



Solicitation (Revised October 20, 2016)

**IMPORTANT: SEE "BID SUBMITTAL INSTRUCTIONS" CLAUSES HEREIN
BIDS MAY BE SENT TO THE ABOVE ADDRESS ONLY**

(E-Mail or Facsimile Bid Submissions Are NOT Acceptable)

BID OPENING	TITLE: Group 20020 - Serials and Database Access (Statewide)	
DATE: November 1, 2016	Classification Code(s): 55 & 83	
TIME: 11:00 AM		
SOLICITATION NUMBER: 23044	SPECIFICATION REFERENCE: As Incorporated in the Solicitation	
CONTRACT PERIOD: Five years with renewal options for up to two (2) additional years		
DESIGNATED CONTACTS:		
PRIMARY CONTRACT Shrilata Nath Contract Management Specialist Telephone: (518) 474-3034 E-mail: shrilata.nath@ogs.ny.gov	SECONDARY CONTRACT Terri L. Allen Team Leader Telephone: (518) 474-7795 E-mail: terri.allen@ogs.ny.gov	TERTIARY CONTRACT Jamie Nusbaum Assistant Director Telephone: (518) 474-5340 E-mail: edward.nusbaum@ogs.ny.gov

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

(b). Information may be accessed at:
Procurement Lobbying: <http://ogs.ny.gov/acpl/>

Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <i>(See "New York State Vendor File Registration" clause)</i>			
If applicable, place an "x" in the appropriate box <input type="checkbox"/> NYS Small Business <input type="checkbox"/> Minority Owned <input type="checkbox"/> Women Owned <i>(check all that apply):</i> _____ #Employees Business Business				
Legal Business Name of Company Bidding:				
D/B/A - Doing Business As (if applicable):				
Street	City	State	Zip	County
If applicable, place an "x" in the appropriate box <input type="checkbox"/> Manufactured Within New York State <input type="checkbox"/> Manufactured Outside New York State <i>(check all that apply):</i>				
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____.				
Bidder's Signature:		Printed or Typed Name:		
Title:		Date:		
Phone : () - ext ()	Toll Free Phone : () - ext ()			
Fax : () - ext ()	Toll Free Fax : () - ext ()			
E-mail Address:		Company Web Site:		

FOR PROCUREMENT SERVICES USE ONLY

P.R. #	LIT <input type="checkbox"/>	MEMO <input type="checkbox"/>	LET <input type="checkbox"/>	OTHER <input type="checkbox"/>	MISSING PAGES
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ACKNOWLEDGEMENT FORM

BIDDER

Company Name:	NYS Vendor Identification Number:
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INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

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

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

On the _____ day of _____ in the year 20____ before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he maintains an office at _____, and further that:

[Check One]

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

Notary Public
Registration No.

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SECTION 1: INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (NYS) Office of General Services (OGS), Procurement Services. The Contracts awarded as a result of this Solicitation will be multiple statewide centralized Contracts for the purchase of Serials and Database Access Products and services by New York State Agencies and Non-State agencies, including political subdivisions, school districts and others authorized by law (See Section 5.48, *Non-State Agencies Participation in Centralized Contracts* and Section 5.50, *Extension of Use*). Contractors should familiarize themselves with the licensing requirements contained in this Solicitation, including attachments.

References to the State and its Agencies or Non-State Agencies as Authorized Users under this Solicitation and the ensuing Contract(s) encompass and include all such entities within the definition of “Authorized User” set forth in State Finance Law §163(1)(k).

This Solicitation outlines the terms and conditions, and all applicable information required for submitting a bid. A Bidder should pay strict attention to the bid submission date and time to prevent disqualification. To ensure compliance with bid requirements and prevent possible disqualification, a Bidder must follow the format and instructions in Section 3.6, *Bid Submittal Instructions*. Bidders are strongly encouraged to read the language of this Solicitation thoroughly and to precisely follow the instructions included in the Solicitation and all Attachments. The scope of this Solicitation can be found in Section 2.1, *Scope*.

