

CONTRACT AWARD TERMS AND CONDITIONS

Title	: Centralized Contract for the Acquisition of Microcomputer Systems, Software, Peripherals, Accessories & Related Services
Award Number	: Various
Contract Number	: Various
Contract Period	: 3 years from approval, with 2 year extension options
Bid Opening Date	: June 2, 1999
Date of Issue	: See Individual Notice of Award for Each Contract
Specification Reference	: As Incorporated

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Attached are the contract terms and conditions applicable to the new contracts for Microcomputer Systems that will be held directly by the manufacturers. As new awards are issued OGS PSG will issue only the award notice and the updated listing of awarded and pending contracts. These Award Terms and Conditions **will not** be re-issued with every new notice of award; users should therefore keep a copy of the terms and conditions in their file along with a separate folder for each of the individual Notices of Award. Updated award notices should be kept with the original contract documents and the Procurement Procedures which are included in the original award.

Each manufacturer has the option of either direct distribution or the use of resellers, and in some cases may choose both methods of distribution.

The price list for each contract will be available on the manufacturers web sites through a link from the OGS website. A link from the contractor web site to the OGS Terms and Conditions, and links from the OGS site to the contractors price lists are available. The price list is updated by the contractor as changes in their price list occur and we recommend you receive a written

(continued)

quote when making purchases. The contract terms require the contractor to make twelve months of historical contract information available to contract users for auditing purposes.

MWBE Goals assigned to these contracts: 4% Women & 4% Minority

NOTE ABOUT PREVIOUS MICROCOMPUTER CONTRACTS:

The previous contracts will remain in affect under two circumstances,

1. The new contract is still pending award (in this case the contract period is as the previous extension indicates). When the new contract is issued or the term expires, whichever is first, the old contract will expire. If the previous contract extension expiration is not reached prior to the issuance of the new contract is issued, it may still be usable in the following instance for certain educational institutions:
2. If there are approved E-Rate applications, the contract will be in affect through the previously stated contract period and only for use by those institutions with an approved E-Rate application.

Contract users should note that Addendum # 1 and Section 3 of the Base Contract amend certain sections of the contract document. Users should refer to these items if questions arise.

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	<p>Appendices D & E are supplied by the contractor upon request and available on their NYS contract website listed in each individual notice of award:</p> <p>APPENDIX D - <i>NYS NET PRICE SCHEDULE (including configuration, installation and extended warranty services)</i></p> <p>APPENDIX E - <i>CONSULTING & TRAINING SERVICES</i></p>	
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Procurement Procedures for State Agencies

The Office of General Services has established contracts for many brands of microcomputer equipment and new brands may become available in the future. State agencies should carefully consider all alternatives and select the most cost effective (which can include lowest price or best value analysis) for their current and anticipated future needs. Please refer to OGS CL-301 Summary of Technology Contracts and Guidelines for their Use dated September 18, 1998 and OSC Bulletin No. G-68 for additional information on soliciting best and final offers and negotiation techniques.

For each brand of microcomputer covered by a contract, the manufacturer hosts the contract at their web site and provides a configurator to enable Authorized Users to easily develop and price different configurations. Each of these web sites is linked to the OGS web site for convenience.

It is recommended that each agency develop for the Procurement Record an agency-wide procurement strategy for microcomputers. Different policies can be developed for different types of requirements (i.e. equipment for a statewide network vs. single site requirements, a separate policy for laptops, etc.). Whether the policy is to consider all contract equipment or to standardize on one or more specific brands, the policy should be supported by specific rationale expressed in terms of what represents best value to the agency. Because technology is constantly changing, it is recommended that the policy be reviewed annually and updated as necessary.

In accordance with the Guidelines for use of the technology contracts, it is recommended that the agency aggregate its requirements and make as few purchases a year as possible. Each purchase of microcomputers should be acquired in accordance with the agency's established policy. Agencies will be required to solicit quotes from at least three contractors (brands) for any requirement exceeding \$50,000, or in those instances where an agency has an established policy calling for standardization on a certain brand(s) and the planned acquisition will exceed \$50,000, solicit quotes from at least three qualified resellers under the contract for that brand(s)

When negotiating best and final offers with contractors, create a short description of the requirement, being as specific as possible. Be sure to include any required services such as consulting (analysis and/or design), configuration, installation and training. Finally, indicate whether the final selection will be based on lowest price or on a best value analysis. If a best value analysis will be used, indicate what factors besides cost will be considered. Note that consulting and training services may be acquired directly from the microcomputer contracts provided that such services do not exceed twenty percent (20%) of the value of Product being acquired. Consulting and training services exceeding twenty percent (20%) of the cost of the Product being acquired cannot be acquired under the microcomputer contracts. They may be procured competitively using the OGS Consulting, Systems Integration and Training contracts or other competitive process selected by the Authorized User.

One of the following procedures should be used when purchasing microcomputers:

(A) Annual Competition (preferred)

It is recommended that once a year the agency engage in either an aggregated buy through the Office for Technology or solicit best and final offers from all applicable contract sources in accordance with the agency's procurement strategy. See below for procedure to be used for purchases in excess of \$50,000. If the agency anticipates placing multiple orders within the year, additional discounts or other concessions offered by the successful contractor should apply to the future purchases.

Or

(B) Transactional Competition

If the agency chooses to solicit competition or negotiate for each purchase of product and related services, the following guidelines apply:

- Orders up to \$50,000: confirm best available pricing with contractor of choice via a phone call, fax or e-mail.
- Orders over \$50,000: solicit via fax or e-mail best and final offers from a minimum of three contractors (different brands). In the event that multiple resellers participate in a given contract, the agency need only solicit a single reseller for each brand. If an agency has an established policy calling for standardization on a certain brand(s) and the planned acquisition will exceed \$50,000, the agency must solicit quotes from at least three qualified resellers under the contract for that brand(s)

Agency should select the offer that represents best value in accordance with the criteria outlined in their solicitation.

A Procurement Record should be prepared for any order exceeding \$50,000 to include :

- the agency policy applicable to the purchase
- the list of contractors/resellers solicited
- copies of the offers received
- a document detailing the evaluation and selection of the winning offer

State agencies should file all orders directly with the Office of the State Comptroller in accordance with their rules and regulations. A copy of the Procurement Record should be attached to the OSC copy of the purchase order.

Please note that the above procedures may be changed or refined as necessary to facilitate efficient purchases within the framework of the State Finance Law.

**NEW YORK STATE
OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP
38th Floor - Corning Tower Building
Empire State Plaza
Albany, New York 12242**

CONTRACT ADDENDUM #1

DATE: May 20, 1999

CONTRACT DOCUMENT: CENTRALIZED CONTRACT FOR THE ACQUISITION OF MICROCOMPUTER SYSTEMS, SOFTWARE, PERIPHERALS, ACCESSORIES & RELATED SERVICES

I. The following change has been made to the above-mentioned document. Please refer to:

Appendix B Clause 83 & Clause 3 of Base Contract –CLARIFICATIONS, MODIFICATIONS & DELETIONS, PART II MODIFICATION /CLARIFICATIONS:

This clause has been modified to make the distinction that this clause refers to the discontinuance of maintenance and support, not to discontinuance of the product, and should now read as follows:

Discontinuance of Product Support and Maintenance In the event that a Product manufacturer proposes to discontinue maintenance or support for Product, contractor shall (1) notify the State and each Authorized User in writing of the intended discontinuance and **either** (2) continue to provide maintenance and support for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice, **or**, (3) at Authorized User's option, either: a) provided that the authorized User is under maintenance, provide the authorized User with either a Product replacement with equivalent functionality at no additional charge, or b) provide Authorized User with the source code for Licensed Product at no additional charge to enable it to continue use and maintenance of the Product.

II. Additional Responses to Contractor's Questions

Contract Document Clause 9 B Payments/Pricing

Regarding payment. **Clarification:** Payment is due after acceptance, and 30 days from receipt of proper invoice whichever occurs later. For Products being installed, payment is due within 30 days of installation.

Contract Document Clause 11 B Internet Access to contract & Pricing Information

The 2nd paragraph references auditing of contract transaction and historical data. **Clarification:** Should an independent audit be necessary, the State will not limit the dollar value of the audit.

Appendix B Clause 64 (c) Reimbursement of Cost Incurred

Clarification: In the event it becomes necessary for a user to temporarily rent equipment due to non-delivery (instead of their right to cancel the order and choose another manufacturer’s product), the user agrees to seek fair market value for the rental rate (the contractor acknowledges the rate may be affected by the need to rent the equipment immediately).

Appendix B Clause 71 (d) Warranties & Guarantees

Clarification: Regarding product warranty. If the Standard warranty period is longer than ninety days, the warranty period will be extended for the additional number of days equal to the length of downtime.

**Appendix G - OGS Procedures for Updating Contractor Price Or Product Listings
Required Format for Submission of Price List**

Clarification: It is required that product list submitted with the offer include list price, discount, warranty information and any addition information the manufacturer deems necessary to convey to the end user.

We acknowledge receipt and understand these changes and clarifications and will provide one originally signed copy of this document with each of the four original contract documents forwarded with our offer to the State.

CONTRACTOR

THE PEOPLE OF THE STATE OF NEW YORK

By: _____

By: _____

Name:

Title:

Contractor Firm Name:

Federal Tax Identification #:

**APPROVED AS TO FORM
ELIOT SPITZER
New York State Attorney General**

**APPROVED
H. CARL MC CALL
New York State Comptroller**

CORPORATE, PARTNERSHIP OR INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____ }
: SS.:
COUNTY OF _____ }

On the ____ day of _____ in the year 19 __ , before me personally appeared: _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides at _____, Town of _____, County of _____, State of _____; and further that:

[Check One]

- If an individual):** _he executed the foregoing instrument in his/her name and on his/her own behalf.
- If a corporation):** _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- If a partnership):** _he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.

Notary Public

All other terms and conditions remain the same.

“OGS...COMMITTED TO CUSTOMER SATISFACTION”



**STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES**

CENTRALIZED CONTRACT FOR THE ACQUISITION OF MICROCOMPUTER SYSTEMS, SOFTWARE, PERIPHERALS, ACCESSORIES & RELATED SERVICES

New York State Contract #

Vendor Reference #

[CONTRACTOR NAME]

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

1. CONTRACT SCOPE/TERM

This document (hereinafter “Contract”) sets forth the terms and conditions governing the acquisition of microcomputer systems, software, peripherals, accessories, including installation, configuration, extended warranties, and other incidental services (including, but not limited to, consulting (analysis and design), and training). Terms used in this document shall have the meanings set forth in Appendix B. Amendments or modifications to this Contract may only be made with mutual written agreement of the parties with the approval of the State Comptroller.

The term of this Master Contract shall be five (5) years commencing on the date of approval by the New York State Comptroller, or until a new contract is approved by the Office of the State Comptroller, whichever is later. Starting with the third anniversary of the contract term, either party shall have the option to terminate this contract upon thirty (30) days notice prior to the contract anniversary date. Upon termination of the Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made or individual licenses granted to Authorized Users prior to such termination.

This contract is available for use by all Authorized Users (See: Appendix B, Clause 6 (Definitions), and Clause 39 (Participation in Centralized Contracts). Contractor agrees to extend the pricing, terms and conditions offered under this contract to all entities authorized under previous laws to use centralized state contracts. Contractor further agrees to extend this contract upon the joint approval of the Contractor and the Commissioner for joint purchasing by any department, agency or instrumentality of the United States government and/or any state including political subdivisions thereof (“other authorized entities”). In the event that this contract is so extended, such other authorized entities shall be solely responsible for liability and performance under the Contract, and Contractor agrees to hold them solely responsible for such liability and performance.

NOTE: Current NYS OGS Contracts for microcomputers have been extended and may continue to be used by Authorized Users to the extent of approved E-Rate (Universal Service Fund) applications for the period 7/1/1999 through 6/30/2000 which have been filed with the federal government prior to April 5, 1999. Contractor agrees to extend pricing under this contract, if lower, to acquisitions made under those contracts.

2. MERGER OF APPENDICES/CONFLICT OF CLAUSES

This Contract shall incorporate the following appendices as if set forth herein at length. Only documents expressly enumerated below shall be deemed a part of this Contract, and references contained in the documents to additional Contractor documents not enumerated below shall be of no force and effect. Conflicts between these documents shall be resolved in the following descending order of precedence, which supersedes the order of precedence stated in Appendix B, section 5:

1.	Appendix A	<i>Standard Clauses for NYS Contracts</i>
2.	Base Contract	(This Document)
3.	Appendix B	General Specifications for Procurement Contracts, Parts I & II
4.	Appendix C	Contractor's Year 2000 Warranty Compliance Statement
5.	Appendix D	NYS Net Price Schedule (Product Offerings, and Fees for Installation, Configuration, Support & Maintenance)
6.	Appendix E	Consulting and Training Services & Fees (Description of Services & Course Offerings, and Fees)
7.	Appendix F	Manufacturer & Approved Reseller/Distributor Information
8.	Appendix G	<i>OGS Procedures for Updating Price or Product Listings & Required Format for Submission of Contractor Offerings/Price Lists</i>
9.	Appendix H	<u>Mandatory</u> : MacBride Certification, & Contractor's Requirements under Executive Law, Article 15-A
10.	Appendix I	Approved Order Form* (<i>*Not applicable to this procurement</i>)

3. **APPENDIX B - CLARIFICATIONS, MODIFICATIONS & DELETIONS**

Appendix B (General Specifications for Procurement Contracts) is modified for this Contract as follows:

DELETIONS/CLARIFICATIONS: The following sections are deleted in their entirety:

Part I: Sections 8 through 13, 20, 24, 28, 29, 32, 49, and 50;

Part II: Sections 75, 76, 78, 84, 85 and 88 are deleted. Contractor and third party software offered under this contract shall be licensed in accordance with the manufacturer's standard license and warranty terms which terms shall be furnished to Authorized User at time of purchase in either hard copy or electronic form. Notwithstanding the foregoing, warranty coverage for either manufacturer or third party software must start co-terminously with the Product warranty period set forth in this Contract, Appendix B, Clause 71 (d). Any costs associated with this requirement shall be borne by Contractor.

