. (RESERVED)

15. CONFIDENTIAL / TRADE SECRET MATERIALS

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. 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, at the time of submission. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

16. (RESERVED)

17. TAXES

a. The NYS net 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 items 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 Contractor.

c. Purchases by Authorized Users other than the State of New York may be subject to such taxes, and in those instances the tax should be computed based on the NYS net price and added to the invoice submitted to such entity for payment.

18.- 22. (RESERVED)

23. PRICING

a. (Reserved)

b. Net Pricing Unless otherwise specified in the Contract, prices shall be net, including delivery, and other charges fully prepaid by the Contractor to the destination(s) indicated on the Purchase Order, subject to the cash discount.

c. Price Escalation: The pricing under this Agreement may be increased a maximum of one time in any twelve month period on the anniversary date of the Agreement. Pricing may be decreased at any time.

The annual price will be subject to a maximum increase of the lesser of five (5%) percent or the percent increase in the latest copy of the National Consumer Price Index for national average, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, DC 20212. The Contractor has the sole

responsibility to submit to The Office of General Services a rate adjustment, providing a copy of the index and other supporting documentation necessary to support the increase. Increases will be granted only when it is documented that the Contractors' costs have actually increased. In the event that this index ceases to be published, the referent index shall be as issued by the U.S. Department of Labor in its place.

The above provisions only apply to actual price increases for the Products available under this Agreement. The provisions do not apply to price increases or decreases that would naturally occur as a result of annual changes in the FTE count, Simultaneous User count or other similar price formulas under the Agreement.

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

24. DRAWINGS

a. (RESERVED)

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 update drawings and plans during the Contract term to reflect additions, alterations, and deletions as a condition of payment. 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.

25. (RESERVED)

26. PROCUREMENT CARD NYS has entered into agreements for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing the Purchase Orders or Purchase Authorizations currently required. Purchasing Cards are issued to selected employees authorized to purchase for the agency 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 items returned as defective or faulty.

27. - 32. (RESERVED)

33. PERFORMANCE QUALIFICATIONS The Commissioner reserves the right to investigate or inspect at any time whether or not the Product, qualifications or facilities offered by the Contractor meet the requirements set forth in the Contract or Purchase Order. Contractor shall at all times during the Contract term remain responsible and responsive. A Contractor must be prepared, if

NEW YORK STATE OFFICE OF GENERAL SERVICES
ON-LINE DATABASE SERVICES

requested by the Commissioner, to present evidence of experience, ability and financial standing, as well as a statement as to capacity of the Contractor for the production, distribution and servicing of the Products offered. If the Commissioner determines that the conditions and terms of the Contract are not complied with, or that items or Product proposed to be furnished do not meet the specified requirements, or that the qualifications, financial standing or facilities are not satisfactory, or that performance is untimely, the Commissioner may terminate the Contract. Nothing in the foregoing shall mean or imply that it is obligatory upon the Commissioner to make an investigation either before or after award of a Contract, but should such investigation be made, it in no way relieves the Contractor from fulfilling all requirements and conditions of the Contract.

34. DISQUALIFICATION FOR PAST PERFORMANCE

Contractor may be disqualified from receiving awards if Contractor, or anyone in Contractor's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts.

35. - 37. (RESERVED)

38. CONTRACT CREATION / EXECUTION

Except for contracts governed by Article 11-B of the *State Finance Law*, upon receipt of all required approvals a Contract shall be deemed executed and created upon the Commissioner's mailing or electronic communication to the address set forth in the Contract of: i) a Letter of Acceptance; ii) a fully executed Contract; or iii) a Purchase Order authorized by the Commissioner.

39. PARTICIPATION IN CENTRALIZED CONTRACT

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 Office of General Services Procurement Services Group, unless the Contract limits 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 OGS Commissioner.

c. Voluntary Extension Purchase Orders issued against a State centralized Contract by any Authorized User not provided for by law 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) (a) (iv) of the *State Finance Law*, which would comprise all entities authorized under prior laws.

d. Responsibility for Performance Participation in New York State centralized contracts by Authorized Users is permitted upon the following conditions: a) 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; b) 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; c) 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 d) each non-state agency Authorized User and Contractor guarantee 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.

40. Modification of Agreement

a. This Agreement shall not be modified or changed except by written instrument signed by the parties hereto. Such modification shall become and be part of this Agreement from the date of execution of the modification.

b. Contractor may make minor changes, modifications or deletions to the services offered by Contractor as is customary in the normal course of business provided that: (1) services which were included as "Standard Databases" or in a lower price category may not thereafter be changed from one price category to a higher price category, or offered for a separate, additional charge (i.e., changes from a lower to a higher database category); and (2) Contractor must provide written notice of any such changes, modifications or deletions to the currently configured services to the Office of General Services, Procurement Services Group, at the address first listed above; and (3) changes to Excluded Charges, as defined in Service Agreement, must be approved in advance by the New York State Comptroller.

c. At any time, Contractor may add new materials or features to the Services or make new electronic information services available to Authorized Users other than those detailed in Appendix F to this agreement. Any charges and other terms and conditions established by Contractor for new materials, features or electronic information services shall be approved by the State Comptroller for incorporation under the terms of this Service Agreement upon thirty days advance notice to the State and each Authorized User. The rate schedule for new features shall, where applicable, follow the aggregate volume structure of this agreement.

d. Contractor may change the rates to certain databases, features and third party gateway charges in an amount equal to the increase from said third party, or make them excluded charges if Contractor is contractually bound or otherwise required to do so by a third party contributor of data to Contractor.

e. Third party vendor contract price increases pursuant to this paragraph may be passed through to the Authorized User provided that the charges have been documented by Contractor. Such documentation shall be deemed shown upon Authorized User receipt of the following:

- i. Notice of said increase shall be furnished to the State at the address first stated above at least thirty days prior to such change going into effect; and
- ii. Contractor shall furnish from said third party vendor a written statement of an independent auditor verifying: 1) the date on which such price increase from third party shall be deemed effective as against Contractor; and 2) the percentage increase in the charge which the third party vendor is charging to Contractor as a gateway for vendor's services.

f. Contractor shall not be otherwise authorized to increase the fees stated herein for non-third party gateway charges, or to charge additional fees for updates to the Contractor databases listed in this Agreement more frequently than annually.

**NEW YORK STATE OFFICE OF GENERAL SERVICES
ON-LINE DATABASE SERVICES**

g. This Agreement shall not be changed, modified or altered in any manner except by an instrument in writing mailed to the parties at the address first stated above and agreed to in writing by both parties hereto. Agreement or consent on behalf of the State of New York shall be evidenced by written approval of the New York State Comptroller.

h. Nothing contained in this section 40 shall be construed to allow Contractor to diminish rights under this Service Agreement, or to restructure or re-bundle existing services covered by this agreement without the written consent of the State.

i. However, the parties anticipate that the means of access to the services described in this agreement may evolve during the term of this agreement in response to new or emerging technological changes, including accessing Contractor databases via the Internet. In such event, the parties may amend this agreement as required to allow for such access, which amendment shall be based upon mutual consent of the parties.

41. SCOPE CHANGES The Commissioner reserves the right, unilaterally, to require by written order, changes altering, adding to or deducting from the Contract 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. Contracts for services and technology are completely voluntary as to use, and therefore no quantities are guaranteed.

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. BEST PRICING OFFER Price Decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after:

a. 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

b. 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

c. 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 for the life of such general offer or promotion.

d. Special Offers/Promotions to Authorized Users: Contractor may offer Authorized Users, under either the 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 (c).

44. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Products are to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or canceled 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 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. Unless otherwise specified, all Purchase Orders against centralized contracts will be placed by Authorized Users directly with the Contractor and shall be deemed to incorporate the terms and conditions set forth in this Contract by reference. Should an Authorized User add pre-printed terms and conditions to the purchase order that conflict with the terms and conditions of this contract, the Contractor has the option of rejecting the order after first attempting to negotiate the additional pre-printed terms and conditions in good faith with the Authorized User, or of filling the order. Any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User.

