

**AGREEMENT BETWEEN**  
**THE NEW YORK STATE OFFICE**  
**OF GENERAL SERVICES**

**&**

**Hewlett – Packard Company**

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FOR

CONSULTING/TECHNICAL SERVICES

AND

MAINTENANCE/SUPPORT SERVICES

CONTRACT NO. CMS1051/PS61987

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## INTRODUCTION

**THIS AGREEMENT** (Agreement) is made by and between the State of New York (the State), acting through the Office of General Services (OGS), with offices located at the 41<sup>st</sup> Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, and Hewlett-Packard Company (HP or Contractor), a Delaware corporation, authorized to do business in the State of New York, having offices at 240 Washington Avenue Extension, Albany, New York, 12203, collectively referred to as the Parties (Parties).

## BASE AGREEMENT

### **01**      **Definitions**

The following defined terms are incorporated in this Agreement, and are in addition to the defined terms set forth in Appendix B-1:

CONSULTING/TECHNICAL SERVICES – Shall mean those services provided by the Contractor where the Contractor's expertise or specialized skills with respect to hardware or software necessary to accomplish:

- Mainframe and Enterprise Server Management (e.g., command center, systems operation and monitoring, production control, automation, technical support, and software support)
- Mainframe and Peripheral Network Support (e.g., monitoring and maintenance)
- Services Management (e.g., service level and performance management, problem, communication and change management)
- LAN/WAN Support Services
- LAN Implementation Services
- Network Integration Services (e.g., custom planning and installation)
- Network Consulting Services
- Storage Management (e.g., managed storage services)
- Database Services
- Applications Hosting and Monitoring
- Print Management
- Business Continuity Planning/Disaster Recovery Management
- Security Management (e.g., firewalls, security policy, intrusion detection plans, and best practices)
- Architecture and Capacity Planning
- Facilities Management (e.g., hardware planning, cabling, and site preparation)
- Remote Systems Support (e.g., software distribution, remote control, and asset inventory)
- Training Services (e.g., training specific to Contractor's software or hardware; level of certification or curriculum only available from Contractor)
- Customization, Integration, and Configuration of Software Owned or Controlled by the Contractor
- Installation, Implementation, and Deployment Services Specific to Contractor's Hardware
- Technical Services (e.g., training, and administration services)

For purposes of the definition of Consulting/Technical Services, hardware or software shall be deemed to be limited to, Contractor's hardware or software and other integrated hardware or software installed within an Authorized User's Enterprise that operate as a single, integrated system or Contractor's hardware or software that an Authorized User is in the process of procuring.

DELIVERABLES - Shall mean literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works), including custom programming or any other solution, that that Contractor may deliver to an Authorized User as part of a Service pursuant to the terms of Schedule 1 to this Agreement.

MAINTENANCE/SUPPORT SERVICES – Shall mean that maintenance performed by Contractor which is designed to keep Products in proper operating condition. It is performed on a scheduled basis or during an unscheduled repair, or both.

RECURRING CHARGES – Shall mean periodic charges (monthly, quarterly, or annually) for Maintenance/Support Services provided on a regular basis.

SERVICES - Shall encompass both Consulting/Technical Services and Maintenance/Support Services.

**02 Entire Agreement**

This Agreement constitutes the entire Agreement between the Parties and no statement, promise, condition, understanding, inducement, or representation, oral or written, express or implied, which is not contained herein shall be binding or valid, and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the Parties.

**03 Incorporation and Order of Precedence**

The following documents are incorporated herein and shall be deemed an express part of this Agreement as if they were set forth herein. In the event of conflict between the various documents incorporated into this Agreement, the following order of descending precedence shall apply:

**Appendix A - Standard Clauses for NYS Contracts**

**Base Agreement** (This Document)

**Schedules:**

Schedule 1	Consulting/ Technical Services
Schedule 2	Maintenance/Support Services

**Attachments to the Schedules**

**Appendix B-1** General Specifications Technology Products and Services

**Appendix C** Problem Escalation Summary

<b><u>Exhibits</u></b>	Exhibit 1	NYS Department of Taxation and Finance Contractor Certification Form (ST-220)
	Exhibit 2	NYS Standard Vendor Responsibility Questionnaire

**Transaction Documents** Purchasing documents setting forth the specific work order:  
Statement of Work (SOW)  
Letter Agreement  
Purchase Order for Maintenance/Support Services

Notwithstanding the foregoing, the Contractor may, in a Transaction Document, agree to provide an Authorized User with more favorable prices, terms, warranties or other benefits than are specified elsewhere in the Agreement. A Transaction Document may not contain any terms less advantageous to the Authorized User than those set forth in this Base Agreement, an Appendix, or a Schedule.

**04**      **Indemnification**

(A) Contractor hereby agrees to fully indemnify and save harmless the State and its 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, acting in their capacities as Contractor's officers, employees, subcontractors, partners, or agents, based upon any third party claim for: i) personal injury, damage to real or personal tangible property, without limitation; or (ii) infringement of any United States Letter Patent with respect to the Deliverables furnished, or of any copyright, trademark, trade secret or other third party proprietary right in relation to the Services or Deliverables furnished, without limitation, provided that the State 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 the State by the furnishing of timely written notice and verified receipt, (b) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (c) assistance in the defense of any such action at the expense of Contractor.

(B) With regard to claims under (i) of paragraph (A) of this Section, the Contractor shall not be required to indemnify for that portion of any claim, loss or damage that arises thereunder due to the act or failure to act of the State or for that portion of any claim, loss or damage that arises thereunder due to the act or failure to act of a third party not acting in the capacity of an officer, employee, subcontractor, partner or agent of the Contractor.

(C) With regard to claims under (ii) of paragraph (A) of this Section, 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 the State which is incorporated into the Deliverables, including, but not limited to, non-Contractor products included by Contractor at the express written direction of an Authorized User; (2) the Authorized User's unauthorized modification of the Deliverables; (3) Authorized User's unauthorized use of the Deliverables in other than its specified operating conditions and environment; (4) the unauthorized combination, operation, or use of a Deliverable with other products not provided by Contractor as a system, or the combination, operation, or use of a Deliverable with any product, data, or apparatus that Contractor did not provide; or (5) infringement by a non-Contractor product alone, as opposed to its combination with Deliverables Contractor provides as a system.

Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State shall require.

(D) If the use of any Deliverable or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the State the right to continue using such Deliverable(s) or part(s) thereof, as applicable; (ii) to modify the Deliverable(s) so that it becomes non-infringing product of at least equal quality and performance; (iii) to replace said Deliverable or part(s) thereof, as applicable, with a non-infringing product of at least equal quality and performance; or (iv) if none of the foregoing is commercially reasonable, then the State agrees to return the Deliverable (or part thereof) and Contractor shall provide monetary compensation to the Authorized User for its inability to continue to use the Deliverable (or part thereof) up to the applicable dollar amount specified in Section 5, below.

Apart from the Contractor's obligation to indemnify the State pursuant to paragraph (A) of this Section, the foregoing constitutes the State's sole remedy regarding any Deliverable that is returned pursuant to this paragraph (D).