1.2 Solicitation Documents

The following are hereby expressly made a part of this Solicitation as fully as if set forth at length herein:

This Solicitation Document (Revised October 20, 2016) (PDF)
 Appendix A – Standard Clauses for New York State Contracts (January 2014) (PDF – Attached to Solicitation)
 Appendix B – General Specifications (April 2016) (PDF – Attached to Solicitation)
 Appendix C – Contract Modification Procedure (PDF – Attached to Solicitation)
 Attachment 1 – Pricelist (Revised October 20, 2016) (Microsoft Excel)
 Attachment 2 – New York State Required Certifications (Microsoft Word)
 Attachment 3 – Encouraging Use of New York State Businesses (Microsoft Word)
 Attachment 4 – Insurance Requirements (PDF)
 Attachment 5 – General Questions (Microsoft Excel)
 Attachment 6 – Use of SDVOBs in Contract Performance (Microsoft Word)
 Attachment 7 – Reseller Directory (Microsoft Word)
 Attachment 8 – Bidder Questions (Microsoft Excel)
 Attachment 9 – Report of Contract Sales (Microsoft Excel)
 Business Automobile Liability Insurance Attestation

1.3 Key Events/Dates

<u>EVENT</u>	<u>DATE</u>	<u>TIME</u>
Solicitation Release	September 1, 2016	N/A
Closing Date for Inquiries	September 13, 2016	5:00 PM ET
Responses to Inquiries	October 20, 2016	N/A
Submission of Bid and Bid Opening	November 1, 2016	11:00 AM ET
Contract Awardee Notification (estimated)	December 1, 2016	N/A
Contract Term Begin (estimated)	January 1, 2017	N/A

1.4 New York State Contract Reporter

You must register with the New York State Contract Reporter (NYSCR) at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must choose the option “send me notification updates on this,” located in the lower right hand corner of the particular ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR. If you do not opt-in to receive

notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents. Submission of responses to the Solicitation that do not account for updated information may result in your bid/offer being deemed non-responsive.

1.5 Summary of Policy and Prohibitions on Procurement Lobbying

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

<http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

1.6 Inquiries

All inquiries concerning this Solicitation should be submitted electronically to the PRIMARY CONTACT listed on the front page of the Solicitation using the template found in Attachment 8 – *Bidder Questions* form on or before the date and time listed in Section 1.3, *Key Events/Dates*. When e-mailing Attachment 8, a Bidder should annotate the subject of its submission as follows: "Inquiry for Solicitation 23044 – Serials and Database Access (Statewide)". Bidder should raise any potential assumptions, exceptions, caveats, etc. to the terms and conditions, specifications, and requirements of this Solicitation during the inquiry period of the procurement. OGS will not entertain any exceptions to Appendix A. OGS will also not entertain exceptions to this Solicitation or Appendix B that are of a material and substantive nature. This is your only chance to inquire about the Solicitation, so please be thorough. No inquiries submitted via phone or mail will be accepted. Responses to all questions of a substantive nature will be provided electronically on the OGS website and released through the New York State Contract Reporter. See also Section 3.2, *Bid Deviations*.

1.7 Definitions

Terms used in the Solicitation documents that have a capitalized first letter shall be defined in accordance with Appendix B, §2, *Definitions*, which is hereby incorporated by reference. In addition, the following definitions shall apply:

Term	Definition
Active Request	Refers to an End User submitted search request transaction to the licensor's online service that has not yet received a response from the licensor's system.
Aggregator	A bibliographic service that provides online access to the digital full-text of Periodicals published by different Publishers. See also Database Publisher.
Back File Access	The ability to access information within a resource before a subscription period begins.
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State and federal holidays.
Concurrent Users	Specified number of simultaneous End Users accessing an Electronic Publication or Database.
Concurrent Sessions	Concurrent User is interpreted to include any End User station device which, at the point in time of measurement, has established a logical session path to the licensor's online service, enabling an immediate search request to be made directly to the licensor's search software. This is the common meaning of such expressions as being "signed on" or "logged on" to the online service. Under this

