STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
NEW YORK STATE PROCUREMENT
PIGGYBACK CONTRACT FOR COMMODITIES

New York State Contract #	**PC66729, Award 22788** **Group 05400 - Lamps Ballasts & Lighting Equipment**
Master Contract #	**Western States Contracting Alliance (WSCA)** **RFP/Contract 1862, Facilities MRO** **Lamps, Ballasts and Fixtures Category**

DESIGNATED CONTACTS:	
Primary Contact: Dorah Bluth **E-mail address:** **dorah.rosenzweig@ogs.ny.gov**	**Secondary Contact: Todd Gardner** **E-mail address: todd.gardner@ogs.ny.gov**
	Anuola Surgick **Anuola.surgick@ogs.ny.gov**

THIS CONTRACT for establishment of a "piggyback" contract is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163(10)(e), and W.W. Grainger, Inc. (hereinafter "Contractor" or "Vendor" or "Offerer"), with its principal place of business at 100 Grainger Parkway Lake Forest IL 60045. OGS and Contractor are hereby individually referred to as a "Party" and collectively referred to as "Parties".

Whereas, in accordance with New York State Finance Law §163(10)(e), the Commissioner of OGS (hereinafter "Commissioner") may authorize purchases required by New York State agencies or other authorized purchasers by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states (hereinafter "Issuing Agency");

Whereas, OGS New York State Procurement (hereinafter "Procurement Services"), on behalf of the Commissioner, finds it necessary and desirable to enter into such a contract (hereinafter "Piggyback Contract" or "Contract"), with Contractor for the purchase of specified products or services under the terms and conditions established pursuant to WSCA Contract 1862

Whereas, OGS provided notification of its intention to enter into a single source contract with Contractor by placing a notice in the October 8, 2014 edition of the New York State Contract Reporter.

Therefore, by completing and signing this Piggyback Contract, Contractor is willing and able to enter into a contract and authorizes OGS to process the Piggyback Contract and provide notification regarding the availability of this Piggyback Contract.

1. PIGGYBACK CONTRACT SCOPE

This document sets forth the terms and conditions governing acquisitions under this Piggyback Contract for use by Authorized Users. All the terms, conditions, covenants and representations contained herein and in the Master Contract, except as modified by this Piggyback Contract, are hereby incorporated by reference and deemed to be a part of this Piggyback Contract as if fully set forth at length herein. The terms and conditions of this Piggyback Contract shall supersede any conflicting terms and conditions set forth in the Master Contract.

The Master Contract is expressly amended as noted in Section 4, *Merger of Appendices/Conflict of Clauses*, below.

This Piggyback contract is limited ONLY to items contained in the lamps, ballasts, and fixtures category of the Master Contract or attached *'WSCA-New York Hot List'* and does not include any other equipment or products. Authorized users must ensure that all purchases made pursuant to this Piggyback Agreement are in accordance with their procurement procedures and only for the items specified.

2. TERM

The term of this Piggyback Contract shall be the last date of execution by the Parties through end of the Master Agreement.

3. CONTRACT MODIFICATIONS AND RENEWALS

Any modifications to this Piggyback Contract must be made by an instrument in writing executed by the Parties hereto. Contractor shall submit copies of any modifications to or renewals of the Master Contract, including new products, terms, or price changes, to Procurement Services for review prior to enactment. Procurement Services may accept a modification to or renewal of the Master Contract in full. If a modification is not fully acceptable to Procurement Services, either the Contractor or OGS may terminate the Piggyback Contract in accordance with its terms or amend the Piggyback Contract to accept the modification to the Master Contract in part.

However, in accordance with Appendix B, Section 28, *Modification of Contract Terms*, an Authorized User shall have the authority to accept an offer from Contractor for more advantageous terms and pricing than those under this Piggyback Contract. An Authorized User shall not have the authority to accept any other requests for modifications to the Piggyback Contract, which must be handled as outlined herein.

4. MERGER OF APPENDICES/CONFLICT OF CLAUSES

This Piggyback 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 Piggyback 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.

