AGREEMENT FOR

TRUCKS, HEAVY DUTY
(Class 8 Chassis Cab Type with Various Bodies)

BY AND BETWEEN

NEW YORK STATE

OFFICE OF GENERAL SERVICES

AND
AIR-FLO MANUFACTURING, INC.
CONTRACT NUMBER PC67339

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STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT #PC67339
CENTRALIZED CONTRACT FOR HEAVY DUTY TRUCKS
CLASS 8 CHASSIS CAB TYPE WITH VARIOUS BODIES

THIS AGREEMENT (hereinafter the "Contract" or the "Agreement") is made by and between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (OGS), whose office is on the 41st Floor, Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the "State" or "OGS") and Air-Flo Manufacturing, Inc., having its principal place of business at 365 Upper Oakwood Avenue Elmira Heights, NY, herein after referred to as the "Contractor"). OGS and the Contractor are collectively referred to as the "Parties."

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

WHEREAS, OGS has identified a need by New York State agencies and other Authorized Users for centralized contracts for Heavy Duty Trucks, Class 8 Chassis Cab Type with Various Bodies, as further described herein, and

WHEREAS, OGS issued a solicitation, referred to as Invitation for Bids #22910 ("the IFB") for Heavy Duty Trucks, Class 8 Chassis Cab Type with Various Bodies, which was advertised on February 13, 2015 in the New York State Contract Reporter, as required by New York State Economic Development Law, and

WHEREAS, OGS conducted a competitive procurement to identify the bidder(s) which could provide the Heavy Duty Trucks, Class 8 Chassis Cab Type with Various Bodies at the lowest cost, and

WHEREAS awards were made to one (1) Primary Contractor and one (1) Secondary Contractor, each representing a different OEM, per Lot for Lots I, II, III, IV and V, and one (1) Contractor per Lot for Lots VI, VII, VIII and IX, as further specified herein, to the bidders who submitted the lowest cost and second-lowest cost (as applicable) responsive proposals, and

WHEREAS, the State has determined: that the Contractor submitted the lowest cost or second-lowest cost responsive proposal for the applicable Lot(s) as described herein; that the Contractor is a responsible vendor; and that the Contractor is willing to provide the commodities set forth herein under the terms and conditions contained herein, and

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

1. OVERVIEW

1.1 OVERVIEW

This Contract sets forth the terms and conditions for the provision of Heavy Duty Trucks, Class 8 Chassis Cab Type with Various Bodies, from Contractor to Authorized Users of the Contract on a statewide basis. References to the State and its Agencies or Non-State Agencies as Authorized Users under this Contract encompass and include all such entities within the definition of “Authorized User” set forth in State Finance Law §163(1)(k).

All Chassis Cab bid pricing and all Truck Body bid pricing shall be the final published pricing currently available from the OEM. OEM Pricelist names and effective dates for each Item, if available, are identified on the Contract Pricelist.

There are a total of nine (9) Lots, which are specified below and described in further detail herein. Contracts have been awarded to the Contractors identified below for the following Lots:

Lot	Lot Description	Contractor(s)
I	Chassis Cab (Class 8, 37,000 lb. GVWR)	Primary Chassis Cab Contractor: Navistar Inc. Secondary Chassis Cab Contractor: No Award
II	Chassis Cab (Class 8, 47,000 lb. GVWR)	Primary Chassis Cab Contractor: Navistar Inc. Secondary Chassis Cab Contractor: No Award
III	Chassis Cab (Class 8, 66,000 lb. GVWR)	Primary Chassis Cab Contractor: Navistar Inc. Secondary Chassis Cab Contractor: No Award
IV	Truck Bodies (Single Axle Dump Body and Plow)	Primary Body and Plow Contractor: Air-Flo Mfg Inc. Secondary Body and Plow Contractor: Henderson Products Inc.
V	Truck Bodies (Tandem Axle Dump Body and Plow)	Primary Body and Plow Contractor: Henderson Products Inc. Secondary Body and Plow Contractor: Air-Flo Mfg Inc.
VI	Truck Bodies (ELP Interchangeable Body Systems)	Single Contractor: Cives Corporation dba Viking Cives (USA)
VII	DOT Upfitted Trucks (Class 8, 47,000 & 66,000 lb. GVWR, with Dump Body and Plow)	Single Contractor: Navistar Inc.
VIII	Thruway Upfitted Truck (Class 8, 37,000 GVWR, with Dump Body and Plow)	Single Contractor: Navistar Inc.
IX	Thruway Upfitted Truck (Class 8, 66,000 lb. GVWR, with ELP Dump Body and Plow)	Single Contractor: Navistar Inc.

1.2 SCOPE

The purpose of this Contract is to provide Authorized Users with a means of acquiring Heavy Duty Chassis Cab Trucks (Class 8), Truck Bodies, Plows and associated Options. It is anticipated that Authorized Users will order Product from the Chassis Cab Contractors (Lots I, II and III) and Truck Body Contractors (Lots IV, V and VI) in order to form an Upfitted Truck. DOT and Thruway Upfitted Trucks (Lots VII, VIII and IX) are not for the exclusive use of those agencies, and may be purchased by any Authorized User. Upfitted Truck functions may include plowing, salting and sanding highways, supporting paving operations, stockpiling materials and all general road construction and maintenance programs.

This Contract is to cover the outright purchase of new Chassis Cab Trucks, Truck Bodies and Upfitted Trucks. Leasing of a Contract Item is not permitted under this Contract. A 'new' product is one that will be used first by the Authorized User after it is manufactured or produced. Under no circumstances may "demos" or "used" Chassis Cab or Truck Bodies be sold under this Contract.

1.3 ESTIMATED QUANTITIES

This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. The Contractor must furnish all quantities or dollar values actually ordered. The individual value of the Contract is indeterminate.

See Appendix B §30 *Estimated/Specific Quantity Contracts* and §27 *Participation in Centralized Contracts*.

Numerous factors could cause the actual volume of Product purchased under the Contract to vary substantially. Such factors include, but are not limited to, the following:

- Such Contract is a 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 the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the contract period;
- The State reserves the right to terminate the Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Services' experience, depending on the price of a particular Product, the actual volume of purchases for that Product 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. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contract could vary substantially.

1.4 CONTRACT PERIOD AND RENEWALS

This Contract shall commence after receipt of all necessary approvals, and shall become effective upon mailing of final Contract Award Notice by OGS in accordance with Appendix B § 26(i), *Contract Creation/Execution*. All Heavy Duty Truck Contracts awarded under solicitation 22910 will terminate simultaneously three (3) years from the date of OGS approval of the first Contract awarded. If mutually agreed between OGS and the Contractor, the Contract may be renewed, under the same terms and conditions, for up to two (2) additional one (1) year term(s). The Contract renewal may be exercised on a month to month basis, such as an additional three (3) month, six (6) month, twelve (12) month, or twenty-four (24) month period.

1.5 DEFINITIONS

Terms used in the IFB, Contract or Attachments that have a capitalized first letter shall be defined in accordance with Appendix B, §2 *Definitions*, which is hereby incorporated by reference, and the National Truck and Equipment Association (NTEA) Truck Equipment Glossary, available online at http://www.ntea.com/content.aspx?id=22114 . In addition, the following definitions shall apply:

"Additional Options and Aftermarket Components (AOAC) Discount" shall refer to the percentage amount deducted from the MSRP (for Chassis Cab Options), or Contractor-Published Pricelist (for Dump Body Options, additional Plow Models, Plow Options, and Aftermarket Components), as applicable, for any additional Options and Aftermarket Components offered for the Chassis Cab, Truck Body, or Plow, for Authorized User purchases that are not included in the Base Item specifications. See also Chassis Cab AOAC Discount, Dump Body AOAC Discount and Plow AOAC Discount.

"Aftermarket Component(s)" shall mean any accessory, equipment, or feature that is manufactured by an OEM other than the Chassis Cab or Truck Body OEM, and is not included in the OEM Product Line, and that may be installed on the Chassis Cab or Truck Body by the Contractor, or third-party.

"Aftermarket Component Provider" shall refer to the provider of an Aftermarket Component (i.e., Contractor or third-party).

"Authorized User(s)" as defined in State Finance Law §163(1)(k).

"Base Item (or Item)" shall refer to a Chassis Cab, Truck Body or Upfitted Truck and its corresponding specifications, as set forth in Appendix C: *Heavy Duty Truck Contract Documents*, Number 2: *Contract Pricelist.*

"Base Item Unit Price" shall refer to the price NYS Authorized Users will pay the Contractor for the Base Item.

"Chassis Cab" shall refer to a vehicle that consists of the cab (the driver passenger carrying compartment) and the chassis (frame, wheels, and machinery of a motor vehicle – including the vehicles engine, transmission, driveshaft, differential, and suspension), and is an incomplete vehicle that requires the addition of a Truck Body to perform its intended functions.

"Chassis Cab AOAC Discount" shall refer to the AOAC Discount that applies to Chassis Cabs.

"Chassis Cab Contractor" shall refer to a responsive and responsible Bidder who has attained the lowest or second lowest Grand Total For Lot score for Chassis Cab Lots, (Lots I, II and III), and is working under an executed Contract with New York State.

"Chassis Cab Discount" shall refer to the percentage amount deducted from the Chassis Cab MSRP for Authorized User purchases for the Base Item and for any additional Chassis Cab Models offered under the Contract. See Section 3.1.2 *Additional Chassis Cab and Truck Body Product Line Discounts*.

"Chassis Cab MSRP" shall refer to the MSRP of the Chassis bid for a Chassis Cab included in a Base Item.

"Chassis Cab Price" shall refer to the Chassis Cab MSRP minus the Chassis Cab Discount. The Chassis Cab Price is synonymous with the Base Item Unit Price for Chassis Cab Lots (Lots I, II, and III).

"Chronic Failure" shall refer to a component of a Chassis Cab or Upfitted Truck that repeatedly fails or becomes inoperable and has to be replaced more than once within the OEM rated life expectancy of the component.

"Class 8" shall mean a truck classification that is determined based on the Upfitted Truck's GVWR. Class 8 trucks have a GVWR of 33,001 lb. or greater.

"**Contract"** as defined in Appendix B §2 *Definitions*.

"Contract Pricelist" shall refer to the pricelist which identifies the Make(s), Model(s) and Model Code(s), NYS discounts (i.e., Chassis Cab, Dump Body and Plow Discounts, AOAC Discount), NYS Net Contract Price, and configuration of the of the Base Item(s), which has been approved by Procurement Services for inclusion in the Contract. OGS reserves the right to require that the Contract Pricelist include an item number, description and NYS Contract Price for Options and Aftermarket Components to be offered under the Contract.

"Contractor-Published Pricelist" shall refer to the electronic, (i.e., in Excel or PDF format), document(s) issued by the Contractor which lists, among other things, an item number, description and MSRP for the Contractor's complete Product Line for the Contract.

"Contractor" as defined in Appendix B §2 *Definitions*.

"Dealer(s)" shall refer to alternate distribution sources for an OEM that are authorized and designated by said OEM, subject to approval by New York State.

"Dealer Invoice" shall refer to the Bidder document(s) which lists, at a minimum:

(1) The Make, Model and Model Code of the Chassis Cab bid;
(2) The MSRP of the standard base Chassis Cab, excluding Options, other applicable OEM fees (e.g. destination fees), and Aftermarket Components;
(3) The MSRP and Option Code for each Option included in the Chassis Cab bid;
(4) The total MSRP for the Chassis Cab bid, inclusive of standard equipment and Options.
(5) If Aftermarket Components are included in the Chassis Cab bid, the Bidder must also provide a Bidder-Published Pricelist that includes the MSRP for the applicable Aftermarket Components.

"Delivery Allowance Schedule (DAS)" refers to the schedule that shall be used to determine maximum delivery charges for a Chassis Cab or Upfitted Truck purchased from the Contract.

"Delivery Charge" shall mean the total amount charged to the Authorized User for shipment of the Chassis Cab or Upfitted Truck from the Delivery Origin to the location(s) designated by the Authorized User on the Purchase Order.

"Delivery Cost per Mile" shall refer to the dollar amount that an Authorized User pays the Contractor, for each mile travelled by the Contractor, when a Chassis Cab or Upfitted Truck is delivered to either a Truck Body Contractor or to the Authorized User.

"Delivery Origin" shall mean the location from which the Contractor delivers a Chassis Cab or Upfitted Truck to the Authorized User (i.e., Contractor's place of business or other location specified by the Contractor).

"Dump Body" or "Dump" shall refer to a Truck Body which has a bed that tilts backward and/or sideways to dump loose material.

"Dump Body AOAC Discount" shall refer to the AOAC Discount that applies to Dump Bodies.

"Dump Body Discount" shall refer to the percentage amount deducted from the Dump Body MSRP for Authorized User purchases for the Base Item and for any additional Dump Body Models offered under the Contract. See Section 3.1.2 *Additional Chassis Cab and Truck Body Product Line Discounts*.

"Dump Body MSRP" shall refer to the MSRP of the Dump Body bid for a Dump Body included in a Base Item.

"Dump Body Price" shall refer to the Dump Body MSRP minus the Dump Body Discount.

"ELP" shall refer to Équipements Lourds Papineau Inc., manufacturer of an Interchangeable Body Systems product line.

"ELP Discount" shall refer to the percentage amount deducted from the ELP Interchangeable Body Systems Product Line MSRP, for Authorized User purchases.

"Executive Agency(ies)" shall mean all State departments, offices or institutions but, for the purposes of this IFB, excludes the State University of New York and excludes City University of New York. Furthermore, such term shall not include the legislature, the judiciary, public benefit corporation, public authority, or local government entity.

"Final Order Due Date" shall mean the last calendar date that an Authorized User may issue a Purchase Order to the Contractor for a Chassis Cab or Truck Body, in order to have the Chassis Cab or Truck Body built before Model Year build-out date.

"GVWR" shall refer to Gross Vehicle Weight Rating. The maximum total vehicle weight, measured at the tire-ground interfaces, for which the vehicle possesses components adequately rated to safely carry.

"Heavy Duty Truck" shall refer to a Chassis Cab Truck with a GVWR of 33,001 lb. or over (i.e., Class 8 Vehicles, as designated by the U.S. Department of Transportation).

"Interchangeable Body Systems" shall refer to a detachable Truck Body system that allows several different Truck Bodies to be used with the same Chassis Cab.

"Lot" shall refer to a grouping of Items available from Contractors under award 22910, as set forth on the OGS website, and on each Contractor's Appendix C: *Heavy Duty Truck Contract Documents*, Number 2: *Contract Pricelist.*

"M/WBE" shall refer to a business certified with Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.