The Purchase Order shall indicate the address for delivery of the Product. Authorized User shall confirm pricing, supported hardware platforms and model availability with Contractor prior to placement of orders. Contractor's order form shall, at a minimum, contain the NYS Product Name, price, and must separately itemize quantities for products and services. The State reserves the right to require any other information from the Contractor, which the State deems necessary in order to verify any Purchase Order placed under the Contract.

45- 54. (RESERVED)

55. EMPLOYEES / SUBCONTRACTORS / AGENTS All employees, subcontractors or agents performing work under the Contract must be trained technicians who meet or exceed the technical and training qualifications set forth in the Contract, 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 or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause, including but not limited to, 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 / SUBCONTRACTORS 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

**NEW YORK STATE OFFICE OF GENERAL SERVICES
ON-LINE DATABASE SERVICES**

such Contract to any other person, company, firm or corporation in performance of the Contract, other than the assignment of the right to receive money due, without the prior written consent of the Issuing Entity. Prior to an assignment of the right to receive moneys becoming effective, Contractor shall file written notice of such assignment simultaneously with the NYS Comptroller, the Commissioner, and participating Authorized User(s).

The Commissioner reserves the right to reject any proposed subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to: that the proposed transferee is 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; unsatisfactory Contract performance or service has been previously provided; or attempts were not made to solicit minority and women's business enterprises (M/WBE) bidders for the subcontract. Contractor's request to assign shall not be unreasonably withheld.

57. (RESERVED)

58. 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 State or Issuing Entity. 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 on State spending, declaration of emergency, 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 work.

59. TERMINATION

a. For Cause: For a material breach that remains uncured for more than thirty (30) days 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. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner as it may deem advisable and pursue available legal or equitable remedies for breach.

If the annual volume of business done by the Contractor is less than the minimum annual volume criteria established for the Contract for two consecutive contract years, the Contract may be terminated for cause. For purposes of this paragraph, contract year is defined as the first full four quarters reported after award, in accordance with the Reporting/Monitoring Contract Performance clause included in the Contract, and each of the same four quarterly periods thereafter until contract termination.

b. For Convenience: This Contract may be terminated at any time by the State for convenience upon sixty (60) days written notice without penalty or other early termination charges due. Such termination shall not affect the validity of Purchase Orders placed prior to termination. Such termination of the Contract shall not affect any project or Purchase Order which has been issued under the Contract prior to the date of such termination.

c. For Violation of Executive Order Number 127: The State reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Executive Order Number 127, signed by Governor Pataki

on June 16, 2003, was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms in the contract.

60. SAVINGS / FORCE MAJEURE The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor negligence of the Contractor, its officers, employees or agents contributed to such delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires or floods, or other similar cause beyond the control of the Contractor, or for any of the foregoing which affect subcontractors or suppliers and no alternate source of supply is available to the Contractor. In such event, Contractor shall notify the Commissioner, by certified or registered mail, of the delay or potential delay and the cause(s) thereof either (a) within ten (10) calendar days after the cause which creates or will create the delay first arose if the Contractor could reasonably foresee that a delay could occur by reason thereof, or (b) if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe a delay could result. The foregoing shall constitute the Contractor's sole remedy or excuse with respect to such delay. In the event performance is suspended or delayed, in whole or in part, by reason of any of the aforesaid causes or occurrences and proper notification is given the Commissioner, any performance so suspended or delayed shall be performed by the Contractor at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of the Commissioner that the delay will significantly impair the value of the Contract to the State or to Authorized Users, whereupon the Commissioner may:

- a.** Accept allocated performance from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to State Agencies 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 quantity; or
- c.** Terminate the Contract or the portion thereof which is subject to delivery delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, with Contractor's consent, which consent shall not unreasonably be withheld, 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: (1) the volatility is due to causes outside the control of Contractor; (2) the volatility affects the marketplace or industry, not just the particular contract source of supply; (3) the effect on pricing or availability of supply is substantial; and (4) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

61. CONTRACT BILLINGS Contractor shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billings for Agencies must contain all information required by the Comptroller. The Comptroller shall render payment for Agency 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.

**NEW YORK STATE OFFICE OF GENERAL SERVICES
ON-LINE DATABASE SERVICES**

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.

62. DEFAULT - AUTHORIZED USER An Authorized User's breach shall be individual and shall not be deemed a breach of the centralized Contract. 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 access to Database 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.

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. 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 State or Authorized User may thereafter utilize any remedy available at law or equity.

63. INTEREST ON LATE PAYMENTS

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

b. By Non-State Agencies 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 non-State Authorized Users. Neither is the Office of General Services nor the Office of the State Comptroller 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*.

64. REMEDIES FOR BREACH:

a. In the event the Authorized User shall fail to keep, observe or perform any covenant or agreement of the Service Agreement hereunder and such failure continues unremedied for 30 days after written notice from the Contractor, the Contractor, at its election, may discontinue service to the Authorized User, and/or exercise all rights and remedies which may be available at law or in equity. Failure of the Contractor to enforce any provision or to require that any default hereunder be cured shall not constitute a waiver of rights nor shall it be deemed an implied amendment or modification of this Agreement, unless agreed to in writing and signed by the Contractor.

b. In the event the Contractor shall fail to keep, observe or perform any covenant or agreement of the Contractor's hereunder and such failure continues unremedied to the satisfaction of The State of New York for 30 days after written notice, The State of New York at its election may terminate this Agreement, and/or exercise all rights and remedies which may be available at law or in equity.

c. 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:

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

ii. Deduction / Credit: Sums due as a result of these remedies may be deducted or offset by the Authorized Users 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 Users the amount of such claim or portion of the claim still outstanding, on demand.

65. 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 U.S.C. Section 1, et seq. and the antitrust laws of the State of New York, G.B.L. Section 340, et seq.

66. (RESERVED)

67. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, distributors, resellers, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the State or 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.

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

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 confidential material which is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the State or 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 personnel, agents, officers and any subcontractors regarding the obligations arising under this clause to insure such confidentiality.

It is understood that the State and any Authorized User are subject to the applicable terms and conditions of the Federal Driver Privacy

**NEW YORK STATE OFFICE OF GENERAL SERVICES
ON-LINE DATABASE SERVICES**

Protection Act (18 USC sec. 2721 et seq.) and New York State Department of Motor Vehicles List of Permissible Uses and the Fair Credit Reporting Act (16 CFR Part 601 et seq.) and any other state law or regulation as they apply to this paragraph and Agreement.

69. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to subcontractors of the Authorized User, relating to delivery of product or coordination of services.

70. 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 (cumulatively) with the written concurrence of the Contractor.

71. WARRANTIES Where Contractor or Product manufacturer/developer 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 that:

a. The Contractor warrants that it has the right to license the rights granted under this Agreement to use Products, that it has obtained any and all necessary permissions from third parties to license the Products, and that use of the Products by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.

b. The Contractor shall use reasonable efforts to provide continuous availability of the Products online subject to periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Products as they become available, and downtime related to equipment or services outside the control of the Contractor including public or private telecommunications services or internet nodes or facilities. If the Products fails to operate in conformance with the terms of this Agreement, Authorized User shall immediately notify Licensor, and Licensor shall promptly repair the nonconformity. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Authorized User in an amount that the nonconformity is proportional to the total Fees owed by Authorized User under this Agreement.

c. Licensor warrants the physical medium on which the Products is provided to Authorized User will be free from defects for a period of ninety (90) days from delivery.

d. **Product Performance** Products delivered pursuant to this Contract conform to the specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

e. **Title and Ownership Warranty** Full ownership, clear title free of all liens, or that Contractor has obtained on behalf of Authorized User perpetual license rights to use the Product for the purposes of this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the State and Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation. Authorized User may require Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. Authorized User's request or failure to request such documentation shall not relieve Contractor of liability under this warranty.

f. **Contractor Compliance** To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any

governmental entity in conjunction with the performance of its 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 workman'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.

g. **Software Product Warranty** Every Product must be unconditionally guaranteed against faulty material and workmanship for a period of ninety (90) days from and after the date the Product is accepted unless otherwise specified by the Commissioner. Furthermore, the Contractor agrees to extend its warranty period by the cumulative periods of time, after notification, during which the Product requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, distributors, resellers or employees. If during the regular or extended warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. Substituted or replacement Product must be unconditionally guaranteed for a period of ninety (90) days from the date such substituted or replacement Product was installed or replaced. 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 therefore. This warranty shall survive any termination of the Contract in accordance with the warranty term.

h. **Virus Warranty** Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

i. Except as otherwise specified above, the warranties set forth above and herein shall survive any termination of this contract for individual projects in accordance with the stated warranty term(s).