	definition, any signed on terminal or End User station device is counted as part of the concurrent use total, regardless of whether the End User is at the End User station; formulating a new search request; waiting for the licensor's system to respond to a search request; or digesting the results of a previous request.
Concurrent Use License	Where licensing of Electronic Publications is based upon "Concurrent Users" the Contractor shall obtain from the publisher the right of the Authorized User to obtain license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users.
Continuing Directory	A list of people, companies, institutions, organizations, etc., in alphabetical or classified order, providing contact information (names, addresses, phone/fax numbers, etc.) and other pertinent details (affiliations, conferences, publications, membership, etc.) in brief format, often published serially (i.e. Continuing resources (not complete as first issued and intended to be ongoing, though not necessarily indefinitely).
Customization	Changes to the function, layout and/or appearance of a Database which does not alter the Database content.
Database	A large, regularly updated file of digitized information (bibliographic records, abstracts, full-text documents, directory entries, images, statistics, etc.) related to a specific subject or field, consisting of records of uniform format organized for ease and speed of search and retrieval and managed with the aid of database management system (DBMS) software. Content is created by the Database producer, which usually publishes a print version and leases the content to one or more Database vendors that provide electronic access to the data after it has been converted to machine-readable form, usually on CD-ROM or online via the Internet, using proprietary search software.
Database Management System (DBMS)	A computer application designed to control the storage, retrieval, security, integrity, and reporting of data in the form of uniform records organized in a large searchable file called a Database. The range of available DBMS software extends from simple systems intended for personal computers to highly complex systems designed to run on mainframes.
Database Publisher	Company that uses specialized techniques to generate documents from source data and provide to End Users through a Database. See also Aggregator.
Discipline Specific Database	Information provided is focused on a discipline or area, however may include information from multiple related subject areas.
Electronic Journal	A digital version of a print journal, or a journal-like Electronic Publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some web-based Electronic Journals are graphically modeled on the print version. Synonymous with E-journal. Compare with electronic magazine.
Electronic Magazine	A digital version of a print magazine, or a magazine-like electronic publication with no print counterpart, made available via the World Wide Web, e-mail, or other means of Internet access. Some Web-based electronic magazines are graphically modeled on the print version. Synonymous with e-zine and Webzine. Compare with Electronic Journal.
Electronic Publication	A work in digital form capable of being read or otherwise perceived, distributed to the public electronically. Includes Electronic Journals and e-prints, Electronic Magazines and newspapers, electronic books, Web sites, Weblogs, etc. Some Electronic Publications are online versions of print publications; others are born digital. Synonymous with e-publication.
End User	Shall mean those persons who are permitted by the Authorized User to have access to an Electronic Publication or Database.
Fair Use	Shall mean acceptable use under the Copyright Revision Act 1976 as amended subsequently provided that such rights are exercised in accordance with Section 108 of the Act and with the guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines) and published in U.S. Copyright Office Circular 21.
Full Text Database	Contains the complete text of any documents (e.g. books, Journals, newspapers, magazines).

Full Time Equivalent End User (FTE)	For State agencies and Authorized Users not otherwise identified, the number of full time employees shall be the number of FTEs; for a higher educational institution, it shall refer to the student enrollment expressed as the number of full time students; for K-12 educational institutions, each student shall be considered one (1) FTE; for public libraries, the census population served shall be deemed to be the number of FTEs.
International Standard Serial Number (ISSN)	A unique eight-digit standard number assigned by the International Serials Data System (ISDS) to identify a specific serial title. The ISSN is usually given in the masthead of each issue or on the copyright page of each volume or part of a series. When a continuing resource undergoes a title change, a new ISSN is assigned.
Journal	A Periodical devoted to disseminating original research and commentary on current developments in a specific discipline, subdiscipline, or field of study, usually published in quarterly, bimonthly, or monthly issues sold by subscription. Journal articles are usually written by the person (or persons) who conducted the research. Longer than most magazine articles, they almost always include a bibliography or list of works cited at the end. In Journals in the sciences and social sciences, an abstract usually precedes the text of the article, summarizing its content. Most scholarly Journals are peer-reviewed. Scholars often use a current contents service to keep abreast of the Journal literature in their fields of interest and specialization.
Library Database	A large catalog or index of organized information.
Licensing Agreement	A formal written contract between a library and a vendor for the lease of one or more proprietary (copyrighted) bibliographic databases or online resources, usually for a fixed period of time in exchange for payment of an annual subscription fee or per-search charge. Vendors typically charge libraries on a sliding scale based on number of registered borrowers or FTE enrollment, number of institutions or facilities served, and number of simultaneous users.
List Price	The undiscounted price at which a new publication is offered for sale to the public, established by the publisher at the time the edition is issued. The List Price is quoted in the Publisher's catalog and printed on the front flap of the dust jacket in hardcover editions and usually on the back cover in softcover editions. Discounts offered to libraries, booksellers, and jobbers are computed as a percentage off List Price. In library cataloging, the List Price of an item is indicated (when available) in the standard number and terms of availability area of the bibliographic description (field 020 or 022 of the MARC record). Synonymous with published price, retail price, and sticker price.
Magazine	A popular interest Periodical usually containing articles on a variety of topics, written by various authors in a nonscholarly style. Most magazines are heavily illustrated, contain advertising, and are printed on glossy paper. Articles are usually short (less than five pages long), frequently unsigned, and do not include a bibliography or list of references for further reading. Most magazines are issued monthly or weekly for sale at newsstands, in bookstores, and by subscription.
Metadata Database	Information about data itself, including size, origination or other descriptors.
MWBE	A business certified with NYS Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.
N/A	A common abbreviation for <i>not applicable</i> or <i>not available</i> , used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.
National Public Entities	Defined as State Governments, the Federal Government, Local Governments, cities, towns, school districts, libraries, police and fire departments, and other political subdivisions