"Make" shall refer to the OEM company name of a Chassis Cab or Truck Body Model (e.g., International, Freightliner, Viking, Galion).

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

"Model" shall refer to a particular brand of Chassis Cab or Truck Body sold by an OEM (e.g., ProStar, Cascadia, Proline, 450U).

"Model Code" shall refer to the OEM code used to identify a particular subset of a Model.

"Model Year" shall mean the year used to designate a discrete Chassis Cab or Truck Body Model, irrespective of the calendar year in which the Chassis Cab or Truck Body was actually produced, provided that the production period does not exceed 24 months.

"Model Year Build-Out Date" shall mean the last date of manufacture for the Model Year of a Chassis Cab or Truck Body Model.

"MSRP" shall refer to the Manufacturer's Suggested Retail Price (also known as Manufacturer's Suggested List Price, or List Price), or the standard retail price included on the Bidder-Published Pricelist, as applicable.

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

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

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

"NYS Net Contract Price(s)" shall mean the price charged to the Authorized User for an Item, Option or Aftermarket Component, inclusive of installation fees. The NYS Net Contract Price does not include Delivery Charge.

"NYS Vendor ID" shall refer to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

"OEM" shall refer to the Original Equipment Manufacturer.

"OEM Pricelist" shall refer to the nationally published electronic, (i.e., in Excel or PDF format), document(s) issued by the Chassis Cab manufacturer which lists, among other things, an Option Code, description and MSRP for the OEM's Product Line.

"OGS" shall mean the New York State Office of General Services.

"Options" shall refer to an accessory, equipment, or feature that can be added to, or deleted from, a Chassis Cab, Truck Body, or Plow. For the purposes of this solicitation, Options include only those accessories, equipment, or features that are available from the Chassis Cab, Truck Body or Plow OEM.

"Option Code" shall refer to an alpha-numerical code (also known as Feature Code) used by an OEM to identify a particular feature or Option included with, or available for, a Chassis Cab, Truck Body or Plow.

"Plow" shall mean a flat or curved piece of metal that is attached to the front of a Chassis Cab and used for clearing snow from a road, driveway, etc.

"Plow AOAC Discount" shall refer to the AOAC Discount that applies to Plows and related Plow Options, for Authorized User purchases.

"Plow Discount" shall refer to the percentage amount deducted from the Plow MSRP for Authorized User purchases for the Base Item.

"Plow MSRP" shall refer to the MSRP of the Plow bid for a Plow included in a Base Item.

"Plow Price" shall refer to the Plow MSRP minus the Plow Discount.

"Primary Chassis Cab Contractor" shall refer to a responsive and responsible Bidder having the lowest Grand Total For Lot score for a Chassis Cab Lot (Lots I, II and III). The Primary Chassis Cab Contractor shall be the first selection among Contractors by Executive Agencies for Chassis Cab orders. See also, "Secondary Chassis Cab Contractor."

"Primary Truck Body Contractor" shall refer to the responsive and responsible Bidder having the lowest Grand Total For Lot for a Truck Body Lot (Lots IV and V), exclusive of Lot VI (ELP Interchangeable Body Systems). The Primary Truck Body Contractor shall be the first selection among Contractors by Executive Agencies for Truck Body orders, exclusive of Lot VI (ELP Interchangeable Body Systems). See also, "Secondary Truck Body Contractor."

"Product Line" shall mean a group of related products manufactured by a single company, or offered by a company in their usual course of business.

"Region" shall refer to a grouping of New York State counties as set forth in the Delivery Allowance Schedule (DAS).

"Secondary Chassis Cab Contractor" shall refer to the responsive and responsible Bidder, representing a different OEM than the Primary Chassis Cab Contractor, having the second lowest Grand Total For Lot score for a Chassis Cab Lot (Lots I, II and III). The Secondary Chassis Cab Contractor shall be the second selection among Contractors by Executive Agencies for Chassis Cab orders. See also "Primary Chassis Cab Contractor."

"Secondary Truck Body Contractor" shall refer to the responsive and responsible Bidder, representing a different OEM than the Primary Truck Body Contractor, having the second lowest Grand Total For Lot for a Truck Body Lot (Lots IV and V), exclusive of Lot VI (ELP Interchangeable Body Systems). The Secondary Truck Body Contractor shall be the second selection among Contractors by Executive Agencies for Truck Body orders, exclusive of Lot VI (ELP Interchangeable Body Systems). See also "Primary Truck Body Contractor."

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

"Small Business" as defined in Executive Law Section 310(20).

"State Agency(ies)" shall refer to all New York State departments, offices or institutions, including Executive Agencies.

"Truck Body(ies)" refers to the portion of the vehicle that carries the load or cargo, and is attached to a separate Chassis Cab. For the purposes of this IFB, Truck Bodies includes the following body types: Dump and Interchangeable Body Systems.

"Truck Body Contractor" shall refer to a responsive and responsible Bidder who has attained the lowest or second lowest Grand Total For Lot score for a Truck Body Lot (Lots IV, V and VI), and is working under an executed Contract with New York State. See also "Primary Truck Body Contractor" and "Secondary Truck Body Contractor."

"Upfitted Truck" shall mean the Product that is the result of the Chassis Cab and Truck Body being joined together to form a complete vehicle that is ready for use and can perform its intended functions.

"Upfitted Truck Contractor" shall refer to a responsive and responsible Bidder who has attained the lowest or second lowest Grand Total For Lot score for an Upfitted Truck Lot (Lots VII, VIII and IX), and is working under an executed Contract with New York State.

2. CONTRACT TERMS AND CONDITIONS

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

2.1 CONFLICT OF TERMS

Conflicts among the documents shall be resolved in the following order of precedence:

A. Appendix A, *Standard Clauses for New York State Contracts*;

B. The base Contract (the portion of this document preceding the signature of the parties);

C. Appendix B, *General Specifications*;

D. Appendix C, *Heavy Duty Truck Contract Documents*

2.2 APPENDIX A

Appendix A, Standard Clauses for New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

2.3 APPENDIX B

Appendix B, Office of General Services General Specifications, dated July 2014, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

2.4 APPENDIX B MODIFICATIONS

Appendix B, Section 33, *Product Delivery*, is deleted and replaced in its entirety by Section 3.5 of this Contract, *Delivery*.

2.5 APPENDIX C

Appendix C, *Heavy Duty Truck Documents,* is hereby expressly made a part of this Contract as fully as if set forth at length herein.

2.6 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISES

I. General Provisions

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("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, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

II. Contract Goals

A. For purposes of this procurement, OGS conducted a comprehensive search and determined that this contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528. 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.

B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

(1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.

(2) A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

(3) Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.

(4) A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

(5) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.

(6) Other information deemed relevant to the request.

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. By entering into this Contract, Contractor certifies 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 submitted a staffing plan on Form EEO 100 to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories. Contractor shall complete the Staffing plan form and submit it as part of their contract.

C. Form EEO 101 - 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 and conviction and prior arrest.

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

2.7 OEM OR AUTHORIZED DEALER CERTIFICATION

Contractor certifies that it is an OEM or an authorized Dealer of the manufacturer of the relevant Product. If an authorized Dealer, Contractor certifies that the manufacturer has agreed to supply the Dealer with all quantities of Product required by the Dealer in fulfillment of its obligations under this Contract.

2.8 SHORT TERM EXTENSION

In the event a replacement contract has not been issued, this Contract may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should the replacement contract be issued in the interim.

2.9 EXTENSION OF USE

This Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in this 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 extensions.

2.10 EXTENSION OF USE COMMITMENT

Contractor agrees to honor all orders from State Agencies, political subdivisions and others authorized by law to participate in this Contract, which are in compliance with the pricing, terms, and conditions contained herein.

Any unilateral limitations or restrictions imposed by the Contractor on eligible Authorized Users will be grounds for cancellation of the Contract. If a Contract, or any portion thereof, is canceled for this reason, any additional costs incurred by the eligible purchaser will be borne by the Contractor.

2.11 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, §27 *Participation in Centralized Contracts*.

Upon request, all eligible non-State agencies must furnish 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 Procurement Services' Customer Services at 518-474-6717.

2.12 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

If it is found by the State that the Contractor's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract. Contractor agrees it shall recertify its Questionnaire no later than the end of the eleventh month of each Contract year.

The Contractor shall at all times during the 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 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. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the 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 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.

2.13 "OGS OR LESS" GUIDELINES APPLY

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

i. lower in price; and/or
ii. available under terms which are more economically efficient to the Authorized Users (e.g. delivery terms, warranty terms, etc.).

State agencies are reminded that they must provide the Contractor 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, as applicable. State agencies should refer to the "OGS or Less" section of the New York State Procurement Guidelines for complete procedural and reporting requirements: http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf.

2.14 PURCHASE ORDERS AND INVOICING

All Purchase Orders and invoices/vouchers shall include the Contract number and a line by line listing of separate charges. Order confirmation shall mean that the Contractor has received the purchase order, has reviewed it for compatibility with the Item currently on Contract, has resolved any non-compatibility problems with the Authorized User, and has entered the order with the manufacturer and that the manufacturer has accepted the order and assigned an order number and anticipated build and delivery dates.

2.14.1 PURCHASE ORDERS

Purchase orders are to include the following information:

A. Contract number;
B. Contractor name;
C. Make, Model and Model Code of the Chassis Cab, Truck Body and/or Plow, as applicable;
D. Option codes and descriptions, if applicable;
E. Aftermarket Components part numbers and descriptions, if applicable;
F. MSRP for each Product, Option, and Aftermarket Component;
G. Base Item, AOAC and Discounts, as applicable;
H. Liquidated damages, if any;
I. Calculation of NYS Net Contract Price; and
J. Specific designation of special price(s) which may be better than the NYS Net Contract Price.

2.14.2 INVOICES

Authorized Users are instructed not to process invoices that do not include the required information set forth below. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice **all** of the following items. Failure to comply may result in lengthy payment delays. Invoices shall include, at a minimum, the following information:

A. Contract number;
B. NYS Vendor ID;
C. Purchase Order number;
D. Make, Model and Model Code of the Chassis Cab, Truck Body and/or Plow, as applicable;
E. Option Codes and descriptions, if applicable.
F. Aftermarket Components part numbers and descriptions, if applicable;
G. Calculation of NYS Net Contract Price
H. Breakdown of liquidated damages, if any

2.15 MSRP VERIFICATION

An Authorized User may verify MSRP information, especially for Options and Aftermarket Components. The Contractor shall, upon request by the Authorized User, provide a copy of the most recently published OEM Pricelist. See also Section 3.1.5 *Contract Pricelist* and Section 3.1.6 *Aftermarket Components Pricelists.*

2.16 CONTRACT PAYMENTS

Payments cannot be processed by Authorized Users until the Chassis Cab or Upfitted Truck has been delivered and accepted in accordance with Section 3.5 *Delivery*. Payment will be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section 2.14 *Purchase Orders and Invoicing*.

2.17 JOINT VENTURES/PARTNERSHIPS

Should the Contractor elect to undertake Contract performance with a joint venture partner, the Contractor acknowledges that all other members of the joint venture would likely be deemed to be subcontractors and the Contractor may be liable for claims made against an uninsured joint venture partner. Contractor shall require all such joint venture partners, prior to commencement of an agreement between Contractor and the joint venture partner, to secure and keep in force during the term of the Contract, insurance policies meeting all of the insurance requirements of this Contract as specified in Appendix C: *Heavy Duty Contract Documents*, Number 5: *Insurance Requirements*.

2.18 POOR PERFORMANCE

Authorized Users should notify Procurement Services Customer Services promptly if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services
Procurement Services
Customer Services
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242

Tel: 518-474-6717
Fax: 518-474-2437
E-mail: customer.services@ogs.ny.gov

2.19 CONTRACT ADVERTISING

In addition to the requirements set forth in Appendix B, §13 *Advertising Results*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance. See also Section 3.2.10 *Advertising*.

2.20 OVERLAPPING CONTRACT ITEMS

Products/services available under this 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 maintain a procurement record documenting the basis for this selection.

2.21 WEB ACCESSABILITY

Any web-based information and applications development, or programming delivered pursuant to the Contract will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by OGS and the results of such testing must be satisfactory to OGS before web-based information and applications will be considered a qualified deliverable under the Contract.

2.22 NEW YORK STATE STATEWIDE FINANCIAL SYSTEM

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.0 Bundle 18, operating on PeopleTools version 8.49.33. The State is planning to upgrade to PeopleSoft Financials version 9.2 sometime in 2015. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with centralized contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor’s participation in the catalog site development or management. Upon completion and activation of an on-line

catalog, State agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: www.sfs.ny.gov and http://www.osc.state.ny.us/agencies/guide/MyWebHelp/.

2.23 ADDITIONAL REQUIREMENTS

For reasons of safety and public policy, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work under this Contract.

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

2.24 INSURANCE REQUIREMENTS

Contractor agrees to comply with the Insurance Requirements as described in Appendix C: *Heavy Duty Truck Contract Documents*, Number 5: *Insurance Requirements*. If requested by Procurement Services, Contractor must provide proof of current insurance, certifications, licensing, etc. throughout the Contract term.

2.25 EMERGENCY PURCHASING

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

2.26 REPORT OF CONTRACT USAGE

The Contractor shall furnish a report of all Product provided under the Contract during each quarterly period, no later than fifteen (15) days following the close of the quarterly period. Quarterly periods will end on March 31st, June 30th, September 30th and December 31st. 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 quarterly report. Purchases by all Authorized Users under the Contract shall be reported in the same report and be indicated as required. A template for such report is included in Appendix C: *Heavy Duty Truck Contract Documents*, Number 3: *Report of Contract Usage*. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided, in Microsoft Excel 2003, or newer (or as otherwise directed by OGS), to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the OGS group number, award number, Contract Number, sales period, and Contractor's (or other authorized agent) name, and all other fields required. OGS reserves the right to amend the report template during the Contract term.

2.27 TAX LAW SECTION 5-A

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than $100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State are in excess of $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made. This law imposes upon certain Contractors the obligation to certify whether or not the Contractor, its affiliates, and its subcontractors are required to register to collect State sales and

compensating use tax and Contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving Agency, from approving a Contract awarded to a Contractor meeting the registration requirements but who is not so registered in accordance with the law. Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor has filed the ST- 220-TD with the NYS Department of Taxation and Finance (DTF). Please note that the NYS Department of Taxation and Finance should receive the completed Form ST-220-TD, not OGS. OGS should only receive the Form ST-220-CA.

Proposed Contractors should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a Bidder non-responsive. Each Bidder 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 No. 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 No. 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.

2.28 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 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, §15, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

2.29 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 Contract.

2.30 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER 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) (EO4), 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://www.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.