I. Appendix A, *Standard Clauses for NYS Contracts*
II. Piggyback Contract
III. Appendix B, *OGS General Specifications*
IV. Master Contract, 1862

5. APPENDIX B AMENDMENTS

The following sections of Appendix B are hereby deleted:

Appendix B, Clause 64 (*Disputes*), is hereby deleted and replaced with the following:

I. Policy

It is the policy of OGS to provide Interested Parties, as that term is defined herein, with an opportunity to administratively resolve disputes related to OGS bid solicitations, contract awards or contract administration. Interested Parties are encouraged, but not required, to seek resolution of disputes through consultation with OGS staff through the Informal Dispute Resolution Process described herein, prior to filing a Formal Dispute. All Informal and Formal Disputes will be accorded full, impartial and timely consideration. OGS Dispute Resolution Procedures may be obtained by contacting the person identified in the Contract as a designated contact or through the OGS website (www.ogs.ny.gov).

II. Dispute Resolution Procedures

A. Informal Dispute Resolution Process

1. In the event there is a dispute under this Piggyback Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Piggyback Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Piggyback Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

2. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Piggyback Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result through negotiation.

3. If negotiation between the Contractor and Authorized User fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

4. The Contractor shall extend the informal dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

B. Formal Dispute Process

1. Definitions
   a. Filed means the complete receipt of any document by OGS before its close of business.
   b. Interested Party for the purpose of filing a dispute relating to a solicitation, as used in this section, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a Contract or by the failure to award a Contract.
   c. Interested Party for the purpose of filing a dispute relating to a Contract award, as used in this section, means an actual bidder or offeror for the subject Contract.
   d. Interested Party for the purpose of filing a dispute relating to the administration of the Contract, as used in this section, means the awarded Contractor for the subject Contract.

e. Issuance of award means the Date of Issue identified on the Contract Award Notification transmitted by OGS.

f. A Formal Dispute means a written objection by an Interested Party to any of the following:

i. A solicitation or other request by OGS for offers for a contract for the procurement of commodities, services or technology.

ii. The cancellation of the solicitation or other request by OGS.

iii. An award or proposed award of the Contract by OGS.

iv. A termination or cancellation of an award of the Contract by OGS.

v. Changes in the scope of the Piggyback Contract by the Commissioner.

vi. Determination of "materiality" in an instance of nonperformance or contractual breach.

vii. An equitable adjustment in the Piggyback Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

2. Submission of Formal Disputes

a. A Formal Dispute must be filed in writing with the Director of Procurement Services by mail, email or facsimile, using the following contact information:

Director, New York State Procurement
A Division of the Office of General Services
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 474-2437

b. The Formal Dispute must include:

i. Name, address, e-mail address, fax and telephone numbers of the filer.

ii. Solicitation or Contract number.

iii. Detailed statement of the legal and factual grounds for the Formal Dispute, including a description of resulting prejudice to the filer.

iv. Copies of relevant documents.

v. Request for a ruling by the agency.

vi. Statement as to the form of relief requested.

vii. All information establishing that the filer is an Interested Party for the purpose of filing a Formal Dispute.

viii. All information establishing the timeliness of the Formal Dispute.

3. Formal Disputes concerning a solicitation shall be filed by an Interested Party (see II.B(1)(b)) with OGS no later than ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, Formal Disputes concerning the solicitation shall be filed with OGS at least twenty-four (24) hours before the time designated for receipt of bids.

4. Formal Disputes concerning a pending or awarded Contract must be filed within ten (10) business days by an Interested Party (see II.B(1)(c)) after the disputing party knew or should have known of the facts which form the basis of the Formal Dispute; however, a Formal Dispute may not be filed later than ten (10) business days after issuance of the Contract award.

5. Formal Disputes concerning the administration of the Contract after award (see II.B(1)(iv-vii)) must be filed within twenty (20) business days by an Interested Party (see II.B(1)(d)) after the disputing party knew or should have known of the facts which form the basis of the Dispute. However, if Contractor and Authorized User participate in the Informal Dispute Resolution Process, Formal Disputes concerning the administration of the Contract after award must be filed by Contractor within twenty (20) business days after the Contractor and Authorized User failed to reach resolution through the Informal Dispute Resolution Process set forth in Section II.A.