**05**      **Limitation of Liability**

Except as otherwise set forth in Sections 4, 6(B), and 6(C), the limit of liability under this Agreement shall be as follows:

Contractor's liability for any claim, loss or liability arising out of, or connected with the Deliverables and Services provided under this Agreement, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in an amount of:

1. With regard to obligations under Schedule 1 of this Agreement, an amount equal to two (2) times the charges specified in the Transaction Document for the Service or Deliverable, or parts thereof forming the basis of the Authorized User's claim, said amount not to exceed a total of twelve (12) months charges payable under the applicable Transaction Document, or one million dollars (\$1,000,000), whichever is greater.
2. With regard to obligations under Schedule 2 this Agreement that arise in connection with a Transaction Document that involves Recurring Charges, the greater of: (i) one million dollars (\$1,000,000) or (ii) an amount equal to two (2) times the charges specified in the Transaction Document for the Service, or parts thereof forming the basis of the Authorized User's claim, said amount not to exceed a total of twelve (12) months Recurring Charges payable under the applicable Transaction Document.
3. With regard to any other obligations under Schedule 2 of this Agreement, an amount equal to two (2) times the charges specified in the Transaction Document for the Service, or parts thereof forming the basis of the Authorized User's claim or one million dollars (\$1,000,000), whichever is greater.

Notwithstanding the above, neither the Contractor nor the State shall be liable for any consequential, indirect or special damages of any kind which may result from the performance of this Agreement, including, without limitation, damages resulting from loss of use or loss of profit by the State, the Contractor, or by others.

## **06 Security, Non Disclosure, Confidentiality and Press Releases**

The Contractor shall maintain the security, nondisclosure, and confidentiality of all information in accordance with the following clauses in performance of its activities under this Agreement:

### **A. SECURITY PROCEDURES:**

Contractor shall comply fully with all security procedures of the Authorized User clearly communicated to it in the performance of this Agreement. Contractor acknowledges that such security procedures may vary based on the specific facility at which the Contractor is providing Deliverables or Services. Contractor agrees that its officers, agents, employees and subcontractors who provide Deliverables or Services under this Agreement shall be required to undergo the Authorized User's same security clearances as are required of the employees of the Authorized User. Specifically, where an Authorized User is authorized to do so, each prospective and current employee of Contractor designated to work under this Agreement with an Authorized User shall submit identifying information to the Authorized User and be fingerprinted by the State. Such fingerprints shall be submitted to the Division of Criminal Justice Services for a state criminal history record check and, where authorized, to the Federal Bureau of Investigation for a national criminal history record check. Authorized User shall, at its own expense, arrange for the scheduling of such fingerprinting activities and completion of any record checks.

### **B. NONDISCLOSURE AND CONFIDENTIALITY:**

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors shall maintain strict confidence with respect to Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors have access. Confidential Information may be shared within the Contractor's Enterprise only to the extent necessary to provide the Deliverables or Services identified in the Transaction Document. This representation shall survive termination of this Agreement.

For purposes of this Agreement, all Authorized User information of which Contractor, its officers, agents, employees, and subcontractors becomes aware during the course of performing Services for the Authorized User shall be deemed to be Confidential Information (oral, visual or written). Notwithstanding the foregoing, information which falls into any of the following categories shall not be considered Confidential Information:

- (a) information that is previously rightfully known to the receiving party without restriction on disclosure;
- (b) information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain;
- (c) information that is independently developed by Contractor without use of Confidential Information of the Authorized User;
- (d) information obtained from a source other than the State or an Authorized User without obligation of confidentiality; and
- (e) information disclosed by the State or an Authorized User without obligation of confidentiality.

Contractor shall never disclose information which Federal, State statute, or regulation prohibits from disclosure. Other Confidential Information disclosed under this Agreement will be subject to this Agreement for five years following the initial date of disclosure.

The Contractor may use in its business activities the ideas, concepts and know-how contained in Confidential Information which are retained in the memories of Contractor's employees who have had access to the Confidential Information under this Agreement. Nothing in this paragraph permits the Contractor to disclose the source of information, or any of the State's or Authorized User's financial or personnel data or business plans.

Contractor shall fully indemnify and save harmless the Authorized User from any loss or damage to the Authorized User resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such Confidential Information.

**C. FEDERAL OR STATE REQUIREMENTS:** In the event that it becomes necessary for Contractor to receive Confidential Information which Federal or State statute or regulation prohibits from disclosure, Contractor hereby agrees to return or destroy all such Confidential Information that has been received from the State when the purpose that necessitated its receipt by Contractor has been completed. In addition, Contractor agrees not to retain any Confidential Information which Federal or State statute or regulation prohibits from disclosure after termination of the Agreement. Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Contractor agrees to extend the protections of the Agreement for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information. If Contractor elects to destroy Confidential Information, it shall use reasonable efforts to achieve the same and notify the State accordingly. Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information which Federal or State statute or regulation prohibits from disclosure. Contractor agrees that it shall immediately report to the State the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information. Contractor shall also report the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information of any New York State agency information directly to that New York State agency. The State may terminate this Agreement if it determines that Contractor has violated a material term of this section. The terms of this section shall apply equally to Contractor and any and all of its subcontractors and agents. Contractor agrees that all subcontractors and agents shall be made aware of and shall agree to the terms of this section.

**D. PRESS RELEASES:** Contractor agrees that no brochure, news/media/press release, public announcement, memorandum or other information of any kind regarding this Agreement shall be disseminated in any way to the public, nor shall any presentation be given regarding this Agreement without the prior written approval by the undersigned or the undersigned's designee from the Authorized User, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of this Agreement and answer any

questions relating thereto to any State or Federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering or its financial advisors or auditors.

**E. PUBLIC INFORMATION:** Disclosure of records related to this Agreement shall be permitted consistent with the Freedom of Information Law (Public Officers Law, Article 6; hereinafter FOIL). Pursuant to §87(2)(d) of FOIL, records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise” may be exempt from disclosure. In addition, pursuant to §89(5)(a)(1-a) of FOIL, records or portions thereof that contain critical infrastructure information may be exempt from disclosure (“Critical infrastructure” is defined in §86[5] of FOIL). If the Contractor intends to seek an exemption from disclosure under FOIL of either or both types of information:

- (i) At the time records are submitted to the Authorized User, Contractor shall inform the Authorized User, in writing, that such records, or portions thereof, constitute trade secret materials or critical infrastructure information and are not to be disclosed;
- (ii) said records, or portions thereof shall be clearly marked and identified; and
- (iii) Contractor shall state the reasons why the records, or portions thereof, should be exempted from disclosure.

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

## 07 General Principles

A. Neither Party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.

B. Each Party is free to enter into similar agreements with others.

C. Each Party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations.

D. Except as otherwise provided in a Transaction Document, Authorized User agrees not to resell any Service without Contractor's prior written consent.

E. This Agreement will not create any right or cause of action for any third party, nor will Contractor be responsible for any third party claims against the State except as described in the Indemnification section above or as permitted by the Limitation of Liability section above.

F. Authorized Users agree to provide Contractor with sufficient and safe access to facilities and systems for Contractor so as to enable Contractor to fulfill its obligations under the Agreement.

G. Authorized Users agree to comply with all applicable export and import laws and regulations.

H. Authorized Users agree to allow Contractor and its subsidiaries to store and use Authorized User contact information, including names, phone numbers, and e-mail addresses, anywhere they do business for purposes of this Agreement only. This information will not be used for promotions and market research.

## 08 Contractor Requirements

The Contractor shall:

A. Identify a single contact person who will serve as the Contractor's Client Relationship Executive and assure OGS that this individual will have ready and direct access to any and all of Contractor's corporate management necessary to meet the needs of OGS. The contact information for the initial Client Relationship Executive appears in Section 21 of this Base Agreement.