2.31 DIESEL EMISSION REDUCTION ACT OF 2006

Pursuant to N.Y. Environmental Conservation Law §19-0323 ("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 its 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. The Bidder/Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and 6 NYCRR Parts 248 and 249.

3 SPECIAL TERMS & CONDITIONS

3.1 PRICE

All Contract pricing shall be the final published pricing on the currently available OEM Pricelist(s) or Contractor-Published Pricelist(s), as applicable, and approved for inclusion in the Contract. Contractor shall state the OEM Pricelist, or Contractor-Published Pricelist, name(s) and effective date(s) applicable to each Base Item bid on the Contract Pricelist. The Contractor will be required to provide the awarded Base Item(s) at the prices and discounts quoted in its bid submitted in response to the IFB.

The Discounts included in the bid, (i.e., Chassis Cab, Dump Body, Plow and ELP Discounts, and AOAC Discounts) may be increased by the Contractor at any time during the Contract term, but may <u>not</u> be decreased for the entire term of the Contract.

3.1.1 BASE ITEM UNIT PRICE

The Base Item Unit Contract Price for each Item shall use the final published pricing currently available OEM Pricelist(s) or Contractor-Published Pricelist(s), as applicable, and approved for inclusion in the Contract. Unless otherwise specified by an Authorized User, the Base Item Unit Contract Price for each Base Item shall also include all customs, duties and charges, all vehicle preparation and clean-up charges, New York State motor vehicle inspection, installation charges and all other incidentals normally included with providing a Chassis Cab or Upfitted Truck, including any manufacturer's fees. Pursuant to Appendix B, *Shipping/Receipt of Product*, freight terms are F.O.B. Destination, and shipping costs shall be calculated in accordance with Section 3.5 *Delivery*. Offers of pricing greater than the Base Item MSRP shall be rejected.

3.1.2 ADDITIONAL CHASSIS CAB AND TRUCK BODY PRODUCT LINE DISCOUNTS

The discounts offered for Chassis Cab and Truck Bodies shall be applied to the MSRP for additional Models offered under the Contract as follows. See also Section 3.2.5 *Chassis Cab, Truck Body and Plow Substitutions*.

A. <u>Chassis Cab Lots</u>. The Chassis Cab Discount for Chassis Cab Lots (i.e., Lots I, II and III) shall also be applied to the MSRP included on the OEM Pricelist for additional Chassis Cab Models offered under the Contract.

B. <u>Truck Body Lots</u>. The Dump Body Discount for Truck Body Lots (i.e., Lots IV and V) shall also be applied to the MSRP included on the Contractor-Published Pricelist for additional Dump Body Models offered under the Contract. For Lot VI *ELP Interchangeable Body Systems*, the ELP Discount offered shall apply to both the ELP Product Line and for Aftermarket Components.

C. <u>Upfitted Truck Lots</u>. The Chassis Cab and Dump Body Discounts for Upfitted Truck Lots (i.e., Lots VII, VIII and IX) shall also be applied to the applicable MSRP included on the OEM Pricelist for additional Chassis

Cab Models offered under the Contract, and to the MSRP included on the Contractor-Published Pricelist for additional Dump Body Models offered under the Contract.

3.1.3 ADDITIONAL OPTIONS AND AFTERMARKET COMPONENTS (AOAC) DISCOUNT

Additional Options and Aftermarket Components (AOAC) offered under the Contract are limited to products that are (1) listed on the OEM or Contractor-Published Pricelist(s), and (2) may be installed on the awarded Chassis Cab series or Truck Body Product Line by the Contractor, or third-party. The following terms and conditions apply to AOAC:

A. Contractor shall offer a single discount for Chassis Cab, Dump Body and/or Plow AOAC for each Base Item, as applicable. Offers of pricing greater than the MSRP shall be rejected. Contractor must offer <u>all</u> Chassis Cab Options, Dump Body Options, additional Plows Models and related Plow Options and Aftermarket Components sold under Contract at the applicable AOAC Discount. For Lot VI *ELP Interchangeable Body Systems*, the ELP Discount offered shall apply to both the ELP Product Line and for Aftermarket Components.

B. The AOAC Discount shall be applied to the MSRP on the OEM Pricelist or Contractor-Published Pricelist, as applicable, to yield a NYS Net Contract Price, as follows:

   i. <u>Chassis Cab</u>. The Chassis Cab AOAC Discount shall be applied to the MSRP included on the OEM Pricelist. If Aftermarket Components are offered for a Chassis Cab, the Chassis Cab AOAC Discount shall be applied to the MSRP included on the Contractor-Published Pricelist;

   ii. <u>Dump Body</u>. The Dump Body AOAC Discount shall be applied to the MSRP included on the Contractor-Published Pricelist;

   iii. <u>Plow</u>. The Plow AOAC Discount shall be applied to the MSRP included on the Contractor-Published Pricelist for additional Plow Models not included in the Base Item Specifications, and for Plow Options;

   iv. <u>Credits</u>. The AOAC Discount shall not apply to an Option or Aftermarket Component with an MSRP that is a credit (e.g., -$20.00). The credit for such features shall be applied to the MSRP of the Base Item before applicable discounts are applied; and

   v. <u>Replacement Parts</u>. The discount for replacement parts shall be the applicable AOAC Discount (e.g., if the replacement part is for the Dump Body, then the Dump AOAC Discount shall apply).

C. When an AOAC is being added or deleted from the Base Item specifications, or upon request, Contractors are required to give the Authorized Users a copy of the OEM Pricelist or Contractor-Published Pricelist for the applicable AOAC. Any addition or deletion must be clearly shown on the invoice and clearly show the MSRP, the application of the AOAC Discount for the Option, and the resultant NYS Net Contract Price.

D. The NYS Net Contract Price for Options shall include any and all labor, installation, fittings, connections, etc., that might be needed to attach the Options to the Chassis Cab or Truck Body so that the Option operates to the Option's full design capabilities; there shall be no additional up-charges, fees, etc., for adding Options. The Contractor may add normal, published labor rates to install Aftermarket Components and labor shall not be more than what is charged to the public at large.

E. If the Contractor sells an Option or Aftermarket Component to the public at large with pricing that is lower than the application of the Additional Options and Aftermarket Components Discount to the MSRP, then the price that is charged to the public at large shall be charged to Authorized Users. This shall be clearly shown on the invoice as a "Special Value" or by some other phrase or identifying designation.

3.1.4 DELIVERY

Contractors will be required to deliver Chassis Cabs and Upfitted Trucks anywhere within New York State boundaries, as designated by the Authorized User on the Purchase Order. Pursuant to Appendix B §35, *Shipping/Receipt of Product*, freight terms are F.O.B. Destination. The cost of delivery shall be calculated either

on a per mileage basis, or in accordance with the Delivery Allowance Schedule (DAS) below, whichever is less. A Contractor shall list a Delivery Cost per Mile charge on the Contract Pricelist.

A. **Per Mileage Calculation**. If mileage is calculated on a per mileage basis, the mileage used for calculation shall be the actual mileage that the Chassis Cab or Upfitted Truck incurred as a result of the delivery, and/or the actual mileage that the Contractor incurred on a vehicle used for the delivery to the Truck Body Contractor or Authorized User. Mileage travelled by the OEM when delivering Product to the Contractor's place of business, or the Contractor's authorized dealer location that is nearest to the delivery location, (e.g., when a Cab Chassis is drop-shipped to the Contractor), shall not be included in the calculation. If a Contractor's place of business is not located within the State of New York, then mileage shall be calculated from the point of entry into New York State.

B. **Delivery Allowance Schedule (DAS).** The following Delivery Allowance Schedule (DAS) indicates the maximum dollar amount that will be paid for delivery of a Chassis Cab or Upfitted Truck from the Delivery Origin to the applicable Region to which the Chassis Cab or Upfitted Truck is delivered. A Contractor may charge a Delivery Charge that is less than the Delivery Allowance. The Region is determined by the New York State County in which the Delivery Origin is located. If the Delivery Origin is not located within the State of New York, then the Region utilized shall be the Region that is closest in distance to the Delivery Origin.

EXAMPLE: If the Delivery Origin is in Albany County (Region 3), and the delivery location is in Westchester County (Region 5), the Delivery Allowance is $275. Each Contractor will only be concerned with their particular region (i.e., if the Delivery Origin is in Region 1, the only row that will be utilized is the first one).

Each February 1st, beginning with February 2016 the DAS chart shall be updated in accordance with changes in the CPI, (Series Id: CUUR0100SA0, CUUS0100SA0; Not Seasonally Adjusted; Area: Northeast urban; Item: All items, http://data.bls.gov/pdq/SurveyOutputServlet?series_id=CUUR0100SA0,CUUS0100SA0; by comparing the value for December of the year involved to the value for December 2014. For example, if the value for December 2015 is 220.4 and the value for December 2014 was 206.2, the DAS would increase by 6.89% (e.g., 220.4/206.2 = 1.0688965 = 6.89% rounded increase), effective February 1, 2016. The values in chart shall be rounded to the nearest five (5) dollar amount (e.g., $161 would be rounded to $160, and $166 would be rounded to $165).

DELIVERY ALLOWANCE SCHEDULE (DAS):

VENDOR LOCATION	Delivery to Region					
Region	**1**	**2**	**3**	**4**	**5**	**6**
1	$190	$275	$455	$525	$620	$815
2	$275	$190	$275	$275	$345	$620
3	$455	$275	$190	$275	$275	$620
4	$525	$275	$275	$190	$525	$795
5	$620	$345	$275	$525	$190	$310
6	$815	$620	$620	$795	$310	$190

DELIVERY REGIONS:

Region 1	Region 2	Region 3	Region 4	Region 5	Region 6
Allegany	Broome	Albany	Clinton	Dutchess	Bronx
Cattaraugus	Cayuga	Columbia	Essex	Orange	Kings
Chautauqua	Chenango	Fulton	Franklin	Putnam	Nassau
Chemung	Cortland	Greene	St. Lawrence	Rockland	New York
Erie	Delaware	Hamilton		Sullivan	Queens
Genesee	Herkimer	Montgomery		Ulster	Richmond
Livingston	Jefferson	Rensselaer		Westchester	Suffolk
Monroe	Lewis	Saratoga			
Niagara	Madison	Schenectady			

Ontario	Oneida	Schoharie			
Orleans	Onondaga	Warren			
Schuyler	Oswego	Washington			
Seneca	Otsego				
Steuben	Tioga				
Wayne	Tompkins				
Wyoming					
Yates					

3.1.5 CONTRACT PRICE LIST

The Contractor shall provide a Contract Pricelist to Procurement Services based on the bid submitted by the Contractor. The Contractor will be required to provide the awarded Base Item(s) at the prices and discounts quoted in its bid.

The Contract Pricelist shall be made available to Authorized Users and posted publically on the OGS Web site, and shall include at a minimum, the Make(s), Model(s) and Model Code(s), NYS discounts (i.e., Chassis Cab, Dump Body, Plow and ELP Discounts, and AOAC Discounts), NYS Net Contract Price, and configuration of the of the Base Item(s) and Plow, if applicable, which has been approved by Procurement Services for inclusion in the Contract. OGS reserves the right to require that the Contract Pricelist include an item number, description and NYS Contract Price for Options and Aftermarket Components to be offered under the Contract.

Notwithstanding the foregoing, where an Authorized User does not have the capability to access Contract information electronically, it shall be the Contractor's responsibility, upon Authorized User request, to furnish, without charge, Contract Pricelists, and applicable OEM and Contractor-Published Pricelists, pursuant to the Contract, to Authorized Users who request them. Contract Pricelists, and applicable OEM and Contractor-Published Pricelists, may be furnished to Authorized Users in either hard-copy or electronic format. If available in both formats, they shall be furnished in the format preferred by the requesting Authorized User. Upon request, the Contractor shall assist Authorized Users in the use of Contract Pricelists.

In order to receive approval for additions and deletions of Product from the Contract Pricelist, the Contractor must submit a completed Appendix C: *Heavy Duty Truck Contract Documents*, Number 4: *Contract Modification Procedure*. and the applicable OEM Pricelist(s), identified with name and effective date, to the Procurement Services Contract administrator. If approved, Procurement Services will notify the Contractor in writing and post the revised Contract Pricelist to the OGS website.

3.1.6 AFTERMARKET COMPONENTS PRICELISTS

Upon request by the Authorized User, a Contractor shall supply a hard-copy or electronic copy of the Contractor-Published Pricelist for Aftermarket Components that are sold under the Contract.

3.1.7 PRICE CHANGES

Notification from the vendor of a new OEM Pricelist should be made in writing thirty (30) days prior to the date the prices take effect. Price changes may be requested quarterly, and will go into effect after all necessary approvals on the first day of the next quarter (e.g. January 1, April 1, July 1 and October 1). In order to receive approval for price changes, the Contractor must submit the applicable OEM Pricelist(s), identified with name and effective date, to the NYSPro Contract administrator. OGS reserves the right to request additional information that may be needed in order to determine if the price changes are reasonable.

Aftermarket Component prices shall be based on the current OEM Pricelist available from the manufacturer at the time an Authorized User is invoiced. Price changes may occur, without prior approval from NYSPro, in accordance with changes made by the Aftermarket Component OEM.

Chassis Cab, Truck Body, Upfitted Truck and Option prices are firm for either the first twelve (12) months of the Contract term, or for the Model Year bid, if applicable. Thereafter, prices shall be subject to increase or decrease during the Contract period, subject to OGS approval, in accordance with the following:

A. Chassis Cab. Changes to Chassis Cab and related Options prices may be requested in accordance with MSRP price adjustments made to the OEM Pricelist during the current Model Year, or upon announcement of a new Model Year.

B. Dump Bodies (excluding ELP) and Plows. Changes to Dump Body, Plows and related Options prices may be requested in accordance with MSRP price adjustments made to the Contractor-Published Pricelist;

C. ELP Interchangeable Body Systems. Changes to ELP Interchangeable Body Systems prices may be requested in accordance with MSRP price adjustments made to the OEM Pricelist.

D. Plows. Changes to Plow and related Options prices may be made in accordance with MSRP price adjustments made to the Contractor-Published Pricelist;

E. Aftermarket Components. Price changes to Aftermarket Component prices may be made in accordance with MSRP price adjustments made to the Contractor-Published Pricelist, without prior approval from Procurement Services.

F. Price Change Requests. Notification from the Contractor of a new or revised OEM Pricelist or Contractor-Published Pricelist should be made in writing thirty (30) days prior to the date the prices take effect. In order to receive approval for price changes, the Contractor must submit a completed Appendix C: *Heavy Duty Truck Contract Documents*, Number 4: *Contract Modification Procedure* and the applicable OEM Pricelist(s), identified with name and effective date, to the Procurement Services Contract administrator. OGS reserves the right to request additional information that may be needed in order to determine if the price changes are reasonable. Price changes may be requested quarterly, and will go into effect after all necessary approvals on the first day of the next quarter (e.g. January 1, April 1, July 1 and October 1). If approved, Procurement Services will notify the Contractor in writing and post the revised Contract Pricelist to the OGS website.