THE WARRANTIES SET FORTH IN THIS CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Misuse, accident, unsuitable physical or operating environment, modification or operation inconsistent with standard industry practice, or failure caused by a product for which Contractor is not responsible may void the warranties.

72. LIMITATIONS ON WARRANTIES

Notwithstanding anything else in this Agreement,

a. No party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Products.

b. The Contractor makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Products, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.

**NEW YORK STATE OFFICE OF GENERAL SERVICES
ON-LINE DATABASE SERVICES**

c. Contractor and/or third parties do not guarantee or warrant the correctness, completeness, merchantability, or fitness for a particular purpose of the services or the components thereof.

d. Except for the express warranties stated herein, the Products are provided on an "as is" basis, and the Contractor disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Products or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose.

e. & f. **(RESERVED)**

73. DATE AND TIME CHANGE WARRANTY. Except as provided by the following paragraph, Contractor warrants that commercial products, including databases, software, technology and services, furnished pursuant to this agreement 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) various date/time transitions, including leap year calculations, as long as, and only to the extent that, all other information technology used in combination with such product (e.g., software, firmware, hardware) properly exchanges date data with it. Where Contractor's product specification requires that specific commercial products must perform as a package or system with other commercial products obtained hereunder, this warranty shall apply to the products as a system.

This warranty shall not apply to (i) products purchased under previous agreements with us; (ii) versions of product that predate the actual version of the license purchased hereunder; (iii) products combined in a package or system with non-Contractor products; (iv) user-customized or third party add-on features or products, including items such as macros and custom programming or formatting features; (v) instances where the product's failure is attributable to the hardware upon which it is run; (vi) components of products that an enrolled affiliate is permitted to redistribute under applicable product use rights, or (vii) if failure of the product has resulted from accident, abuse or misapplication by Authorized Users, or the authorized user's employees, agents, subcontractors, or invitees.

This Date/Time Warranty shall survive 90 days beyond termination or expiration of the agreement. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this agreement for breach of warranty.. If Contractor is notified within the warranty period that a product does not meet this warranty, then Contractor will either (i) return the price paid for the product or (ii) repair or replace the product. To the maximum extent permitted by law, this is the exclusive remedy for any failure of any product to function as described in this subsection.

74. - 76 (RESERVED)

77. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: a) the Product developer's certified License Confirmation Certificates in the name of such Licensee; or b) 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.

78. MIGRATION TO CENTRALIZED CONTRACT

Authorized User may obtain additional Product authorized under this Contract, (e.g., licensed capacity upgrades, consulting or training) whether or not Product was initially obtained independently of this Contract. The Authorized User's election to obtain additional Product shall not operate to diminish, alter or extinguish rights previously granted.

79. (RESERVED)

80. 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 service is being withdrawn from the U.S. market or that technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (1) notify the Commissioner, each Licensee and each Authorized User then under contract for technical support in writing of the intended discontinuance; and (2) 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 (3) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: a) provide the Authorized User with either a Product replacement or migration path with at least equivalent functionality at no additional charge, or b) provide Authorized User with the source code for Licensed Product 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: (1) provide the notice required under (1), above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (2) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdrawn support.

The provisions of this paragraph (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 Service 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: (1) notify the State and each Authorized User in writing of the intended change; (2) 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 (3) 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.

81.-82. (RESERVED)

83. INDEMNIFICATION & LIMITATION OF LIABILITY

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force

NEW YORK STATE OFFICE OF GENERAL SERVICES
ON-LINE DATABASE SERVICES

majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under a Project Award.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the State and 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 an 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 State or Authorized Users.

Contractor will indemnify, defend and hold the State and its Authorized Users harmless, **without limitation**, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the 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. Where a dispute or claim arises relative to a real or anticipated infringement, the State or Authorized User may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) Authorized User's unauthorized modification or alteration of a Product; ii) Authorized User's use of the Product in combination with other products not furnished by Contractor; iii) Authorized User's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof 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 as the Authorized User's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Project Award.

For all other claims against the Contractor under any individual Project Award or subsequent scope change(s) ("Project Award") where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and such liability for direct damages under any Project Award, shall not exceed one and one half (1.5) times the charges rendered by the Contractor. Unless otherwise specifically enumerated herein or in the Project Definition, Contractor shall not be liable for consequential, indirect, special or economic consequential damages, even if Contractor has been advised of the possibility of such damages. *Contractor shall not be responsible for loss of records or data unless the Contractor is required to back-up the records or data as a Deliverable.*

The State and Authorized User may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

APPENDIX C

LICENSE

NEW YORK STATE OFFICE OF GENERAL SERVICES
ON-LINE DATABASE SERVICES

I. 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.

II. CONTENT OF PRODUCTS; GRANT OF LICENSE:

The Products shall remain the property of the Contractor. The Contractor hereby grants to Authorized User non-exclusive use of the Products and to provide the Products to End Users in accordance with this Agreement.

Scope Licensor hereby grants to Licensee a non-exclusive, non-transferable license for use of the Products (subscription to databases or hardware and software provided to allow access to databases) set forth in Appendix D in accordance with the rights and obligations set forth in Service Agreement. The license shall commence upon Licensee's receipt of Product and may survive termination of the Service Agreement. The Licensee shall enjoy use of the Products which Licensor warrants will conform to the written specifications and performance warranties set forth in Service Agreement.

It is understood that the State and any Authorized User are subject to the applicable terms and conditions of the Federal Driver Privacy Protection Act (18 USC sec. 2721 et seq.) and New York State Department of Motor Vehicles List of Permissible Uses and the Fair Credit Reporting Act (16 CFR Part 601 et seq.) and any other state law or regulation as they apply to this paragraph and Agreement.

Business Transfer Any License rights or hardware or software rights granted hereunder are transferable within the normal course of business of Licensee, as such operations are now or may hereafter be authorized, expanded or diminished. This shall permit Licensee to exercise such rights, or continue maintenance or other support services from Licensor notwithstanding a change in use location, or consolidation of Licensee's ongoing enterprise, or merger of governmental operations.

Concurrent Use License Where licensing of products is based upon "Concurrent Users", Vendor hereby grants license rights to the specified number of concurrent users actually executing the licensed programs, without reference to location or named users (hereinafter "Concurrent Users"). Upon written notice to Vendor, Licensee reserves the right, without penalty or termination of the existing license, to increase or diminish the number of Concurrent User licenses.

Archived Data The licenses granted hereunder shall permit Licensee to use and obtain copies of the Licensed Databases and related information in connection with archival backup. The Licensor shall be able to provide archived data in electronic form to the licensee for an appropriate, non exorbitant fee specified herein in a manner compatible with the licensee's technological capabilities. Such archival backup containing updated motor vehicle history data will be provided in the instance that License Monitor permanently ceases to operate or within 60 days after an Authorized User provides notice as set forth in this Agreement to License Monitor of its intention not to renew their Agreement.

No Subsequent, Unilateral Modification of License Terms Notwithstanding any other provision of any agreement which may be hereafter issued by Vendor, and irrespective of whether any such agreement has been proposed prior to or after the issuance of a purchase order for products licensed under this agreement, or the fact that such agreement may be affixed to or accompany databases upon delivery, the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

Third Party Agreements Vendor may change the rates to certain databases, features and third party gateway charges in an amount equal to the increase from said third party, or make them excluded charges if Vendor is contractually bound or otherwise required to do so by a third party contributor of data to Vendor. Third party vendor contract price increases pursuant to this paragraph may be passed through to the Licensee provided that the charges have been documented by the

Vendor. Such documentation shall be deemed shown upon OGS receipt of the following.

- a. Said increase shall be furnished to the State for approval at the address for the issuing officer at least thirty days prior to such change going into effect; and
- b. Vendor shall furnish from said third party vendor a written statement from an authorized representative of the Department of Motor Vehicles or an independent auditor verifying: 1) the date on which such price increase from third party shall be deemed effective as against Vendor; and 2) the percentage increase in the charge which the third party vendor is charging to Vendor as a gateway for vendor's services. See Article 10 of Agreement.