The Contractor must notify OGS of any proposed change in the Client Relationship Executive and OGS may request a change in the Client Relationship Executive. In the event that the Contractor and OGS cannot agree upon a proposed or requested change in the Client Relationship Executive, the dispute will be referred to the Commissioner of OGS and the Contractor's Client Director, as outlined in Section 9 (C) of this Base Agreement.

B. Identify, in each Transaction Document, a single contact person who will serve as the liaison for the Authorized User in connection with the Services to be provided pursuant to that Transaction Document.

C. Maintain, for the term of this Agreement, an adequate administrative organizational structure sufficient to discharge its contractual responsibilities.

D. Maintain, for the term of this Agreement, the level of liaison and cooperation with OGS necessary for proper performance of all contractual responsibilities.

E. Within the scope of this Agreement, cooperate fully as directed by an Authorized User with any other contractors that may be engaged by the Authorized User and/or required or permitted to use the systems or any of the components.

F. Periodically, but no less than annually, notify OGS in writing of any changes in the person or persons within the Contractor's organization responsible for interfacing with OGS and authorized to bind Contractor to this Agreement or sign any amendments hereof, on behalf of the Contractor. Contractor must submit to OGS within three (3) days of identification, in writing, a description of each problem which threatens its performance hereunder including a recommendation for resolution whenever possible.

G. Maintain key personnel as identified in the appropriate Transaction Document, unless granted specific written permission to change such personnel by the Authorized User, which permission shall not be unreasonably withheld or delayed.

H. In providing Services under this Agreement, unless otherwise provided in a Schedule, or otherwise agreed to in a Transaction Document, employ the *Problem Escalation Summary* described in Appendix C.

I. Agree to pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of its acts and obligations contemplated under this Agreement.

J. Agree that it will perform its acts and obligations contemplated under this Agreement in accordance with all applicable Federal or State laws, rules, and regulations now or hereafter in effect.

K. Warrant and affirm that the terms of this Agreement do not violate any contracts or agreements to which it is a party and that its other contractual obligations will not adversely influence its capabilities to perform under this Agreement.

L. Certify, pursuant to section 5-a of the Tax Law, that the Contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. Contractor represents and warrants that it has fully and accurately completed the NYS Department of Taxation and Finance Contractor Certification Form (ST-220), which is attached as Exhibit 1. Contractor acknowledges that section 5-a of the Tax Law prohibits the Office of the State Comptroller (OSC), or other approving agency, from approving a

contract awarded to a vendor meeting the registration requirements but who is not so registered in accordance with the law.

M. Represent to OGS and the Authorized User that, during the Term of the Agreement:

1. The Contractor and any subcontractors have corporate authority to perform all duties required of them by this Agreement;
2. The Contractor and any subcontractors have completed, obtained or performed all registrations, filings, approvals, authorizations, consents, and examinations required by the State of New York or any other governmental authority necessary to perform all their acts and obligations contemplated under this Agreement and that they shall, in order to perform such acts and obligations, comply with any requirements imposed upon them by law during the term of this Agreement; and
3. The employees of the Contractor and any subcontractors are eligible for employment in the United States.

## **09 Dispute Resolution**

In addition to any escalation procedure or problem resolution procedure established in connection with the delivery of specific Deliverables or Services under this Agreement, an Authorized User and the Contractor shall have recourse to the dispute resolution procedure described herein. Authorized User staff and Contractor staff shall, in good faith and in a timely manner, attempt to resolve all disputes arising under this Agreement. Authorized User and the Contractor agree to the use of the following procedures should a dispute arise concerning their rights and responsibilities under this Agreement:

- A. Authorized User staff and Contractor staff will be given the first opportunity to solve the dispute.
- B. If staff cannot resolve the dispute within five (5) business days from the date on which the dispute arose, they will refer the dispute to the Authorized User's Director of Information Technology or the officer or employee holding the position that is the functional equivalent of the Director of Information Technology and the Contractor's Client Relationship Executive.
- C. If the preceding steps do not lead to an agreement within ten (10) business days from the date on which the dispute arose, then the Chief Executive Officer of the Authorized User or his or her designee and the Contractor's Client Director will meet for the final resolution of the matter. Such resolution may include a determination of the equitable allocation of any costs incurred by the Authorized User or the Contractor. For purposes of this Agreement, "Contractor's Client Director" shall mean a member of the Contractor's corporate management with supervisory authority over the Client Relationship Executive.
- D. Contractor shall, in conjunction with the reporting requirements set forth in Section 12, below, provide OGS with a written report quarterly of those disputes requiring action under paragraph C, above. Such report shall include an explanation of how each such dispute was resolved.
- E. For disputes involving the Contractor and OGS, the Contractor agrees to follow the procedures found at: <http://www.ogs.state.ny.us/purchase/seller.asp>.

The foregoing dispute resolution procedure, or any determination or equitable allocation of costs included therein, shall not be deemed to limit either Party's rights or remedies under this Agreement.

## **10 Subcontracts**

Contractor may subcontract a Service provided for under this Agreement, or any part of it, to subcontractors selected by Contractor subject to Authorized User's prior approval. In the event that one of Contractor's subcontractors further subcontracts, prior written consent of the Authorized User is

also required. A subcontractor shall be defined as any firm or person who is not a full time employee of the Contractor, engaged or assigned to perform work under this Agreement. All agreements between the Contractor and its subcontractors shall be by bona fide written contract.

Contractor shall include in all subcontracts for a Service to be provided under this Agreement, in such a manner that they will be binding upon each subcontractor with respect to work performed in connection with this Agreement, provisions consistent with those found in this Agreement, including, but not limited to:

- That the work performed by the subcontractor must be in accordance with the terms of this Agreement including, but not limited to, Appendix A;
- That subcontractor shall comply with the provisions of section 5-a of the Tax Law;
- That nothing contained in such subcontract shall impair the rights of an Authorized User;
- That nothing contained herein shall create any contractual relation between any subcontractor and the Authorized User;
- That subcontractor shall maintain all records with respect to work performed under the subcontractor in the same manner as required of the Contractor; and
- That the Authorized User shall have the same authority to audit the records of all subcontractors as it does those of the Contractor.

Contractor shall be fully responsible to the Authorized User for the acts and omissions in the performance of Services under this Agreement of the subcontractors and/or persons either directly or indirectly employed by it or by the subcontractors, as it is for the acts and omissions in the performance of Services under this Agreement or persons directly employed by the Contractor. Contractor shall not in any way be relieved of any programmatic or financial responsibility under this Agreement by its agreement with any subcontractor or by an Authorized User's approval of such an agreement with a subcontractor.

## **11 Transaction Documents**

A. Transaction Documents shall be used for all orders placed under this Agreement.

B. For the purpose of ordering Consulting/Technical Services under Schedule 1 of this Agreement, Authorized Users may only use a Statement of Work or a Letter Agreement. A Statement of Work shall be in substantially the same form as that set forth in Attachment B to Schedule 1. A Letter Agreement shall be in substantially the same form as that set forth in Attachment C to Schedule 1, attached hereto. Transaction Documents entered into by State agencies for Consulting/Technical Services will only be valid where the subject matter and amount of the Transaction Document has been approved in accordance with the guidelines for Usage Review Report and Approval established by OGS and OSC.

C. For the purpose of ordering Maintenance/Support Services under Schedule 2 of this Agreement, Authorized Users may use a Purchase Order, as defined in Appendix B.