G. Price Increases. Procurement Services reserves the right to deny price increases that are determined, at the sole discretion of Procurement Services, to be unreasonable. Prices shall in no event exceed the MSRP included on the OEM Pricelist or Contractor-Published Pricelist, as applicable. Price increases shall not be effective until Procurement Services has notified the Contractor in writing that they have been approved.

H. Price Decreases. Notwithstanding the foregoing, when price decreases become effective on a new or revised OEM Pricelist or Contractor-Published Pricelist, the Contractor shall immediately apply the decreased price to purchases from the Contract. Prior approval for decreased prices is not required.

I. Discount Changes. The Contract discounts (i.e., Chassis Cab, Dump Body, Plow and ELP Discounts, and AOAC Discounts) may be increased by the Contractor at any time during the Contract term, but may not be decreased for the entire term of the Contract.

3.1.8 LOWER PRICING

The State reserves the right to negotiate lower pricing, or to advertise for bids, whichever is in the State's best interest as determined by the Commissioner, in the event of a significant decrease in market price of any Product listed under the Contract. In addition, if the Contractor's normal pricing to the public or to the trade in general is less than the NYS Net Contract Price, then the normal pricing to the public or to the trade in general shall also be granted by Contractor to Authorized Users.

Price decreases to the Authorized User are permitted at any time, and do not need prior approval by Procurement Services. If, prior to the delivery of a Chassis Cab or Upfitted Truck by the Contractor, a price reduction is included in the applicable OEM or Contractor-Published Pricelist, a comparative price reduction shall be given to the Authorized User.

3.1.9 GOVERNMENT MANDATED PROGRAM PRICE ADJUSTMENT

An adjustment in price may be permitted, upon approval by the State, if a government mandated program, (e.g., a new standard for emissions) takes effect and suitable documentation is furnished to the State and the State determines the requested price change is verifiable and is reasonable. Such a price adjustment may be permitted for only a limited time, since such an adjustment would eventually be reflected in the MSRP.

3.1.10 UNWORKABLE PRICE STRUCTURE

Should the price structure utilized by the parties become unworkable, detrimental or injurious to the State and/or Contractor or result in prices which are not truly reflective of current market conditions, and the price is deemed unreasonable or excessive by the Commissioner, and no adjustment in price is mutually agreeable, the Commissioner reserves the sole right upon ten (10) days written notice mailed to the Contractor to terminate the Contract. If the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on an unworkable price structure, it shall immediately notify the State of that fact in order that the State may take appropriate action. Such notification shall be in writing and shall be directed to the Office of General Services, Procurement Services. Such notification shall not relieve the Contractor of its responsibilities under the Contract.

The State reserves the right to implement changes in price based on unforeseen factors (e.g., dramatic changes in Product availability, delivery, costs, etc.), that substantively affect the Contractor's business processes or that may impact Contract pricing, at the sole discretion of the State. Such changes may be based on information from the U.S. Bureau of Labor Statistics, industry data, or other sources.

3.1.11 LIMITATION

Price adjustments are limited to changes as allowed for in Section 3.1 *Price*. Increases in Contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs to the Contractor, will not be allowed during the Contract period.

3.1.12 REBATES

The State reserves the right to determine the disposition of any rebate settlement, restitution, liquidated damages, etc. which arise from the administration of the Contract.

3.2 PRODUCT REQUIREMENTS

The following shall be considered minimum Product requirements. The Contract Pricelist includes supplemental required specifications for Items in each Lot. Unless otherwise indicated, all items specified on the Contract Pricelist which are listed on the OEM or Contractor-Published Pricelist as standard or optional equipment for a Product provided under the Contract shall be factory installed and operative. Product delivered to an Authorized User in a condition considered to be below retail customer acceptance levels will not be accepted. Items which determine this acceptance level shall include, but not be limited to, the general appearance of the interior and exterior of the Chassis Cab, Truck Body or Upfitted Truck for completeness and quality of workmanship, lubrication and fluid levels, with any leaks corrected, mechanical operation of the vehicle and all electrical components operational. Product specified to be furnished and installed which is not available through the OEM shall conform to the best quality standards known to that particular industry, both product and installation.

3.2.1 STANDARDS, CODES, RULES AND REGULATIONS

Product shall be designed and assembled in accordance with all applicable industry standards. It will comply with all governmental regulations as they apply to the operation of the Chassis Cab, Truck Body or Upfitted Truck described in the specifications including, but not limited to, those listed below. If applicable, the appropriate decals indicating compliance shall be affixed to the Upfitted Truck.

A. Product shall conform to any and all applicable New York State laws, regulations and directives, including but not limited to, New York Codes, Rules and Regulations (NYCRR), New York State Vehicle and Traffic Law (NYSVTL), and New York State Dept. of Motor Vehicles (NYSDMV).

B. Product shall comply with all current applicable Federal Motor Vehicle Safety Standards (FMVSS), Federal Motor Carrier Safety Administration (FMCSA), National Highway Traffic and Safety (NHTSA), Environmental Protection Agency (EPA), and Occupational Safety & Health Administration (OSHA) requirements.

C. Product shall comply with the regulations of the Federal Government and New York State (NYCRR) governing the control of air pollution from new motor vehicles and new motor vehicle engines in effect on the date of manufacture. Please refer to NYCRR (NY Codes Rules and Regulations), Title 6 (Environmental Conservation) Part 218, Emissions Standards for Motor Vehicles and Motor Vehicle Engines.

D. Product shall be manufactured in accordance with any codes, standards and engineering practices as recommended by the following professional organizations for the specific vehicle/equipment:

American Institute of Steel Construction (AISC)
American National Standards Institute (ANSI)
American Society of Mechanical Engineers (ASME)
American Society for Testing and Materials (ASTM)
American Trucking Association (ATA)
American Welding Society (AWS)
American Wood-Preservers Association (AWPA)
Battery Council International (BCI)
British Standards Institute (BSI): Limits and Fits
Compressed Air and Gas Institute (CAGI)
Industrial Fastener Institute (IFI)
International Standards Organization (ISO)
Joint Industrial Council (JIC)
National Fire Protection Association (NFPA)
National Truck and Equipment Association (NTEA)
Power Crane and Shovel Association (PCSA)
Society of Automotive Engineers (SAE)
Society of Manufacturing Engineers (SME)
Steel Structure Painting Council (SSPC)
Tire and Rim Association (TRA)

3.2.2 STANDARD EQUIPMENT

All items of standard equipment which are provided by the OEM shall be furnished unless such items are expressly deleted by the Authorized User or are specified to be other than standard. When Optional equipment is specified, all components listed in the OEM Pricelist as being included with the Option shall be furnished.

Example: If the standard Chassis Cab comes with air conditioning, then it must be included with the Chassis Cab provided to the Authorized User. Air conditioning cannot be deleted because it was not identified as required by the specifications.

3.2.3 MANUALS

Simultaneous with delivery, all Product shall be furnished with standard manuals (e.g. maintenance, parts and operational manuals) as would normally accompany such Product(s). Manuals may be provided printed and bound, on CD, or at an online website. If paper manuals are provided, an Authorized User shall be able to opt not to receive extra copies of documentation when ordering multiple units. This arrangement should be agreed upon between the Contractor and the Authorized User prior to order. An Authorized User may also want to purchase additional sets of documentation, if needed. If the provision of additional sets of documentation is subject to a separate cost, the Contractor must so advise the Authorized User at the time of order. Contractor shall also

ensure that the part numbers associated with this provision of additional sets of documentation are available to the Authorized User and included on the OEM or Contractor-Published Pricelist.

Further, where documentation is provided either in printed or electronic format, Authorized User shall be entitled to make copies to the extent necessary to fully enjoy the rights granted under the Contract provided that the Authorized User reproduces the copyright notice and any other legend of ownership on any copies made.

3.2.4 COMPATIBLE EQUIVALENT

Whenever an item is specified in this Contract by trade name of an OEM, the term “compatible equivalent,” if not inserted therewith, shall be implied. Any reference to a particular OEM’s product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a 'no substitute' or ‘no substitution(s)’ is requested. When a 'no substitute' or ‘no substitution(s)’ is requested, Procurement Services will consider bids for the referenced Product only. The term “compatible equivalent,” is defined as meaning any other Product which, in the sole opinion of Procurement Services, is equal in performance, quality and design in such a way that the Product is directly interchangeable with the referenced Product without modification.

3.2.5 CHASSIS CAB, TRUCK BODY AND PLOW SUBSTITUTIONS

A Contractor shall only offer Chassis Cabs, Truck Bodies or Plows from the OEM awarded for each Lot. Under no circumstances may a Chassis Cab, Truck Body or Plow from another OEM be substituted for the OEM awarded for a Lot. For example, if the Contractor is awarded a Dump Body from OEM “Company A” for Lot IV *Truck Bodies (Single Axle Dump Body and Plow)* the Contractor may not substitute a Dump Body from OEM “Company B” for that Lot. Additional Chassis Cab, Truck Body and Plow Models may be offered under the Contract as follows. See also Section 3.1.2 *Additional Chassis Cab and Truck Body Product Line Discounts*, Section 3.1.3 *Additional Options and Aftermarket Components (AOAC) Discount*, Section 3.2.7 *Chassis Cab and Truck Body OEM Options,* and Section 3.2.8 *Aftermarket Components.*

A. Chassis Cab Substitutions. A Chassis Cab (Lots I, II and III) or Upfitted Truck Contractor (Lots VII, VIII and IX), may offer additional Chassis Cab Models under the Contract, provided that the additional Models are within the same Model series as the Base Item awarded for the applicable Lot (e.g., Model awarded is 4600, and substitute Model is 4650), and that the GVWR of the additional Model does not fall within another Lot (e.g., Lot awarded is Lot I: *Chassis Cab: Class 8, 37,000 lb. GVWR*, substitute Model GVWR is over 37,000 but under the GVWR for Lot II: *Chassis Cab: Class 8, 47,000 lb. GVWR*).

B. Truck Body Substitutions. For Truck Body Lots (Lots IV and V, excluding Lot VI *ELP Interchangeable Body Systems*), and Upfitted Truck Lots (Lots VII, VIII and IX), a Contractor may offer additional Truck Body Models under the Contract, provided that the additional Models are manufactured by the same OEM as the Model Awarded, and that Model is a Dump Body. Additional Truck Body types (e.g., stake, box or service/utility) shall not be substituted for Truck Body Lots (Lots IV and V, excluding Lot VI *ELP Interchangeable Body Systems*), and Upfitted Truck Lots (Lots VII, VIII and IX). For Lot VI *ELP Interchangeable Body Systems*, the Contractor shall offer the entire ELP Product Line.

C. Plow Substitutions. For Truck Body Lots (Lots IV, V and VI), and Upfitted Truck Lots (Lots VII, VIII and IX), a Contractor may offer additional Plow Models under the Contract, provided that the additional Models are manufactured by the same OEM as the Model Awarded.

3.2.6 EQUIPMENT, PARTS AND ACCESSORIES

All equipment, parts and accessories furnished under the Contract shall be in accordance with current standard published data book specifications, requirements, recommendations and options of the respective OEMs in addition to conforming to all Federal and State Regulations in effect at the time of delivery. Additionally:

A. All electronic systems shall be properly insulated so as to not cause any interference with the operation of the Chassis Cab or Upfitted Truck or the land mobile radio communications system, when properly installed in the Chassis Cab or Upfitted Truck.

B. Power systems must be compatible with the engine, transmission, axles, hydraulic system and power steering, etc., in order to meet the requirements specified herein.

C. Upfitted Trucks shall meet the maximum gradeability of the manufacturer when loaded to maximum GVWR without exceeding the engine manufacturer's recommended maximum revolutions per minute ("RPM") based on maximum net torque.

D. The ratio of the rear axle and transmission shall be geared to maintain a road speed of approximately sixty-five (65) mph on a level road, when operating at maximum GVWR without exceeding the recommended engine RPM figure.

E. Brakes, axles, and suspension components shall meet or exceed the specified axle rating.

F. All welds to brackets shall be high quality and show no visible signs of porosity. All OEM and fabricated brackets and braces shall be finish ground smooth, all sharp corners or edges removed, prepped, primed and painted on all sides to match their surroundings.

G. The Authorized User shall have its choice of the manufacturer’s standard paint colors, and shall designate the selection on the Purchase Order. All surfaces, including bumpers, wheels and spares which are normally painted shall be factory painted with the specified color. Equipment supplied by other than the OEM shall have any rust spots and welding slag removed, be properly sanded, cleaned, prepped and primed per the paint manufacturer’s recommendations. The Chassis Cab or Upfitted Truck shall be carefully smoothed, cleaned, primed and finished with top quality transportation enamel. Truck Bodies and auxiliary equipment shall be primed and finished with not less than two (2) coats of durable enamel in the manufacturer’s standard color specified by the Authorized User. All paint, primer, basecoats, clear coats or any other coating within the paint system shall be lead free.

H. The Chassis Cab or Upfitted Truck shall have all required rust proofing applied to the exterior and underside of the vehicle. No rustproofing compound can be on the personnel compartment's items or the exterior of the Truck Body in unsightly or unintended areas.

I. Tire size and type shall be original equipment brand or as indicated in the Contract Pricelist. Tire inflation monitors shall be supplied as required by Federal Motor Vehicle Safety Standard (FMVSS) 138.

J. All fuel, oil, hydraulic, and air filters shall be serviceable without interference from other Truck Body, Chassis Cab, Plow, and air & hydraulic system components. Chassis Cab Contractors and Truck Body Contractors shall coordinate filter and component placements to ensure unimpeded servicing is available;

K. Upfitted Trucks will not exceed the aggregate value of the GAWR. The GAWR of a front and rear axle assembly shall meet, or exceed, the lowest component rating thereof;

L. The Chassis Cab Contractor and Truck Body Contractor, or Upfitted Truck Contractor, as applicable, will ensure installed Truck Body components will not interfere with Chassis Cab configurations and vice versa.

M. Specifications provided by the Authorized User (e.g., Cab to Axle and Wheel Base measurements) shall be adjusted appropriately for the Upfitted Truck’s intended application. See also Section 3.3 *Pre-Production Meeting*.

3.2.7 CHASSIS CAB AND TRUCK BODY OEM OPTIONS

The Contractor must offer the Chassis Cab, Dump Body or Plow bid, with all of the standard features and Options specified for the applicable Base Item in the Contract Pricelist.