PART I MODIFICATIONS/CLARIFICATIONS:

Clause 21 (Recycled or Recovered Materials): Serviceable refurbished or remanufactured components tested to meet new product standards are permitted for warranty service under this contract.

Clause 25 (Site Inspection): This clause applies only to those procurements where the Authorized User requires a site visit by Contractor prior to bid. For those procurements, Contractor is required to detail all costs associated with remedying deficiencies or pre-existing conditions as a separate item in the price quote.

Clause 27 (Samples): The Commissioner of OGS reserves the right to request a sample pursuant to this clause. Otherwise, requests for samples by Authorized Users require the mutual consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question. Any samples (evaluation units) furnished to Authorized Users are furnished with the understanding that Authorized User will either return the evaluation units to Contractor after a thirty (30) day evaluation period, or the Authorized User will pay the Contractor for the evaluation units in accordance with the payment clause set forth in the Contract.

Clause 41 (Scope Changes): Equitable price adjustments pursuant to this clause require the mutual consent of the Contractor, which consent shall not be unreasonably withheld.

Clause 43 (Best Pricing Offer): This clause applies to offers made to other customers (other than Authorized Users) outside of this contract for similar quantity purchases.

Clause 45 (Product Delivery): Delete the first sentence.

Clause 47 (b) (Shipping Charges): Delete the requirement for tailgate delivery.

Clause 47 (c) (Receipt of Product): A signed receipt of delivery to the address specified on the purchase order shall be deemed to be made to authorized personnel.

Clause 48 (Title and Risk of Loss): The reference in Clause 48 to "a reasonable period of time" shall be deemed to refer to the specified acceptance period contained in clause 77. Risk of loss shall pass upon delivery. Title, however, shall pass upon acceptance.

Clause 51 (Rejected Product): All references to "ten" days shall be changed to "thirty" days. Carrier pick up arranged by Contractor or pre-paid shipping label furnished by Contractor are acceptable.

Clause 52 (Installation): Clause 52 applies only to those procurements which require Product installation and a site visit by Contractor. For those procurements, Contractor is required to detail all costs

associated with installation as a separate item in the price quote. Product fees set forth in Appendix D do not include site installation fees.

- Clause 53 (Repaired or Replaced Product/Components)** Delete the words “including product warranties” from the last line. See the modifications to Clause 71 (e) which require the replaced components to be warranted through the end of the original Product warranty period.
- Clause 59 (Cancellation):** After the word “mini-bid” on the third line, add the words “or orders”.
- Clause 61 (Contract Billings):** The term “Contractor” shall be deemed to mean Contractor, and/or where designated in Appendix F by Contractor, any approved Alternate Channel Reseller.
- Clause 68 (Security/Confidentiality):** Add the following language to the end of this section: *“The State acknowledges and agrees that Contractor brings to this engagement, and pursuant to this engagement will acquire, a substantial amount of general ideas, concepts, know-how, techniques, data, modules, components, designs, utilities, interfaces, templates, subroutines, analyses, methods, algorithms, formulas, technical information, specifications and other materials used or developed by Contractor in the course of this and/or prior engagements (“Residuals”). “General” is defined to mean that it does not identify confidential, secure or other non-public information about the specific business processes, records or data of the Authorized User. Nothing in this Agreement is intended to, or shall be construed to, restrict Contractor from using such Residuals to prepare materials or provide solutions for other customer. Moreover, nothing contained in this Agreement shall preclude, or in any way limit, Contractor from: (a) providing products or services to others who compete with the State; or (b) assigning its employees in any way it may choose.”*
- Clause 71 (a) (Warranties & Guarantees):** Immediately preceding (i), delete the word “including” and replace with the word “based upon”; (i) Delete the words “or intangible”; (ii) Delete “negligence, either active or passive, without limitation, or (iii)”; (iii) The text of (iii) becomes (ii), and from (iii) delete “or other third party intellectual”; and add after the first sentence: *“The obligation to indemnify shall not apply to the extent that part or all of the claim is based on any of the following: (1) anything provided by Authorized User which is incorporated into the Product; (2) Authorized User’s modification of a Product, or use in other than its Specified Operating Environment; (3) the combination, operation, or use of a Product with other Products not provided by Contractor as a system, or the combination, operation, or use of a Product with any product, data, or apparatus that Contractor did not provide; or (4) infringement by a non-Contractor Product alone, as opposed to its combination with Products Contractor provides as a system.”*
- Clause 71 (b) (Warranties & Guarantees):** This clause is modified and replaced in its entirety as follows:
b. Contractor warrants full ownership, clear title free of all liens, or the right to transfer or deliver perpetual license rights to any Products transferred to Authorized User under this Contract, and Contractor shall be solely liable for any costs of acquisition associated therewith.
- Clause 71 (c) (Warranties & Guarantees):** Contractor is responsible for all costs enumerated in the clause associated solely with purchase and delivery of the Product to Authorized Users place of business in the U.S.
- Clause 71 (d) (Warranties & Guarantees):** All references to the specific time frame of “one (1) year” are replaced with “ninety (90) days” Additionally, Contractor is responsible for all costs associated with Product pick-up or return delivery during the warranty or extended warranty period(s)
- Clause 71 (e) (Warranties & Guarantees):** Delete “one (1) year from the date of replacement” and replace with “for the remainder of the warranty period under (d), above”, making the guarantee for replacement parts equal to the remaining warranty period for the original Product. Serviceable refurbished or remanufactured components tested to meet new product standards are permitted for warranty service under this contract.

PART II MODIFICATIONS/CLARIFICATIONS:

- Clause 77 (Product Acceptance):** All reference to the acceptance period of “sixty (60) days” shall be changed to “thirty (30) days” from the date of delivery, and add to the end of the first sentence, “,unless the Contractor is responsible for installation, in which case the thirty day period shall run from completion of installation”.
- Clause 81 (Product Version):** Change the word “delivery” in line three, to “order”.
- Clause 83 (Notice of Product Discontinuance):** Change the reference from “eighteen (18) months” to “twelve (12) months”. This clause applies to Contractor’s Product (software and hardware) only, and requires notice to any purchaser of the Product or service being discontinued, not to all Authorized Users. As to Third Party Products or Product Support, Contractor shall be required to provide notice of discontinuance or withdrawal to purchasers when such notice is received by Contractor from Third Party Manufacturer.

Clause 86 (a) & (c) (Warranties) - Apply to Contractor Product only, not third party Product.

Clause 87 (Indemnification): This clause is deleted and replaced in its entirety as follows:

87. LIMITATION OF LIABILITIES THE WARRANTIES SET FORTH IN THESE GENERAL SPECIFICATIONS (PARTS I and II) ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by Authorized User, or failure caused by a product for which Contractor is not responsible may void the warranties. Contractor does not warrant uninterrupted or error-free operation of a Product or service. Except as provided in Appendix B, Clause #71 (a), the total limitation of liability of Contractor for damages under the Contract shall not exceed two (2) times the fees paid for the applicable Product or Service. Other than the damages expressly enumerated in this Contract, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records, even if the party has been advised of the possibility of such damages. Notwithstanding the foregoing, neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

This agreement is intended to be for the sole benefit of the Contractor, the State and Authorized Users and their respective successors and assigns. Nothing in this Section or in this Agreement shall create or give to other third parties any claim or right of action against Contractor or the State beyond such as may legally exist irrespective of this Section or this Agreement.

Neither party shall be liable to the other for their respective losses or damages associated with third party claims other than: (1) patent, title or copyright infringement; (2) claims for bodily injury or damage to real or tangible personal property; or (3) claims against the State or Authorized Users made by Contractor's developers, subcontractors, suppliers or agents.

The State or Authorized User may retain such moneys from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted by or against the State or Authorized User, provided however, that Contractor shall not indemnify each such entity to the extent that any claim, loss or damages arising hereunder is caused by the negligence act or failure to act of said entity.

4. PRODUCT AND SERVICE OFFERINGS

The Products and services available under this Contract are set forth herein and specified in Appendices D and E. which may be amended during the contract term to incorporate new product or service offerings, price revisions or deleted items. This Contract is limited to sale of product, and leasing is not permitted at this time. The Commissioner reserves the right to amend the contract at any time to incorporate lease offerings. Offering updates should be submitted under the Contract as soon as possible after they are announced by Contractor in accordance with the terms of Appendix G.

A. Manufacturer's Product Line All microcomputer products, peripherals and accessories offered by the Contractor in its US Commercial Price List or GSA Supply Schedule may be included under this contract. Appendix D Manufacturer's Product pricing includes the Product, standard warranty, instruction manuals/documentation, shipping costs and delivery FOB destination inside storeroom door.

B. Third Party Products (Microcomputer Components, Software) Third party products which are available under Contractor's standard commercial price list may be offered for sale under this contract. Contractor is prohibited from adding third party products under this contract unless the product is incorporated in the Contractor's commercial price list. Appendix D Manufacturer's Product pricing includes the Product, standard warranty, instruction manuals/documentation, shipping costs and delivery FOB destination inside storeroom door.

The State has and will continue to establish alternative contracts for technology product lines, including major brands of microcomputer software (Novel, Corel, Lotus, Microsoft, etc.), other ancillary microcomputer options (i.e. monitors, disk drives, software, etc.), and microcomputer services.

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

C. Instruction Manuals/Software & Documentation Product shall be furnished, at no extra charge, with one complete set of standard operator instruction manuals and documentation (hard copy or CDROM) as would normally accompany such product(s). However, in some instances, Authorized Users may wish to reduce their volume of paper when ordering multiple units, and should be able, if possible to opt not to receive extra copies of documentation. This should be worked out between the Contractor and the Authorized User prior to order.

In addition to the software installed on the unit being delivered, software media provided with each unit must be in a format usable by the unit, without requiring any type of conversion (ex. if unit has a 3½" disk drive, software must be provided on 3½" diskettes). Software is to be provided for:

- (1) Hardware that requires software for setup and/or to take full advantage of all features of the product such as, video driver cards, tape drives, and CD-ROM drives.
- (2) Operating system software purchased with the microcomputer such as Windows and DOS.

D. Description of Services Services, including consulting, training, configuration, installation and extended warranty services, may be acquired directly from Contractor under this contract at the rates specified in Appendices D and E. Unless otherwise noted in Appendix D or E, fees for these services are not included in the Product price. (See exception, below, under (3) Configuration Services.)

Consulting Services and Training under Appendix E which exceed twenty (20%) percent of the Net NYS Price for the total order price for Appendix D Product/Services cannot be acquired under this contract vehicle, but may be procured competitively using the OGS Consulting, Systems Integration and Training mini-bid process or other procurement process selected by the Authorized User. Consulting services cannot be obtained under this contract independent of a product acquisition, and may be obtained only after an analysis selecting an appropriate vendor in accordance with the OGS Procurement Guidelines established for this contract.

(1) Consulting Services:

Consulting Services may include the qualified, professional ability of the Contractor to offer analysis, recommendations, or design expertise to the State relating to microcomputer systems. Said expertise must include a current knowledge of the technology marketplace, related microcomputer systems issues and trends, and may include the ability to:

- a) Analyze existing technological environment, including hardware, software, and live operations and transaction volumes;
- b) Design and develop new systems, add-ons or modifications to existing architectures, including single platform computer systems and distributed systems;
- c) Develop functional and/or design specifications, technical writing and documentation.

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

- (2) **Training Services: "Training Services"** may include Contractor's ability to furnish pre-packaged training products, and/or develop or customize training programs as requested, including Live Training, Computer Based/Multi-Media Training which encompasses Internet-Delivered Training, and/or Video Based Training. Computer Based and Video Based Training are training delivery methods that provide

alternatives and/or supplements to instructor-led classroom training. Both allow the student to advance at his or her own speed and to review as needed.