6. Agency Response

a. OGS will consider all information relevant to the Formal Dispute, and may, in its discretion, suspend, modify, or cancel the disputed procurement/Contract action prior to issuance of a Formal Dispute decision.

b. OGS reserves the right to require the filer to meet or participate in a conference call with OGS to discuss the Formal Dispute when, in its sole judgment, circumstances so warrant.

c. OGS reserves the right to waive or extend the time requirements for decisions and final determinations on appeals herein prescribed when, in its sole judgment, circumstances so warrant.

d. OGS reserves the right to consider or reject the merits of any Formal Dispute.
e. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the Formal Dispute.

7. Appeals

a. Should the filer be dissatisfied with the Formal Dispute determination, a written appeal may be filed with the Chief Procurement Officer, by mail or facsimile, using the following contact information:

Chief Procurement Officer
New York State Procurement
A Division of the Office of General Services
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 474-2437

b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of Procurement Services shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.
c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.
d. An appeal of the decision of the Director of Procurement Services shall not include new facts and information unless requested in writing by the Chief Procurement Officer.
e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

8. Legal Appeals

a. Nothing contained in these provisions is intended to limit or impair the rights of any vendor or Contractor to seek and pursue remedies of law through the judicial process.

6. APPLICABLE LAW

This Piggyback Contract shall be governed by and construed in accordance with the laws of the State of New York. Any claims or actions brought by Contractor against the State for monetary damages shall be brought in the New York State Court of Claims. See Section 14, *Governing Law*, in Appendix A.

7. AUTHORIZED USERS

"Authorized User" shall have the meaning set forth in the State Finance Law section 163(1)(k). This Piggyback Contract is for use by Authorized Users, which includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, Section 2(b), *Definitions*.

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

8. PREFERRED SOURCES.

New York State Finance Law §162 mandates that a New York State agency, public authority, political subdivision or public benefit corporation obtain certain commodities and services from preferred sources, such as Correctional Industries (Corcraft), the blind and the disabled, when such products or services meet the form, function and utility of the entity. Some products or services under this Piggyback Contract may be available from one or more preferred sources.

Contractor understands and agrees that such products and services must be purchased from a preferred source in accordance with New York State Law.

9. NOTICES

All notices, demands, designations, certifications, requests, reports, offers, consents, approvals and other instruments given pursuant to this Piggyback Contract shall be in writing and shall be validly given when mailed by registered, certified or overnight mail, or hand delivered and, (i) if to the State, addressed to the State at its address identified as indicated below, or (ii) if to the Contractor, addressed to the Contractor at its address identified as indicated below. A Party may, from time to time, specify any address in the United States as its address for purposes of notices under this Piggyback Contract by giving fifteen (15) days written notice to the other Party. The Parties mutually agree to designate individuals in their respective organizations for purposes of receiving notice pursuant to this Piggyback Contract. The representatives for the State and the Contractor will be identified, and updated, on the Contract Award Notification page associated with this Piggyback Contract.

10. PROCESSING CONTRACT PAYMENTS

The Contractor acknowledges that a contract payment cannot be processed by an Authorized User until the contract Products have been delivered and accepted.

11. CONTRACT BILLINGS AND PAYMENTS

Appendix B, Section 49, *Contract Invoicing*, applies to this Piggyback Contract.

12. PAYMENTS OF INTEREST

Appendix B, Section 51, *Prompt Payments*, applies to this Piggyback Contract.

The Federal Prompt Payment Law (or any other law governing payment terms incorporated in the Master Contract) does not apply to the Piggyback Contract regardless of customer.