Authorized Users may purchase the Base Item awarded and choose to have Options added or deleted. Such Options will generally be considered OEM, but may be from other suppliers that the OEM may utilize and/or may be considered part of the OEM’s standard Product Line for the Chassis Cab, Dump Body or Plow. Additional Options to be offered under the Contract are limited to products that are (1) listed on the OEM or Contractor-Published Pricelist(s), and (2) may be installed on the awarded Chassis Cab or Truck Body by the Contractor, or third-party.

See Section 3.1.3 *Additional Options and Aftermarket Components (AOAC) Discount* for pricing information relative to the addition and deletion of Options.

A. **Deletions**: It is anticipated that Authorized Users may delete Options that have been required by the Base Item specifications for the Chassis Cab, Dump Body or Plow involved. Contractor shall be required to honor all such deletions.

B. **Additions**: It is anticipated that Authorized Users may add Options above and beyond that which have been required by the solicitation's specifications for the Chassis Cab or Truck Body involved. Contractor shall be required to honor all such additions.

C. **Thruway Package**: It is anticipated that the NYS Thruway (Thruway) will require the Thruway Package specified on the Contract Pricelist for Lot VI *Truck Bodies (ELP Interchangeable Body Systems)* ordered from the Contract. Contractor shall be required to honor all such additions of Thruway Packages. When a Thruway Package is specified on the Purchase Order, it shall meet the specifications listed on the Contract Pricelist.

D. **Replacement Parts:** It is anticipated that Authorized Users may require purchase of Options separately from a Contract Item, for replacement parts for Contract Items. Contractor shall be required to honor all such purchases. Replacement parts may not be purchased for use with Chassis Cabs, Truck Bodies and Plows that have not been purchased from the Contract.

3.2.8 AFTERMARKET COMPONENTS

The Contractor may offer Aftermarket Components from its full Product Line, provided that the Aftermarket Component is (1) listed on the OEM or Contractor-Published Pricelist(s), and (2) may be installed on the awarded Chassis Cab or Truck Body by the Contractor, or third-party. Aftermarket Components may not be purchased for use with Chassis Cabs, Truck Bodies and Plows that have not been purchased from the Contract.

3.2.9 AVAILABILITY OF SERVICE & REPAIR PARTS

Service and repair parts for Product on Contract must be available to Authorized users within New York State. Repair parts must be available on an on-demand basis to Authorized Users for delivery within twenty-four (24) State business hours, unless such part is nationally backordered. Additional payment for expedited orders is at the discretion of the Contractor(s) and must be mutually agreed upon by the Contractor and Authorized User prior to shipment.

3.2.10 ADVERTISING

No name, trade mark, decal or other identification, other than that of the OEM, shall be applied to the Chassis Cab or Upfitted Truck without prior approval by the Authorized User. Identification of the Contractor shall not be attached to the Upfitted Truck. Splash guards shall be plain (without lettering) unless done so in compliance with the specifications of the solicitation. In any instance of violation of these restrictions the cost to the State for removal of such advertising will be deducted from Contractor's outstanding voucher.

3.2.11 DMV INSPECTION

Unless otherwise instructed by the Authorized User, all Chassis Cabs must be delivered with complete NYS Inspections. In the event that a Chassis Cab is delivered uninspected, $250 will be deducted from the invoice by the Authorized User to cover the cost of the inspection and to compensate for time. The State reserves the right to cancel a Contract and/or take other action if Chassis Cabs are not properly inspected or if the New York State Department of Motor Vehicles inspection sticker is not properly affixed to a Chassis Cab.

3.3 PRE-PRODUCTION MEETING

Contractors shall be required to consult with the Authorized User upon receipt of a Purchase Order in order to ensure complete and accurate understanding of the Chassis Cab, Truck Body and Upfitted Truck specifications, and delivery requirements, required by the Authorized User. The contractor shall advise the Authorized User of all design changes, including component style or performance changes, which the applicable Base Item has undergone since Contract execution.

It is understood that it is the responsibility of the Contractor to advise the Authorized User prior to production if the Chassis Cab, Truck Body and Plow specifications that they have provided will result in an improperly rated Upfitted Truck (e.g., due to its particular weight distribution), and to recommend the proper equipment and Options that will meet the Authorized User's needs.

The Contractors for Chassis Cab Lots (Lots I, II, and III) and Truck Body Lots (Lots IV, V, and VI) shall coordinate and attend a pre-production meeting, if required by the Authorized User, at a location convenient to the Authorized User, to provide all necessary information prior to building any Upfitted Truck, or scheduling production. Only after the pre-production meeting, if required by Authorized User, and subsequent approval from the Authorized User, shall the Contractor begin the production.

3.4 PILOT MODEL INSPECTION

Prior to completion of all Chassis Cab and Upfitted Trucks ordered, a complete pilot model inspection of one or more Chassis Cab or Upfitted Trucks shall be provided by the Contractor if requested by the Authorized User. The terms and conditions of such inspection(s) shall be provided by the Authorized User, and should be agreed upon by the Contractor and Authorized User prior to scheduling production. This inspection shall take place inside a building and on a dry Chassis Cab or Upfitted Truck at the OEM's facility or Contractor's place of business, as agreed to by the Authorized User. The Authorized User shall be responsible for transportation, lodging and meals associated with the initial pilot model inspection. The Authorized User, at their discretion, may require that the Contractor cover the costs of subsequent pilot model inspections should the pilot model not pass the initial inspection.

3.5 DELIVERY

Delivery shall be expressed in number of calendar days required to make delivery after receipt of a Purchase Order (After Receipt of Order ("ARO")). All Chassis Cab and Upfitted Trucks must be delivered within the number of days previously agreed upon by the Contractor and Authorized User, after receipt of the Purchase Order by the Contractor. Failure to deliver within the previously agreed upon time period shall result in payment of liquidated damages in accordance with Section 3.5.10 *Liquidated Damages*.

Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User. It shall be assumed by the parties that the Contractor received the Purchase Order on the third business day following the date of the Purchase Order, unless the Contractor provides credible evidence that the order was received on a later date. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from Procurement Services.

3.5.1 CHASSIS CAB DELIVERY TO TRUCK BODY CONTRACTOR

The Chassis Cab Contractor(s) awarded Lot I, II, or III shall be responsible for delivery to the Truck Body Contractor(s) awarded Lot IV, V, or VI, or other delivery location specified by the Authorized user. The Chassis Cab Contractor agrees to bear the risk of loss, injury, or destruction of the Item(s) ordered prior to receipt of the Items by the Truck Body Contractor, or other delivery location specified by the Authorized user. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations.

The Chassis Cab Contractor shall secure a signed receipt from the Truck Body Contractor, or other delivery location specified by the Authorized User, certifying delivery of the Chassis Cab and the odometer reading. In the event deficiencies are later noted and a properly signed receipt cannot be found, Chassis Cab Contractor will be responsible for certifying delivery and odometer reading.

3.5.2 UPFITTED TRUCK DELIVERY TO AUTHORIZED USER

The Truck Body Contractor(s) awarded Lots IV, V, and VI, and the Upfitted Truck Contractor(s) awarded Lots VII, VIII and IX, shall be responsible for final Product delivery to the Authorized User. The Truck Body or Upfitted Truck Contractor, as applicable, agrees to bear the risk of loss, injury, or destruction of the Item(s) ordered, including the Chassis Cab after receipt from the Chassis Cab Contractor, prior to receipt of the Upfitted Truck by

the Authorized User. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations.

The Truck Body Contractor shall secure a signed receipt from the Authorized User, certifying delivery of the Upfitted Truck and odometer reading. In the event deficiencies are later noted and a properly signed receipt cannot be found, the Truck Body Contractor will be responsible for certifying delivery and odometer reading.

3.5.3 DOT AND THRUWAY UPFITTED TRUCKS DELIVERY

NYS Department of Transportation (DOT) and NYS Thruway (Thruway) Upfitted Trucks provided under the Contract from Lot VII: *DOT Upfitted Trucks (Class 8, 47,000 & 66,000 lb. GVWR, with Dump Body and Plow),* Lot VIII *Thruway Upfitted Truck Class 8, 37,000 GVWR, with Dump Body and Plow* and Lot IX *Thruway Upfitted Truck Class 8, 66,000 lb. GVWR, with ELP Dump Body and Plow,* or other Lots, shall be delivered to DOT and Thruway locations. DOT and Thruway may stagger the delivery of these vehicles over a period of time, and require delivery to multiple locations. For example, order forty (40) Upfitted Trucks with instructions to deliver four (4) Upfitted Trucks to each of the ten (10) DOT delivery locations listed below over a period of time.

Following are the current DOT delivery locations for each DOT Region:

Region 1: 21 Ninth Street, Waterford, NY 12188

Region 2: 10 Harbor Lock Road (West), Utica, NY 13502

Region 3: 5450 South Bay Road, North Syracuse, NY 13212

Region 4 2797 Clover Street, Pittsford, NY 14534

Region 5 4717 South Western Blvd., Hamburg, NY 14075

Region 6: 7000 County Route 70A (mailing), Hornell, NY 14843
Route 36 & County Route 70A (shipping), Hornell, NY 14843

Region 7: Box 22422, Route 342, Watertown, NY 13601

Region 8: 272-278 Violet Avenue, Poughkeepsie, NY 12601

Region 9: 241 Colesville Road, Binghamton, NY 13904

Region 10: 375 North Carleton Avenue, Central Islip, NY 11722

Following are the current Thruway delivery locations for each Thruway Division:

Albany: 200 Southern Blvd., P.O. Box 189, Albany, NY 12201-0189

Buffalo: 455 Cayuga Road, Suite 800, Cheektowaga, NY 14225-0121

Suffern: Suite 400, 4 Executive Blvd., Suffern, NY 10901

Syracuse Suite 250, 2nd Floor, 290 Elwood Davis Road, Liverpool, NY 13088-0308

3.5.4 EXPANSION OF DELIVERY POINTS

Upon mutual agreement, delivery locations may be expanded per Section 2.11 *Non-State Agencies Participation in Centralized Contracts*, 2.9 *Extension of Use* and 2.10 *Extension of Use Commitment*, incorporated herein.

3.5.5 PRE-DELIVERY INSPECTION

At the discretion of the Authorized User, the Contractor may be required to present a Chassis Cab or Upfitted Truck for pre-delivery inspection. The terms and conditions of such inspection(s) shall be provided by the Authorized User, and should be agreed upon by the Contractor and Authorized User prior to scheduling production. This inspection shall take place inside a building and on a dry Chassis Cab or Upfitted Truck at the OEM's facility or Contractor's place of business, as agreed to by the Authorized User. When so required, the Contractor shall make no delivery of a Chassis Cab or Upfitted Truck without written approval of the Authorized User.

The Contractor shall notify the Authorized User by that the Chassis Cab or Upfitted Truck is ready for inspection. Within five (5) working days of the Contractor's notification, the Authorized User will send a team of qualified inspectors to the Contractor's facility, or another mutually agreed upon location convenient to the Authorized User,

to accomplish the inspection of the Chassis Cab or Upfitted Truck before delivery. Upon the inspector's arrival at the facility, the Contractor will assign a mechanic, a runner and a delivery bay to the inspector. It is the Contractor's responsibility to properly itemize, organize and segregate all Chassis Cab or Upfitted Trucks. The above areas of responsibility must be accomplished in order to facilitate an expeditious and orderly inspection flow. This will also allow discrepancies to be corrected while the inspector is located at the Contractor's facility.

Inspected Chassis Cab or Upfitted Trucks which do not comply with these or other requirements will be rejected. All rejected Product will be corrected and the corrected Product will be presented for re-inspection within ten (10) working days. The Authorized User may cancel the Purchase Order if the Contractor fails to correct any problem, without incurring any cost or fee.

3.5.6 CONDITION ON DELIVERY

Chassis Cab and Upfitted Trucks must be delivered strictly in accordance with the Contract specifications and shall be "Ready for Use", and/or as requested by the Authorized User. If a Chassis Cab or Upfitted Truck is delivered with minor deviations or improper servicing, the Contractor must arrange to have the necessary corrective work performed within five (5) days (exclusive of Saturdays, Sundays and Federal or NYS Holidays) after receipt of written notification from the Authorized User and/or Procurement Services. If Contractor cannot arrange to have the necessary work done within such time period, the corrections shall be made by an entity of the Authorized User's choosing and Contractor will be required to reimburse the Authorized User for this expense within thirty (30) calendar days of request.

Each Chassis Cab and Upfitted Truck and its components shall be completely assembled, serviced and ready for use when delivered to the Authorized User. Unless specified otherwise; any parts, components, equipment, controls, materials, features, performances, capacities, ratings or designs which are standard and/or necessary to form an efficient and complete working Upfitted Truck shall be furnished whether specifically required herein or not. Additionally, each Chassis Cab or Upfitted Truck:

A. At point of acceptance, shall have an odometer reading that is consistent with the miles, in distance, to the anticipated odometer mileage incurred between the OEM factory, the Contractor's place of business and the point of delivery. *Note: In the event that a Chassis Cab or Upfitted Truck is delivered with an odometer reading that the Authorized User considers to be excessive, the Contractor shall be required to provide a reasonable explanation for the odometer reading. Chassis Cabs or Upfitted Trucks that are delivered with an odometer reading that is considered excessive without a reasonable explanation may be rejected. Chassis Cabs shall only be used for transport of other Chassis Cabs (e.g., as "mule" trucks), that are included in the Authorized User's delivery.*

B. Shall include the proper forms to apply for a NYS title and license. These forms will include: the original manufacturer's statement of origin signed by the Contractor, and notarized. All title papers shall be properly prepared and executed.

C. Shall be certified to meet or exceed requirements to obtain a NYS license. The GVWR shall be identified in the Chassis Cab as the final complete certification label (minimum rating). The Gross Combined Weight Rating (GCWR) shall be identified by decal in the cab to indicate the approved weight, which can be towed, if applicable.

D. Shall include the proper forms to apply for a NYS registration. These forms shall include:

   1. Required from Contractors in New York State: MSO (Manufacturer's Statement of Origin), MV50 Retail Certificate of Sale (except for trailers with an unladen weight under 1,000 lb.), and MV82 (Vehicle Registration/Title Application); or

   2. Required from Contractors outside New York State: Manufacturer's Certificate or Statement of Origin, and Odometer Disclosure Statement (This is not required if the Manufacturer's Certificate/Statement of Origin includes the odometer disclosure.)

E. Shall have a valid NYS state inspection sticker and a valid NYS emissions inspections sticker. All NYS state inspection requirements are the sole responsibility of the Contractor.