(3) **Configuration Services:** Configuration Services may include, but are not limited to, the following -

- a) SYSTEM SET UP - Set time and date; Format hard drive and install DOS, if applicable; Test system components (CPU, monitor, and keyboard).
- b) BOARD-LEVEL ENHANCEMENTS - Memory upgrades; Math co-processors; I/O Boards; etc.
- c) DISK/TAPE DRIVE INSTALLATION
- d) INSTALL APPLICATION SOFTWARE - (see Section 4 (B) above)
- e) EXTERNAL DEVICE TESTING - Printer; Modem; CD ROM; etc.
- f) INSTALL NETWORK OPERATING SYSTEMS
- g) SYSTEM INTEGRATION
- h) CUSTOMIZED CONFIGURATIONS
- i) HARDWARE AND SOFTWARE MANAGEMENT (including hardware and software asset tracking and tagging if requested)
- j) ELECTRONIC SOFTWARE DISTRIBUTION

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

(4) **Installation Services:**

Installation may include moving equipment to its final location, testing, auditing, and fully integrating products in Authorized User's environment. **NOTE:** Appendix B, Clause 52, as modified in Clause #3, above.

(5) **Extended Warranty Services:**

Extended warranty services may include those options made available by the manufacturer in their normal course of business and which are routinely included as options in their retail/commercial price list.

5. CONTRACT ADMINISTRATION

A. Contract Liaison Contractor must provide a dedicated contract liaison to support the updating and management of the contract on a timely basis. The name and contact information shall be set forth in Appendix F.

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

C. Sales & Support Staff Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall insure that sufficient resources are available directly, or through Alternate Channel Participation in accordance with Section 8, to insure maximum service capability throughout the State. The State reserves the right to require Contractor to add additional Resellers to this contract to insure that Authorized Users receive adequate coverage and service.

6. PRODUCT ORDERING

NOTE: Any additional or extraneous terms placed on the order shall be subject to the restrictions set forth in Appendix B, Clause 40. Orders shall be placed in accordance with Appendix B, Section 44. Orders which reference the New York State Contract number shall be deemed to be placed under and to incorporate the terms and conditions of this Contract by reference. There is no standard pre-approved Order Form (Appendix I) for this contract.

Written or electronic orders shall separately itemize requests for hardware, software, documentation, and services. Products ordered shall be deemed to reference Contractor's most recently released Product at time of delivery, unless an earlier version is specifically requested in writing by Authorized User and Contractor is willing to provide such Product. The Purchase Order shall indicate the person authorized to take delivery of the product. Authorized Users shall confirm pricing, supported hardware platforms and model availability with Contractor prior to placement of orders. All pricing calculations shall be made in accordance with, or better than, the terms of the Contract.

Orders placed under this Contract will additionally be governed by purchasing procedures included in the "Contract Award Notification".

7. PRODUCT SHIPPING/ DELIVERY/ACCEPTANCE

Appendix B shall govern delivery and acceptance of orders placed under this Contract, in particular Part I, Clauses 45 through 48, 51, and Part II, Clause 77, as modified per clause #3 of this document, above. Product orders may be canceled by a notice in writing at any time prior to delivery of the Product or services without claim for lost profit or other damages.

8. USE OF ALTERNATE CHANNEL PARTICIPATION (RE-SELLERS/DISTRIBUTORS)

The State agrees to permit Contractor to utilize approved, designated Resellers including: Value Added Resellers (VARs), distributors and dealers ("Reseller(s)"), to participate as alternate distribution sources for Contractor. Resellers may be added at any time during the contract term at the discretion of the Contractor provided that they comply with all of the conditions of participation set forth in paragraph B, below, with no set minimum or maximum number of Reseller(s) who may be used. Such participation is subject to the following conditions:

A. Designation of Reseller(s) Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). If Reseller(s) are designated to fulfill orders under this contract, Contractor must provide the State, in advance, with all necessary ordering, billing addresses and federal identification numbers in the format provided in Appendix F.

B. Conditions of Participation Reseller(s) participation is subject to the following conditions:

1. Reseller(s) must be approved in advance by the State as a condition of eligibility. .
2. The State reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time.
3. Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by product line, contracting program (i.e. government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that: i) such qualifying criteria is uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental/educational program criteria, and not to a particular procurement; ii) all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term, iii) shall be compliant with State and Federal laws; and iv) those qualifying criteria met by the Reseller must be identified on the form provided in Appendix F at the time that Reseller approval is requested under this paragraph 8; and v) immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term. Contractor shall not be required to add any Reseller(s) who do not meet Contractor's qualifying criteria, as defined below, or where the addition of the Reseller(s) would violate any state or federal law or regulation.

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

4. Contractor's pricing in Appendices D and E constitutes a ceiling price which shall be the maximum price payable by the State and Authorized Users under the contract for Product or services. Resellers may not charge more than the ceiling rates set forth by Contractor in Appendices D and E, but may offer Authorized Users lower pricing than the ceiling pricing set forth therein.
5. Where the proposed Reseller(s) also holds an approved ERATE contract as referenced in Clause #1 of this agreement, and the rate offered by Reseller under this Contract is lower than the rate offered under the ERATE contract, Reseller must agree to extend and match the lower rates offered under this Contract to the ERATE purchasers in order to be approved for participation under this contract.
6. As a further condition of participation, where Reseller(s) wish to maintain a web-site page for Products/Services to be offered under the NYS Contract, Contractor must furnish a link to Reseller(s) home page from the Contractor's NYS Contract home page, and Reseller(s) must meet the following requirements at all times during the contract term:
 - i) Reseller(s) may only list such Products and Services for which ceiling prices are listed on the Contractor's home page; and
 - ii) Reseller(s) pricing must be at or lower than the ceiling rates listed at Contractor's home page; and
 - iii) Reseller(s) must individually meet and comply with the requirements of Clause 11, paragraphs A, C (such notice to be provided to both Contractor and OGS), D, E (first paragraph only), G and H.

C. Applicability of Contract Terms/ Responsibility for Reporting & Performance The State shall execute a single contract with the Contractor, and Reseller(s) may only participate as a subcontractor or agent of the Contractor. Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions.

Although the State will not be entering into separately executed contractual agreements with the designated Reseller(s), Authorized Users may place orders and issue payments directly to the Resellers in accordance with this Section 8. Product ordered directly from Reseller(s) is subject to all terms and conditions of this Contract. Reseller may only offer those Products and Services approved by the State for sale under the Contract.

Product (including services) purchased through Reseller(s) must be included and reported by Contractor in the required Quarterly Reports to the State, and where applicable, in the Third Party Manufacturer(s) reports required in accordance with the provisions of Section 12 (below). In addition to inclusion of Reseller(s) volume in the Contractor's quarterly reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with quarterly reports of the individual Authorized User's contract activity with Reseller.

9. PAYMENTS/PRICING

Contractor must offer a ceiling rate for each product or service type/category, which shall be set forth in Appendices D and E. **For Products:** The discounts offered for a specific Product category must be uniform for all Products within that category. Contractor may, however quote a different discount percentage for different product categories. e.g. Laptop discounts may have a different structure than desktops. However, all laptops within a product category must have the same discount. **For Services:** It is expected that, where services can be furnished by multiple sources (i.e. Contractor and/or Resellers), each source may offer different rates for the same service. Rates offered by each multiple source cannot exceed Contractor's ceiling rate for that type/category. The parties may, upon mutual agreement expressed in the Purchase Order, agree to more advantageous payment or financing schedules.

A. Payments - Shall be made in accordance with applicable prompt payment laws of the state and/or political subdivisions. *NOTE: Appendix B, Clauses 61-63.*

B. NYS Discounted Price Products or services offered under this Contract are offered at or below the ceiling price set forth in Appendix D & E in effect at the time of order placement. Appendices D pricing includes all applicable documentation, media, shipping and handling charges. (Hereinafter "NYS Discounted Price".)

Unless expressly set forth to the contrary in Appendix E, rates set forth for services shall be deemed inclusive of travel, meals and lodging, wherever applicable. Where travel, meals and lodging are specified in Appendix E over and above the quoted rates, reimbursement to Contractor for such costs shall be subject to the then-current ceiling

rates specified by the New York State Comptroller for State employees classified as “management confidential”, which terms and rates are subject to periodic revision.

C. GSA Benchmarked Pricing Where the NYS Discounted Price is based upon Contractor’s approved GSA Supply Schedule:

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

(2) The GSA pricing set forth in Appendices D and E incorporates an additional sum known as the “Industrial Funding Fee”, currently set by the GSA Administrator at 1% as of January, 1999. This amount is included in the prices set forth in Appendices D and E but is returnable quarterly by the Contractor to GSA, making the net pricing offered by Contractor under GSA actually 1% lower than the total order price calculated in accordance with Appendices D and E. Therefore, the “NYS Discounted Price” shall be calculated as set forth in this section, including all applicable discounts, and then further reduced by 1% to reflect the Industrial Funding Fee percentage.

D. Changes in Product Offerings/Pricing

(1) ***Adding New Products or Services Within Existing Price Structure*** Where future offerings of Products or service become commercially available during the Contract term and are commercially offered within the established pricing categories and discount structures set forth in Appendix D or E, the Contract may be amended to include such offerings in accordance with the “Auto Add” procedures set forth in Appendix G.

(2) ***Adding New Products or Services Using Different Price/Discount Structure*** Where future Products or service offerings become commercially available during the Contract term and are not commercially offered within the established pricing categories and discount structures set forth in Appendix D or E, the Contract may be amended to include such offerings in accordance with the “Regular Add” procedures set forth in Appendix G, which require the approval of OGS and the Office of the State Comptroller in advance of such product being incorporated into the contract offerings.

(3) ***Existing Products - Price Changes:*** For approved Product or Service offerings under the Contract, Contractor may change the pricing set forth under this Contract as follows:

a) **Price Decreases** shall take effect automatically during the contract term where:

- i) ***List Price/Reseller Cost/GSA Pricing, as Applicable, is Reduced:*** Contractor lowers its pricing for product and/or services to its customers, resellers, or GSA as applicable during the contract term. In such case the Contractor shall lower Contract pricing in accordance with the established pricing structure as outlined in Appendix D or E, as applicable; or
- ii) ***Special Offers/Promotions:*** See Appendix B, Clause #43, as amended (per this document, Clause #3). Contractor offers any customer generally during the term of the Contract other more advantageous special promotions or special discount pricing, in which case the maximum discount associated with such offer or promotion, if greater than the discount otherwise available under this Contract (“Contract discount”), shall, for transactions on the same terms or for the life of such special offer or promotion, be used in lieu of the Contract discount in the calculation of the NYS Price.
- iii) ***Special Offers/Promotions to Authorized Users Under/Outside of Contract:*** Contractor may offer Authorized Users, under either the Contract or any other contracting vehicle, competitive pricing which is lower than the rates set forth herein at any time during the Contract term and such lower rates shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (ii).

b) **Price Increases** - Price increases shall be effective as to orders placed after: i) the date on which such increase becomes effective under the appropriate benchmark the GSA Schedule or under other appropriate benchmark generally (ie. US Commercial Price List) or ii) thirty days after the

date on which OGS and the NYS Comptroller have received and approved the amended pricing; whichever is later. In no event can a price increase be posted to the Contractor's Internet site until after the effective date.

Additionally, where the pricing submitted for services are not benchmarked to an approved GSA Supply Schedule, Contractor may request an increase in the pricing contained in Appendices D or E provided that Contractor certifies in writing that the price change for services applies to all U.S. customers using the same benchmark. Such adjustment shall not exceed the lesser of five (5%) percent or the percent increase in the latest copy of the "National Consumer Price Index for All Urban Consumers (CPI-U)", as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. Contractor has the sole responsibility to submit to OGS a service rate adjustment request thirty (30) days prior to the effective date of the price increase, providing a copy of the index and other supporting documentation necessary to support the request. In the event that this index ceases to be published, the referent index shall be as issued by the U.S. Department of Labor in its place. In no case shall the percentage increase result in a NYS Price which exceeds Contractor's commercial price list.

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

10. DISTRIBUTION OF CONTRACTOR PRICE LIST AND CONTRACT APPENDICES

It shall be the Contractor's responsibility to distribute hard copies of the terms and conditions of the Contract, including price lists and appendices, to Authorized Users upon request. Contractor shall also be required to furnish OGS with additional copies of the price lists (paper copy or diskette, at the State's discretion) in order that OGS can make them available to fulfill requests made pursuant to the New York State Freedom of Information Law.

11. INTERNET ACCESS TO CONTRACT & PRICING INFORMATION

It is the intention of the parties to facilitate access by Authorized Users to contract offering and pricing information primarily electronically via the Internet. To that end, the State's website shall host and update the Contract terms and conditions throughout the Contract term. The Contractor is required to host the complete Contract ceiling pricing and product offerings at Contractor's Internet site, at Contractor's sole expense, including all subsequent changes in the Contract offerings (adds, deletes, price revisions) throughout the Contract term. Contractor may not password protect or otherwise restrict access to the site.

A. Warranty Contractor warrants and represents that contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at Contractor's web site. Contractor may only post Product or Service offerings, including Product SKU's and part numbers, at the NYS Contract web page which have been approved for sale under the Contract. Contractor shall be liable to the State and Authorized Users for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post contract information in accordance with this paragraph.

B. Price Data Retention & Audit The parties anticipate that certain price data may fluctuate during the contract term, and that new pricing will be posted in a timely manner. When no longer current, historical pricing information must be archived and retained by the Contractor, at Contractor's place of business at its sole cost and expense, for a twelve month period. Archived data must be retained in a manner which renders it electronically accessible on-line by the State and/or Authorized Users for the purpose of auditing payments under the Contract. While the Contractor is not required to maintain this information as live data at Contractor's web site, it may choose to do so or may permit access by remote log-on to a dedicated PC, or any other similar means.