Net Price	List Price less all applicable discounts or inclusive of Service Charges; the price paid by Authorized Users of the resultant Contract.
Newspaper	A Serial publication, usually printed on newsprint and issued daily, on certain days of the week, or weekly, containing news, editorial comment, regular columns, letters to the editor, cartoons, advertising, and other items of current and often local interest to a general readership.
NYS Vendor ID	Refers to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
Numerical Data Database	This includes statistical and other numerical data.
Optional Products and Services	Refer to supplementary Products and services that enhance or support the provision of Serials and/or Database Access Products identified to be within scope. For example: under Lot 1 that may include things such as stamps; call numbers or routing label; bar-coding; security strips; processing of journals including affixing date and property; shipment consolidation, MARC (Machine Readable Cataloging) records and updates; and Serials management solutions; under Lot 2 that may include things such as Database Management Systems (DBMS), hard copy records, mailing labels, batching, and reporting.
Periodical	A Serial publication with its own distinctive title, containing a mix of articles, editorials, reviews, columns, short stories, poems, or other short works written by more than one contributor, issued in softcover more than once, generally at regular stated intervals of less than a year, without prior decision as to when the final issue will appear. Although each issue is complete in itself, its relationship to preceding issues is indicated by enumeration, usually issue number and volume number printed on the front cover. Content is controlled by an editor or editorial board. Includes magazines, sold on subscription and at newsstands; journals, sold on subscription and/or distributed to members of scholarly societies and professional associations; and newsletters, but not proceedings or the other regular publications of corporate bodies as they relate primarily to meetings.
Procurement Services	Formerly known as NYSPRO or Procurement Services Group (PSG), Procurement Services shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide Contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such Contracts.
Publication	Refers to a work capable of being read or otherwise perceived (e.g. book, audiorecording, videorecording, CD-ROM, etc.), issued by a Publisher for sale to the general public, usually in multiple copies and sometimes in multiple editions.
Publisher	A person or corporate entity that prepares and issues printed materials for public sale or distribution, normally on the basis of a legal contract in which the publisher is granted certain exclusive rights in exchange for assuming the financial risk of publication and agreeing to compensate the author, usually with a share of the profits.
Reseller	Any model for distribution of Product other than direct from the Contractor. Resellers include but are not limited to approved value added resellers (VARs), distributors, dealers, sales agents, and alternate channel partners.
Subject Specific Database	This includes information from academic or scholarly Journals and trade or professional publications.
Serial	Publication in any medium issued under the same title in a succession of discrete parts, usually numbered (or dated) and appearing at regular or irregular intervals with no predetermined

	conclusion. Serials may be purchased individually, in combination with other titles, or as large collections of titles (particularly when purchased electronically).
Server	Shall mean the computer system(s) on which Electronic Publications or Databases reside and through which End Users gain access to the Electronic Publications or Databases.
Service Charge	A fee charged by a Subscription Agent for filling orders for Periodical subscriptions, usually 5 to 10 percent of the total annual amount paid by the library for subscriptions.
Subscription Agent	A company in the business of providing centralized Serial subscription or Database Access services to Authorized Users such as libraries to relieve them of the time consuming task of dealing with Publishers individually.