NEW YORK STATE OFFICE OF GENERAL SERVICES
ON-LINE DATABASE SERVICES

III. ACCESS TO PRODUCTS; EFFECTIVE DATE OF ACCESS:

The Products will be made available to the Authorized Users and End Users in the following manner:

The Products will be stored at one or more locations in digital form accessible by telecommunications links between such locations and Authorized User's or End User's workstations. Access to the Products by Authorized Users shall be controlled by the use of IP addresses or other authentication to be identified.

The Contractor shall provide Authorized User and its End Users with access to the Products under this Agreement no later than ten (days) from the Service Commencement Date, provided that this Agreement has been fully executed.

IV. AUTHORIZED USE OF PRODUCTS:

Authorized Uses. End Users may make all use of the Products as is consistent with the Fair Use Provisions of United States and international copyright laws. In addition, the Products may be used as follows:

- (a) End Users may display, download, copy and/or print portions of the Products for use in research, education, or other non-commercial purposes.
- (b) End Users may use a reasonable portion of the Products in the preparation of educational materials.
- (c) End User may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. End User agrees to maintain records respecting End User's use of Materials in such Interlibrary Loan and to provide such records to the Contractor upon request.
- (d) End User understands that its use of the motor vehicle record is subject to the applicable terms and conditions of the Federal Driver Privacy Protection Act (18 USC sec. 2721 et seq.) and New York State Department of Motor Vehicles List of Permissible Uses and the Fair Credit Reporting Act (16 CFR Part 601 et seq.) and any other federal or state law or regulation.

V. SPECIFIC RESTRICTIONS ON USE OF PRODUCTS:

Authorized User shall not knowingly permit anyone other than End Users to use the Products.

Authorized User may not utilize the Products for commercial purposes, including but not limited to the sale of the Products, fee-for-service use of the Products, or bulk reproduction or distribution of the Products in any form; nor may Authorized User impose special charges on End Users for use of the Products beyond reasonable printing or administrative costs.

End Users may not disseminate or redistribute the Products via electronic bulletin boards, e-mail, intranets, the Internet or similar medium or service.

APPENDIX D

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APPENDIX E

**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 4% 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 a 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 of Minority and Women's Business Development
30 South Pearl Street
Albany, New York 12245
Telephone: (518) 292-5250**

Revised 4/2/99

APPENDIX F

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: _____	VENDOR CONTACT: NAME: _____ PHONE NO: _____ FAX NO.: _____ E-MAIL: _____
GROUP NO. & DESCRIPTION: _____ _____	
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: <input type="checkbox"/> Auto Add <input type="checkbox"/> Regular Add <input type="checkbox"/> Special Add See contract for an explanation of these terms.	2. The intent of this submittal is to: <input type="checkbox"/> Add new products <input type="checkbox"/> Delete products <input type="checkbox"/> Increase pricing <input type="checkbox"/> Reduce pricing <input type="checkbox"/> Amend VAR list
--	--

3. All terms and conditions of the contract shall apply to this request. <input type="checkbox"/> Agree <input type="checkbox"/> Disagree	4. All discounts as agreed to in the contract shall apply. <input type="checkbox"/> Agree <input type="checkbox"/> Disagree
5. All discounts are: <input type="checkbox"/> GSA <input type="checkbox"/> Most Favored Nation* *Prices offered are the lowest offered to any similarly situated entity.	6. Attached documentation includes: <input type="checkbox"/> Current approved GSA (labeled "For information only") <input type="checkbox"/> Current commercial price list (labeled "For information only") <input type="checkbox"/> Revised NYS Net Price List
7. If other than an auto-ad, describe the Nature and Purpose of the update: <hr/> <hr/>	
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: <hr/> <hr/>	

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:

<u>CORPORATE ACKNOWLEDGMENT</u>	
STATE OF	}
	:
	ss.:
COUNTY OF	}
On the ____ day of _____ in the year 2000, 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.	
_____ Signature and Office of Person Taking Acknowledgment	

FOR STATE USE ONLY

OGS APPROVAL:

Approved _____ **Approved as**
amended _____ **Disapproved** _____

Name: _____

Title: _____

Date _____

OSC APPROVAL:

Approved _____
Disapproved _____

Name: _____

Title: _____

Date _____

APPENDIX G

CONTRACTOR'S REQUIRED SUBMISSIONS

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

Page 1 of 2

1. Are you a New York State resident business?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
2. Total number of people employed by your firm: (including 6 independently contracted Sales and IT personnel)	13	
3. Total number of people employed by your firm in New York State:	SAME	
4. Is your company independently owned and operated?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
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 <input checked="" type="checkbox"/>	No <input type="checkbox"/>
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, <input type="checkbox"/> Minority Owned <input type="checkbox"/> Women Owned If yes, have you been certified or registered? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, List certification or registration authority: _____ _____	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
7. Do any of the Products offered herein incorporate recycled materials?	Yes <input type="checkbox"/>	No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
8. Do any of the Products offered herein contain remanufactured components?	Yes <input type="checkbox"/>	No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
9. Are any of the Products offered herein Energy Star Compliant? If yes, which Products? _____ _____	Yes <input type="checkbox"/>	No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>

Continued on next page...

10. Within the past five years has your firm, any affiliate, any predecessor company or entity, owner, director, officer, partner or proprietor been the subject of:		(Check any that apply. If "Yes", describe using additional pages.)	
a. an indictment, judgment, conviction, or a grant of immunity, including pending actions, for any business-related conduct constituting a crime under local, state or federal law?	Yes_____	No	X
b. a federal, state, or local government suspension or debarment, rejection of any bid or disapproval of any proposed subcontract, including pending actions, for lack of responsibility, denial or revocation of pre-qualification or a voluntary exclusion agreement?	Yes_____	No	X
c. any federal or state determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful"?	Yes_____	No	X
d. a consent order with NYS Department of Environmental Conservation, or a federal or state enforcement determination involving a construction-related violation of federal or state environmental laws?	Yes_____	No	X
e. a finding of non-responsibility by an agency or authority due to the intentional provision of false or incomplete information as required by Executive Order 127?	Yes_____	No	X
If yes to any of above, please provide details regarding the finding.			
ENTITY MAKING FINDING:			
YEAR OF FINDING:			
BASIS OF FINDING:	_____		
(If space to the right is not enough please provide additional sheet with this offer.)	_____		
11. "NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MacBRIDE FAIR EMPLOYMENT PRINCIPLES"			
<p>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:</p> <p>(answer Yes or No to one or both of the following, as applicable),</p> <p>A. have business operations in Northern Ireland:</p> <p>If yes,</p> <p>B. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles</p>	a.	a.	
	Yes_____	No	X
	b.	b.	
	Yes_____	No_____	

<p>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.</p>		
<p>12. NON-COLLUSIVE BIDDING CERTIFICATION</p> <p>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:</p> <p>(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;</p> <p>(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</p> <p>(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.</p>		

Submission # 2
Contractor Information

Contractor Information (for Ordering and Contract Administration Purposes)

1. CONTRACTOR/COMPANY INFORMATION	
Company Name:	License Monitor, Inc.
Address: (From first page of Contract)	99 Tulip Avenue
	Suite 408
	Floral Park, New York 11001
FEDERAL ID #:	13-4187405
Source Code Escrow Agent Name:	N/A
Address:	
Phone Number:	
2. CENTRALIZED CONTRACT	
Contract Administrator Name:	Thomas J. Burger
Title:	President
Mailing Address:	99 Tulip Avenue
	Suite 408
	Floral Park, New York 11001
Telephone Number:	(516) 437-9856
E-mail:	tburger@licensemonitor.com
FAX:	(516) 437-9652
3. SALES/BILLING	
Contact Name:	Thomas L. Montagnino
Title:	Chief Operating Officer
Address:	99 Tulip Avenue, Suite 408 Floral Park, NY 11001
Telephone Number:	(516) 437-9856
E-mail:	tmontagnino@licensemonitor.com
FAX:	(516) 437-9652

Submission # 2A
Bidder Disclosure of Contacts

Bidder Disclosure of Contacts Form

This form shall be completed and submitted with your bid/proposal or offer in accordance with Executive Order Number 127 (EO 127). Failure to complete and submit this form shall result in a determination of non-responsiveness and disqualification of the bid, proposal or offer. If at the time of submission of this form, the specific name of a person authorized to attempt to influence a decision on your behalf is unknown, you agree to provide the specific person's information when it is available. You also agree to update this information during the negotiation or evaluation process of this procurement, and throughout the term of any contract awarded to your company pursuant to this bid/proposal or offer.