At the end of each twelve month period, the Contractor shall either electronically archive the information in a manner which allows the State to continue to access the information; or electronically transmit the information to the

State. This does not relieve the Contractor from any audit requirements imposed by Appendix A, Clause 10, nor does it shorten the retention periods for information stated therein. In addition, annual audits of the information posted at Contractor's web site may be conducted by OSC, or by an independent auditor at Contractor's expense. The independent auditor shall be selected by: (1) Contractor forwarding three proposed firms acceptable to Contractor to the State, and (2) the State making the final selection of the auditor used from that pool.

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

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

E. Responsibility for Content Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, or assigns, and agrees that neither it, its agents, employees, or assigns has any authority to act or speak on behalf of the State or OGS.

Contractor's NYS Contract page must list each and every Product and Service which has been approved for sale under this NYS Contract, whether such Product/Service is furnished directly by Contractor or in combination with or solely by approved Reseller(s), and must provide the contract ceiling prices set forth in Appendices D and E for each such Product/Service. Contractor must also provide "hot links" from its website to the website(s) of Reseller(s) participating under the contract.

Where Products and services are offered from multiple sources (Contractor and/or one or more Resellers), Contractor's web site should first list category of service, and second all multiple sources approved to provide that service under the contract. The State reserves the right, at any time during the Contract term, in the alternative to require the Contractor to host all pricing information at its site (including Reseller(s) pricing), or to require, as a condition of continued Reseller participation, Reseller to have an operational on-line configurator at Reseller(s) site in accordance with the requirements of paragraph F, below.

F. On-line Price Configurator It is mandatory for the Contractor to offer an operational on-line configurator at their contract website at the start of the Contract term and thereafter throughout the Contract term. With respect to item 3 below, the ability to produce a search result as described must be available within one year from start of the contract. The configurator must incorporate the pricing for all Product and Service offering approved under Appendices D and E. The on-line configurator may only configure options, products, and pricing data for products and services which have been approved for sale under the NYS Contract.

Directions and assistance in using the configurator and website in general must be available at entry. This configurator must enable Authorized Users to:

- (1) view the options available for the type of PC, other product(s) or service(s) requested;
- (2) fully configure a system or to search and find products under the approved contract list;
- (3) choose CPU type and speed, ram, hard drive, monitor, speaker, mouse, keyboard, card (and other available options) that will produce a search result that includes all models fitting that configuration

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

G. On-Line Ordering Contractor may offer electronic ordering capability to Authorized Users in order to facilitate the transaction electronically.

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

12. REPORTING/MONITORING CONTRACT PERFORMANCE

A. Quarterly Usage & Performance Reports Contractor shall provide the State with verified quarterly reports showing the dollar volume of any and all sales under this Contract for the prior three month period. Said report shall include all participation by all Authorized Users, including state and non-state governmental entities, and others authorized by law. In the event that a Contractor utilizes alternate channel participants (i.e., Value Added Resellers, distributors, or dealers) to fulfill orders under this contract, it is the responsibility of Contractor to include all contract revenues from these participants in the quarterly report. Where third party product or ancillary options are acquired under this Contract, Contractor shall be required to separately report such sales volume on a quarterly basis so that such quantities will be applied to the State's aggregated volume with the third party product manufacturer. Factory installed hardware options involving third party components do not have to be reported separately. Third party software, however, must be reported separately by product line under this Section 12.

Such reports shall be compiled and delivered by Contractor, to the Procurement Services Group of the Office of General Services on the 37th floor of the building address first listed above by close of business as follows:

Calendar Quarter Ending:	Report Due:
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The State shall have the right to verify said report and to take any action(s) necessary to enforce its rights under this paragraph, including but not limited to the right to stop payments until such reports are received, audit Contractor's applicable contract books, to substitute, in its sole judgment, a good faith estimate of contract usage upon failure of Contractor to deliver said report as required, or to terminate the Contract for breach.

B. Electronic Reporting of Contract Purchases At such time as such facilities become available for use without special cost or technology development by the Contractor for this Contract only, Contractor shall be required to provide its quarterly usage reports to the State electronically in accordance with the State's mapping instructions at no additional cost to the State.

C. Electronic Reporting of Product Update At such time as such facilities become available for use without special cost or technology development by the Contractor for this contract only, Contractor shall be required to provide updates to the State in accordance with the State's mapping instructions at no additional cost to the state.

13. CANCELLATION

In addition to the cancellation rights stated in Appendix B, any order placed under this Contract may be canceled for convenience at any time by the State upon thirty (30) days written notice without penalty or other early termination charges due.

In the event that an order is canceled either for cause or for convenience, Contractor shall be entitled to payment for services rendered and materials provided prior to the termination, and subject to offsets, if any, for claims by Authorized User against the Contractor." In no event shall the State be liable for for lost profits, incidental, consequential or special damages based upon the exercise of the State or Authorized User's cancellation rights.

14. ENTIRE AGREEMENT

This Contract and the referenced appendices constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and these contracts shall not be changed, modified or altered in any manner except by an instrument in writing executed by authorized representatives of both parties hereto. Such parties include Contractor, and the Commissioner of OGS, the Attorney General, and the Comptroller on behalf

of the State of New York. Licensees shall not have the authority to modify the terms of the Contract, except as to acceptance of better terms and pricing for a particular procurement than that set forth under the Contract.

15. NOTICES

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

16. 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.

17. 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.

18. E.P.A. ENERGY STAR PROGRAM

The Federal EPA has continued to foster the manufacture of energy efficient EDP equipment. New York State fully supports this effort. Unless otherwise noted in Appendix C all relevant hardware products listed therein are in compliance with the applicable EPA requirements.

19. AMERICANS WITH DISABILITIES ACT (ADA)

The Federal ADA, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities. Any software or hardware products in Appendix C which may be used or adapted for use by visually, hearing or any other physically impaired individuals must be clearly designated and distinguished from non-ADA product offerings in the price list.

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

CONTRACTOR

THE PEOPLE OF THE STATE OF NEW YORK

By: _____

By: _____

Name:

Title:

Contractor Firm Name:

Federal Tax Identification #:

**APPROVED AS TO FORM
ELIOT SPITZER
New York State Attorney General**

**APPROVED
H. CARL MC CALL
New York State Comptroller**

ACKNOWLEDGMENT

STATE OF _____ }
COUNTY OF _____ } ss.:

On the ___ day of _____ in the year 19 _____, before me personally appeared: _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that ___he resides at _____, Town of _____, County of _____, State of _____; and further that:

[Check One]

Individual: ___he executed the foregoing instrument in his/her name and on his/her own behalf.

Corporation or Partnership: ___he is the _____ of _____,

the **CORPORATION** described in said instrument; that, by authority of the Board of Directors of said corporation, ___he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, ___he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

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 the purposes set forth therein; and that, pursuant to that authority, ___he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.

Limited Liability Company: ___he is a member or manager 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 the purposes set forth therein; and that, pursuant to that authority, ___he executed the foregoing instrument in the name and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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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, licensor, licensee, lessor, lessee or any other party):

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$10,000 (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.

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. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York,

Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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

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

Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

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

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

implementation of the contractor's obligations herein; and

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

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

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

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

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

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

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

after service hereunder is complete in which to respond.

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

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

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

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

Information on the availability of New York State subcontractors and suppliers as well as a directory of minority and women-owned business enterprises is available from:

NYS Empire State Development
Minority & Women Owned Business Division
One Commerce Plaza
Albany, New York 12245

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 state 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 amendments (Chapter 684, Laws of 1994) require that they be denied contracts which they would otherwise obtain. NOTE: South Carolina, Alaska, West Virginia, Montana, Wyoming, Louisiana and Hawaii were the states subject to this provision as of October, 1998. Contact NYS Empire State Development for a current list of states subject to this provision.

APPENDIX B

General Specifications for Procurement Contracts

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PART I
GENERAL - ALL PROCUREMENTS

GENERAL

1. APPLICABILITY The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to all procurements and resulting procurement contracts let by the Office of General Services Procurement Services Group, or let by any other Issuing Entity where incorporated by reference in its Bid Documents. Appendix B shall govern such procurement or contract unless expressly modified or amended by the terms of a Bid Specifications, or a negotiated Contract/Clarification document, if any. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

This document supersedes and replaces the General Specifications issued by the Office of General Services, September, 1983.

2. GOVERNING LAW The laws of the State of New York shall govern and apply to the procurement, any resulting contract and for determinations in a court of competent jurisdiction in New York of any and all disputes, litigation or interpretations arising from or connected with the procurement or contract, except where expressly superseded in a specific contract letting or where the Federal supremacy clause requires otherwise.

3. APPENDIX A Mandatory terms for all New York State contracts incorporated in all bid documents and/or resulting contracts. The terms of Appendix A (*Standard Clauses for New York State Contracts*) are expressly incorporated herein.

4. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the requirements of the *Public Officers Law*, and other State codes, rules and regulations 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.

5. CONFLICT OF CLAUSES Conflicts between procurement or contract documents shall be resolved in the following order of precedence:

- a. Appendix A (*Standard Clauses for NYS Contracts*)
- b. **Contract/Clarification Documents**
Writing(s) setting forth the final agreements, clarifications, terms, statement of work and/or modifications between the Bid Documents and Contractor's Bid or Mini-bid.
- c. **Mini-Bid Project Definition** (If any)
- d. **Bid Documents** (Other than Appendix A)
 - i. Bid Specifications prepared by the Issuing Entity
 - ii. Appendix B (*General Specifications*)
- e. **Contractor's Bid or Mini-Bid Proposal**

6. DEFINITIONS – PART I Terms used in this Appendix B shall have the following meanings:

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

ANCILLARY PRODUCT Product which is purchased or licensed on a restricted use basis in conjunction with the principal manufacturer's
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Product being acquired (e.g. may be used only in combination, or by educational institutions for research use).

ATTORNEY GENERAL Attorney General of the State of New York.

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

BID OR BID PROPOSAL An offer or proposal submitted by a Bidder to furnish a described product or a solution or means of achieving a practical end, at a stated price for the stated contract term.

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

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

BID SOLICITATION The notice or advertisement of an intent to purchase a specified Product by or on behalf of Authorized User(s).

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

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

COMPTROLLER Comptroller of the State of New York.

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

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

b. Centralized Contracts Single or multiple award contracts where the specifications for a Product or general scope of work or Product are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded 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.

c. Back-Drop Contracts Multiple award centralized contracts where the Office of General Services defines the specifications for a general scope of work or Product(s) 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 recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor from among back-drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a mini-bid among qualified back-drop contract holders, or such other method as set forth in the Bid Document.

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

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

CONTRACTOR Any successful Bidder(s) to whom a contract has been awarded by the Commissioner. The term "Contractor" includes Licensors.

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

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

GROUP A classification of Product (commodities, services or technology).

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

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

LATE BID For purposes of bid openings held and conducted by OGS, a bid not received in such place as may be designated on the Bid Specifications or in the OGS Mailroom located in the Governor Nelson A. Rockefeller 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 Issuing Entities 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.

LETTER OF ACCEPTANCE 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).

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

LICENSEE One or more Authorized Users who acquire Product from Contractor by execution of a license in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User(s) on whose behalf the license was executed who took receipt of the Product, and who shall be solely responsible for performance and liabilities incurred.

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

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

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

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

OGS The New York State Office of General Services

PROCUREMENT RECORD Documentation by the Issuing Entity of the decisions made and approach taken during the procurement process.

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

PURCHASE ORDER The Authorized User's fiscal form or format which is used when making a purchase.

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

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

RESPONSIBLE BIDDER A Bidder that is determined to have skill, judgment and integrity, and that is found to be competent, reliable, experienced and qualified financially, as determined by the Commissioner.

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

SINGLE SOURCE A procurement where two or more offerors can

supply the required Product, and the Commissioner may award the contract to one Bidder over the other.

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

STATE State of New York

BID SUBMISSION

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

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

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

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

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

“BID ENCLOSED (bold print, all capitals)

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

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

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

10. FACSIMILE SUBMISSIONS Unless specifically prohibited by the terms of the Bid Specifications, facsimile bids may be SUBMITTED AT THE SOLE OPTION AND RISK OF THE BIDDER. Only the FAX number(s) indicated in the Bid Specifications may be used. Access to the facsimile machine(s) is on a “first come, first serve” basis, and the Commissioner bears no liability or responsibility and makes no guarantee whatsoever with respect to the Bidder's access to such equipment at any specific time. Bidders are solely responsible for submission and receipt of the entire facsimile bid by the Issuing Entity prior to bid opening and must include on the first page of the transmission the total number of pages transmitted in the bid, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Commissioner. Facsimile bids are fully governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the

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format required in the Bid Specifications, including the executed signature page and acknowledgment.

11. AUTHENTICATION OF FACSIMILE BIDS The act of submitting a bid by facsimile transmission, including an executed signature page, shall be deemed a confirming act by Bidder which authenticates the signing of the bid.