F. Shall have the OEM's recommended pre-delivery service completed.

G. Shall have the Chassis Cab OEM's model name and model number stated on a decal affixed to the inside of the driver's side door.

H. Shall be clean, lubricated, serviced, fuel gauge registering no less than one half recommended capacity, all adjustments completed, all mechanical and electrical motors and components fully functional and operational, and the vehicle will be "road ready" for immediate use.

I. Shall have permanent antifreeze in each vehicle to protect it at a level of -34 °F. Only a low silicate type anti-freeze will be used for vehicles having diesel engines.

J. Shall be free from all dealer signs/emblems. See Section 3.2.10 *Advertising*.

K. Shall include a copy of the OEM warranty and service policy with all warranty vouchers, certificates and coupons. Delayed warranty forms are to be provided with the required motor vehicle paper work.

L. Shall have each Chassis Cab, Truck Body, and other applicable components identified with a metal identification tag that provides the OEM's name, model number and individual serial number. Tags will be affixed in an accessible and readable position on the item.

M. Shall include a bill of materials or line-setting ticket. The bill of materials shall list by part number, capacity, size or otherwise, all major components of the Upfitted Truck (engine, frame, transmission, drive line, axles, alternator, storage battery, fuel tank, etc.). The bill of materials shall be at least as comprehensive as the OEM's line-set ticket.

N. If towed to the Authorized User for delivery, the towing device may not be attached in such a way that holes are drilled in the bumper of the vehicle being towed. Drilling of holes in the vehicle bumpers is not permitted. Any bumper damage caused by a towing device will be replaced by the Contractor at no charge to the Authorized User. If a vehicle is being towed by another vehicle, the vehicle being towed must have the drive shaft disconnected to eliminate unnecessary mileage.

The above items are pre-delivery service items, and Contractors should not misconstrue these requirements with warranty problems that arise after the Authorized User accepts the completed unit which complies with the written specifications.

All charges for any of the aforementioned administrative and technical services and equipment are considered minimum acceptable requirements for delivery and shall be included in the bid price.

3.5.7 POST DELIVERY INSPECTION

After Chassis Cab and Upfitted Trucks have been delivered to the location as stated on the Purchase Order, a post-delivery inspection will be performed by the Authorized User. The report written at the pre-delivery inspection will be used to verify that any deficiencies have been corrected. If any deficiencies remain it is the responsibility of the Contractor to rectify them.

3.5.8 SHIPPING DATES AND DELIVERY TIMES

The following provisions for shipping dates and delivery time shall apply:

A. Contractor shall provide written acknowledgement of orders within five (5) business days after receipt of order.

B. Contractor shall provide ordering Authorized User with anticipated shipping date of completed Chassis Cab or Upfitted Truck with written acknowledgement of order.

C. Contractor shall furnish the Authorized User with written acknowledgement of the shipping date at least fourteen (14) calendar days prior to shipment.

D. For Lot VII *DOT Upfitted Trucks (Class 8, 47,000 & 66,000 lb. GVWR, with Dump Body and Plow),* delivery time will be considered in making Contract award. Delivery of all Upfitted Trucks ordered in the first year of the contract is required by September 15, 2016 and delivery of Upfitted Trucks ordered in

subsequent years is required by September 15 of the year following Contractor receipt of the Purchase Order. If DOT does not issue a Purchase Order by September 15 of any given year, the Contractor will have one (1) year from the actual Purchase Order date to deliver all Upfitted Trucks ordered.

E. If shipment will not be made within the delivery time, the Contractor is required to notify the Authorized User in writing within one (1) business day of when Contractor knows the shipment will not be made within the delivery time. This notification must include the reasons for the delay and the latest date the Vehicle will be shipped. Should the delay not be acceptable to the Authorized User, appropriate contract default proceedings will be initiated under Section 3.5.9 *Default On Delivery*. Failure to supply timely written notification of delay may be cause for default proceedings.

F. All correspondence on shipping dates and delivery times shall be directed to the ordering Authorized User's contact person

3.5.9 DEFAULT ON DELIVERY

If during the Contract period an Authorized User has issued a Purchase Order for a Base Item, and a Chassis Cab, Dump Body or Plow included in that Base Item becomes unavailable or cannot be supplied for any reason (except as provided for in Appendix B §48 *Savings/Force Majeure*), following the issuance of the Purchase Order, a substitute Chassis Cab, Dump Body or Plow deemed by Procurement Services to be equivalent to the specifications for the Chassis Cab, Dump Body or Plow in the resultant Contract(s), must be supplied by Contractor if requested by the Authorized User. The price for substitute Chassis Cab, Dump Body or Plow shall be equal to or less than the Chassis Cab, Dump Body or Plow Price for the Item in the resultant Contract(s).

Alternatively, the Authorized User may, at their sole discretion, cancel the order and purchase the Chassis Cab, Truck Body or Upfitted Truck from other sources. In such event the Contractor shall reimburse the Authorized User for all excess costs over the Contract price.

3.5.10 LIQUIDATED DAMAGES

In the event of a delay or default in the delivery timeframe previously agreed upon by the Contractor and the Authorized User, the Authorized User shall be entitled to and shall assess against the Contractor as liquidated damages and not by way of penalty, a sum calculated as follows:

Two hundred and fifty dollars ($250) per seven (7) calendar day period, per Chassis Cab or Upfitted Truck to compensate for delay, and other loses, detriments and inconveniences attendant upon such delay from the end of the grace period commencing from the time delivery was due as specified on the Purchase Order. A grace period of seven (7) calendar days commencing on and including the Purchase Order date for delivery shall be extended to the vendor prior to the assessment of such liquidated damages. Notice is hereby given to the vendor that, despite the extensions of the grace period herein specified, time shall be of the essence in regard to delivery of the Upfitted Truck.

Liquidated damages, if assessed, shall be deducted from the Purchase Order price for each Chassis Cab or Upfitted Truck delivered against such Purchase Order.

3.6 GENERAL WARRANTY REQUIREMENTS

The Contractor shall warrant the Chassis Cab, Truck Body, Plow and Aftermarket Components against parts failure or malfunction due to design, construction or installation errors, defective workmanship, and missing or incorrect parts. Warranty service shall be available within New York State, and shall be honored by all the manufacturer's dealers in New York State. The Authorized User shall be responsible for all transportation, pick-up and delivery for any Chassis Cabs or Upfitted Trucks procured under the Contract requiring warranty service, unless otherwise agreed upon by the Contractor. Additional payment for delivery and/or pickup by the Contractor is at the discretion of the Contractor(s), and must be mutually agreed upon prior to service.

The warranty period for all coverage shall begin on the date the Chassis Cab or Upfitted Truck is accepted by the Authorized User or put in service, whichever occurs later. Delayed warranty forms are to be provided with the required motor vehicle paper work. Where Chassis Cab or Upfitted Trucks develop Chronic Failures during the

warranty period, Contractor shall extend the warranty period for an equal period of time following correction of such failures, as indicated in the original warranty.

The Contractor will be responsible for all warranty claims related to the Chassis Cab or Truck Body, including all Plow and Aftermarket Components as provided by the Contractor at the time of delivery. All components supplied by the Contractor shall be included and covered by the basic Chassis Cab, Truck Body, Plow or Aftermarket Component warranty. OEM replacement parts are to be new, not remanufactured, unless the OEM has specified that a replacement part be remanufactured, or prior approval has been granted by the Authorized User. All warranties will cover all labor and parts replacement during the warranty period. Normal wear and tear items will be warranted in accordance with manufacturer's standard warranty. Parts replaced under this warranty will be of OEM quality or higher. Service will be at a level to maintain or meet the manufacturer's requirements to sustain the warranty. See Appendix B §59 *Warranties*. The Contractor shall furnish with each repaired vehicle an information sheet that indicates the type of warranty work performed, parts replaced, and number of labor hours involved.

The warranty requirements stated for each Base Item on Appendix C: *Heavy Duty Truck Contract Documents*, Number 2: *Contract Pricelist,* are considered minimum. If the manufacturer's standard warranty exceeds the specified warranty, or if a minimum warranty requirement is not stated in Appendix C: *Heavy Duty Truck Contract Documents*, Number 2: *Contract Pricelist,* the manufacturer's standard warranty shall apply. Whenever extended warranty packages are being promoted by the factory at "No Additional Charge," they shall be extended to all Contract purchases. Manufacturer's warranty shall be provided in written or electronic form to the Authorized User.

3.6.1 WARRANTY REPAIR BY AUTHORIZED USERS

Warranty repairs performed by the Authorized User shall be reimbursed at the Contractor's standard flat reimbursement rates. Rates shall be provided at the request of OGS or the Authorized User. Understanding that the State of New York shop must be "certified" to perform and be reimbursed for warranty repairs, the Contractor will provide documentation that details the qualifications required in order for Authorized User maintenance repair facilities to become certified. If not currently available, the Contractor will document the potential for this type of infrastructure to develop. The Authorized User shall be responsible for all costs associated with becoming certified.

3.7 POST DELIVERY SERVICE

Post-delivery service by authorized representatives of the Chassis Cab, Truck Body, Plow and Aftermarket Components OEMs must be available within New York State for Product awarded in all Lots. Post-delivery service shall be performed in a modern, properly equipped service shop.

An Authorized User shall have the right to utilize any service location for post-delivery service. If requested by an Authorized User, the Contractor shall assist the Authorized User in locating a servicing Dealer.

The Contractor is responsible for any warranty service/repair/recall, which will be at Contractor's own expense. In the event that a warranty service/repair/recall is for an Aftermarket Component, the Contractor shall be the primary point of contact, and will assist the Authorized User with the warranty service/repair/recall. Events beyond Contractor's control, such as lack of parts due to strikes and unforeseen acts of God, shall constitute valid reasons for delay in making necessary repairs. However, the State shall make such determination.

3.8 TRAINING

Complete instructions on the operation and maintenance of each Chassis Cab and Upfitted Truck, and a demonstration on the operation of the unit shall be given by the Contractor, if requested by the Authorized User Training is to include operator training with instruction on proper operation of the unit, safety, preventive maintenance and proper usage of parts and service manuals. Training provided must be sufficient to update technician(s) on all new componentry and diagnostics capabilities.

The Contractor shall provide the training services of qualified factory technician(s) for a minimum period of one (1) full working day, at one mutually agreed-upon location (e.g., at the location of delivery or at a field location within the

State), at no additional charge. Additional training days and/or locations shall be provided upon request by the Authorized User. The Contractor may charge a mutually agreed-upon fee for any additional training days and/or locations.

One (1) copy of training programs (DVD or CD format) and/or PowerPoint presentations covering all or any part of the Chassis Cab, Truck Body or Upfitted Truck, that are normally available from the OEM, shall be provided to the Authorized User at no additional charge.

3.9 REPLACEMENT ITEMS

The State may permit the Contractor to offer a replacement model or a replacement Product Line if the model series or the Product Line originally awarded is discontinued, replaced, or made unavailable by the OEM. Pricing for such replacement items shall be based on the current OEM Pricelist for the replacement item and the previously agreed upon Contract discounts.

3.10 SERVICE/TECHNICAL BULLETINS AND RECALLS

The Contractor must immediately notify Procurement Services of any service/technical bulletins and recall notices pertaining to Base Items. These documents shall be submitted on a continual basis to keep the State informed regarding improvements, changes and/or problems concerning State owned vehicles and their component parts.

3.11 INTERNET ACCESS TO CONTRACT AND PRICING INFORMATION

Access by Authorized Users to Contract terms and pricing information shall be made available and publically posted on the OGS website. To that end, OGS shall publically post the Contract Pricelist, including all subsequent changes in the Contract offerings (adds, deletes, price revisions), Contractor contact information, and the Contract terms and conditions, throughout the Contract term.

3.12 CONTRACT CANCELLATION

If a Contract is cancelled, the State reserves the right to make award on another bid meeting requirements, but is not obligated to do so. If the cause of cancellation was out of the control of the Contractor, no penalties or damages will be assessed.

3.13 PROCUREMENT INSTRUCTIONS

Authorized Users should follow the following procurement instructions when purchasing Product from the Contract(s).

A. When utilizing the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:

- A statement of need and associated requirements;
- Obtaining all necessary prior approvals;
- A summary of the Contract alternatives considered for the purchase; and
- The reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

B. The resultant Contracts for Chassis Cab Lots (Lots I, II and III), and Truck Body Lots (Lots IV and V, excluding Lot VI *ELP Interchangeable Body Systems*), are tiered. Executive Agencies are required to purchase from the Primary Chassis Cab or Truck Body Contractor, as applicable, unless written justification for purchasing from the Secondary Chassis Cab or Truck Body Contractor is approved by the

Department of Budget, OGS or other control agency. Authorized Users, other than Executive Agencies, are encouraged to purchase from the Primary Chassis Cab or Truck Body Contractor. Awarded Contractors' Product offerings, Contract and pricing information will be posted to the OGS website.

C. Authorized Users will issue Purchase Order(s), as described in Section 2.14.1 *Purchase Orders*, directly to the Contractor(s), specifying the Product required and shipping/delivery requirements.

D. Before proceeding with their purchase, Authorized Users should arrange a pre-production meeting with the Contractors(s) in order to ensure complete and accurate understanding of the Upfitted Truck specifications, and delivery requirements, that are required by the Authorized User.

E. Upon Authorized User acceptance of Product itemized on the Purchase Order, Contractor(s) will invoice Authorized User for any portion of Product, and accordingly, Authorized User will arrange for payment.

Note: Contractor must disclose any forms, or other order information, that Contractor will attach to orders or require completion of when Authorized User makes a purchase. Documents which contain additional terms and conditions must receive pre-approval by OGS for use under the Contract. Additional terms and conditions that were not pre-approved by OGS are void. Additional terms and conditions which conflict with the Contract shall be removed at the discretion of the State.

3.14 DISPUTE RESOLUTION POLICY

It is the policy of Procurement Services to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to Procurement Services bid solicitations or contract awards. Procurement Services encourages vendors to seek resolution of disputes through consultation with Procurement Services staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the Procurement Services Dispute Resolution Procedures may be obtained by contacting the person identified on the front page of the Invitation for Bids or through the OGS website at: http://ogs.ny.gov/BU/PC/BizInfo.asp (click on Dispute Resolution Procedures).

4 GENERAL PROVISIONS

4.1 NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Agreement shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address set forth below, and (ii) if to Contractor, addressed to Contract Administrator at the address set forth below.

The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Agreement by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Agreement. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

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

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

4.2 CAPTIONS

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

4.3 SEVERABILITY

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

4.4 COUNTERPARTS

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

4.5 ENTIRE AGREEMENT

This Contract and the referenced Appendices and Attachments constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein. In accordance with the terms set forth in Appendix B, §28 *Modification of Contract Terms*, and §32 *Purchase Orders*, no preprinted terms or conditions on a Purchase Order issued by an Authorized User which seek to vary the terms of this Contract or impose new duties or obligations on the Contractor shall have any force and effect.