D. All Transaction Documents are deemed to incorporate and to be issued under the terms of this Agreement and cannot supersede terms and conditions set forth herein. Notwithstanding the foregoing, the Contractor may, in a Transaction Document, agree to provide an Authorized User with more favorable prices, terms, warranties or other benefits than are specified elsewhere in the Agreement.

## **12 Reporting**

For each quarter of the term of this Agreement, Contractor shall provide OGS with detailed reports in a form to be prescribed by OGS. Such reports shall show, at a minimum, dollar volume of Deliverables and Services provided to each Authorized User under the Agreement.

Such reports shall be compiled and delivered by Contractor to OGS at the address specified in Section 21 of this Base Agreement within thirty (30) days of the close of the quarter. The State reserves the right to verify said reports and to take any action(s) necessary to enforce its rights under this section, including the right to audit Contractor's applicable contract books or terminate the Agreement.

In the event that the Contractor fails to deliver the abovementioned report(s) and the failure cannot be resolved pursuant to the Dispute Resolution procedures set forth in Section 9, above, the State and Authorized Users shall have the right to suspend all payments for failure to deliver said report(s) within the required time frames.

**13 Additional Remedies**

To the extent that Transaction Documents identify specific deliverables to be provided by the Contractor or require that the Contractor perform within specific parameters, such Transaction Documents shall include provisions that detail appropriate remedies in the event that the deliverables are not provided according to the terms of the Transaction Document or the Contractor does not perform within parameters specified in the Transaction Document. Such remedies shall be provided in the applicable Transaction Document and may include, but are not limited to:

A. The right for the Authorized User to withhold payment of some or all of the amounts due and owed under the Agreement until a specific deliverable is approved by the Authorized User or Contractor's performance is brought within the specified parameters.

B. The right, on the part of the Authorized User, to retain a percentage of the amount of each periodic payment due under a Transaction Document until the final acceptance of all deliverables under the Transaction Document.

C. The application of credits against amounts due and owed by the Authorized User under the Agreement.

D. The right, on the part of the Authorized User, to require re-performance by the Contractor at no charge or at a reduced charge.

E. The requirement that the Contractor allocate necessary resources, at no additional charge to the Authorized User, to the work described in the Transaction Document until the deliverable is approved by the Authorized User or Contractor's performance is brought within the specified parameters.

The provision of such remedies in a Transaction Document shall not be deemed to limit any other rights or remedies provided to the Authorized User by law or under this Agreement.

**14 Term of the Agreement**

The term (Term) for this Agreement shall be from September 1, 2005, through August 31, 2010, and shall be effective upon approval hereof by the Office of the Attorney General (OAG) and OSC, unless otherwise terminated in accordance with the terms of the Agreement.

Upon mutual agreement of the Parties, the Term of the Agreement may be extended, subject to the approval of the OAG and the OSC, for one (1) additional five (5) year term.

Notwithstanding the termination of this Agreement pursuant to the above stated Term, the terms and conditions hereof shall be effective and binding for all Transaction Documents entered into before the termination hereof. However, no Transaction Document may have a term that extends more than twelve (12) months beyond the termination of the Agreement.

**15 Termination**

The Agreement shall be subject to the following termination provisions:

- A. All or any part of this Agreement may be terminated by mutual written agreement of the Parties.
- B. All or any part of this Agreement may be terminated by OGS for cause upon the failure of the Contractor to comply substantially with the material terms and conditions of this Agreement, including the attachments hereto, provided that OGS shall give the Contractor written notice specifying Contractor's failure and the termination of this Agreement and thirty (30) days to cure any claimed failure. OGS may terminate this Agreement if the failure remains without cure after this thirty (30) day period. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination. Termination for cause may create a liability upon the Contractor for legal damages.
- C. This Agreement may be unilaterally terminated by OGS in the event of a substantial or material failure of the Contractor to perform within the time requirements set forth in this Agreement.
- D. If the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Agreement in accordance with this Agreement and as permitted by law or exercise such other remedies as shall be available under this Agreement, at law or equity.
- E. OGS retains the right to cancel this Agreement, in whole or in part, without reason provided that the Contractor is given at least sixty (60) days notice of OGS's intent to cancel. This provision should not be understood as waiving the OGS's right to terminate the Agreement for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Authorized User Transaction Documents, which are, pursuant to Schedule 1 and Schedule 2, subject to the thirty (30) day discretionary cancellation or cancellation for cause by the respective Authorized User.
- F. OGS reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with section 5-a of the Tax Law is not timely filed during the term of the contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, OGS may exercise its termination right by providing written notification to the Contractor.
- G. In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion of this Agreement and the Contractor shall cancel as many outstanding obligations as possible.
- H. In the event that the Agreement is terminated for any reason, then within ten (10) days after such termination, Contractor shall make available to OGS all OGS and Authorized User records, documents and data in Contractor's custody that pertain to Services rendered under the Agreement.

**16**      **Price Protection**

The prices and warranties granted by the Contractor herein are comparable to or better than the equivalent terms being offered by the Contractor to other State government customers using similar scope and volume of Services under like terms and conditions. If the Contractor shall, during the term of this Agreement, enter into agreements with any other State government customers providing better prices and warranties inconsistent with the commitments of this section, at the option of OGS, this Agreement shall thereupon be deemed amended to provide the same to Authorized Users.

**17**      **Charges**

A. Payments to the Contractor shall be based on the prices and/or rates set forth in the Schedules attached hereto. Unless otherwise specified in a Schedule attached hereto or a Transaction

Document, monthly invoicing will be submitted to the Authorized User in arrears and invoices for Services rendered under this Agreement. For Authorized Users that are State agencies, invoicing shall be submitted by the Contractor on a Standard New York State Voucher in a form acceptable to the State. For other Authorized Users, invoicing shall be submitted by the Contractor on a form prescribed by the Authorized User.

**All invoices under Schedule 1 must include a reference to Contract No. CMS1051.**

**All invoices under Schedule 2 must include a reference to Contract No. PS61987.**

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

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

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

## **18 Federal Funding Clauses**

To the extent that a Transaction Document provides that Deliverables or Services provided by Contractor under this Agreement are to be funded, in whole or in part, by federal funds, Contractor and its subcontractors shall comply with the following requirements set forth herein and further, agree to comply with any additional federal requirements that shall be required for the receipt and/or expenditure of such funds. Contractor shall comply with all applicable federal requirements pertaining to the following areas as further set forth at Chapters II and XXX of 7 CFR and 45 CFR Parts 74 and 95, including:

A. Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375 as supplemented by 41 CFR 60, and the nondiscrimination requirements of 45 CFR Parts 80, 84 and 90, and 7 CFR Parts 15, 15b and 15d.

B. Copeland “Anti-Kickback Act” (18 USC 874 and 40 USC 276c) which provides that all contracts/subgrants greater than \$2,000 for construction or repair must have a provision requiring compliance with 18 USC 874 as supplemented by 29 CFR Part 3, which prohibit contractors or subrecipients from inducing by any means any person employed in construction, completion or repair of public work to give up any part of compensation to which they are otherwise entitled and that the recipient shall report all suspected/reported violations to the Federal awarding agency.

C. Davis-Bacon Act, as amended (40 USC 276a to a-7) which requires all construction contracts awarded by recipients of more that \$2,000 to comply with the Act as supplemented by USDOL Regulations 29 CFR Part 5 requiring all contractors to pay wages to laborers and mechanics at a rate not less than the minimum wage specified by the Federal Secretary of Labor, which wages shall be paid not less than once a week. The recipient shall place a copy of the federally specified wage (the “prevailing wage”) in each solicitation and the award of a contract shall be conditioned upon acceptance of such a determination. The recipient must report all suspected/reported violations to the Federal awarding agency.