Is this an initial filing in accordance with Section II, paragraph 1 of EO 127 or an updated filing in accordance with Section II, paragraph 2 of EO 127?:

Initial Filing Updated Filing

The following person or organization was retained, employed or designated by or on behalf of the Bidder to attempt to influence the procurement process:			
Name:	Thomas J. Burger and Thomas L. Montagnino		
Title:	President & Chief Operating Officer, respectively		
Occupation:			
Company:	License Monitor, Inc.		
Address1	99 Tulip Avenue		
Address2	Suite 408		
City	Floral Park		
State	NY	Zip	11001 Country USA
Telephone Number			
Does the above named person or organization have a financial interest in the procurement?:			
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			

Provide the foregoing information for each person or organization retained, employed or designated by or on behalf of the Bidder to attempt to influence the procurement process:

* * * * *

Submission # 3

NYS Contract Net Price List

(NYS Net Prices For: On-line Database Access, Related Electronic Products, Consulting & Training Services)

(to be attached by Contractor)

Pricing is Based On:

- US Commercial List, Dated November 1, 2003
- GSA Supply Schedule Number _____.
Dated _____
- Other: _____

License Monitor New York State Discount Pricing

Updated June 29, 2005

Pro-Active Monitoring & Instant Motor Vehicle Records (New York State records *only*)

Pro-Active License Monitoring & Driver Data Management System	Number of New York Driver Licenses	One Time Driver License Set-Up Fee (per drivers license)	Monthly Monitoring & Database Mgt. (per New York Driver License)	Cumulative Discount
<i>Standard</i> OGS Contract Pricing	< 25,000	\$4.95	\$3.15	20%
NYS State Volume Discount (<i>Tier I</i>)	25,000 – 50,000	\$4.95	\$2.95 (additional 5% discount)	25%
NYS State Volume Discount (<i>Tier II</i>)	50,000 – 100,000	\$4.95	\$2.75 (additional 5% discount)	30%
NYS State Volume Discount (<i>Tier III</i>)	100,000 – 250,000	\$4.95	\$2.55 (additional 5% discount)	35%
NYS State Volume Discount (<i>Tier IV</i>)	> 250,000	\$4.95	\$2.35 (additional 5% discount)	40%
Instant MVR	\$4.95 per New York driver license request No set-up fee No monitoring & database mgt. fee			

Non-New York State Motor Vehicle Records

New Jersey MVR	\$11.25 per New Jersey driver license request No set-up fee No monitoring & database mgt. fee
Connecticut MVR	\$16.95 per Connecticut driver license request No set-up fee No monitoring & database mgt. fee
Pennsylvania MVR	\$21.95 per Pennsylvania driver license request No set-up fee No monitoring & database mgt. fee
Delaware MVR	\$16.95 per Delaware driver license request No set-up fee No monitoring & database mgt. fee

Submission # 4

Support

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

(to be attached by Contractor)

<p>SPECIFICATION – Description of Database</p> <p>Describe what types of databases are available and elaborate on whether these databases are citation, abstract, full text, image, multimedia, etc.</p>	<p>MEET (Y/N)</p>	<p>ANTICIPATED ENHANCEMENT (DATE)</p>
<p>RESPONSE</p> <p>NY State Department of Motor Vehicles driver license history database is accessed real-time by the License Monitor application. The License Monitor™© application then employs unique proprietary processes to convert and massage the data. Subscribed entities may then view full driver license histories, and access driver license data, stored and available for full-text comparative reports displayed in a proprietary format, and housed in a uniquely configured relational database. The License Monitor application generates real-time, pro-active notifications of driver license status changes delivered to the authorized user via a proprietary protocol through the entities’ organizational hierarchy. The unique products delivered include the License Monitor “P-MVR”™© (Pro-Active Motor Vehicle Record); “DDMS”™© (Driver Data Management System); “I-MVR”™© (Instant Motor Vehicle Record). This process allows for an authorized user to obtain an instantaneous motor vehicle record for a qualifying employee, pro-actively monitor that record in real-time, and generate updated user-defined risk management reports based on the historical data within those records. The application therefore provides a unique, previously unavailable regulatory compliance and a risk management solution for employers that are responsible for the actions and behavior of their employed drivers. Additional states’ driver license databases are/will be available ongoing and availability of database tools are dependent upon each particular states’ legal guidelines.</p>		
<p>SPECIFICATION – Description of Database</p> <p>Describe the subject categories covered by the databases including but not necessarily limited to the following subject categories: general, business, social sciences, health, education, science, technology and law.</p>	<p>MEET (Y/N)</p>	<p>ANTICIPATED ENHANCEMENT (DATE)</p>
<p>RESPONSE</p> <p>License Monitor provides a real-time, pro-active employed driver license risk management solution incorporating Department of Motor Vehicles driver data. The tools can be accessed by all agencies and government entities for real-time pre-employment checks, validation of driver license status, risk management reports and analysis. Utilization by those entities facilitates legal compliance with federal and state laws and assists in employed driver license management, facilitating identification of accident and injury risks and resulting in bottom line cost savings. To that end, the License Monitor™© application collectively provides business, health and safety, technology, and legal risk mitigation and compliance benefits to authorized users.</p>		

<p>SPECIFICATION – Description of Database</p> <p>Describe the years of coverage of the databases (e.g. from 1995 to the present). Provide a statement that describes the range of coverage currently available and the ongoing development of the databases including specific time related goals (e.g. databases dating back to 1990 under development with completion expected in 2002).</p>	<p>MEET (Y/N)</p>	<p>ANTICIPATED ENHANCEMENT (DATE)</p>
<p>RESPONSE</p> <p>The NY Department of Motor Vehicles Database houses complete historical driver license data, which is governed by the DMV’s legal guidelines and at the account subscription’s opening, includes moving violation convictions archived for 3 (three) years and felony violations (ex. DWI) archived for 10 (ten) years. All activity (suspensions, revocations, etc.) on a subscribed license reported by the NY DMV thereafter, is processed within the License Monitor™© application and accessible to the authorized user.</p>		
<p>SPECIFICATION – Description of Database</p> <p>Are the databases indexed? If so, describe indexing method.</p>	<p>MEET (Y/N)</p>	<p>ANTICIPATED ENHANCEMENT (DATE)</p>
<p>RESPONSE</p> <p>Yes. The database is indexed in a user-friendly manner in several ways throughout the user interface. The Driver Data Management System™© home page provides an Account Management toolbar across the top of the screen. Fleets may be viewed by an Assigned Manager or by the assigned administrator across the entire Fleet. A separate “Fleet Toolbar” allows the fleet manager the ability to add, delete, view or assign licenses on the account fleet at will. A “Safety Meter™©” is provided which displays categorically the real-time current status of all licenses in the fleet and allows the user to instantly hot link from any status category to the license records in that category. Reports may be generated by pre-defined report categories or by user-defined searches, including the user-defined Driver Card©, or generated over user-defined periods of time.</p>		
<p>SPECIFICATION – Description of Database</p> <p>How frequently are the databases updated? Describe the procedures for updating databases.</p>	<p>MEET (Y/N)</p>	<p>ANTICIPATED ENHANCEMENT (DATE)</p>