12. LATE BIDS 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 Issuing Entity. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Issuing Entity, shall not excuse late bid submissions.

13. 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 in the Bid Specifications. 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.

14. EXTRANEIOUS 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) which are attached or referenced with the submission shall not be considered part of the bid, but shall be deemed included for informational or promotional purposes only.

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

- a. Each proposed extraneous term (addition, 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) which Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed “material,” shall be incorporated into a contract unless the Commissioner 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).

15. CONFIDENTIAL / TRADE SECRET MATERIALS Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission. 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, at the time of submission. Acceptance of the claimed materials does not constitute a determination on the exemption

request, which determination will be made in accordance with statutory procedures.

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

a. “Public Works” and “Building Services” - Definitions

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

ii. Building Services *Labor Law Article 9 applies to contracts for building service work over \$1,500 with a public agency, which 1) involve the care or maintenance of an existing building, or 2) involve the transportation of office furniture or equipment to or from such building, or 3) involve the transportation and delivery of fossil fuel to such building, and 4) the principal purpose of which is to furnish services through use of building service employees.*

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

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

d. Public Posting & Certified Payroll Records *In compliance with Article 8, Section 220 of the *Labor Law*, as amended by Chapter 565 of the Laws of 1997:*

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

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

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only *Contractors and sub-contractors on public works projects must submit monthly payroll transcripts to the*

*issuing entity which has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For mini-bid solicitations, the payroll records must be submitted to the entity preparing the agency mini-bid project specification. For “agency specific” bids, the payroll records should be submitted to the entity issuing the purchase order. For all other OGS centralized contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and the issuing entity, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor so long as: 1) the contractor/subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the contractor or subcontractor attesting to the truth and accuracy of the records accompanies the disk. **This provision does not apply to building services contracts.***

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

e. Day’s Labor - Defined for Article 8, Public Works (For Purposes of Article 8 of the Labor Law) *No laborer, worker or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do all or part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. “Extraordinary emergency” shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the contract site or for the protection of the life and limb of the persons using the contract site.*

17. TAXES

a. *Unless otherwise specified in the Bid Specifications or set forth in this clause, 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 items will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the *Tax Law*. Non-State Authorized Users must offer their own proof of exemption where required. 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. For tax free transactions under the Internal Revenue Code, the New York State Registration Number is 14740026K.*

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

18. EXPENSES PRIOR TO AWARD *The Issuing Entity is not liable for any costs incurred by a Bidder in the preparation and production of a bid or for any work performed prior to contract award and/or issuance of an approved Purchase Order.*

19. ADVERTISING BID RESULTS *A Bidder in submitting a bid agrees not to use the results therefrom as a part of any commercial*

advertising without the prior written approval of the Commissioner. In addition to any other sanctions or remedies available to it in law or equity, the Commissioner may suspend from bidding on its requirements or terminate a contract of any Bidder/Contractor who violates the terms of this clause.

20. PRODUCT REFERENCES

a. **“Or Equal”** On all Bid Specifications the words “or equal” are understood to apply where a copyright 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 therein which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

21. **RECYCLED 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 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. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the “Warranties & Guaranties” set forth below.

Refurbished or remanufactured components or items may only be accepted at the discretion of the Commissioner, or upon the conditions set forth in the Bid Specifications.

Items with recycled, recovered, refurbished or remanufactured content must be identified in the bid or will be deemed new Product.

22. **PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS** Bids offering Products which are manufactured or produced in public institutions will be rejected.

23. 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, 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** Prices must 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 only to the cash discount. If the award is to be made on another basis, transportation and other charges must be prepaid by the Contractor and added to the invoice as a separate item, unless otherwise required in the Bid Specifications.

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 grouping 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. **COPS Financing** Many acquisitions of Product are financed through Certificates of Participation (COPS). Pursuant to the terms of the COPS 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.

24. DRAWINGS

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

b. **Drawings Submitted During the Contract Term** Where required by the Bid Specifications to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall be required to develop, maintain, deliver and update such drawings on an ongoing basis at no additional charge. Contractor shall be responsible for updating drawings and plans during the contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User’s representative as required by the Bid Specifications. Where required, Contractor shall furnish to Authorized User in a timely manner the required drawings representing the then current, “as modified” condition of all product included in the scope of work.

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

25. **SITE INSPECTION** Where Bidder is required by the Bid Specifications to deliver or install Product, or to service installed product(s) or equipment, Bidder shall be given an opportunity and shall be required to inspect the site prior to submission of the Bid, including environmental or other conditions or pre-existing deficiencies in the installed product, equipment or environment, which may affect Bidder’s ability to deliver, install or otherwise provide the required product. All inquiries regarding such conditions may only be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed, and to have included the costs of repair in its bid. Bidder must provide a detailed explanation of work intended to be performed under this clause. Bidder shall be required to remedy any pre-existing deficiencies or conditions at the commencement of the contract term. Reimbursement for the cost of repairing the conditions or deficiencies shall be separately enumerated in the bid.

26. **PROCUREMENT CARD** NYS and American Express (AMEX) have entered into an agreement for AMEX to provide the State with purchasing card services. The AMEX Corporate Purchasing Card enables authorized users to make authorized purchases directly from a Contractor without processing the Purchase Orders or Purchase Authorizations currently required. Purchasing Cards are issued to selected employees authorized to purchase for the agency and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the AMEX Corporate Purchasing Card.

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

27. SAMPLES

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

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

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

c. Enhanced Samples When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a commodity substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

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

e. Testing All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after contract award. Unless otherwise stated in the Bid Specifications, Bidder Samples consumed or rendered useless by testing will not be returned to the Bidder.

BID EVALUATION

28. BID EVALUATION The Commissioner reserves the right to accept or reject any and all bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his/her sole discretion, may accept or reject illegible, incomplete or vague bids and his/her decision shall be final. A conditional or revocable bid which clearly communicates the terms or

limitations of acceptance may be considered and contract award may be made in compliance with the Bidder's conditional or revocable terms in the offer.

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

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

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

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

33. PERFORMANCE QUALIFICATIONS The Commissioner reserves the right to investigate or inspect at any time whether or not the Product, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Documents. Contractor shall at all times during the contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Commissioner, to present evidence of experience, ability and financial standing, as well as a statement as to plant, machinery and capacity of the manufacturer for the production, distribution and servicing of the Product bid. If the Commissioner determines that the conditions and terms of the Bid Documents or Contract are not complied with, or that items or Product proposed to be furnished do not meet the specified requirements, or that the qualifications, financial standing or facilities are not satisfactory, or that performance is untimely, the Commissioner may reject such bid or terminate the contract. Nothing in the foregoing shall mean or imply that it is obligatory upon the Commissioner to make an investigation either before or after award of a contract, but should such investigation be made, it in no way relieves the Bidder/Contractor from fulfilling all requirements and conditions of the contract.

34. DISQUALIFICATION FOR PAST PERFORMANCE Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts.

35. 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 to conform with requirements. In the event such right is exercised, the lowest responsible Bidder meeting specifications will be advised of the revised requirements 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 requirements.

36. RELEASE OF BID EVALUATION MATERIALS Requests concerning the evaluation of bids may be submitted under the *Freedom of Information Law*. Information, other than the Bid Tabulation, shall be released as required by law after contract award. Written requests should be directed to the Commissioner.

37. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty (60) days after the date of the bid opening, during which period, bids must remain firm and cannot be withdrawn. If, however, an award is not made within the sixty (60) day period, bids shall remain firm until such later time as either a contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its bid. Any bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner, be accepted or rejected.

TERMS & CONDITIONS

38. CONTRACT CREATION / EXECUTION Except for contracts governed by Article 11-B of the *State Finance Law*, upon receipt of all required approvals 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 of: i) a Letter of Acceptance; ii) a fully executed contract; or iii) a Purchase Order authorized by the Commissioner.

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

a. Agencies All State Agencies may utilize and purchase under any state centralized contract let by the Office of General Services Procurement Services Group, unless the Bid Specifications limit purchases to specific State Agencies.

b. Non-State Agency Authorized Users Authorized Users other than state agencies are permitted to make purchases through state centralized contracts where permitted by law, the contract or the OGS Commissioner.

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

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

40. MODIFICATION OF 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.

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

41. SCOPE CHANGES The Commissioner reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the contract specifications, such changes to be within the general scope of the contract. The Commissioner may make an equitable adjustment in the contract price or delivery date if the change affects the cost or time of performance.

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.

42. ESTIMATED QUANTITY CONTRACTS Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the contract term. No guarantee of any estimated quantity(s) is implied or given. Unless otherwise set forth in the Bid Specifications, contracts for services and technology are completely voluntary as to use, and therefore no quantities are guaranteed.

43. 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 vehicle upon the same or similar terms and conditions as that of this contract at a lower price, the price under this contract shall be immediately reduced to the lower price.

44. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Products are to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User requiring the Product. Unless terminated or canceled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address set forth in the Contract for receipt of orders, 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. Unless otherwise specified, all Purchase Orders against centralized contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the vendor's order form, confirmation or

acknowledgment, and the contract terms shall be resolved in favor of the terms most favorable to the Authorized User.

If, with respect to an agency specific contract, a Purchase Order is not received 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 the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the Commissioner and without cost to the State, result in the canceling of such requirement by the Commissioner with, at the Commissioner's discretion, a corresponding reduction in the contract quantity and price.

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

46. SATURDAY & HOLIDAY DELIVERIES Unless otherwise specified in the Bid Specifications or by an Authorized User, deliveries will not be scheduled for Saturdays, Sundays or legal holidays observed by the State of New York except of Product for daily consumption or where an emergency exists or the delivery is a replacement or is late, in which event the convenience of the Authorized User shall govern.

47. SHIPPING / RECEIPT OF PRODUCT

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

b. Shipping Charges Contractor shall be responsible for insuring that the Bill of Lading states "charges prepaid" for all shipments. Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be FOB 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 are understood to not relieve the contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges.

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

48. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title and 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. 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 which is substandard or does not comply with the Contract terms, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

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

50. PRODUCT SUBSTITUTION In the event a specified manufacturer's Product listed in the Contractor's Bid becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Force Majeure Clause below) a Product deemed by the Commissioner to be the equal or better of the specified commodity or service 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 approval may be cause for cancellation of contract.

51. REJECTED PRODUCT When Products are rejected, they must be removed by the Contractor from the premises of the receiving entity within ten days of notification of rejection by Authorized User. Upon rejection notification, risk of loss of rejected or non-conforming Product shall remain on Contractor. Rejected items not removed by the Contractor within ten days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of the items 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.

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

53. REPAIRED OR REPLACED PRODUCT / COMPONENTS

Where the Contractor is required to repair, replace or substitute Product or components under the Contract, the repaired, replaced or substituted Product shall be subject to all terms and conditions for new Product set forth in the contract, including product warranties.

54. ON-SITE STORAGE Materials, equipment or supplies may be stored at the Authorized User's site at the Contractor's sole risk and only with the approval of the Authorized User.

55. EMPLOYEES / SUBCONTRACTORS / AGENTS All employees, subcontractors or agents performing work under the contract must be trained technicians who meet or exceed the technical and training

qualifications set forth in the Bid Specifications or the Bid, whichever is greater, and must comply with all rules and requirements of the Contract. The Commissioner reserves the right to conduct a security background check or otherwise approve any employee or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause, including but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the contract terms. The Commissioner reserves the right to reject and/or bar from the facility for cause any employee, subcontractor, or agents of the Contractor.

56. ASSIGNMENT / SUBCONTRACTORS 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, other than the assignment of the right to receive moneys due, without the prior written consent of the Issuing Entity. Prior to an assignment of the right to receive moneys becoming effective, Contractor shall file a written notice of such assignment simultaneously with the NYS Comptroller, the Issuing Entity, and participating Authorized User(s).

The Commissioner reserves the right to reject any proposed subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to: that the proposed transferee is on the Department of Labor's list of companies with which New York State cannot do business; the Commissioner determines that the company is not qualified; unsatisfactory contract performance or service has been previously provided; or attempts were not made to solicit minority and women's business enterprises (M/WBE) bidders for the subcontract.

57. PERFORMANCE / BID BOND The Issuing Entity reserves the right, pursuant to *State Finance Law*, to require the Bidder/Contractor to furnish without additional cost, a performance, payment or bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the contract, whenever the Commissioner in his/her sole discretion deems such bond or security to be in the Issuing Entity's best interest. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

58. STOP / SUSPENSION OF WORK

a. Stop Work Order The Commissioner reserves the right to stop the work covered by this contract at any time that the successful Contractor becomes unable or incapable of performing the work or meeting any requirements or qualifications set forth in the contract. In the event of such stopping, the Commissioner shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Contractor shall be liable for any such cost on account thereof.

b. Suspension of Work Order The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this contract, at any time, in the best interests of the State or Issuing Entity. In the event of such suspension, the contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of emergency, or other such circumstances. Upon issuance of such suspension of work, the Contractor is not to accept any purchase orders, as specified in the Suspension Order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of work.

59. CANCELLATION A contract may be canceled by the Commissioner, and/or an Authorized User may cancel its participation, license or service order under the contract, at the Contractor's expense

upon non-performance, or upon a determination that Contractor is non-responsive, or non-responsible.