13. REPORT OF CONTRACT PURCHASES

Contractor agrees it shall furnish a report of purchases made from this Piggyback Contract by the fifteenth of the month following the end of each six-month period. The State reserves the right to seek alternate data and reporting elements and will work with Contractor if necessary to change. The report shall be on an individual item (SKU) basis, be in Excel format and must include the following data fields:

Contractor's Part/Stock Number
Item Description
Manufacturer Name
Manufacturer's Part Number
Product Category
Invoice #
Invoice Date
Account Name
Account Number
Quantity Purchased
List Price (Unit Price)
Discount
Sale Price (Unit Price)
Extended Sale Price

The report is to be submitted to OGS in accordance with the notice provisions of this Piggyback Contract and shall reference the Group Number, New York State Contract Number, sales period, and Contractor's name.

Failure to submit the required report may constitute breach of this Piggyback Contract.

14. PRICE AND DISCOUNT

MINIMUM ORDER

If the Master Contract contains minimum order quantities or values, Contractor may elect to honor orders for less than the minimum order. For all orders less than the minimum order, at the Contractor's option, shipping costs from the shipping point may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by Contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the order by the Authorized User.

I. PRICE AND DISCOUNTS

Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the Authorized User. Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Master Contract will also be included in this Piggyback Contract.

II. "OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

Purchases of the commodities included in the Piggyback Contract are subject to the "OGS or Less" provisions of State Finance Law §163(3)(a)(v). This means that State agencies can purchase commodities from sources other than the Contractor provided that such commodities are substantially similar in form, function or utility to the commodities herein and are:

A. lower in price

-and/or-

B. available under terms that are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.).

State agencies are reminded that the Contractor must be provided an opportunity to match the non-contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit.

III. WSCA-New York Hot List

The Contractor agrees to offer Authorized Users of this piggyback agreement a customized core list of items as shown in Attachment 1 - '*WSCA-New York Hot List'* for which line item pricing (list price, discount and net price) shall be maintained. This list of items is in addition to any other core lists offered under the WSCA Master Agreement and is not a substitute for those core lists. Should any of the items listed on the '*WSCA-New York Hot List'* be included on a WSCA Core List, the item's net pricing shall be determined using the list with the lowest net pricing.

The contract pricing for items contained on the '*WSCA-New York Hot List'* shall be determined by multiplying the current list price for the item as approved by WSCA under the terms of the WSCA Master Agreement by the discount listed in Attachment 1, which shall remain firm for the life of this piggyback agreement.

For items that are included in the 'WSCA-New York Hot List' but not included in the WSCA Master Contract, the pricing shall be determined by multiplying the list price shown in Attachment 1 by the discount shown in Attachment 1, with the discount remaining firm for the life of the piggyback agreement. The list price for these items may be updated by the Contractor at the same time that WSCA price updates are performed.

Items listed on the '*WSCA-New York Hot Lis*t' shall not be removed without written permission of the New York State Office of General Services, Procurement Services. In the event that an item is discontinued, the Contractor agrees to replace it with a similar item from the same manufacturer having equal or greater technical specifications and to provide the same discount for the new item.

15. USE OF SUBCONTRACTORS/DEALERS/DISTRIBUTORS/RESELLERS

Contractor shall be fully liable for Subcontractor, Dealer, Distributor and/or Reseller performance under this Piggyback Contract, and their compliance with all Piggyback Contract terms and conditions.

16. OVERLAPPING CONTRACT ITEMS

Products/services available under this Piggyback Contract may also be available from other New York State contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements, and to document the basis for this selection in the procurement record.

17. CONTRACTOR'S INSURANCE REQUIREMENTS

The Contractor shall procure at its sole cost and expense, prior to this Piggyback Contract taking effect, and shall maintain in force at all times during the term of this Piggyback Contract, policies of insurance as herein below set forth, written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-" Class "VII" or better. If during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OGS and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall deliver to OGS evidence of such policies in a form acceptable to OGS. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under this Piggyback Contract.

I. **General Conditions Applicable to Insurance.** All policies of insurance required by this Piggyback Contract must meet the following requirements:

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

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

   C. **Certificates of Insurance/Notices.** Contractor shall provide a Certificate or Certificates of Insurance and all required endorsements, in a form satisfactory to OGS, prior to this Piggyback Contract taking effect, and within three (3) business days of request to OGS.