CONTRACTOR SIGNATURE PAGE

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties as set forth in Appendix B, §26 *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, upon receipt of all necessary approvals, to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

CONTRACTOR

Signature: Charles Musso Jr.

Printed Name: Charles Musso Jr.

Title: President

Date: 1/25/16

Company Name: Air-Flo Mfg. Co. Inc.

Federal ID: 16-0757910

NYS Vendor ID: 1000007502

THE PEOPLE OF THE STATE OF NEW YORK

Signature:

Printed Name: Bruce Hallenbeck

Title: Director Procurement Services

Date: 2/12/16

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

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF New York }

: **Sworn Statement:**

COUNTY OF Chemung }

On the 25th day of January in the year 20 16, before me personally appeared Charles Musso Jr., 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 Horseheads

County of Chemung, 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 President of Air-Flo Mfg. Co. 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.

Kevin Spear

Signature of Notary Public

KEVIN SPEAR
Notary Public No. 6006179
State of New York County of Steuben
Commission Expires, April 27, 2018

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

January 2014

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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 (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

any State approved sums due and owing for work done upon the project.

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

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

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

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

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

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

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

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

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

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

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

26. **IRAN DIVESTMENT ACT**. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

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GENERAL

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

2. DEFINITIONS Terms used herein shall have the following meanings:

a. 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.

b. AUTHORIZED USER(S) Authorized User shall have the meaning set forth in New York State Finance Law section 163(1)(k) and 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.

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

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

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

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

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

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

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

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

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

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

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

i. 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(s).

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

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

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

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

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

o. LICENSEE(S) 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(s)" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

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

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

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

s. OGS The New York State Office of General Services.

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

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

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

w. REQUEST FOR PROPOSALS (RFP) A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law, to the responsive and responsible Bidder(s).

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

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

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

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

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

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

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

ee. STATE State of New York.

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

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

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

BID SUBMISSION

3. INTENTIONALLY OMITTED

4. INTENTIONALLY OMITTED

5. INTENTIONALLY OMITTED

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

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

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

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

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

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

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

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

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

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

9. CONFIDENTIAL/TRADE SECRET MATERIALS

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

b. COMMISSIONER OR AUTHORIZED USER Contractor 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 without the written consent of the Commissioner or Authorized User. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

10. INTENTIONALLY OMITTED

11. TAXES

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

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

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

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

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

14. PRODUCT REFERENCES

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

Commissioner's decision as to acceptance of the Product as equal shall be final.

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

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

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

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

17. PRICING

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

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

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

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

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

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

g. Specific price decreases:

(i) GSA Changes: Where NYS Net Prices are based on an approved GSA Schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) Commercial Price List Reductions: Where NYS Net Prices are based on a discount from Contractor's list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

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

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

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

h. Cost Proposal Revisions A Contractor may be solicited prior to contract award to propose the best possible offer for the Product or service being bid on, in accordance with State Finance Law § 163(9)(c). A cost proposal revision must be a lower price than the initial price.

18. INTENTIONALLY OMITTED

19. INTENTIONALLY OMITTED

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

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

21. INTENTIONALLY OMITTED

BID EVALUATION

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

23. TIE BIDS In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

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

25. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Where an award is not made within the sixty day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid.

TERMS & CONDITIONS

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

27. PARTICIPATION IN CENTRALIZED CONTRACTS

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

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

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

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

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

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

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

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed

order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

29. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within thirty days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a proposal. Failure to agree to any adjustment shall be a dispute under the Disputes clause, provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

30. ESTIMATED / SPECIFIC QUANTITY CONTRACTS
Estimated quantity contracts, also referred to as indefinite delivery / indefinite 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 is implied or given.

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.

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

32. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the Contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

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

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

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

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

35. SHIPPING/RECEIPT OF PRODUCT
a. Packaging Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers.

The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

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

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

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

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

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

39. REJECTED PRODUCT When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar-day period.

40. INTENTIONALLY OMITTED

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

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

43. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, notwithstanding anything in Section 138 of the State Finance Law to the contrary, any approval required thereunder shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the contract.

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

44. SUBCONTRACTORS AND SUPPLIERS The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior OGS Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do

business; the Commissioner's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

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

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

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

47. TERMINATION

a. For Cause: For a material breach that remains uncured for more than thirty calendar days or other specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively, at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

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

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

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

e. For Non-Responsibility: The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may 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 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.

f. For refusal to testify, sign a waiver of immunity or answer questions

The Commissioner reserves the right in accordance with State Finance Law §139-a, to terminate the contract in the event it is found that a member, partner, director or officer of Contractor refused, when called before a grand jury, head of a state department, temporary state commission or other state agency, or the organized crime task force in the department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor.

48. SAVINGS/FORCE MAJEURE A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any Force Majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the Force Majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the Force Majeure condition continues beyond thirty (30) days, the Parties shall jointly

decide on an appropriate course of action that will permit fulfillment of the Parties' objectives hereunder.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor, under the Contract due to a Force Majeure occurrence:

a. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or
b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the Force Majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the Force Majeure event.

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

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss. Failure of the Contractor to agree to any adjustment shall be a dispute under the Disputes clause; provided however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

49. CONTRACT INVOICING

a. **Invoicing.** Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

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

b. **Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment** The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at **www.osc.state.ny.us**, by e-mail at **HelpDesk@sfs.ny.gov**, or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

50. DEFAULT – AUTHORIZED USER

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

b. Failure to Make Payment. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within thirty calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

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

d. Insufficient basis. If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

51. PROMPT PAYMENTS

a. State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by Agency may be made in accordance with State Finance Law §§179-d et. seq. and the implementing regulations (2 NYCRR §18.1 et seq.).

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

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

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

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

Such purchases may be deducted from the Contract quantity without penalty or liability to the State. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during a period where Contractor is making good faith efforts to cure a material breach.

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should Contractor and the Commissioner fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be a dispute under the Disputes clause.

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

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

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may obtain substitute Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

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

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

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

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

55. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment.

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

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

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

59. WARRANTIES

a. Product Performance Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous

warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users.

In addition, Contractor hereby warrants and represents that the Products acquired by the Authorized User under the terms and conditions of this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

Contractor further warrants and represents that Products, components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be free from defects in material and workmanship and will conform with all requirements of the Contract for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period").

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

b. Title and Ownership Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify Authorized Users and hold Authorized Users harmless from any damages and liabilities (including reasonable attorneys' fees and costs) awarded by a court of competent jurisdiction arising from any breach of Contractor's warranties as set forth herein.

c. Product Warranty for Deliverables During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the system requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

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

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

The Commissioner agrees that Contractor is not responsible for any modification of the Products made by an Authorized User without Contractor's approval.

d. Replacement Parts Warranty If during the regular or extended warranty periods, parts or components break or fail to perform as intended, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period(s) shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

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

e. Virus Warranty The Contractor represents and warrants that any Licensed Software acquired by the Authorized User does not contain any known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

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

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract as long as the Product is used by the governmental entity, or its successor, for whom the Product was originally purchased." Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

g. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards. The Authorized User must notify Contractor of any services warranty deficiencies within ninety calendar days from performance of the services that gave rise to the warranty claim.

h. Miscellaneous The Authorized User shall promptly notify the Contactor and the Commissioner in writing of any claim of breach of any warranty provided herein.

The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

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

61. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Commissioner shall give Contractor: (i) prompt written notice of any action, claim or threat of 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, claim or suit at the expense of Contractor.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

62. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS The Contractor will also defend, indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, or by reason of an off-the-shelf component; and b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

At Authorized User's option, Contractor may be given the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

Such indemnity shall only be applicable in the event of claims, judgments, liabilities and/or costs that may be finally assessed against Authorized User in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, judgments, liabilities and/or costs arise solely from the Authorized Users negligent act, failure to act, gross negligence or willful misconduct.

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

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

63. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Third Party Rights clause, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty,

negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) five hundred thousand dollars ($500,000), whichever is greater.

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

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

64. INTENTIONALLY OMITTED

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

65. INTENTIONALLY OMITTED

66. INTENTIONALLY OMITTED

67. INTENTIONALLY OMITTED

68. INTENTIONALLY OMITTED

69. INTENTIONALLY OMITTED

70. INTENTIONALLY OMITTED

71. INTENTIONALLY OMITTED

72. INTENTIONALLY OMITTED

73. INTENTIONALLY OMITTED

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Appendix C

Heavy Duty Trucks Contract Documents:

Number 1: ***Contractor Information***

Number 2: ***Contract Pricelist***

Number 3: ***Report of Contract Usage***

Number 4: ***Contract Modification Procedure***

Number 5: ***Insurance Requirements***

Appendix C: Number 1: *CONTRACTOR INFORMATION*

Contract # / MWBE/SB	Contractor & Address	Centralized Contract Contact (Sales Questions, Orders, Emergencies After Business Hours)	Federal ID NYS Vendor ID
NYS Contract: PC67339	Air-Flo Mfg. Co. Inc 365 Upper Oakwood Avenue Elmira Heights, NY 14903	Name: Stacey Eustace Title: Sales Operations Manager Phone: 607-733-8284 Emergencies: 607-483-3938 Fax: 607-733-8397 Email: stacey@air-flo.com	**Federal ID** 16-0757910 **NYS Vendor ID** 1000007502
Business Hours: M-F, 8:00 a.m.- 4:30 p.m., Closed Sat & Sun			

PAYMENT/ORDERING INFORMATION

Does Contractor offer Electronic Access Ordering (EDI)?	No
Does Contractor offer Prompt Payment Discounts?	No

Appendix C: Number 2: *CONTRACT PRICELIST*

The Contractor has been awarded the following Lot(s), and will offer the awarded Model(s) at the Base Item Unit Price listed.

The Authorized User may elect to add or delete Options and Aftermarket Components from the Base Item awarded, and the Contractor shall adjust the Base Item Unit price in accordance with the Dump Body or Plow AOAC Discount awarded. Additional Options and Aftermarket Components (AOAC) to be offered under the Contract are limited to products that are (1) listed on the OEM or Contractor-Published Pricelist(s), and (2) may be installed on the awarded Body and Plow Product Line by the Contractor, or third-party.

Additional Truck Body and/or Plow Models may be offered under the Contract at the Dump Body Discount and/or Plow Discount, as applicable. The discount(s) shall be applied to the MSRP for additional Models offered under the Contract.

For additional information, see Section 3.1.1 *Base Item Unit Price*, Section 3.1.2 *Additional Chassis Cab and Truck Body Product Line Discounts*, Section 3.1.3 *Additional Options and Aftermarket Components (AOAC) Discount*, Section 3.2.5 *Chassis Cab, Truck Body and Plow Substitutions*, Section 3.2.7 *Chassis Cab, Dump Body and Plow OEM Options*, and Section 3.2.8 *Aftermarket Components*.

For a complete, updated Contract Pricelist, including Base Item specifications, please see the Contractor Award Notification page located on the OGS website at:

http://www.ogs.ny.gov/purchase/spg/awards/4059022910can.HTM.

Item	Awarded Items	Dump Body or Plow Discount	AOAC Discount
Lot IV: Truck Bodies (Single Axle Dump Body and Plow) (Primary Body and Plow Contractor)	2015 AIR-FLO AF-DAU-10 10' DUAL AUGER UNIBODY	30%	30%
	2015 Henke OWFA 30-60-11 11' One-Way Plow	30%	30%
Lot V: Truck Bodies (Tandem Axle Dump Body and Plow) (Secondary Body and Plow Contractor)	2015 AIR-FLO AF-DAU-13 13' DUAL AUGER UNIBODY	30%	30%
	2015 Henke OWFA 30-60-11 11' One-Way Plow	30%	30%

Group 40590-22910, TRUCKS, HEAVY DUTY

Appendix C: Number 3: *REPORT OF CONTRACT USAGE*

DO NOT ADD, REMOVE OR REARRANGE ANY COLUMNS OR ROWS.

Enter Contractor information below.

Contract Group & Award Number:	**Group 40590, Award 22910**
Contract Number:	
Contract Sales Period:	
Contractor Company Name:	
Contact Name:	
Contact E-Mail:	
Contact Phone Number:	

Report of Contract Usage - Truck Data

DO NOT ADD, REMOVE OR REARRAGE ANY COLUMNS OR ROWS.

	Contract Number	Contractor Order Number	Vehicle Order Date	Order Cancellation Date (if applicable)	Authorized User Purchase Order Number	Authorized User Entity Name	Region/ Facility/ Location Name (if applicable)	Indicate "State" or "Non-State" Entity (see "State Agency" tab)	Ship to County	Contract Lot Number	Contract Lot Equipment Type
Ex:	PC12345	1234	6/15/2015	8/15/2015	7891011	NYS Department of Transportation	DOT Region 5 Buffalo	State	Erie	I	Chassis Cab
Ex:	PC12346	1235	7/15/2015		12345	Albany County	Department of Public Works	Non-State	Albany	V	Truck Body
Ex:	PC12347	1236	7/18/2015		99810	Saratoga County		Non-State	Saratoga	VII	Upfitted Truck

Contract Lot or Item Description	**Chassis Cab Manufacturer** (if applicable)	**Chassis Cab Model Year** (if applicable)	**Chassis Cab Model/Model Code** (if applicable)	**VIN** (if applicable)	**Truck Body Manufacturer** (if applicable)	**Truck Body Model/Model Code** (if applicable)	**Plow Manufacturer** (if applicable)	**Plow Model/Model Code** (if applicable)	**Contract Item GVWR** (if applicable)
37k Chassis Cab	Navistar International	2016	7300 SFA 4X4	11223344556677800	N/A	N/A	N/A	N/A	37,000
Tandem Axle Dump	N/A	2016	N/A		Viking	Proline 1415LW	Viking	4572HSE 9	
Item 1: DOT 47k	Navistar International	2016	7300 SFA 4X4	11223344556677899	Viking	Proline 1415LW	Viking	4572HSE 9	48,000

Chassis Cab MSRP (including Options)	**Dump Body MSRP** (including Options)	**Plow MSRP** (including Options)	**Total Base Item MSRP** (automatically calculated)	**Base Item Discount Percentage** (automatically calculated)	**Base Item Unit Price** (excluding Aftermarket Components)	**Total Aftermarket Components NYS Price** (from "Aftermarket Component Data" worksheet)	**Delivery Charge**	**Total NYS Net Contract Price**
$110,000.00			$110,000.00	27.27	$80,000.00		$170.00	$80,170.00
	$59,000.00	$30,000.00	$89,000.00	26.97	$65,000.00	$4,500.00	$160.00	$69,660.00
$110,000.00	$59,000.00	$30,000.00	$199,000.00	12.06	$175,000.00	$2,600.00	$400.00	$178,000.00
			$0.00	#DIV/0!				$0.00
			$0.00	#DIV/0!				$0.00
			$0.00	#DIV/0!				$0

Report of Contract Usage - Aftermarket Component Data

DO NOT ADD, REMOVE OR REARRAGE ANY COLUMNS OR ROWS.