A continuous recruitment Back-Drop Contract may be terminated at any time, in whole or in part, in the discretion of the Commissioner. Such cancellation of the Back-Drop shall not affect any project mini-bid which has been issued under the Back-Drop Contract prior to the date of such termination.

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

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

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

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

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

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

62. DEFAULT - AUTHORIZED USER An Authorized User's breach shall not be deemed a breach of the centralized contract. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend 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.

Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared. It is understood, however, that if the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User shall constitute a breach of its contract and the State or Authorized User may thereafter utilize any remedy available at law or equity.

63. INTEREST ON LATE PAYMENTS

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

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

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

64. REMEDIES FOR BREACH 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 Upon the failure of the Contractor to properly perform within the time specified, failure to provide acceptable service, to make immediate replacement of rejected Product when so requested, or upon the revocation of the Contract by the Commissioner for cause, or upon repudiation of the contract by the Contractor, the Commissioner may, with or without formally bidding same:

i. purchase from other sources to replace the Product rejected, revoked, not timely delivered or repudiated; or

ii. If after making reasonable attempts, under the circumstances then existing, to timely provide acceptable service or acquire replacement product of equal or comparable quality, the Commissioner is unsuccessful, the Commissioner may acquire acceptable service or replacement product of lesser or greater quality.

Such purchases may, in the discretion of the Commissioner, be deducted from the contract quantity.

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

c. Reimbursement of Costs Incurred The Contractor agrees to reimburse the State and/or Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the State or Authorized User in December, 1998

connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

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

d. Deduction / Credit Sums due as a result of these remedies may be deducted or offset by the State or 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 State or Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc. which arise from the administration of the contract.

65. ASSIGNMENT OF CLAIM Contractor hereby assigns to the State any and all its claims for overcharges associated with this contract which may arise under the antitrust laws of the United States, 15 U.S.C. Section 1, et seq. and the antitrust laws of the State of New York, G.B.L. Section 340, et seq.

66. 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 user agency representative.

67. 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 State or Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

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

Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, subcontractors, officers, or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such confidential material which is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the State or Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State Laws and Regulations. This warranty shall survive termination of this Contract for a period of five (5) years. Contractor

further agrees to take appropriate steps to instruct its personnel, agents, officers and any subcontractors regarding the obligations arising under this clause to insure such confidentiality.

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

70. CONTRACT TERM - EXTENSION In addition to any stated renewal periods in the Contract, any contract or unit portion thereof let by the Commissioner may be extended by the Commissioner for an additional period(s) of up to one year (cumulatively) with the written concurrence of the Contractor.

71. WARRANTIES & GUARANTEES Contractor hereby warrants and guarantees:

- a. To fully indemnify and save harmless the State, Authorized Users and their respective officers, agents and employees from suits, actions, damages and costs of every name and description arising out of the acts or omissions of Contractor, its officers, employees, subcontractors, partners, or agents, in any performance under this contract including: i) personal injury, damage to real or personal tangible or intangible property, without limitation; ii) negligence, either active or passive, without limitation, or iii) infringement of any law or of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or other third party intellectual proprietary rights, without limitation, provided that the State or Authorized User shall give Contractor: (a) prompt written notice of any action, claim or threat of infringement suit, or other suit, promptness of which shall be established by Authorized User upon the furnishing of written notice and verified receipt, (b) the opportunity to take over, settle or defend such action, claim or suit at Bidder's sole expense, and (c) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State or Authorized User may require Bidder/Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner shall require.
- b. Contractor warrants full ownership, clear title free of all liens, or perpetual license rights to any Products transferred to Authorized User under this Contract, and Contractor shall be solely liable for any costs of acquisition associated therewith without limitation. Contractor warrants that Authorized User will have undisturbed, peaceful use of the Products, including, without limitation, software, object or source codes, custom programming or third party intellectual property rights incorporated or embedded therein, and training modules or Documentation. Contractor fully indemnifies the State and Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.
- c. To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the contract.
- d. Unless recycled or recovered materials are available in accordance with the "Recycled & Recovered Materials" clause, Product offered shall be standard new equipment, current model of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice. Every Product, including any substituted or replacement unit delivered, must be guaranteed against faulty

material and workmanship for a period of one year from and after the date the unit is accepted unless otherwise specified by the State or Authorized User. Notwithstanding the foregoing, when the manufacturer's standard guarantee for Product or any component thereof exceeds one year, the longer guarantee period shall apply to such unit or component thereof delivered under this contract. Furthermore, the Contractor agrees to extend its warranty period with regard to any Product delivered by the cumulative periods of time, after notification, during which the Product requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers or employees. If during the regular or extended warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective goods during the warranty periods shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor. This warranty shall survive any termination of the contract in accordance with the warranty term.

- e. Where the provision of services requires the replacement or repair of Product, any replaced or repaired component, part or Product shall be new and shall, if available, be replaced by the original manufacturer's component, part or Product. All proposed substitutes for the original manufacturer's installed Product must be approved by the Authorized User before installation. The Product or part shall be equal to or of better quality than the original Product being replaced. Any Product replaced by the Contractor under the contract shall be guaranteed for one (1) year from the date of replacement and replaced at no cost to the Authorized User if found defective during that time.
- f. 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 any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman's compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the State to cancel or suspend this contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

72. YEAR 2000 WARRANTY The following Year 2000 warranty applies to procurements of: **A) Product**, including: i) equipment incorporating embedded software or other technology (e.g. copiers, elevators, security systems), ii) software, or iii) other technology; or **B) Services** including: 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).

This Year 2000 Warranty shall survive beyond termination or expiration of the Contract through: a) one year, b) December 31, 2000, or c) the Contractor or Third Party Manufacturer's stated Year 2000 warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

a. Definitions For purposes of this warranty, the following definitions shall apply:

i. "Product" shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are furnished (e.g., maintenance, consulting, systems integration, code or data conversion, data entry) the term "Product" shall include resulting deliverables.

ii. "Contractor's Product" shall include all Product delivered under

this Contract by Contractor other than Third Party Products.

iii. **“Third Party Product”** shall include product manufactured or developed by a corporate entity independent from Contractor and provided by Contractor on a non-exclusive licensing or other distribution agreement with the third party manufacturer. “Third Party Product” does not include product where Contractor is: (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

b. **Warranty Disclosure** At the time of bid for individual or agency specific contracts, or at the time of ordering Product or Product quote for OGS centralized contracts, Contractor must disclose in writing to Authorized User:

i. **For Contractor Product and Products (including, but not limited to, Contractor and/or Third Party Products and/or Authorized User’s Installed Products) which have been specified to perform as a system:** Compliance or non-compliance of the Products individually and as a system with the Warranty set forth below; and

ii. **For Third Party Product not specified to perform as part of a system:** compliance on the grounds that the Contractor has passed-through the third party manufacturer Year 2000 Warranty or non-compliance based upon the fact that a) Contractor indicates that they can not pass through the third party manufacturer’s Year 2000 Warranty or b) there is no third party manufacturer’s Year 2000 Warranty to pass through.

NOTE: AN ABSENCE OR FAILURE TO FURNISH THE REQUIRED WRITTEN WARRANTY DISCLOSURE SHALL BE DEEMED A STATEMENT OF COMPLIANCE BY THE CONTRACTOR OF THE PRODUCT(S) OR SYSTEM(S) IN QUESTION WITH THE YEAR 2000 WARRANTY STATEMENT SET FORTH BELOW.

c. **Year 2000 Warranty** Year 2000 Warranty “compliance” shall be defined in accordance with the following warranty statement:

Warranty Statement: Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Where a purchase requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

In the event of any breach of this warranty, Contractor shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized User’s ongoing business processes, time being of the essence, at Contractor’s sole cost and expense. This warranty does not extend to correction of Authorized User’s errors in data entry or data conversion.

d. **YEAR 2000 Warranty on Services** 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), in addition to the foregoing Year 2000 warranty on service deliverables, 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) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year

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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.

PART II
SOFTWARE & TECHNOLOGY PROCUREMENTS

GENERAL

73. APPLICABILITY In addition to the terms contained in **Part I** (*General - All Procurements*), the terms contained in **Part II** (*Software & Technology Procurements*) apply to software and technology procurements.

74. DEFINITIONS - Part II

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

ENTERPRISE The business operations in the United States of a Licensee or Enterprise Participant, without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Licensee or Enterprise Participant. For the State of New York, "business operations" shall be defined as the business operations of all Agencies, as defined in Part I.

ENTERPRISE LICENSE A contract which grants Enterprise Participants unlimited license rights to access, use and/or execute Product within the Enterprise.

ENTERPRISE PARTICIPANTS One or more Licensees, as defined in Part I, participating in an Enterprise License.

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.

LOGICAL PARTITION A subset of the processing power within a CEC which has been divided through hardware and/or software means (i.e. *Processor Resources/System Manager* [PR/SM]) so as to limit the total processing power which is accessible by an operating system image by individual users or individual software products.

OBJECT CODE The machine executable code that can be directly executed by a computer's central processing unit(s).

PHYSICAL PARTITION A subset of the processing power within a CEC which has been derived through hardware means so as to limit the total processing power accessible by an operating system image by individual users or individual Products.

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

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.

TERMS OF LICENSE The terms and conditions set forth in the Contract which are in effect and applicable to a Product order at the time of order placement, and only such additional terms as are consistent therewith or more advantageous to the Authorized User as are set forth on the individual Product order form executed and approved by both Authorized User and Contractor.

VIRUS Any computer code, whether or not written or conceived by Contractor, which disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area

f. Restricted Use By Outsourcers / Facilities Management,

networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

TERMS AND CONDITIONS

75. SOFTWARE LICENSE GRANT *Unless otherwise set forth in the Bid Specifications or Contract, where Product is acquired on a licensed based the following shall constitute the license grant::*

a. License Scope Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product with other product within its business enterprise in the United States. Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the product, provided that any modifications, however extensive, shall not diminish manufacturer's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

b. License Term The license term shall commence upon the License Effective Date. Where the terms of license permit licensing on a non-perpetual basis, the license term stated in the Contract shall be extended by the time periods allowed for testing and acceptance.

c. Licensed Documentation Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product. If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: a) One (1) hard copy and One (1) Master Electronic Copy of the Documentation in diskette or CD-ROM format; or b) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - 1 copy per License
- Concurrent Users - 8 copies per site
- Processing Capacity - 8 copies per site

d. Product Use Product may be accessed, used, executed, reproduced, displayed, performed by Licensee to service all Authorized Users of the machine on which Product is installed, up to the capacity measured by the applicable licensing unit stated in the terms of license (i.e. payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation).

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

Service Bureaus / or Other Third Parties Outsourcers, facilities

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

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (using, for example, but not limited to, JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the state function or business activity.

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: 1) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; 2) reproducing a reasonable number of copies of the Product and related documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; 3) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed under paragraph (F) above. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

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

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

- i. Copy the Product;
- ii. Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
- iii. Distribute, disclose, market, rent, lease or transfer to any third party any portion of the Product or the Documentation, or use the Product or Documentation in any service bureau arrangement;
- iv. Disclose the results of Product performance benchmarks to any third party who is not an Authorized User without prior notice to Contractor;
- v. Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

76. ENTERPRISE LICENSE OPTION FOR SOFTWARE Multiple Authorized Users may license any Product offered under the Contract on behalf of their collective business operations. An

Enterprise License shall incorporate the terms set forth in this Part II and the pricing set forth in the Contract, and additionally the following terms:

a. Enterprise - Defined Any Authorized User may be an Enterprise Participant. Enterprise Participants will be enumerated in the Enterprise License, including: i) contact name, ship to and main billing address of each Enterprise Participant, ii) street address of the included End User sites of each Enterprise Participant. The originally defined Enterprise may be modified at any time thereafter, including deletion or addition of Enterprise Participants, sites or "ship to" locations, provided that Contractor is given written notice and that any additional capacity required by such addition is licensed in accordance with the Enterprise License terms.

b. Product Use Product licensed under this Enterprise Option shall be licensed with the rights set forth in this Part II, without reference to a specific designated system or Licensee, up to the maximum licensed capacity. Product may be used and freely transferable anywhere within the defined Enterprise, including higher or lower performance machines, and Enterprise Participants will not incur an increase in license, support or other charges provided that the aggregate utilization of the Product does not exceed the aggregate Enterprise Licensed capacity.

c. Submission of Orders, Billing and Usage Reporting An Enterprise may be established for order placement and billing as either a "single" or "multiple" point of contact, at Licensee's option. Where designated as a "single", one Enterprise Participant shall be designated as the lead agency and central point for submission of Purchase Orders, usage reporting and billing. Where designated as "multiple" point of contact, each designated Enterprise Participant shall be responsible for submission of Purchase Orders, reporting and billing with regard to its use of Enterprise Licensed Product. For either single or multiple point of contact Enterprises, a) Contractor agrees to hold each Enterprise Participant solely responsible for payment and performance; and b) Contractor shall be responsible for furnishing an annual report to each designated point of contact summarizing overall Enterprise License activity for the preceding twelve months.