<p>RESPONSE</p> <p>The NY Department of Motor Vehicles updates its driver database on a daily batch basis, simultaneously updating the License Monitor™© application. Additional states' driver license databases are updated daily, and the updated license record data is incorporated into the License Monitor™© application for viewing and report generation dependent upon each state's specific legal and technological protocols.</p>		
<p>SPECIFICATION – Description of Database</p> <p>Can the vendor customize electronic journals and database collections? Describe current capabilities as well as costs for this service.</p>	<p>MEET (Y/N)</p>	<p>ANTICIPATED ENHANCEMENT (DATE)</p>
<p>RESPONSE</p> <p>Yes. The License Monitor™© application affords several unique reporting metrics and customizable data fields that attach to driver license records allowing various record sorts according to the user-defined fields. Examples are the License Monitor “Driver Card©.” These customizable features are included and addressed within the standard License Monitor Net Pricing. Additional advanced customization (unique web portal interface, etc.) is available subject to Consultant Fees over and above the Net Pricing Schedule and referenced in Submission #5.</p>		
<p>SPECIFICATION – Description of Searching Capabilities</p> <p>Does the system allow simple command oriented searching? If so, is searching by author, name, company, title, subject and keywords?</p>	<p>MEET (Y/N)</p>	<p>ANTICIPATED ENHANCEMENT (DATE)</p>
<p>RESPONSE</p> <p>Yes. The Application provides record searching and sorting by pre-defined motor vehicle record fields or by a user-defined command fields.</p>		
<p>SPECIFICATION – Description of Searching Capabilities</p> <p>Does the system provide for basic and more sophisticated Boolean searching ("and", "or", "not")? Describe the systems functionality in this regard.</p>	<p>MEET (Y/N)</p>	<p>ANTICIPATED ENHANCEMENT (DATE)</p>

<p>RESPONSE</p> <p>Yes. The License Monitor™ application provides for Boolean searching for pre-defined motor vehicle record fields in combination with other motor vehicle record fields, date ranges and other user-defined criteria utilizing but not limited to both “AND” and “OR” comparisons.</p>		
<p>SPECIFICATION – Description of Searching Capabilities</p> <p>When long searches are identified, does the system provide options for continuing the search, previewing some of the hits, narrowing the search, or terminating the search?</p>	MEET (Y/N)	ANTICIPATED ENHANCEMENT (DATE)
<p>RESPONSE</p> <p>Yes, the application paginates long search results, allows you to customize the size of a page, allows the user to edit current search options for narrowing and terminates searches quite easily. This is done first by allowing the User to define page size settings in the Driver Data Management System™. Any search can be terminated by closing the browser window.</p>		
<p>SPECIFICATION – Description of Searching Capabilities</p> <p>Describe other searching features which may be important to end users.</p>	MEET (Y/N)	ANTICIPATED ENHANCEMENT (DATE)
<p>RESPONSE</p> <p>The License Monitor™ application allows users to search motor vehicles records for events that occurred over a user-defined period of time, for events over pre-defined calendar periods, and by drivers specifically assigned to certain managers in the License Monitor™ application user-hierarchy. Searches can also be conducted on positive/negative hit scenarios relative to queries for data elements within the motor vehicle records. For example, a search can be done on all drivers that have OR have not taken state recognized accident prevention courses over a specified period of time.</p>		
<p>SPECIFICATION – Help/Training</p> <p>Does the system provide a help function at any time during the search?</p>	MEET (Y/N)	ANTICIPATED ENHANCEMENT (DATE)

<p>RESPONSE</p> <p>Yes, the application provides a help function that is accessible at any time. The help function is accessible while searches are running and is displayed in a separate instance within the browser.</p>		
<p>SPECIFICATION – Help/Training</p> <p>Does the system include: provision of an on-line general tutorial on conducting searches, provision of different levels of instruction (e.g. beginner, advanced) printed training materials, training directly from vendor.</p>	<p>MEET (Y/N)</p>	<p>ANTICIPATED ENHANCEMENT (DATE)</p>
<p>RESPONSE</p> <p>The License Monitor™© application provides content sensitive help on every screen in addition to a comprehensive help function that is accessible at any time. A supplemental printable/distributable training manual and production/report description document is anticipated for availability by second quarter of 2004. Our customer support is available over the phone via an unlimited use (800 303 8063) number. Customer support response is available by phone or e-mail 24 hours a day, 7 days a week.</p>		
<p>SPECIFICATION –Display, Print, Download Function</p> <p>Does the system provide screens that are clear and easy to interpret? Labels for fields should be easily interpreted.</p>	<p>MEET (Y/N)</p>	<p>ANTICIPATED ENHANCEMENT (DATE)</p>
<p>RESPONSE</p> <p>Yes, the application displays motor vehicle record information in a clear, concise and extremely easy to read format. Fields are labeled appropriately and heuristics are consistent across all screens.</p>		
<p>SPECIFICATION – Display, Print, Download Function</p> <p>Does the system provide a method of specifying items to print or download?</p>	<p>MEET (Y/N)</p>	<p>ANTICIPATED ENHANCEMENT (DATE)</p>

RESPONSE		
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Yes, the application allows you to print any screen/search results at any time and as many times as the user sees fit. The downloading feature is forecasted to be available by the end of second quarter of 2004 for certain designated screens.

Submission # 5

Consulting & Training Services

(Description of Services, Course Offerings, & Pricing)

(to be attached by Contractor)

**Consultant Training and Customization Offerings
&
Fee Schedule ***

As of November 1, 2003

I. LICENSE MONITOR APPLICATION TRAINING

Training is performed by a qualified License Monitor technician in order to assist the end-user maximize the experience and benefits of License Monitor.

1. **Getting the Maximum Value from the DDMS Hierarchy** – A brief look at how to distribute management of driver licenses, allocate monitoring responsibility and proper use of hierarchy reporting to compare fleets and/or sets of licenses with individual manager response.
TIME: *Approx. 1 hour.*
CONSULTANT RATE: *\$40 / hour per student*
2. **Advanced Reporting** - A brief instruction on maximizing the value of the data contained within driver records. Learn how to utilize License Monitor™© reports and how to generate custom reports.
TIME: *Approx. 1 hour*
CONSULTANT RATE: *\$40 / hour per student*
3. **Reading and Understanding the Driver Record** – A primer to understanding the elements within the driver record. Learn what the various driver record fields and DMV documentation means.
TIME: *Approx. 1 hour*
CONSULTANT RATE: *\$40 / hour per student*
4. **Keeping your Safety Meter Clean** – Suggested steps to maintaining a compliant License Monitor™© Safety Meter™©. What invalid statuses mean and how to quickly remedy invalid driver licenses.
TIME: *Approx. 1 hour*
CONSULTANT RATE: *\$40 / hour per student*

5. **Using the DDMS More Efficiently 101** - Learn the settings and quick tricks that maximize the time you spend on the License Monitor™© DDMS™©.
TIME: *Approx. 1 hour*
CONSULTANT RATE: *\$40 / hour per student*

II. RISK MGT. & ACCOUNT CUSTOMIZATION TRAINING

Training is performed by a member of License Monitor's Corporate Consulting Team so that the end-user properly maximizes the risk management / loss control benefits of License Monitor.

6. **Identifying High Risk Drivers** - Identifying potential risk by looking at hidden motor vehicle record trends and utilizing reports.
TIME: *Approx. 1 hour*
CONSULTANT RATE: *\$55 / hour per student*
7. **Creating Urgency for Safety in your Hierarchy** - Teaching managers in your hierarchy to stay focused on safety by utilizing License Monitor™©.
TIME: *Approx. 1 hour*
CONSULTANT RATE: *\$55 / hour per student*
8. **Commercial Driver Legal Landscape** - A primer in driver license related CDL Law and the effective use of License Monitor™© to enhance regulatory compliance.
TIME: *Approx. 1 hour*
CONSULTANT RATE: *\$55 / hour per student*
9. **Using the Pre-Employment Screening Functions** – Important reasons why the License Monitor™© pre-employment screen function can assist you in reviewing an applicant's motor vehicle driving history.
TIME: *Approx. 1 hour*
CONSULTANT RATE: *\$55 / hour per student*
10. **Using Driver Tags to Integrate with your HR System(s)** – Effective use of the License Monitor™© Driver Card™© system and integration of driver license information with internal HR system(s).
TIME: *Approx. 3 hours*
CONSULTANT RATE: *\$55 / hour per student*

III. SPECIALIZED PROGRAMMING & CONSULTING

Consulting / Training is performed by a Senior License Monitor Technologist to ensure proper deployment and integration of License Monitor and maximum utilization of driver data.