D. Contract Work Hours and Safety Standards Act (40 USC 327-333) which requires, where applicable, that all construction contracts and other contracts involving employment of mechanics and

laborers require compliance with 40 USC 327-333 as supplemented by USDOL Regulations 29 CFR 5 when said contracts exceed \$100, 000, which references require that work in excess of 40 hours/week be recompensed at a rate at least 50% greater than the basic pay rate and that no work be required in unsanitary, hazardous, or dangerous conditions. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.

E. Rights to Inventions Made under a Transaction Document- Notwithstanding the provisions of Section 75 of Appendix B, Transaction Documents entered into under Schedule 1 of this Agreement for the performance of experimental, developmental, or research work that is funded, in whole or in part, by federal funds shall provide for the rights of the federal government and the recipient in any resulting invention in accordance with 37 CFR Part 401 and any further implementing regulations issued by USDHHS or USDA. The grant excludes the proprietary products, documentation, materials and information (and derivative works thereto) of Contractor, Contractor's sub-contractors and third party product providers.

F. Ownership Rights in Software or Modifications Thereof - Notwithstanding the provisions of Section 75 of Appendix B, Transaction Documents entered into under Schedule 1 of this Agreement shall provide that the State shall have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation, and the federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation, provided, however, that this sentence shall not apply to 'proprietary operating/vendor software packages' within the meaning of 45 CFR 95.617(c) and 7 CFR 277.18(l)(1)(iii).

G. Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 USC 1251 et seq.) which require that contracts and subgrants in excess of \$100,000 shall require the recipient to comply with the Acts recited herein and that violations must be reported to USDHHS and the appropriate Regional Office of the Federal Environmental Protection Agency.

H. Byrd Anti-Lobbying Amendment (31 USC 1352) which requires that every contractor under a contract for more than \$100,000 and every tier of contractors or subcontractors thereunder shall file certification, as required, that said contractor will not and has not used any Federal appropriated funds to pay any person or organization for influencing or attempting to influence any federal agency, member of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or award covered by such Amendment. A contractor or subcontractor from any tier shall also disclose any lobbying with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure shall be forwarded up any applicable tiers to the recipient. (See also 45 CFR 93.) The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As evidenced by execution of the Agreement, the Contractor as a sub-recipient, understands and agrees to the Federal requirements for certification and disclosure.

I. Debarment and Suspension (Federal E.O.s 12549 and 12689) which requires that certain contracts shall not be awarded to parties listed on the nonprocurement portion of the U.S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with E.O.s 12549 and 12689. (See 45 CFR 76.) By executing this Agreement, Contractors with awards that exceed the simplified acquisition threshold provide the following required certification(s), as applicable, regarding their exclusion status and that of their principals.

(1) Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions

(a) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- (i) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- (ii) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (iii) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (iv) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(b) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

(2) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions (a) The prospective lower tier participant certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. (b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

J. Contractor shall make positive efforts to assure that small businesses and minority and women owned business enterprises (M/WBEs) are utilized when possible as sources of supplies, equipment, construction and services. If any subcontracts are to be let, Contractor shall (1) include qualified small businesses and M/WBEs on solicitation lists; (2) assure that they are solicited whenever they are potential sources; (3) when economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small business and M/WBE participation; (4) where the requirement permits, establish delivery schedules which will encourage participation by small businesses and M/WBEs, and; (5) use the services and assistance of the New York State Department of Economic Development [(518) 292-5100 or Web Site [www.empire.state.ny.us](http://www.empire.state.ny.us)], the US Small Business Administration, the Office of Minority Business Enterprise of the US Department of Commerce and the US Community Services Administration, as appropriate.

K. Contractor shall insure that the contract provisions specified in 45 CFR 74.48 are included in all subcontracts.

**19 Severability**

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

**20 Amendments**

Except as specifically provided herein, this Agreement may not be changed, altered or modified except by a written agreement signed by both Parties and approved by both OAG and OSC.

**21 Contacts**

The following person, whose position, rather than name, is designated by title, is designated as Contractor's contact person. If Contractor designates a different contact person other than the position listed below, OGS shall be notified immediately and provided with the same information as is set forth below for the new contact person, without requiring formal amendment of this Agreement.

Client Relationship Executive  
Title: Client Principal  
Mailing Address: 32 Caroline St., Latham, New York, 12110  
Telephone: (518) 783-0288 Fax: (518) 783-5786  
E-mail Address: rick.travis@hp.com

The following person, whose position, rather than name, is designated by title, is designated by OGS as the OGS contact person. If OGS designates a different contact person other than the position listed below, Contractor shall be notified immediately and provided with the same information as is set forth below for the new contact person, without requiring formal amendment of this Agreement.

OGS Contact James Patrick  
Title: Purchasing Officer 1  
Mailing Address: 38<sup>th</sup> Floor, Corning Tower  
The Governor Nelson A. Rockefeller Plaza  
Albany, New York 12242  
Telephone: (518) 486-6036 Fax: (518) 486-6867  
E-mail Address: james.patrick@ogs.state.ny.us

**22 Notices**

Any and all notifications, consents and other communications to OGS regarding the implementation, production, or operational production or operational processes or procedures of this Agreement shall be in writing and posted in certified, return receipt mail to the attention of:

James Patrick  
Purchasing Officer 1  
38<sup>th</sup> Floor, Corning Tower  
The Governor Nelson A. Rockefeller Plaza  
Albany, New York 12242

**23 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. Any products in this Agreement which may be used or adapted for use by visually, hearing or any other physically impaired individuals must be clearly designated.

**24 Insurance**

Contractor agrees, during the term of this Agreement, to maintain at its own expense all necessary insurance for its employees, including but not limited to workers' compensation, disability and unemployment insurance and to provide the State with certification of such insurance upon request. Contractor will be responsible for all applicable Federal, State and local taxes and all FICA contributions for such employees.

**25 Executive Order No. 127**

The Contractor certifies that all information provided to OGS in accordance with the New York State Executive Order No. 127, signed by Governor Pataki on June 16, 2003, (Executive Order) for purposes of this Agreement is complete, true, and accurate. This certification shall apply to all information, regardless of the medium, submitted by the Contractor under this section.

In addition to other termination language set forth in the Agreement, OGS reserves the right to terminate this Agreement in the event that OGS finds that the above certification of the Contractor is intentionally false or intentionally incomplete. Upon such finding, OGS may exercise its termination right under this section by providing written notification to the Contractor in accordance with the written notification terms of the Agreement.

Contractor agrees that it has a continuing obligation throughout the term of the Agreement and any amendments, to maintain current disclosure information under this section by updating any information filed by the Contractor with OGS prior to execution of the Agreement.