      1. Certificates shall reference the New York State Contract Number.

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

      3. Certificates shall be submitted to:

         The New York State Office of General Services
         New York State Procurement (Procurement Services)
         Corning Tower- 38th Floor
         Empire State Plaza
         Albany, NY 12242

      4. Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment, in which case, notice shall be provided as required by law to OGS, Attention:

Procurement Services, Corning Tower – 38th Floor, Empire State Plaza, Albany, New York 12242. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply OGS updated replacement Certificates of Insurance, and amendatory endorsements.

5. Certificates of Insurance shall:
   a. Be in the form approved by OGS;
   b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by this Piggyback Contract;
   c. Specify the Additional Insureds and Named Insured as required herein;
   d. Refer to this Piggyback Contract by its New York State Contract Number and any other attachments on the face of the certificate; and,
   e. Be signed by an authorized representative of the insurance carrier or producer.
6. Only original documents or electronic forms that can be directly traced back to the insurance carrier, agent or broker via e-mail distribution (Certificates of Insurance and other attachments) will be accepted.

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

E. **Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this Piggyback Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the State than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph I.C. Certificates of Insurance/Notices, above. If, at any time during the term of this Piggyback Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Piggyback Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Should the Contractor fail to provide or maintain any insurance required by this Piggyback Contract, or proof thereof is not provided, OGS or Authorized Users may withhold further payments due under this Piggyback Contract or treat such failure as a breach or default of this Piggyback Contract. In the event of such a breach, the Contractor shall be subject to liability for damages, indemnification and all other legal remedies available to OGS. The Contractor's failure to obtain and/or keep in effect any and all required insurance shall also provide the basis for OGS' immediate termination of this Piggyback Contract, subject only to a five (5) business day cure period. Any termination by OGS or any delay, time lost or additional cost incurred as a result of the Contractor not having insurance required by this Piggyback Contract or not providing proof of same in a form acceptable to OGS, shall in no event constitute or be deemed a breach of this Piggyback Contract and no liability shall be incurred or arise against OGS or any Authorized User, its agents and employees therefrom for lost profits or any other damages.

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

G. **Subcontractors.** Should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of this Piggyback Contract the insurance requirements of this document on the Subcontractor, as applicable. Proof thereof shall be supplied to OGS.

All insurance required by this Piggyback Contract shall name The People of the State of New York, its officers, agents, and employees as additional insureds hereunder. The General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or the equivalent. Such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term. Additional Insured Endorsements shall be provided prior to this Piggyback Contract taking effect and within three (3) business days of request to OGS, Procurement Services, Corning Tower – 38th Floor, Empire State Plaza, Albany, New York 12242. The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

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

A. Commercial General Liability Insurance (CGL) covering the liability of the Contractor for bodily injury, property damage and personal/advertising injury from all work and operation under this Piggyback Contract. The limits under such policy shall not be less than the following:

1. Each Occurrence limit - $2,000,000.00
2. General Aggregate - $2,000,000.00
3. Products/Completed Operations Aggregate - $2,000,000.00
4. Personal/Advertising Injury - $1,000,000.00
5. Damage to Rented Premises - $50,000.00
6. Medical Expenses - $5,000.00
7. Coverage shall include, but not be limited to, the following:
   a. premises liability;
   b. independent contractors;
   c. blanket contractual liability, including tort liability of another assumed in a contract;
   d. defense and/or indemnification obligations, including obligations assumed under this Piggyback Contract;
   e. cross liability for additional insureds;
   f. products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by this Piggyback Contract;
   g. explosion, collapse, and underground hazards; and,
   h. contractor means and methods.
8. The following ISO forms must be endorsed to the policy:
   a. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
   b. CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B)
   c. Waiver of Subrogation

B. Comprehensive Business Automobile Liability Insurance covering liability arising out of any automobile in connection with the work required under this Piggyback Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least $2,000,000.00 each accident and shall name the People of the State of New York, its officers, agents, and employees and the New York State Office of General Services as additional insureds. The limits may be provided through a combination of primary and umbrella liability policies.