	Contractor Order Number	Vehicle Order Date	Order Cancellation Date (if applicable)	Authorized User Purchase Order Number	Authorized User Entity Name	Aftermarket Component Manufacturer	Aftermarket Component Code	Aftermarket Component Description	Aftermarket Component MSRP	Aftermarket Component NYS Discount (Automatically Calculated)	Total Aftermarket Component NYS Price
Ex:	1235	7/15/2015		7891011	Albany County	Donovan	MGS71330F	2000X Tarp System	$ 1,581.00	10.00	$ 1,422.90
										#DIV/0!	
										#DIV/0!	
										#DIV/0!

Appendix C: Number 4: *CONTRACT MODIFICATION PROCEDURE*

The following guidelines are subject to change at the discretion of OGS. A Contract Amendment requires a formally executed document by mutual agreement of the Parties, to be provided by OGS Contract Administrator, after submission and approval of the Contract Modification Form.

(1) TYPES OF CONTRACT MODIFICATIONS: In order to expedite processing of a contract modification, where proposed changes involve more than one category below, each change should be submitted to OGS as a separate request.

a) UPDATES: "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. Updates may include: Centralized Contract changes and updates made in accordance with the previously approved pricing formula (e.g. discount from list price); adding new products or services within the established, previously approved pricing structure; lowering pricing of products or services already on Contract, deleting products or services available through the Centralized Contract, adding product or service that do not fall under the previously established price structure or discounts under the Contract, re-bundled products, and other updates not listed above that are deemed to be in the best interest of the State and do not result in a change to the established Centralized Contract terms and conditions. Updates must be submitted to OGS for review, and must be accompanied by a justification of reasonableness of price if the change results in a change in pricing methodology. OGS will notify Contractor in writing if approved.

b) AMENDMENTS: "Amendments" are changes that are not specifically covered by the terms and conditions of the Centralized Contract but inclusion is found to be in the best interest of the State. Requests for product changes and other requests that would require changes to the terms and conditions of the Centralized Contract would fall into the Amendments category. Contractor must provide a written justification of reasonableness of the price levels offered in the applicable Program Agreement and a statement explaining why it is in the best interest of the State to approve the requested amendment. Amendments typically require negotiation between OGS and the Contractor. OGS will work directly with the Contractor to obtain the required documentation for each requested amendment and notify Contractor in writing if approved.

(2) CONTRACTOR'S SUBMISSION OF CONTRACT MODIFICATIONS: In connection with any Contract modification, OGS reserves the right to:

- request additional information
- reject Contract modifications
- remove Products from Contract modification requests
- request additional discounts for new or existing Products

(3) PRICE LEVEL JUSTIFICATION – FORMAT: Contractor is required to submit the Product and price level information for the update in an Excel spreadsheet format electronically via e-mail (and in hard copy if requested by OGS) to the OGS Contract Administrator. The list must be dated. The Product and price level information should include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):

- Price level increases
- Price level decreases
- Products being added

(4) SUPPORTING DOCUMENTATION: Each modification request must include the current contract pricing discount relevant to the Products included in the update.

(5) SUBMITTAL OF MODIFICATION REQUESTS: A Contract modification request must be accompanied by a completed Contract Modification Form. 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 price level to its customers generally, and/or for new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS). The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.

STATE OF NEW YORK
EXECUTIVE DEPARTMENT - OFFICE OF GENERAL SERVICES
Corning Tower – 38th Floor
Empire State Plaza
Albany, New York 12242

CONTRACT MODIFICATION FORM

DATE OF THIS SUBMISSION:	**DATE DOCUMENTATION EMAILED:**
CONTRACTOR NAME:_____ OGS GROUP #:_____ OGS AWARD #:_____ OGS CONTRACT #:_____	**CONTRACTOR CONTACT:** Name:_____ Phone #:_____ Email:_____
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 modifications. The form is to be completed in full, signed and submitted to OGS for final approval. Any submission that is not complete and signed will be rejected.
2. Contractor is required to submit the Product and price level information for the update electronically via e-mail in either an Excel spreadsheet (and in hardcopy if requested by OGS) to the OGS Contract Administrator for this Contract.
3. Price level increase requests must be submitted in accordance with the Centralized Contract.
4. If more than one type of modification is being requested, each type should be submitted as a separate request.
5. The Contract modification request must be accompanied by the relevant current contract pricing discount information.

COMPLETE STATEMENTS 1 THROUGH 5 BELOW:

1. This request is for an: _____ Update _____ Amendment See Contract Modification Procedure for an explanation of these terms.	2. The intent of this submittal is to request: _____ Addition of new products or services _____ Deletion of products or services _____ Change in pricing level _____ Other Update _____ Other Amendment
3. All discounts are: _____ GSA _____ Most Favored Nation* _____ Other (provide explanation) _____ _____ _____ *Prices offered are the lowest offered to any similarly situated entity.	4. Attached documentation includes: _____ Current approved GSA (labeled "For information only") _____ Current relevant Price List (labeled "For information only") _____ Revised NYS Net Price List in same format as found in the Pricing Appendix for this Contract _____ Current copy of the "National Consumer Price Index for All Urban Consumers (CPI-U) Northeast region" (for price increases only)

5. Describe the nature and purpose of the modification. If applicable, please explain how pricing has been structured to customers, and/or identify and describe new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS.

_____

_____

_____

_____

_____

_____

_____

The following CORPORATE ACKNOWLEDGEMENT statement must be signed by an individual authorized to sign on behalf of Contractor for the modification being requested in this Contract Modification document. The authorizing authority's signature must be notarized.

_____
Signature of Authorized Vendor Representative

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

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

On the ____ day of _____ in the year 20_____, before me personally appeared _____ , known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he reside(s) in _____and further that:

[Check One]

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

(☐ If a corporation, (☐ a partnership, ☐ a limited liability company): _he is the _____ of _____, the *corporation/ partnership/ Limited Liability Company* described in the above instrument; that, _he is authorized to execute the foregoing instrument on behalf of the *corporation/ partnership/ 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 *corporation/ partnership/ Limited Liability Company* as the act and deed of said *corporation/ partnership/ Limited Liability Company*.

_____
Signature of Notary Public

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

OGS APPROVAL: Approved _____ Approved as amended _____ Disapproved_____

Signature:_____ Date:_____

Printed Name:_____ Title_____

Appendix C: Number 5: *INSURANCE REQUIREMENTS*

The prospective awardee shall be required to procure, at its sole cost and expense, all insurance required by this Section and, unless otherwise required by this Section, provide proof of the same within twenty (20) business days of tentative award and before commencing any work under any Contract resulting from this solicitation. In addition, following award of any Contract resulting from this solicitation, the Contractor shall procure, at its sole cost and expense, and maintain in force at all times during the term of any Contract resulting from this solicitation, 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 rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. After the initial submission of proof of coverage, the Contractor shall be required to provide proof of the coverage required by this Section within three (3) business days of request.

The prospective awardee/Contractor shall deliver to OGS evidence of the insurance required by this Section in a form acceptable to OGS. Insurance 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 the prospective awardee/Contractor of any obligations, responsibilities or liabilities under this solicitation or any Contract resulting from this solicitation.

1. General Conditions

A. Conditions Applicable to Insurance

All policies of insurance required by this solicitation and any Contract resulting from this solicitation must meet the following requirements:

1. ***Coverage Types and Policy Limits.*** The types of coverage and policy limits required from the prospective awardee/Contractor are specified in Paragraph B ***Insurance Requirements*** below.
2. ***Policy Forms.*** Except as may be otherwise specifically provided herein or agreed in writing by OGS, policies must be written on an occurrence basis.
3. ***Certificates of Insurance/Notices. The prospective awardee/Contractor shall provide a Certificate or Certificates of Insurance and required amendatory endorsements, in a form satisfactory to OGS, within twenty (20) business days of tentative award and before commencing any work under any Contract resulting from this solicitation and, thereafter, within three (3) business days of request. Certificates shall reference the solicitation and/or Contract Number. Certificates and endorsements must name: The New York State Office of General Services, NYSPro, 38th Floor, Corning Tower, Albany, New York 12242 as the Entity Requesting Proof of Coverage (The Entity being listed as the Certificate Holder). Certificates and endorsements shall be mailed to The New York State Office of General Services, NYSPro, Corning Tower- 38th Floor, Empire State Plaza, Albany, New York 12242.***

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. The prospective awardee/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.

Certificates of Insurance shall:

- Be in the form approved by OGS (ie: an Acord);
- Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by this solicitation, or any Contract resulting from this solicitation;
- Specify the Additional Insureds and Named Insured as required herein;
- Refer to this solicitation, and/or any Contract resulting from this solicitation, by number and any other attachments on the face of the certificate; and
- Be signed by an authorized representative of the insurance carrier or producer.

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.

4. ***Primary Coverage.*** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation for any claim arising from the Contractor's work under any Contract resulting from this solicitation, or as a result of the Contractor's activities. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation shall be excess of and shall not contribute with the Contractor's insurance.

5. ***Policy Renewal/Expiration.*** At least thirty (30) days prior to the expiration of any policy required by this solicitation or any Contract resulting from this solicitation, evidence of renewal or replacement policies of insurance with terms no less favorable than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph A.3. *Certificates of Insurance/Notices* above. If, at any time during the term of any Contract resulting from this solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this solicitation, or any Contract resulting from this solicitation, 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 solicitation or any Contract resulting from this solicitation, or proof thereof is not provided, OGS or Authorized Users may withhold further payments due under any Contract resulting from this solicitation and/or treat such failure as a material breach or default of any Contract resulting from this solicitation. In the event of such a material breach, the Contractor shall be subject to liability for damages, indemnification and all other legal remedies available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation. 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 any Contract resulting from this solicitation, 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 any Contract resulting from this solicitation or not providing proof of same in a form acceptable to OGS, shall in no event constitute or be deemed a breach of any Contract resulting from this solicitation and no liability shall be incurred by or arise against the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation, or their officers agents and employees for lost profits or any other damages.

6. ***Self-Insured Retention/Deductibles.*** Certificates of Insurance must indicate the applicable deductible/self insured retention on each policy. Deductibles or self-insured retentions above $100,000 are subject to approval from OGS, which shall not be unreasonably withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

7. ***Subcontractors.*** During the term of any Contract resulting from this solicitation, 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 any Contract resulting from this solicitation the insurance requirements of this document on the Subcontractor, as applicable. Proof thereof shall be supplied to OGS in accordance with the requirements of this Section.

All insurance required by this solicitation, and any Contract resulting from this solicitation, shall name The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation as an Authorized User and their 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 within twenty (20) business days of tentative award and before commencing any work under any Contract resulting from this solicitation and, thereafter, within three (3) business days of request to OGS, NYSPro, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242. The additional insured requirement does not apply to Workers' Compensation and Disability coverage.

B. Insurance Requirements

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

1. **Commercial General Liability Insurance** with a limit of not less than $2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01 01 96, or a substitute form providing equivalent coverages and shall cover liability arising from bodily injury, premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a Contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

   Policy shall include bodily injury, property damage and broad form contractual liability coverage.

   - General Aggregate $2,000,000
   - Products – Completed Operations $2,000,000
   - Personal and Advertising Injury $1,000,000
   - Each Occurrence $2,000,000
   - Damage to Rented Premises-$50,000.00
   - Medical Expense-$5,000.00

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

   - premises liability;
   - independent contractors;
   - blanket contractual liability, including tort liability of another assumed in a contract;
   - defense and/or indemnification obligations, including obligations assumed under this solicitation or any Contract resulting from this solicitation;
   - cross liability for additional insureds;

- products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by this solicitation or any Contract resulting from this solicitation;
- explosion, collapse, and underground hazards; and
- contractor means and methods.

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); and

c. Waiver of Subrogation Endorsement.

2. **Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile in connection with the work required under this solicitation or any Contract resulting from this solicitation, 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, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation as an Authorized User and their officers, agents, and employees as additional insureds. The limits may be provided through a combination of primary and umbrella liability policies.

3. **Garage Liability Insurance** including coverage for all garage operations of the Contractor, including premises and operations; products and completed operations, and garagekeepers liability coverage with minimum limits of:

   - Garage liability insurance-$1,000,000.00 for garage operations; and
   - Garagekeepers liability-$100,000.00 per vehicle in custody, $500,000.00 aggregate on a "direct primary" basis.

   The policy 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.

4. **Environmental Liability Insurance (*applicable only to Truck Body Contractors*).** If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any pollutants, which includes but are not limited to, petroleum, petroleum product, hazardous material or substance including asbestos, lead, fungus and those as defined by applicable state and federal laws and regulations, the Contractor shall procure, or otherwise obtain through an approved subcontractor, and maintain in full force and effect throughout the term of the Contract, and for two years after completion hereof, pollution legal liability insurance with limits not less than $10,000,000.00, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceedings against the State, OGS or any authorized user arising from the Contractor's work. 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.

Waiver of Subrogation. For the coverages required above, the prospective awardee/Contractor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or 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 any Contract resulting from this solicitation, Waiver of Subrogation Endorsements shall be provided within twenty (20) business days of tentative award and before commencing any work under any Contract resulting from this solicitation and, thereafter, within three (3) business days of request to OGS, NYSPro, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

5. **Workers' Compensation Insurance and Disability Benefits Requirements:**

   The 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 it has appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of your bid or renewal.

Proof of Compliance with Workers' Compensation Coverage Requirements:

An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the 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.

Notwithstanding any other requirements of this Section, a contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to The New York Office of General Services **at the time of bid submission:**

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); (Reference applicable IFB/RFP and Group #s on the form.)

B) Certificate of Workers' Compensation Insurance:

   1) Form C-105.2 (9/07) if coverage is provided by the Contractor's insurance carrier, the Contractor must request its carrier to send this form to the New York State Office of General Services, or

   2) Form U-26.3 if coverage is provided by the State Insurance Fund, the 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.

Proof of Compliance with Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, 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.

Notwithstanding any other requirements of this Section, a contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the New York State Office of General Services **at the time of bid submission**:

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); (Reference applicable IFB/RFP and Group #s on the form.)

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

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