d. Shipping / Delivery Contractor shall be responsible for delivery of Master Copies of Enterprise Licensed Product and documentation to Enterprise Participants. Within either "Single" or "Multiple" Enterprise Licenses, shipping and delivery of Master Copies of Product and Documentation shall be the responsibility of Contractor to each "ship to" location specified on the Purchase Order(s). Distribution and installation of Enterprise Licensed Product to End Users at a site shall be the responsibility of the Licensee.

e. Enterprise Operating Systems Unless otherwise specified by the parties, up to ten (10) hardware/operating system combinations for Product shall be included at no additional charge. The initial ten hardware/operating systems may be specified at any time within five (5) years of the Enterprise License effective date. Additional hardware/operating systems beyond the initial ten (10) may be specified at any time by the Enterprise, however if additional copies of Product are required for hardware/operating systems beyond the initial ten, the cost for such systems will be as mutually agreed between the parties.

f. Product Acceptance Each Enterprise Participant shall have a right of acceptance, as set forth above in this Part II, only for the first copy of Product for its site(s).

g. Enterprise Fees Enterprise License Fees shall be set forth in the Contract. Notwithstanding the foregoing, the Product license fees for additional copies or units of capacity for Enterprise licensed Product shall not increase by more than six percent (6%) annually

each year during the Enterprise License term. Contractor may offer additional discounts/incentives for Enterprise Participants as may be mutually agreed between the parties. Enterprise Participants shall be entitled to aggregate the volume of all Enterprise Participants for purposes of establishing any applicable discounts under the Contract, and Enterprise Licensed Volume shall be aggregated with volume of non-Enterprise Licensed Product otherwise purchased under the centralized Contract. Upon termination of the Enterprise, Enterprise Participants have the right to acquire additional capacity or users at the Enterprise License price for twelve months after the termination of the Enterprise License.

h. Technical Support Unless otherwise mutually agreed, technical support is optional and may be elected individually by Product by each Enterprise Participant. Where an Enterprise Participant is under a current maintenance or technical support contract, such Enterprise Participant shall be entitled to credit any support paid covering any portion of the Enterprise License Term to the fees due under the Enterprise license.

Enterprise Participants shall have the right to partially or wholly de-support a subset of unused Enterprise licensed capacity upon written notice to Contractor at the end of any then-current technical support term without penalty or charge. The capacity for a Program license which has been de-supported must remain inactive and may not be used within the Enterprise unless technical support for such capacity has been reinstated. In the event of de-support, Contractor reserves the right to reasonably determine compatibility of future releases or new programs prior to shipment.

i. Merger of Two or More Enterprises Two or more Enterprises may be merged to form a larger Enterprise for the purpose of sharing and exchanging data at no additional license fee provided that participants give Contractor notice of such merger and that the combined capacity does not exceed the maximum capacity of the individual licenses.

j. "Nested" Enterprises Individual Enterprise License participant(s) may license additional capacity or products for the specific use of a subset of the larger enterprise. Said participant(s) must certify in writing to Contractor that such use is only by the enumerated subset of participants.

k. Default A default by any Enterprise Participant shall entitle the Contractor to the remedies against such participant under the Contract, but shall not be deemed a default by the remaining non-defaulting Enterprise Participants.

77. PRODUCT ACCEPTANCE Unless otherwise provided in the Bid Specifications, Authorized User(s) shall have sixty (60) days from delivery to accept Product. Failure to provide notice of acceptance or rejection by the end of the period provided for under this clause would constitute acceptance by the Authorized User(s) as of the expiration of that period.

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

In the event that the documented installation test cannot be completed successfully within sixty (60) days from delivery, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for another sixty (60) day increment.

Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the State or Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to fees paid to Contractor, if any, or any liability for costs incurred at the direction or recommendation of Contractor.

78. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, at its expense, use of licensed Product at any site where a copy of the Product resides provided that: i) Contractor gives Licensee or Enterprise Participants at least thirty (30) days advance notice, ii) such audit is conducted during such party's normal business hours iii) each Licensee or Enterprise Participant is entitled to designate a representative who shall be entitled to participate and simultaneously review all information obtained by the audit, and shall be entitled to copies of all reports, data or information obtained by the Contractor; and iv) if the audit shows that such party is not in compliance such party shall be liable for the unlicensed capacity and shall be required to purchase the additional units or rights necessary to bring it into compliance.

79. OWNERSHIP / TITLE TO CUSTOM PRODUCTS OR PROGRAMMING Where contract deliverables include custom products or programming, title, rights and interests to such Product(s) shall be determined as follows:

a. Definitions

PRODUCT For purposes of this section, the term "Product" shall have the meaning set forth in Part I of these *General Specifications*, which includes, but is not limited to: software applications or programming, programming tools, documentation (including user or training manuals), modules, interfaces, templates, and other elements such as utilities, subroutines, algorithms, formulas, source code, object code, reports, drawings, or data.

"EXISTING PRODUCT" is defined as any proprietary material(s) existing or developed independently and not at the expense of Licensee.

"CUSTOM PRODUCT" is defined as any material(s), exclusive of Existing Product, created, prepared, written, compiled or developed by Contractor, or anyone acting on his behalf for Authorized User pursuant to the Contract.

b. Contractor or Third Party Manufacturer's Title To Existing Product Title to Existing Product(s) does not transfer.

With respect to such Existing Product(s), whether embedded in or operating in conjunction with Custom Product, Contractor warrants: a) all right, title and interest in Contractor's Existing Product(s); or b) all license rights, title and interest in third party Existing Product(s), which include the right to grant to Authorized User an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute Existing Product(s). Contractor hereby grants a irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute Existing Product(s) embedded in or transferred for use in conjunction with Custom Product(s). The Licensee agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the license granted under this paragraph prior to distribution or use.

c. Title To Custom Product Title to Custom Product(s), excluding Existing Product, shall be deemed the sole and exclusive property of the Authorized User, who shall have all right, title and interest (including ownership and copyrights). For the purposes of the federal copyright law, execution of this contract shall constitute an assignment of all right, title and interest in the Custom Product(s) by Contractor to the Authorized User. The Authorized User, in its sole discretion, reserves the right to sell Custom Product or to license them on an exclusive or non-exclusive basis to Contractor or other Third Parties. Contractor hereby agrees to take all necessary and appropriate steps to ensure that Custom Product is protected against unauthorized use, execution, reproduction, display, performance, or distribution by or through Contractor, its partners or agents. Notwithstanding this reservation of title, Contractor shall not be precluded from using the related or underlying general knowledge, skills and experience developed in the course of providing the Custom Product in the course of Contractor's business.

d. Acquisitions Funded By Tax Exempt Financing In addition to the foregoing rights under a, b and c, the sale or licensing of Custom Product or rights therein shall not occur until such Product or rights are or become useable, and shall be at fair market value which shall be determined at the time of sale or licensing. Any such transfer shall be pursuant to a separate written agreement. If the Contract deliverables are to be funded through tax exempt financing, the Authorized User may assign to a Trustee or other entity for security purposes Authorized User's ownership and license rights in Custom and Existing Products. Contractor will cooperate with the Authorized User to execute such other documents as may be appropriate to achieve the objectives of this paragraph.

e. Other Acquisitions (Not Funded by Tax Exempt Financing) In addition to the rights set forth above (paragraphs "a", "b" and "c"), the Authorized User reserves the right to transfer any or all rights to Custom Materials on an exclusive or non-exclusive basis. Where such transfer (sale or licensing) is provided in the Bid Specifications, Contractor shall include a purchase price for the such rights in its bid. Such price shall be offered as a deduction from Contractor's overall Bid or Project Bid price, and shall be weighted as set forth in the bid evaluation criteria, if any. Such rights shall transfer to the successful Bidder/Contractor upon successful completion and acceptance by the Authorized User of all contract deliverables. Contractor will cooperate with the Authorized User to execute such other documents as may be appropriate to achieve the objectives of this paragraph.

80. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Product order either: a) the Product manufacturer's certified License Confirmation Certificates in the name of each such Licensee; or b) a written confirmation from the Product manufacturer accepting Contractor's Product invoice as proof of license. Bidder or Contractor shall submit a sample manufacturer's certificate, or alternatively such written confirmation from the manufacturer, with the Bid or Contract. Such certificates must be in a form acceptable to the Licensee.

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

82. MIGRATION TO CENTRALIZED CONTRACT Authorized User may obtain additional Product authorized under this contract, (e.g., licensed capacity upgrades, new releases, documentation, maintenance, consulting or training) whether or not Product was initially obtained independently of this contract. The Authorized User's election to obtain additional Product shall not operate to diminish, alter or extinguish rights previously granted.

83. NOTICE OF PRODUCT DISCONTINUANCE In the event that a Product manufacturer proposes to discontinue maintenance or support for Product, Contractor shall (1) notify the State and each Authorized User in writing of the intended discontinuance, and (2) continue to provide maintenance and support for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than eighteen (18) months from the date of notice, and (3) at Authorized User's option, either: a) provided that the Authorized User is under maintenance, provide the Authorized User with either a Product replacement with equivalent functionality at no additional charge, or b) provide Authorized User with the source code for Licensed Product at no additional charge to enable it to continue use and maintenance of the Product.

84. REINSTATEMENT OF MAINTENANCE Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon written notice to Contractor. In the event that Authorized User discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor at rates which would have been due under the contract for the period of time that such maintenance had lapsed, or for twelve months, whichever is less.

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

86. ADDITIONAL WARRANTIES / GUARANTEES Where Contractor or Product manufacturer offers additional or more advantageous warranties than set forth herein, Contractor shall offer or pass through any additional or more advantageous warranties to Authorized Users. In addition to the "Warranties/Guarantees" set forth in Part I, Contractor makes the following warranties.

a. Product Performance Warranty Contractor represents and warrants that the Products delivered pursuant to this contract conform to the manufacturer's specifications, performance standards, and documentation and that the documentation fully describes the proper procedure for using the Products in an efficient manner. Contractor does not warrant that software is error-free.

In the event that Contractor does not remedy a substantial breach of this warranty within the cure period, Licensee shall also have the right to terminate any payments due Contractor, with a refund of the any fees prospectively paid from the date of breach.

b. Year 2000 Warranty For all procurements of Product, Contractor must furnish a warranty statement in accordance with the NYS Standard Year 2000 Warranty Compliance Statement set forth in Part I at the time of bid for agency specific contracts or product order for centralized contracts.

c. Virus Warranty Contractor represents and warrants that Licensed Software contains no known viruses. Bidder is not

responsible for viruses introduced at Licensee's site. For purposes of this provision, "Virus" shall have the meaning set forth in Part II, "Definitions".

A breach of any of the foregoing shall be deemed a material breach of the Contract or any License granted thereunder. The defaulting party shall be given written notice of a warranty breach under this section and shall have a thirty (30) day period to cure such breach.

87. INDEMNIFICATION THE WARRANTIES SET FORTH IN THESE *GENERAL SPECIFICATIONS* (PARTS I and II) ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Contractor shall indemnify and save harmless the State and Authorized Users from suits, actions, claims, damages and costs arising under or connected to Contractor's actions, and except where express loss liabilities set forth elsewhere in the Contract provide for a higher loss limitation liability than as set forth in this paragraph, or where such express provisions impose Contractor liability on "without limitation", the total liability of Contractor for such claim(s), regardless of the nature and basis for the claim, shall not exceed two (2) times the fees paid for the applicable Product. For any suit, action, claim, damages or costs arising under or are connected to personal injury or property damage, or breach of the title, patent and copyright warranties, Contractor shall be fully liable without limitation.

The Authorized User may retain such moneys from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted by or against the State or Authorized User, provided however, that Contractor shall not indemnify each such entity to the extent that any claim, loss or damages arising hereunder is caused by the negligence act or failure to act of said entity.

88. SOURCE CODE ESCROW FOR LICENSED PRODUCT

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

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

APPENDIX C

Contractor's Year 2000 Warranty Compliance Statement

Sample: Vendor Compliance Statement under NYS Standard Year 2000 Warranty

The following compliance statement shall be furnished as Vendor's compliance statement under the NYS Warranty:

CONTRACTOR'S COMPLIANCE STATEMENT

With regards to the warranty statement contained in paragraph #3 of the NYS Standard Year 2000 Warranty, Contractor Products furnished under ***[Insert Contract Reference Number]*** are individually warranted as Year 2000 compliant.

[If only part of product line is warranted, enumerate compliant products, either: below, attached list, or by other means]

The above are also warranted as a system to be compliant as follows: a) Contractor Products intended to perform as a package or system (e.g. exchanging date/time between two or more such products), and/or b) Contractor's Products with the designated O/S (*operating system(s)*).

Other than as set forth above, Contractor has not tested Contractor Product(s) in combination with all other third party software or hardware, and therefore makes no representations with regard to any Contractor Product's interoperability with any such non-Contractor software or hardware. Contractor shall, however, obtain a pass through from the third party manufacturer to Authorized User of third party manufacturer's standard Year 2000 warranty for any third party products offered under the above contract and provide such warranty at the time of bid, product order or product quote. Where such third party product pass-through is not given, Contractor shall declare such third party products as being "non-compliant" at the time of bid, product order or quote.