Waiver of Subrogation. For the coverages required above, the Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, its officers, agents and employees, the New York State Office of General Services and any Authorized User of this Piggyback Contract. Waiver of Subrogation Endorsements shall be provided prior to this Piggyback Contract taking effect and within three (3) business days of request to OGS, Procurement Services, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

III. Workers' Compensation Insurance and Disability Benefits Requirements

New York State Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document that they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in Offerer/Contractor not being considered for this Piggyback Contract or renewal of same.

A. Proof of Compliance with Workers' Compensation Coverage Requirements: An ACORD form is NOT acceptable proof of workers' compensation coverage.

1. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:
   a. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
   b. Obtain such coverage from an insurance carrier; or
   c. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.
2. A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services before this Piggyback Contract can be executed by the Commissioner.
   a. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov).
   b. Certificate of Workers' Compensation Insurance:
      i. Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or
      ii. Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.
   c. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
   d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

B. Proof of Compliance with Disability Benefits Coverage Requirements:

1. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, a contractor shall:
   a. Be legally exempt from obtaining disability benefits coverage; or
   b. Obtain such coverage from an insurance carrier; or
   c. Be a Board-approved self-insured employer.

2. A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services **before this Piggyback Contract can be executed by the Commissioner**.

   a. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov).

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

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

18. PURCHASE ORDERS

Purchase Orders shall be effective and binding upon Contractor when placed in the mail or electronically transmitted during this Piggyback Contract period addressed to the Contractor at the address for receipt of orders designated in the Master Contract or Contract Award Notification. Any discrepancies between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Piggyback Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. If an Authorized User of the Piggyback Contract adds written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Piggyback Contract, the Contractor may reject the Purchase Order within five (5) business days of its receipt or fulfill the Purchase Order. Prior to rejection of any additional terms and conditions to the Purchase Order, the Contractor has an obligation to attempt to negotiate the additional written terms and conditions in good faith with the Authorized User. For more details on these provisions, See Appendix B, Section 32, *Purchase Orders*.

19. INDEFINITE DELIVERY, INDEFINITE QUANTITY CONTRACT

This Piggyback Contract will be an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. All quantities or dollar values listed within the Piggyback Contract or applicable Participation Agreement are estimates. Estimates are used for evaluation purposes only.

Numerous factors could cause the actual volume of product purchased under the Piggyback Contract to vary substantially from the estimates in the Piggyback Contract or applicable Participation Agreement. Such factors include, but are not limited to, the following:

- Such Piggyback Contracts will be nonexclusive contracts;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of each Piggyback Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the contract period; and,
- The State reserves the right to terminate any Piggyback Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Piggyback Contract.

In Procurement Services's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. By execution of this Piggyback Contract, Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Piggyback Contracts could vary substantially from the estimates provided in this Piggyback Contract or applicable Participation Agreement.

20. CATALOGS AND PRICE SHEETS

Catalogs and price lists shall be provided in accordance with the terms of the Master Contract. Upon request, Contractor shall also assist Authorized Users in the use of such documents.

21. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §§139-j and 139-k, this Piggyback Contract includes and imposes certain restrictions on communications between OGS and an offerer/bidder during the procurement process. An offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the procurement contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page of this Piggyback Contract. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

22. NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT BUSINESS ENTITY

I. OGS conducts a review of prospective contractors ("offerers") to provide reasonable assurances that an offerer is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction contracts and is designed to provide information to assess an offerer's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. If interested in contracting with New York State, an offerer must agree and hereby agrees to fully and accurately complete the Questionnaire. The offerer acknowledges that the State's execution of a contract will be contingent upon the State's determination that the offerer is responsible and that the State will be relying upon the offerer's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each offerer file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website, http://www.osc.state.ny.us./vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at https://portal.osc.state.ny.us.