11. **Advanced Web Portal Customization** – License Monitor™© can provide advanced customization to a client's web portal and the License Monitor application design. Dedicated enterprise portals can contain customized reporting features, advanced sorting, filtering and third party software integration.
PROGRAMMING TIME - *Approx. 20 hours*
PROGRAMMER RATE: *\$75 / hour*

TRAINING TIME - *Approx. 2 hours*
CONSULTANT RATE: *\$55 / hour per student*

12. **The New York State DMV Database Support** – Due to our unique experience with driver record collection, data management and driver data distribution, License Monitor is able to provide the New York State DMV specialized product development and programming support. Our expertise and guidance will enable DMV to upgrade and improve the integrity, delivery and overall viability of their data hardware infrastructure and program support software. Services can include the assistance and development of unique, creative, cost-effective methodologies and products which utilize DMV data.

TIME: N/A

PROGRAMMER RATE: \$75 / hour

13. **Fleet Insurance Risk Management (FIRM™) Analysis Reports / Specialized Reporting** – Periodic, specialized risk analysis reports are available to clients to assist them in identifying and managing driver risk over time and across large fleets. Reports are available to authorized users on a quarterly, biannual or annual basis.

TIME: N/A

RATE: \$15,000 per report

IV. OTHER SERVICES

14. **Data Archiving and Back-up Services** – Upon request, License Monitor will provide the end-user with an archived copy of their driver database on CD-ROM(s) in order to assist with data back-up and driver data management. Data will be archived in Microsoft Excel, Comma Separated, or a similar standard which is easily assimilated into any new file structure.

TIME: *Approx. 2-5 hours*

ARCHIVAL RATE: \$55 per hour

Type of Consultative Service	NYS Net Price
License Monitor Application Training	\$40 per hour per student
Risk Management and Account Customization Training	\$55 per hour per student
Specialized Programming	\$75 per hour
Specialized Consulting	\$100 per hour

* Fees are not inclusive of travel, meals, lodging or other related costs which are allowed over and above the NYS Net Prices, 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, and reimbursement shall be made to Contractor for such costs for employees who do not reside in the local commuting area for the work site, in accordance with the State's Travel Reimbursement Manual.

APPENDIX I

Service Agreement and Attachments

License Monitor™ Inc. Service Agreement

RECITALS

Whereas, LMI has developed, maintains and hosts an Internet-based, pro-active motor vehicle record and driver data management service.

Whereas, the Registrant agrees that it is an Authorized User pursuant to the New York State OGS Contract;

Whereas, the Registrant desires to supplement its risk management efforts and keep apprised of the status of the driver licenses of its employees who operate vehicles in the course of their employment in order to assist its compliance with state and federal motor vehicle laws;

Whereas, the Registrant agrees to only use or access the LMI system or motor vehicle driver records for purposes consistent with the terms of the New York State OGS Contract, the DPPA, FCRA and other legal guidelines.

Whereas, Registrant wishes to subscribe to LMI's Internet-based, pro-active motor vehicle record and driver data management service, according to the terms and conditions of this Agreement.

Whereas, the Service shall act as the agent for the Registrant in the Registrant's requests for access to certain motor vehicle records of the State of New York as designated by the Registrant for specific and authorized purposes;

In consideration of the mutual covenants contained herein, and for valuable consideration, the parties agree as follows:

TERMS AND CONDITIONS

Duration of Service:

1. This agreement between LMI and the Registrant shall remain in effect for a Period of one year. Absent any new express Agreement made prior to the end of the effectuated term, this Agreement shall renew for a new Period of the same duration, fees, and all other material terms present in the prior effectuated term.

The Service:

2. The Service consists of a database with a browser interface, data encryption, data transmission, and data access (as available). Registrant agrees it is a user accessing the Service by means of an authorized account, including if Registrant is a corporation, government entity, or company, any specifically authorized employees of Registrant's corporation, government entity, or company. Registrant is responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access the Service, and for paying all third-party access charges (e.g. kiosk, ISP, telecommunications) incurred while using the Service. The Service makes no guarantees as to the continuous availability of the Service or of any specific feature(s) of the Service, subject to the terms and conditions expressed in the Agreement (to which this serves as an Appendices) and within the OGS General Specs Appendix B 2-D.
3. The Service, as agents for the Registrant, will make accessible to the Registrant via a internet web portal, the Pro-Active Motor Vehicle Records (P-MVRs™) and Driver Data Management System (DDMS™) for each verified permissible record request, including any reported convictions, suspensions, revocations, accidents, restorations, license expirations and point reduction course completions as may be recorded in the New York State Department of Motor Vehicles (referred to herein at times as "DMV") database. The website software shall provide access to the New York State Department of Motor Vehicles computerized records, for all requests which the Registrant represents to be for a legal purpose and use as defined by the Federal Driver's Privacy Protection Act (18 USC sec. 2721 et seq, hereinafter "DPPA"), the New York State Department of Motor Vehicle's List of Permissible Uses for Personal Information, hereinafter "Permissible Uses") and the Fair Credit Reporting Act (16 CFR Part 601 et seq., hereinafter "FCRA"). Requests for and the provision of

motor vehicle records data from states other than New York may be subject to additional requirements. Any such requirements related to License Monitor service offerings other than New York State motor vehicle records will be incorporated, in accordance with the provisions of Article 14 of the Agreement into this Agreement, as the service offering becomes available. Copies and updated web links for the DPPA, Permissible Uses, and FCRA legal requirements are provided and available for download on-line at the website www.licensemonitor.com, or will be provided separately on request.

4. The Service will provide to the Registrant access to the driver license record from the State of New York as defined in paragraph 3 for each permissible person requested. The entire Agreement, including all requests made by the Registrant are subject to the Disclaimer from Employer attached hereto as addendum "A" and incorporated herein. For purposes of this Agreement a "permissible person" shall be a person on behalf of whom the Registrant affirms that he/she is legally authorized to request DMV records consistent with the Federal Driver's Privacy Protection Act and the New York State Department of Motor Vehicles' List of Permissible Uses.
5. It is acknowledged and understood by the Registrant that the Service is providing information from the records of New York State Department of Motor Vehicles, which are exclusively updated and maintained by the New York State Department of Motor Vehicles and no representations or warranties are made by the Service as to the completeness, accuracy or timeliness of such information. The Service makes no representations as to the accuracy of the information provided for each employee request other than that the information provided is the data provided by the New York State Department of Motor Vehicles database. The Service is not responsible for unexpected database down time, data interruptions, or data inaccuracies, caused by the New York State DMV, its acts or omissions.

The Registrant :

6. The Registrant shall provide the Service with a master list containing the 9-digit New York State Driver License Number for each permissible individual as defined in the Federal Driver's Privacy Protection Act. The Registrant is responsible for verifying the accuracy of all information provided to the Service and warrants to the Service that the information provided to the Service is in fact that provided to the Registrant by the permissible person for which the information is requested. Registrant understands that the Service can only rely upon the representations of the Registrant in order to obtain the motor vehicle record, has no way to independently verify the accuracy of the information provided, and therefore Registrant is responsible for its' accuracy.
7. Registrant agrees that it is an employer or prospective employer of each driver whose information it requests, and that Registrant has read, understands and is in compliance with the Federal Driver's Privacy Protection Act (18 USC sec.2721 et seq.) and the New York State Department of Motor Vehicles List of Permissible Uses for Personal Information Under Federal Driver's Privacy Protection Act and the Federal Fair Credit Reporting Act (16 CFR Part 601 et seq.), and, that Service is acting only as Registrant's agent for each DMV record request. As such, Registrant grants to Service the authority to perform the necessary steps on Registrant's behalf to acquire the DMV data requested. Service is in no way responsible for Registrant's duty to identify and request driver information for its' permissible person only. It is understood that the data requested by the Registrant is accessible only by interfacing in some way with State agency and/or department databases or an approved third party vendor, and said supply is therefore subject to administrative and/or legislative regulation or other instance causing a price change for the data. It is therefore understood that from time to time the LMI website, LMI software, and /or the means or costs of acquiring the data may be updated and/or changed at the discretion of the Service to comply with such administration or legislative, or other change. Such updates or changes may include an increase in the price of the Service to reflect additional State, Legislative or Administrative fees or costs charged by a state or governmental entity to acquire the relevant DMV data. Registrant grants authorization to Service to incorporate any aforementioned updates or changes in the LMI website, LMI software or LMI fee structure as necessary to reflect such updates or changes. Said price increases, and other changes, will be presented to OGS for prior approval pursuant to Article 14 of the Agreement.
8. Once Registrant has subscribed to the Service, the Service will make accessible to the Registrant via an internet web portal, the Pro-Active Motor Vehicle Records (P-MVRs™) and Driver Data Management System (DDMS™) for each verified permissible record request, including any reported convictions, suspensions, revocations, accidents, restorations, license expirations and point reduction course completions