Contractor shall furnish this compliance statement and a statement for any non-compliant product or system to the Authorized User at the time of bid, product order or product quote.

APPENDIX D

NYS Net Price Schedule(s)

(includes fees for configuration, installation and extended warranty
services)

(to be attached)

APPENDIX E

Consulting & Training Services
(Description of Services & Course Offerings)
(to be attached)

APPENDIX F

Manufacturer & Value Added Reseller/Distributor Information

1. Manufacturer's Summary of Alternate Channel Distributor's Qualifying Criteria

2. Reseller Designations

(Information to be supplied by contractor)



APPENDIX F
Manufacturer, & Value Added Reseller/Distributor Information

1. Contractor Information (for Ordering and Contract Administration Purposes)			
Company Name:			
Address:			
Federal ID #:			
Contract Administrator Name:			
Title:			
Telephone Number:			
E-mail:			
FAX:			
Contract "Toll" Free Support Number:		Guaranteed Product Delivery Timeframe:	____ days ARO

Value Added Reseller/Distributor Information	
Company Name:	
Address:	
Federal ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
Reseller Qualifying Criteria:	

Value Added Reseller/Distributor Information	
(2) Company Name:	
Address:	
Federal ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
Reseller Qualifying Criteria:	



APPENDIX F

Value Added Reseller/Distributor Information

[Copy additional pages if necessary]

Value Added Reseller/Distributor Information	
Company Name:	
Address:	
Federal ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
Reseller Qualifying Criteria:	

Value Added Reseller/Distributor Information	
Company Name:	
Address:	
Federal ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
Reseller Qualifying Criteria:	

Value Added Reseller/Distributor Information	
Company Name:	
Address:	
Federal ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
Reseller Qualifying Criteria:	

APPENDIX G

OGS Procedures for Updating Contractor Price Or Product Listings
Required Format for Submission of Price List

OGS Procedures for Updating the Contract

As set forth in the Contract, Contractor is responsible for hosting the Contract at the Contractor's internet site. Contractor shall automatically update the website to reflect all Auto-Add changes as defined below. Regular and Special Adds shall be filed with OGS as outlined, and Contractor shall update the website to reflect Regular and Special Adds after Office of General Services (OGS) and Office of the State Comptroller (OSC) prior approval has been received.

TYPES OF CONTRACT CHANGES

AUTO-ADD - Auto-adds are contract changes made in accordance with the previously established pricing categories. Examples of "Auto Add" pricing categories (formulas) include contract changes with a previously approved "discount from list", "cost plus" or GSA pricing. Contractor shall automatically update their contract list and proceed with selling products without prior approval of either the OGS or the OSC; provided, however, that the Contractor gives the State thirty (30) days advance notice of price increases prior to such pricing becoming effective.

REGULAR ADD - Regular adds are products (including services) eligible for addition to the contract which do not fall under the formula (discount, cost plus, or GSA pricing structure) or product types previously approved under the contract. This type of addition must be submitted to the OGS for prior approval along with justification of reasonableness of price, and is subject to pre-audit by the OSC. Contractor will be notified to update their contract list and proceed with selling products if the update is approved by the OGS and the OSC.

SPECIAL ADD - Amendments that do not fall into either of the above categories will be processed as special amendments. Special adds address changes which are not specifically covered by the terms of the contract but are judged to be in the best interests of the State to incorporate into the contract. This type of addition must be submitted to the OGS for prior approval along with justification of reasonableness of price (and why Contractor believes that it is in the best interest of the State), and is subject to pre-audit by the OSC. Contractor will be notified to update their contract list and proceed with selling products if the update is approved by OGS and the OSC.

CHANGES IN ALTERNATE CHANNEL PARTICIPANTS LIST - If the contractor allows resellers to participate in the contract in accordance with the Use of Alternate channel Participation (Resellers/Distributors) clause, requests to add or delete resellers must be submitted for prior approval of the State.

OGS reserves the right to:

- request additional information
- reject contract updates
- remove products from contracts
- request additional discounts for new or existing products

FORMAT FOR SUBMISSION OF PRICE LIST FOR REGULAR AND SPECIAL ADDS

Contractor is required to submit NYS Net Price information in hard copy and on diskettes in spreadsheet format. Details of the required page-setup formatting are explained in the sample below. Diskettes are also required in addition to the paper copies when Contractor submits requests to update contract pricing and/or products.

Required Format for Submission of Price List-General

A Microsoft Excel spreadsheet is preferred but Lotus or Quattro Pro are also acceptable. If Contractor does not use one of the three types of spreadsheet software listed above, information may be provided in a comma delimited ASCII text file.

All Cells

- Arial 10 pitch
- Align "top"
- Sequence of part numbers should be the same as the supporting Contractor's Commercial List Price provided to the State based on the existing contract requirements.

Column “A”

- Column “A” is reserved for **part numbers only** (no descriptive information should appear in Column “A”).
- Cell “A1” must contain the heading - “Part Number”.
- Column should be justified “left”.

Column “B”

- Column “B” is reserved for **product descriptive text only**.
- Cell “B1” must contain the heading - “Product Description”.
- Column is to be “left justified” and “wrap text”.
- Categories and Product headings and subheadings must be in **Bold Text** in column ‘B’ only.
- Each cell can **NOT contain more than 256 characters**. If additional characters are required for the description, cells directly below that cell in column “B” should be used to complete the description.
- The use of upper and lower case letters is suggested for readability.

Column “C”

- Column “C” is reserved for **net pricing information only**.
- Cell "C1" must contain the heading - “NYS Price”.
- Cells in this column must be justified right.
- All cells should be in numeric format with commas and two decimal places, and must be values, not formulas.

Other Columns

Additional columns containing information required under this Contract should begin in Columns D and continue to the right (E, F, G, etc.)

Additional information Contractor wishes to provide should be placed in the columns to the right of the last column containing the required contract information.

SUBMISSION OF REGULAR AND SPECIAL ADDITIONS

During the contract period or any extension period, requests for contract product line updates should include the following, as applicable:

- a. A cover letter briefly describing the update (i.e.: Regular Add, Special Add, Reseller Update, etc). Each of the three cover letters must contain notarized original signatures. The letter should include a place similar to the example below for proper OGS endorsement and final determination:

Approved _____ Approved as amended _____ Disapproved _____

Name Title Date

- b. If applicable, contractor should provide a separate listing in the required presentation format for all **additions**. Request must be accompanied by current pricing information (GSA price schedule, U.S. Commercial Price List, reseller cost list, as applicable) and should include documentation as detailed under Regular and Special Adds.
- c. A revised State Price List incorporating all changes may be submitted with each submission and is required at least on a semi-annual basis. The State reserves the right to require a revised State price list at any time during the contract period and it will be requested if many updates have occurred since the last complete update. This updated list must be either numbered as a version (Version 1, 2 etc.) and/or be dated.

APPENDIX H
**Mandatory Questions and Contractor's Requirement under Article
15-A**

ALL BIDDERS MUST COMPLETE THE QUESTIONS BELOW BY FILLING IN THE BLANKS IN THE SHADED AREA TO THE RIGHT OF THE QUESTIONS.:

1. Place of manufacture of product(s) bid: (Please indicate "Yes" or "No" for either A, B or C):		
A. All NYS Manufacture? OR B. All Manufactured Outside NYS? OR C. Manufactured In NYS and Outside NYS?	Yes _____	No _____
2. Are you a New York State resident business?	Yes _____	No _____
3. Total number of people employed by your firm:	_____	
4. Total number of people employed by your firm in New York State:	_____	
5. Is your company independently owned and operated?	Yes _____	No _____
6. Is your firm a Certified Woman or Minority Owned Business certified by the NYS Department of Economic Development? Your company is eligible to be certified if it is at least 51% owned and controlled by women, or 51% owned and controlled by minority group members (i.e. Black Hispanic, Asian, Pacific Islander American Indian, Alaskan Native)?	Yes _____	No _____
7. Do any of the products bid herein incorporate Recycled materials?	Yes _____	No _____
8. Do any of the products bid herein contain remanufactured components?	Yes _____	No _____
9. Are any of the products bid herein Energy Star Compliant?	Yes _____	No _____
If yes, what equipment? (i.e. monitors, printers, PC's etc.) _____ _____		
VENDOR RESPONSIBILITY		
10. Within the past five years has your firm, any affiliate, any predecessor company or entity, owner, director, officer, partner or proprietor been the subject of:	(Check any that apply. If "yes", describe using additional pages.)	
a. an indictment, judgment, conviction, or a grant of immunity, including pending actions, for any business-related conduct constituting a crime under local, state or federal law?	Yes _____	No _____
b. a federal, state, or local government suspension or debarment, rejection of any bid or disapproval of any proposed subcontract, including pending actions, for lack of responsibility, denial or revocation of pre-qualification or a voluntary exclusion agreement?	Yes _____	No _____
c. any federal or state determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful"?	Yes _____	No _____
d. a consent order with NYS Department of Environmental Conservation, or a federal or state enforcement determination involving a construction-related violation of federal or state environmental laws?	Yes _____	No _____

CONTRACTOR'S REQUIREMENT UNDER ARTICLE 15-A

In July of 1988, Article 15-A of the Executive Law was passed by the New York State Legislature. This legislation, in conjunction with Executive Order 21, which was promulgated in August of 1983, provides specific rules, regulations and procedures for minority and women business participation in certain State contracts.

The Office of General Services (OGS) is required to implement the provisions of Article 15-A for all of its contracts (1) in excess of \$25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing and (2) for contracts in excess of \$100,000 for real property renovation and construction. For purposes of this contract, OGS hereby establishes a goal of 4 % for minority business enterprises (MBE) participation and 4 % for women-owned business enterprises (WBE) participation.

In order to be awarded an OGS contract, every bidder must comply with the requirements, rules and regulations outlined in Article 15-A.

POLICY AND PROVISIONS

It is the policy of the State of New York to promote equality of economic opportunity for minority and women-owned business enterprises (M/WBEs) in State contracting. In order to comply with the State's objectives, the Contractors shall use "good faith efforts" to provide meaningful participation by M/WBE subcontractors or suppliers in the performance of this contract.

For the purposes of determining a contractor's good faith effort to comply with the requirements of Article 15-A or to be entitled to a waiver therefrom, the contracting agency shall consider:

- (a) Whether the contractor has advertised in general circulation media, trade association publications, minority-focus and women-focus media. In such event,
 - (i) whether or not certified minority or women-owned businesses which have been solicited by the contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and
 - (ii) whether certified businesses which have been solicited by the contractor have responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the contracting agency's bid date; and
 - (b) Whether there has been written notification to appropriate certified businesses that appear in the directory of certified businesses prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and
 - (c) Whether the contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.
- A. GOALS** - The MBE and WBE participation goals as stated earlier are based on the availability of M/WBEs currently certified by New York State and geographically located to be able to perform the work in the region where the project is located. The total dollar value of the contract, scope of work, the supplies and equipment necessary to perform the project, are also considerations used to determine the percentage goals.
- B. UTILIZATION** - The Contractor may count as MWBE participation: subcontracting part of the contract to certified firms or purchasing supplies and equipment used to perform the terms and conditions of the contract from certified firms.
- C. MINORITY & WOMEN-OWNED BUSINESS OFFICER** - The Contractor shall designate a MWBE business officer and assign the officer the responsibility and authority to monitor the MWBE program for this contract. The OGS Office of Minority and Women-owned Business Enterprises' staff is available to help in identifying certified MWBEs.
- D. REQUIRED REPORTS** - The Contractor is required to submit a Utilization Plan to the Office of Minority and Women-owned Business Enterprises within 14 days of notification of being the apparent low bidder. The required Utilization Plan requires a list of New York State certified minority and women-owned businesses that have agreed to participate in fulfilling the terms and conditions of this contract. The Contractor must also submit the MBE/WBE Letter of Intent to Participate. The Letter of Intent to Participate is a commitment by the Contractor and the subcontractor/supplier that the terms and conditions for M/WBE participation on this contract are agreed to. Any modifications or changes to the agreed participation by certified MWBEs, over the term of the contract, must be reported on a revised Utilization Plan.
- E. NONDISCRIMINATION** - The Contractor agrees not to discriminate on the basis of race, creed, color, national origin, gender, age, disability, or marital status, in any respect, against any potential subcontractor, supplier, other company, firm, or enterprise in any manner relating to the performance of this contract.

POST AWARD

The Contractor must submit to the Office of Minority and Women-owned Business Enterprises after notification of award the following forms, by the 10th day of each month:

1. Cumulative Monthly Payment Statements
2. Monthly Affirmation of Income Payments

All questions regarding compliance to Article 15-A requirements or copies of the forms should be addressed to:

New York State Office of General Services
Office of Minority and Women-owned Business Enterprises
35th Floor, Room 3580
Corning Tower Bldg.
Albany, NY 12242
Telephone: (518) 473-7083

The addresses for the New York State Department of Economic Development are as follows:

New York State Department of Economic Development
633 Third Avenue
New York, NY 10017

New York State Department of Economic Development
Division of Minority and Women's Business Development
One Commerce Plaza
Albany, NY 12245
(518) 473-0582

Revised Aug. 8, 1996