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at http://www.osc.state.ny.us/portal/contactbuss.htm. Offerers opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the offerer prior to contract award, the offerer must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to OGS' transmittal to you of this Piggyback Contract. An offerer's Questionnaire cannot be viewed by OGS until the offerer has certified the Questionnaire. It is recommended that all offerers become familiar with all of the requirements of the Questionnaire and complete as soon as possible to allow sufficient time for OGS review prior to Piggyback Contract execution.

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

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Piggyback Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice

outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Activity under the Piggyback Contract may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Piggyback Contract.

The Contractor agrees that if it is found by the State that the Contractor's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Piggyback Contract. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Piggyback Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

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

23. NEW YORK STATE TAX LAW SECTION 5-A

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

A contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the contractor filed the ST-220-TD with DTF. Note: NYS DTF receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed as soon as possible upon OGS' transmittal to Contractor of this Piggyback Contract and submitted to the procuring covered Agency certifying that the contractor filed the ST-220-TD with DTF. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned prior to such request). Failure to make either of these filings may render a contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the contractor certification forms and instructions are provided below. Form ST-220-TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the contractor filed the ST-220-TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

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

24. NEW YORK STATE VENDOR FILE REGISTRATION

Prior to being awarded a contract, the contractor and any designated authorized dealers/distributors/resellers who accept payment directly from the State must be registered in the New York State Vendor File (Vendor File) administered by the OSC. This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification

number (Vendor ID) will be assigned to your company and Vendor IDs will be assigned to each of your authorized dealers/distributors/resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York.

If the contractor is already registered in the Vendor File, the contractor must enter its ten-digit Vendor ID on this Piggyback Contract.

If the contractor is not currently registered in the Vendor File, it must request assignment of a Vendor ID number from OGS. Complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) and submit the form to OGS. Please send this document to a Designated Contact for this Contract. In addition, if an authorized dealer/distributor/reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form (http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) should be completed by each designated authorized dealer/distributor/reseller and submitted to OGS. The OGS will initiate the vendor registration process for all companies and their authorized dealers/distributors/resellers. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application. For more information on the Vendor File please visit the following website: http://www.osc.state.ny.us/vendor_management/.

25. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4

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

26. USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State supports and encourages contractors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Piggyback Contract. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, Section 15, *Remanufactured, Recycled, Recyclable or Recovered Materials.*

27. SURPLUS/TAKE-BACK/RECYCLING

I. A State agency is reminded of its obligation to comply with the NY State Finance Law §§ 167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.

II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.

III. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of

electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: http://www.dec.ny.gov/chemical/65583.html.

IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

28. BULK DELIVERY AND ALTERNATE PACKAGING

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

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

I. General Provisions

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

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

C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to subsection VII of this section or enforcement proceedings as allowed by the Contract.

II. Contract Goals

A. OGS hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this Contract.

B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: https://ny.newnycontracts.com/frontend/diversityusers.asp.

Additionally, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

C. Pursuant to 5 NYCRR § 142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and ensure that the MWBEs utilized under the Contract perform commercially useful functions. Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. OGS will assess whether a MWBE is performing a commercially useful function by considering the following:
(1) the amount of work subcontracted;
(2) industry practices;
(3) whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;
(4) the credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and
(5) any other relevant factors.

D. In accordance with Executive Law Section 316-aand 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

A. Contractor shall comply with the following provisions of Article 15-A:
   1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
   2. The Contractor certifies by entering into this Contract that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof is Contractor's equal employment opportunity policy.

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

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

Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

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

IV. MWBE Utilization Plan

A. Contractor certifies that it has submitted a MWBE Utilization Plan on Form MWBE 100 to OGS and will follow such Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Appendix.

B. Contractor further certifies that the MWBEs included in its Utilization Plan will perform commercially useful functions under the Contract. Contractor understands that making false representations or including information

evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Contractor further understands and agrees that MWBEs that do not perform commercially useful functions may not be counted as meeting the MWBE goals of this Contract.