**26 Vendor Responsibility**

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

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the Parties therefore hereby execute their mutual agreement to the terms of this Agreement, bearing OSC’s Contract Numbers CMS1051 and PS61987. This Agreement constitutes a binding contract between the Parties as of the day and year indicated below that approval of the OSC was received. The Parties further hereby agree that, where Contractor is asked to execute six original copies of this signature page along with a complete original copy of the Agreement, the approved signature page(s) will be affixed by OGS, upon final approval by the OSC, to additional copies of this Agreement which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

HEWLETT-PACKARD COMPANY

NEW YORK STATE OFFICE OF GENERAL SERVICES

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Federal Tax Identification No.:

By: \_\_\_\_\_  
Name: Jerry Gerard  
Title: Deputy Director

**Approved as to form:**  
  
**New York State Attorney General**

**Approved:**  
  
**Alan G. Hevesi Comptroller**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Date: \_\_\_\_\_

**CORPORATE ACKNOWLEDGMENT**

STATE OF

) ss.:

COUNTY OF

On the \_\_\_ day of \_\_\_\_\_ in the year 2005, before me personally came: \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_; that he is \_\_\_\_\_ of Hewlett-Packard Company, the corporation described in and which executed the above instrument; and that he signed his name thereto by authority of the board of directors of said corporation.

\_\_\_\_\_  
Notary Public

## **APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

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

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

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

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

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

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

invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7th Floor  
Albany, New York 12245  
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
<http://www.empire.state.ny.us>

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

22. **PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

## APPENDIX B-1: GENERAL SPECIFICATIONS TECHNOLOGY PRODUCTS AND SERVICES

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#### GENERAL

1. **APPLICABILITY** The terms and conditions set forth in this Appendix B-1 are expressly incorporated in the Agreement consistent with Section 3 of the Base Agreement.
2. **VENUE** Actions or proceedings arising from the Contract shall be heard in a court of competent jurisdiction in the State of New York.
3. **APPENDIX A** The terms of Appendix A (*Standard Clauses for New York State Contracts*) are expressly incorporated herein.
4. **ETHICS COMPLIANCE** All Contractors and their employees must comply with the requirements of Sections 73 and 74 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 Contract, Contractor 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. **(RESERVED)**
6. **DEFINITIONS** Terms used in this Appendix B-1 shall have the following meanings:

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

**ATTORNEY GENERAL** Attorney General of the State of New York.

**AUTHORIZED USER(S)** Agencies, 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.

**BIDDER** “Bidder” shall refer to the “Contractor”.

**CERTIFICATES OF PARTICIPATION (COPS)** Certificates issued pursuant to Article 5-A of the State Finance Law which represent the right to receive a proportionate share in lease, installment or other periodic payments to be made by any state department, agency or the City University of New York.

**COMMISSIONER** Commissioner of OGS,

**COMPROLLER** Comptroller of the State of New York.

**CONTRACT** The writing(s) which contain the agreement of the Commissioner and the Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law.

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

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

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

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

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

**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.

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

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

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

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

**OGS** The New York State Office of General Services

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

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

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

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

**SITE** The location (street address) where Services will be delivered.

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

**STATE** State of New York

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

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

**7. through 37. (RESERVED)**

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

**a. Agencies** All State Agencies may utilize and purchase under any state centralized contract let by the Office of General Services Procurement Services Group.

**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 Contract shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service contracts to those additional entities authorized to utilize commodity contracts under Section 163 (3) (a) (iv) of the *State Finance Law*, which would comprise all entities authorized under prior laws.

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

**40. MODIFICATION OF CONTRACT TERMS** The terms and conditions set forth in the Contract 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. For individual Transaction Documents, however, the Contractor may offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, Contractor shall furnish a copy of such better offer to the Commissioner upon request.

Other than where 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*. Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to Product upon delivery (e.g., attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying or affixed to Product) or by incorporating such terms onto Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. Acceptance of Product or processing of such documentation on forms furnished by the Contractor for approval or payment does not constitute acceptance of the proposed modification to terms and conditions.

**41. through 51.(RESERVED)**

**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 PARTS / COMPONENTS** Where the Contractor is required to repair, replace or substitute parts components under the Contract, the repaired, replaced or substituted products shall be subject to all terms and conditions for new parts and components set forth in the Contract. Replaced or repaired components, or parts shall be new and shall, if available, be replaced by the original manufacturer's component or part. Use of remanufactured parts or components meeting new product standards may authorized in a Transaction Document. All proposed substitutes for the original manufacturer's installed parts or components must be approved by the Authorized User before installation. The part or component shall be equal to or of better quality than the original part or component being replaced.

**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 written approval of the Authorized User.

**55. (RESERVED)**

**56. (RESERVED)**

**57. PERFORMANCE / BID BOND** A Transaction Document may require the Contractor to furnish, without additional cost, a performance, payment or bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

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

**59. (RESERVED)**

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

notification is given the Commissioner, any performance so suspended or delayed shall be performed by the Contractor at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of the Commissioner that the delay will significantly impair the value of the Contract to the State or to Authorized Users, whereupon the Commissioner may:

- a. Accept allocated performance 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.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (1) the volatility is due to causes outside the control of Contractor; (2) the volatility affects the marketplace or industry, not just the particular contract source of supply; (3) the effect on pricing or availability of supply is substantial; and (4) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

**61. (RESERVED)**

**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 sixty (60) days of such delivery and acceptance, the Contractor may, upon ten (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 ten (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. (RESERVED)**

**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** In the event of Contractor's material breach, the Commissioner may, with or without formally bidding same:
  - i. Purchase from other sources; or
  - ii. If, after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable Service, the Commissioner is unsuccessful, the Commissioner may acquire acceptable replacement Service of lesser or greater quality.

Such purchases may, in the discretion of the Commissioner, be deducted from the Contract quantity and payments due Contractor.

**b. Withholding of Payment(s)** 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. 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 connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

**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.

**e. Fee Refund** In the event that a Purchase Order is cancelled for breach, Authorized User shall be entitled to a refund of any fees paid by Authorized User for usage or services prospectively from the date of breach.

**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, distributors, resellers, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the State or Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

**68. (RESERVED)**

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

**70. (RESERVED)**

**71. WARRANTIES & GUARANTEES** Where Contractor or Product manufacturer/developer generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users. Contractor hereby warrants and represents:

**a. (RESERVED)**

**b. Title and Ownership Warranty** Full ownership, clear title free of all liens, and/or that Contractor has obtained on behalf of Authorized User perpetual license rights to use Deliverables for the purposes of the Transaction Document. A Transaction Document may require Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. Authorized User's request or failure to request such documentation shall not relieve Contractor of liability under this warranty.

**c. Contractor Compliance** 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 Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman's compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

**d. (RESERVED)**

**e. (RESERVED)**

**f. Virus Warranty** Deliverables contain no known viruses. Contractor is not responsible for viruses introduced at Authorized User's site.

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

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

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

**h. (RESERVED)**

**i. Survival of Warranties** All warranties contained in this Contract shall survive the termination of this Contract.

**72. (RESERVED)**

**73. (RESERVED)**

**74. (RESERVED)**

**75. OWNERSHIP / TITLE TO PROJECT DELIVERABLES**

**a. Definitions for Purposes of this Section 75**

- i. "Products" - A Deliverable furnished under this Contract by or through Contractor, including existing and Custom Products, including, but not limited to: a) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), b) third party software, c)

modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and d) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

- ii. “Existing Products” - Tangible Products and intangible licensed Products which exist prior to the commencement of work under the Contract. Contractor retains the burden of proving that a particular product was existing before commencement of the Transaction Document. .
- iii. “Custom Products” - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees or agents for Authorized User under the Contract.