if recorded in the New York State Department of Motor Vehicles database. The substance and subject matter of the information provided is at all times subject to the availability of the same from the Department of Motor Vehicles, and it is understood by the Registrant that the accessibility of the DMV's data may at any time be expanded or decreased based upon legislative or other governmental action outside of the control of the Service. It is expressly agreed that Service is not responsible for any such change in the availability of the DMV data. Registrant recognizes that any employment decisions or any related actions taken are based entirely upon Registrant's lawful policies and procedures and Registrant recognizes that any opinion or data delivered by Service, Service's employees or representatives is not to be relied upon or used as a basis for any such employment decision or action.

9. LMI's data notification will be forwarded to an e-mail address, telephone number and/or mailing address (hereinafter the "data destination") which is provided to the Service by the Registrant. The Service will make reasonable attempts to provide the designated data destination with the data notification. It is expressly understood that the Service is in no way responsible for the Registrant's ability to access or receive the data notification at the data destination or Registrant's failure to acknowledge an LMI data notification. It is expressly understood that it is at all times the sole and individual responsibility of the Registrant to remain apprised of the data forwarded to the data destination by the Service. It is expressly understood that the Registrant is responsible at all times to inform the Service of any change in the data destination e-mail address, telephone number and/or mailing address in a prompt, timely manner. The Service is in no way responsible for the timeliness or any delay in the Registrant's own review of its data or of any acknowledgments sent to its designated data destination, or, Registrant's communication, or attempted communication, with Service of any changes in its data destination.
10. Registrant agrees that each driver whose information is requested has provided his or her written permission and/or Registrant's request falls within a "permissible use" under the Federal Driver Privacy Protection Act (18 USC sec. 2721 et seq.) and the New York Department of Motor Vehicles List of Permissible Uses and Registrant is therefore authorized to request the driver information and the continuous regularly updated information.
11. The Service reserves the right to refuse requests for drivers' records at any time and for any reason, including, but not limited to, refusal of requests that provide us with incomplete or inaccurate information, refusal for your violation of any applicable state or federal laws or regulations, and refusal for your failure to comply with the terms and conditions you agree to within this written contract and addenda. This Agreement shall not in any way act to invalidate or change any agreement entered into by Registrant on the LMI website.
12. The Service is in no way responsible for the Registrant's duties under the Federal Driver's Privacy Protection Act and New York State List of Permissible Uses, or any other Federal or State Law, to secure the proper authorization if necessary from each employee for whom Registrant intends to request DMV driver information. The Service is in no way responsible for Registrant's subsequent use of any data received through LMI from the DMV, or the Registrant's formulation, enforcement or application of Registrant's corporate policies with regard to any employees or applicants, or any other person or entity. A copy of the Federal Fair Credit Protection Act in relevant portion is provided on the LMI website.

INFORMATION SOURCE AND ACCURACY

13. The ultimate sources of the driver record data provided to Registrant on the LMI website are state agencies and service bureaus. Although every effort is made to ensure the accuracy of transmission and data, the reports/abstracts are provided "as is."

USE OF PROPRIETARY SOFTWARE

14. The Service grants to Registrant subject to the terms and conditions of this Service Agreement, use of the LMI servers and website only as specifically prescribed in this Service Agreement. Neither Registrant (and if Registrant is a corporation or company, none of Registrant's employees or any other person with Registrant's actual or constructive knowledge) will, directly or indirectly, engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the LMI website content, display or functionality; modify, translate or create derivative works based upon the LMI website content, display or functionality; or rent, lease, distribute, sell, resell, assign or otherwise transfer any rights to the LMI website content, display or functionality or use or DMV data contained therein; use the LMI website content, display or functionality or DMV data contained therein for timesharing or service bureau purposes or otherwise for

the benefit of a third party; or remove any proprietary notices or labels on the LMI website, display or content. Notwithstanding the above, the State is authorized to transfer its service agreement to any other State agency so long as said agencies agree to abide by all of the provisions of this Agreement. Because the LMI website content, display and functionality are proprietary, registrant agrees not to publish or disclose to third parties any evaluation of website content, display and functionality without LMI's prior written consent. Registrant acknowledges that LMI retains exclusive ownership throughout the world of all LMI website content, display and functionality, any portions or copies made thereof, and all rights therein. Upon termination of the Service Agreement for any reason, Registrant, and any user accessing the Service by means of a corporate or company account, if applicable, will cease to use or have authority to access to the LMI website.

RESTRICTIONS AND POLICIES

15. General Use. Registrant agrees not to transmit or permit Registrant's employees to transmit through the Service any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene, or otherwise objectionable material of any kind. Registrant will only use the Service for lawful purposes, in compliance with all applicable laws including, without limitations, copyright, trademark, obscenity and defamation laws. Unlawful activities may include (without limit) storing, distributing or transmitting any unlawful material, attempting to compromise the security of any networked account or site, or making direct threats of physical harm.
16. Privacy Policy and Confidentiality. It is LMI's policy to respect the privacy of its users. LMI provides information such as registrant's name, address, and credit card number to organizations (such as credit verification and billing services) to ensure that we receive proper payment for our services. LMI will not share, rent, sell, or trade personal information (including email addresses) that identifies our customers or users to third parties. LMI will not share, rent, sell, or trade data contained in Registrant's account.

PASSWORDS AND SECURITY

17. Registrant will choose or be given all applicable passwords to use in connection with the Service. Registrant is entirely responsible for maintaining the confidentiality of Registrant's passwords and account (including, if applicable, the passwords and accounts of each user accessing the Service by means of an account established by Registrant). Furthermore, Registrant is entirely responsible for any and all activities that occur under Registrant's account (including, if applicable, the accounts of each user accessing the Service by means of an account established by Registrant), and Registrant shall ensure that Registrant exit from Registrant's account at the end of each authorized access session. Registrant shall notify LMI immediately of any unauthorized use of Registrant's account (including, if applicable, the passwords and accounts of each user accessing the service by means of an account established by Registrant) or any other breach of security.

RESALE OF DATA OR SERVICE BY REGISTRANT

18. Registrant agrees and accepts that as an integral part of this Agreement it is prohibited from reselling to a third party, in part or in whole, in any manner whatsoever, LMI services, the data, or the access to the data provided to the Registrant by the Service. Notwithstanding the foregoing, NY State agencies may share access to the Service with other State Agencies so long as said agencies agree to abide by all of the provisions of this Agreement

ADDENDUM A : Disclaimer from Employer

PURPOSE OF REQUEST

By registering with License Monitor, Inc. to receive reports of driver's records from New York State, Registrant certifies that it is an employer or prospective employer of each individual whose information is requested and that License Monitor, Inc. is only acting as Registrant's agent for each request. Registrant certifies that the purpose of its request(s) is for one or more of the following uses:

- I. Continuing employment of the individual(s)
- II. Potential employment of the individual(s)
- III. Underwriting insurance regarding the individual(s)
- IV. Determining individual's eligibility for a commercial driver's license under the Commercial Motor Vehicle Safety Act of 1986
- V. Some other permissible use within the New York State "List of Permissible Uses" under the Federal Driver's Privacy Protection Act.

Registrant further agrees that no information in any such report shall be divulged, sold, assigned, or otherwise transferred to any third person or party except that State Agencies divulge, assign and transfer to other State Agencies to the extent permissible by law and so long as said agencies agree to abide by all of the provisions of this Agreement. Registrant understands that any other use of the information provide to, except for the purposes listed above, may subject it to civil or criminal penalties under federal and state law.

APPENDIX H

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(continued)