C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waivers

A. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form (BDC 333) documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

B. If the OGS, upon review of the MWBE Utilization Plan and updated Quarterly Workforce Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Monthly MWBE Contractor Compliance Report

A. Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System (NYSCS) to report subcontractor and supplier payments made by Contractor to MWBEs performing commercially useful functions under the Contract. The NYSCS may be accessed at https://ny.newnycontracts.com/. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.

B. When a Contractor receives a payment from a State Agency Authorized User following a purchase from an OGS Procurement Services contract, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an e-mail or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: **"Introduction to the System for Vendors"** and **"Contract Compliance Reporting - Vendor Training"** to become familiar with the NYSCS. To view the training schedule and to register visit: https://ny.newnycontracts.com/events.asp

D. As soon as possible after the Contract is approved, Contractor should visit https://ny.newnycontracts.com and click on **"Account Lookup"** to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing **"Change Info."** It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through **"Request New User."** When identifying the person responsible, please add **"- MWBE Contact"** after their last name (i.e John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "Contact Us & Support" then "Technical Support" on the NYSCS website.

E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in Section VII below.

VII. Liquidated Damages - MWBE Participation

A. Where OGS determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the OGS liquidated damages.
B. Such liquidated damages shall be calculated as an amount equaling the difference between:
    1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
    2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
C. In the event a determination has been made, after Contractor has been afforded the process that it is due, which requires the payment of liquidated damages and such identified sums have not been withheld by the OGS, Contractor shall pay such liquidated damages to the OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if the Director renders a decision in favor of the OGS.

ALL FORMS ARE AVAILABLE AT: http://www.ogs.ny.gov/MWBE/Forms.asp

30. MERCURY-ADDED CONSUMER PRODUCTS

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Piggyback Contract.

31. DIESEL EMISSION REDUCTION ACT OF 2006

Pursuant to § 19-0323 of the N.Y. Environmental Conservation Law ("the Law") it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of their governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2015 (unless further extended by law). The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance.

32. NEW YORK STATE REQUIRED CERTIFICATIONS

An Offerer must complete and submit the NYS Required Certifications form certifying compliance with the Diesel Emission Reduction Act, MacBride Fair Employment principles, and Non-Collusive Bidding in order to be considered for award under this Piggyback Contract.

33. ENTIRE AGREEMENT

This Piggyback Contract and the referenced appendices constitute the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Piggyback Contract shall not be changed, modified or altered in any manner except as provided in Section 3 of this Piggyback Contract.

34. CAPTIONS

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

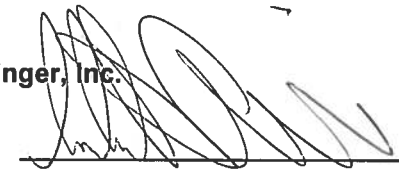
35. SEVERABILITY

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

IN WITNESS WHEREOF, the Parties therefore hereby execute their mutual agreement to the terms of this Piggyback Contract. This Piggyback Contract shall be a binding agreement between the Parties when executed and created as set forth in clause 26 of Appendix B, *Contract Creation/Execution*. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Contract, the approved signature page(s) will be affixed by the State to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

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

W.W. Grainger, Inc.

Signature: 

Printed Name: Michael DeAngelis

Title: Senior Sales Manager, Public Sector

Company Name: W.W. Grainger, Inc.

Federal Tax ID: 36-1150280

NYS Vendor ID 1000009167

Date: 3/24/15

THE PEOPLE OF THE STATE OF NEW YORK

Signature: Jill McCabe

Printed Name: Jill McCabe

Title: Assistant Director

NYS Office of General Services

Date: 5/27/15

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF New York }
: **Sworn Statement:**
COUNTY OF Erie }

On the 24 day of March in the year 2015 , before me personally appeared Michael DeAngelis, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he maintains an office at Town of Huntington, County of Suffolk, State of NY; and further that:

[Check One]

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

(☒ **If a corporation):** _he is the Sr. Sales Manager, Public Sector of W.W. Grainger, Inc., the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

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

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

Carol A. Pinzone
Signature of Notary Public

CAROL S. PINZONE
Lic.# 01PI4706775
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 11-30-17