**b. Title to Deliverables** Contractor acknowledges that it is commissioned by the Authorized User to perform Consulting\Technical Services detailed in the Transaction Document. Unless otherwise specified in writing in the Transaction Document, the Authorized User shall have ownership and/or license rights as follows:

**i. Existing Products:** Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract which is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner (“Existing Licensed Product”), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or other independent software vendor proprietary owner (“ISV”). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner’s standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor’s proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User’s satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User’s work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV’s standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

**ii. Custom Products:** Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Transaction Document in the course of Contractor’s business. A Transaction Document **may** provide the Contractor with a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product, subject to conditions specified in the Transaction Document.

Where a Transaction Document does not involve COPS or other third party financing, the Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

**c. Transfers or Assignments to a Third Party Financing Agent** It is understood and agreed by the parties that a condition precedent to the consummation of the purchase (s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee (“Trustee”) as collateral where required by the terms of the financing agreement. Trustee’s sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to

Authorized User all of Lessor's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

**d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation (COPS))** The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this paragraph.

**e. Contractor's Obligation with Regard to ISV (Third Party) Product** Where Contractor furnishes Existing Licensed Product(s) as a Deliverable, and sufficient rights necessary to effect the purposes of this section 75 are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

**76. PROOF OF LICENSE** The Contractor must provide to each Authorized User who places a Purchase Order either: a) the Deliverable developer's certified License Confirmation Certificates in the name of such Licensee; or b) a written confirmation from the proprietary owner accepting Deliverable invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Authorized User.

**77. (RESERVED)**

**78. (RESERVED)**

**79. CHANGES TO SERVICE OFFERINGS**

**a. Service Discontinuance** Except as otherwise provided in a Schedule to this Agreement, where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers ("date of notice") that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered for the Product, Contractor shall be required to: (1) notify the Commissioner and each Authorized User then under contract for maintenance or technical support in writing of the intended discontinuance; and (2) continue to offer withdrawn support upon the Contract terms previously offered for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (3) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: a) provide the Authorized User with either a Product replacement or migration path with at least equivalent functionality at no additional charge, or b) provide Authorized User with the source code for Licensed Product at no additional charge to enable Authorized User to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (1) provide the notice required under (1), above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (2) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide withdrawn support.

The provisions of this paragraph (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent subcontractor. In the event that such subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to state approval, to an alternate subcontractor.

**b. Service Re-Bundling\*** Except as otherwise provided in a Schedule to this Agreement, In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (1) notify the State and each Authorized User in writing of the intended change; (2) continue to provide withdrawn support upon the same terms

and conditions as previously offered on the then-current NYS Contract for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (3) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. \*The provisions of this section do not apply if the Contractor is not the Product manufacturer.

**80. (RESERVED)**

**81. (RESERVED)**

**82. (RESERVED)**

## **APPENDIX C: PROBLEM ESCALATION SUMMARY**

Appendix C classifies problems and summarizes the escalation process applicable to the Deliverables and Services to be provided under this Agreement. Unless modified by written agreement of the parties in a Schedule or Transaction Document, this Appendix C applies to any Transaction Document issued under this Agreement.

Service levels and escalation points are unique to the type of Service provided by the Contractor, but, Unless modified by written agreement of the parties in a Schedule or Transaction Document, an Authorized User may use the following escalation path to resolve problems:

### Schedule 1:

1 <sup>st</sup> Point of Escalation After 24 Hours: Rich Travis Client Principal (518) 783 0288 Rick.travis@hp.com	2 <sup>nd</sup> Point of Escalation After 48 Hours: Alicia Brown Managing Client Principal (404) 648-6147 Alicia.brown@hp.com	3 <sup>rd</sup> Point of Escalation After 72 Hours: Alan Zimmerle Director (301) 918-7612 alan.zimmerle@hp.com	4 <sup>th</sup> Point of Escalation After 96 Hours: Ralph Lipizzi Vice President (301) 918-5764 ralph.lipizzi@hp.com
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### Schedule 2:

1 <sup>st</sup> Point of Escalation After 24 Hours: Katherine Castro Services Sales for NYS NYS/NYC (518) 843-2342 Katherine.castro@hp.com	2 <sup>nd</sup> Point of Escalation After 48 Hours: Tammy Cardillo Services Sales Manager, Public Sector (678) 652-5544 Tammy.cardillo@hp.com	3 <sup>rd</sup> Point of Escalation After 72 Hours: Tom Hempfield VP Public Sector, Services Sales (412) 244-7304 Tom.hempfield@hp.com	4 <sup>th</sup> Point of Escalation After 96 Hours: Bob Silhavey VP Public Sector, Customer Service (972) 309 6313 Robert.silhavey@hp.com
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**FIRST AMENDMENT TO THE AGREEMENT BETWEEN  
THE NEW YORK STATE OFFICE OF GENERAL SERVICES  
AND  
HEWLETT – PACKARD COMPANY  
FOR  
CONSULTING/TECHNICAL SERVICES  
AND  
MAINTENANCE/SUPPORT SERVICES**

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**THIS FIRST AMENDMENT** to Contract No. CMS1051/PS61987 (First Amendment) is made by and between the State of New York (State), acting by and through the New York State Office of General Services (OGS) with offices located at the 41<sup>st</sup> Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, and Hewlett-Packard Company (HP or Contractor), a Delaware corporation, authorized to do business in the State of New York, having offices at 240 Washington Avenue Extension, Albany, New York, 12203, collectively referred to as the Parties (Parties).

**WITNESSETH:**

**WHEREAS**, OGS entered into Contract No. CMS1051/PS61987 (Agreement) with the Contractor as of October 31, 2005, for Consulting/Technical Services and Maintenance/Support Services; and

**WHEREAS**, it has been determined that it is necessary to make certain revisions to the Agreement, including changes to Appendix B-1 as well as additions, substitutions, and amendments to various other clauses.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the Parties do agree as follows:

1. Section 12 (D) of the Base Agreement is amended to read as follows:

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

2. Section 16 of the Base Agreement is deleted.

3. Section 17 (C) of the Base Agreement is amended to read as follows:

C. Contractor acknowledges that the terms of Article 11-A apply only to procurements by and the consequent payment obligations of State agencies. Neither expressly nor by any implication is the statute applicable to other

Authorized Users. Neither OGS nor OSC is responsible for payments on any purchases made by an Authorized User that is not a State agency. Except as otherwise provided in a Transaction Document and subject to any law or regulation governing the audit and payment of claims by individual Authorized Users, payment obligations of Authorized Users that are not State agencies shall be due upon receipt of an invoice for completed Services.

4. Appendix B-1 is amended by the addition of Section 43:

**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, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

5. Section 64(b) of Appendix B-1 is amended to read as follows:

**b. Withholding of Payment(s)** 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. In the event that the Contractor's non-performance is cured to the requirements of the State or the Authorized User in accordance with the Agreement, amounts withheld shall be paid to the Contractor in accordance with the provisions of Section 17 of the Base Agreement. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

6. Section 64(c) of Appendix B-1 is amended to read as follows:

**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. 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, up to the appropriate limit of liability specified in Section 5 of the Base Agreement, expended or incurred by the State or Authorized User in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

7. Section 76 of Appendix B-1 is amended to read as follows:

**76. PROOF OF LICENSE** Upon request, the Contractor must provide to each Authorized User who places a Purchase Order either: a) the Deliverable developer's certified License Confirmation Certificates in the name of such Licensee; or b) a written confirmation from the proprietary owner accepting Deliverable invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Authorized User.

8. Section 01 of Schedule 1 is amended by the addition of the following paragraph:

For purposes of this Schedule 1, the term "Product" as used in Section 43 of Appendix B-1, Best Pricing Offer, shall mean "Services of a similar scope." The Parties agree that: (i) the rights specified in Section 43 of Appendix B-1 may only be exercised by the State upon written notice to the Contractor; and (ii) any lower prices that apply pursuant to the operation of Section 43 of Appendix B-1 shall only apply to Transaction Documents executed on or after Contractor's receipt of the notice provided in (i), above.

9. Section 01.3 of Schedule 2 is amended by the addition of the following paragraph:

For purposes of this Schedule 2, the term "Product" as used in Section 43 of Appendix B-1, Best Pricing Offer, shall mean "Services of a similar scope." The Parties agree that: (i) the rights specified in Section 43 of Appendix B-1 may only be exercised by the State upon written notice to the Contractor; and (ii) any lower prices that apply pursuant to the operation of Section 43 of Appendix B-1 shall only apply to Transaction Documents executed on or after Contractor's receipt of the notice provided in (i), above.

10. All other terms and conditions of the Agreement not specifically referred to herein remain unchanged.

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**SIGNATURE PAGE**

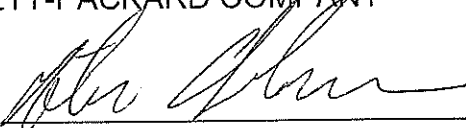
Contract Number: CMS1051/PS61987

Agency Certification

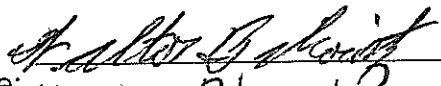
"In addition to the acceptance of this First Amendment to the Agreement, I also certify that original copies of this signature page will be attached to all other exact copies of this First Amendment."

IN WITNESS WHEREOF, each of the parties has caused this First Amendment to executed in its name and behalf by its duly authorized representatives on the day and year appearing below their respective signatures.

HEWLETT-PACKARD COMPANY

By:   
Name: Mike Chambers  
Title: Contracts Manager  
Date: March 8, 2006

NEW YORK STATE OFFICE OF GENERAL SERVICES

By:   
Name: Walter Bikowitz  
Title: DIRECTOR OF Purchasing  
Date: 3/14/06

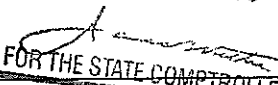
Approved as to Form:  
New York State Attorney General

By: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM  
NYS ATTORNEY GENERAL  
MAR 14 2006  
PETER LAVERGNE  
ASSOCIATE ATTORNEY

Approved:  
Alan G. Hevesi  
Comptroller

By: \_\_\_\_\_

APPROVED  
DEPT. OF AUDIT & CONTROL  
MAR 27 2006  
  
FOR THE STATE COMPTROLLER

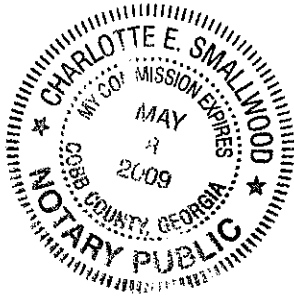
STATE OF        GEORGIA  
COUNTY OF     COBB

)        ss.:

On the 8th day of March in the year 2006, before me personally came: Mike Chambers, to me known, who, being by me duly sworn, did depose and say that he resides at 2425 Tall Timbers Trail, N.E., Marietta, Georgia 30066; that he is Contracts Manager of Hewlett-Packard Company, the corporation described in and which executed the above instrument; and that he signed his name thereto by authority of the board of directors of said corporation.

Charlotte E. Smallwood

Notary Public



**SECOND AMENDMENT TO THE AGREEMENT BETWEEN  
THE NEW YORK STATE OFFICE OF GENERAL SERVICES  
AND  
HEWLETT – PACKARD COMPANY  
FOR  
CONSULTING/TECHNICAL SERVICES  
AND  
MAINTENANCE/SUPPORT SERVICES**

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**THIS SECOND AMENDMENT** to Contract No. CMS1051/PS61987 (Second Amendment) is made by and between the State of New York (State), acting by and through the New York State Office of General Services (OGS) with offices located at the 41<sup>st</sup> Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, and Hewlett-Packard Company (HP or Contractor), a Delaware corporation, authorized to do business in the State of New York, having offices at 240 Washington Avenue Extension, Albany, New York, 12203, collectively referred to as the Parties (Parties).

**WITNESSETH:**

**WHEREAS**, OGS entered into Contract No. CMS1051/PS61987 (Agreement) with the Contractor as of November 1, 2005, for Consulting/Technical Services and Maintenance/Support Services; and

**WHEREAS**, it has been determined that it is necessary to make a term revision to Section 14 of the base Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the Parties do agree as follows:

1. Section 14 (Paragraph 1 ) of the Base Agreement is amended to read as follows:  
The term (Term) for this Agreement shall be from November 1, 2005 through October 31, 2010, and shall be effective upon approval hereof by the Attorney General (OAG) and OSC, unless otherwise terminated in accordance with the terms of the Agreement.
  
2. All other terms and conditions of the Agreement not specifically referred to herein remain unchanged.

**[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]**

**SIGNATURE PAGE**

Contract Number: CMS1051/PS61987

Agency Certification

"In addition to the acceptance of this First Amendment to the Agreement, I also certify that original copies of this signature page will be attached to all other exact copies of this First Amendment."

IN WITNESS WHEREOF, each of the parties has caused this First Amendment to executed in its name and behalf by its duly authorized representatives on the day and year appearing below their respective signatures.

HEWLETT-PACKARD COMPANY

By: 

Name: Mike Chambers

Title: Contracts Manager

Date: 3/8/06

NEW YORK STATE OFFICE OF GENERAL SERVICES

By: 

Name: Walter Bikowitz

Title: Director Purchasing

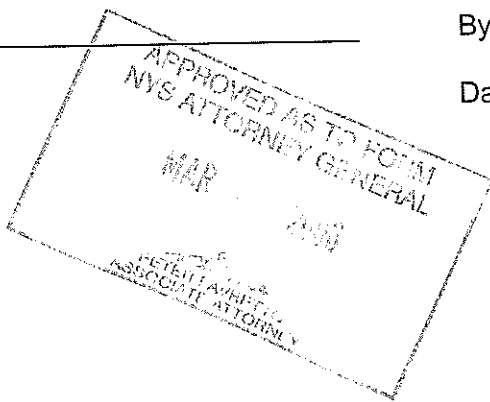
Date: 3/14/06

Approved as to Form:

New York State Attorney General

By: \_\_\_\_\_

Date: \_\_\_\_\_

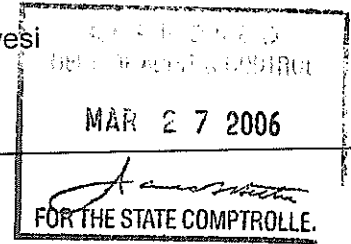


Approved:

Alan G. Hevesi  
Comptroller

By: \_\_\_\_\_

Date: \_\_\_\_\_



STATE OF GEORGIA

) ss.:

COUNTY OF COBB

On the 8th day of March in the year 2006, before me personally came: Mike Chambers, to me known, who, being by me duly sworn, did depose and say that he resides at 2425 Tall Timbers Trail, N.E., Marietta, Georgia; that he is Contracts Manager of Hewlett-Packard Company, the corporation described in and which executed the above instrument; and that he signed his name thereto by authority of the board of directors of said corporation.

Charlotte E. Smallwood

Notary Public