In addition to the above definitions, the following terms are defined as follows regardless of whether they are or are not capitalized:

May	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “Should”.
Must	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall” and “Mandatory”.
Shall	Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Must” and “Mandatory”.
Should	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May”.

1.8 Order of Precedence

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

1. Appendix A (Standard Clauses for New York State Contracts)
2. This Solicitation and its Attachments
3. Appendix B (General Specifications)
4. Bidder’s Bid

SECTION 2: STATEMENT OF WORK & BIDDER QUALIFICATIONS

2.1 Scope

The Contracts resulting from this Solicitation are to provide Authorized Users with a means of acquiring Serials and Database Access Products and services.

This Solicitation contains a total of two (2) Lots:

Lot 1 - Serials

Lot 2 - Database Access

2.1.1 Lot 1 - Serials

Products within scope include, but may not be limited to:

1. Print Periodicals and Newspapers
2. Electronic Magazines and Journals
3. Annuals (reports, yearbooks, etc.)
4. Continuing directories
5. Proceedings and transactions
6. Numbered monographic series cataloged separately

7. Subscription based eBooks
8. Optional Products and Services, including but not limited to:
 - a. Stamps, call numbers or routing labels, bar-coding, and security strips
 - b. Processing of journals including affixing date and property
 - c. Shipment Consolidation
 - d. MARC (Machine Readable Cataloging) records and updates
 - e. Serials management solutions, such as:
 - (i) Link resolvers
 - (ii) A to Z lists
 - (iii) Information discovery tools
 - (iv) Subscription management tools
 - (v) Electronic resource management (ERM) tools

In order to bid Optional Products and Services, Bidders must also bid on at least one Item Category in Attachment 1, *Pricelist*. If a Bidder is not awarded a Contract for at least one Item Category, it will not be awarded a Contract for Optional Products and Services.

2.1.2 Lot 2 – Database Access

Products within scope include, but may not be limited to:

1. Library Databases
2. Full Text Databases
3. Numeric Databases
4. Meta-Databases
5. General Interest Databases
6. Discipline Specific Databases
7. Subject Specific Databases
8. Streaming Video Databases
9. Database Files
10. Optional Products and services, including but not limited to:
 - a. Database Management Systems (DBMS)
 - b. Hard copy records
 - c. Mailing labels
 - d. Batching
 - e. Reporting

2.1.3 Excluded Products

The following Products are not within scope:

1. Products currently offered under the OGS Books and Non-Print Library Materials and other Related Ancillary Services contract (Group 20060)
2. Products and services currently offered under the OGS E-Learning Training/Distance Services contract (Group 73016), which includes web-based, computer based, online and internet based training
3. Standalone Software unrelated to the provision of Serials or Database Access
4. Hardware of any kind
5. Database services offered under the Contract shall not allow the Contractor to access the personal, private, or confidential information of any Authorized User or End User

It is the Contractor's responsibility to ensure that only Products and services that meet the scope of the Contract are purchased through the Contract. Questions concerning items covered under the resultant Contract should be addressed to the OGS Procurement Services contract manager designated on the Contract Award Notification prior to accepting the order.

If a Contractor sells Products that are excluded under this Contract as set forth above, such Contractor's Contract may be suspended or terminated.

2.2 Estimated Quantities

The quantities or dollar values listed in this Solicitation are estimated only. The Contracts resulting from this Solicitation shall be estimated quantities Contracts. No specific quantities or volumes are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards was approximately \$55,000,000.00 annually for Lot 1 and \$20,000,000.00 annually for Lot 2. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meets their needs in the most practical and economical manner. See Appendix B, §28, *Estimated/Specific Quantity Contracts* and §25, *Participation in Centralized Contracts*.

Numerous factors could cause the actual volume of product purchased under the Contracts resulting from this Solicitation to vary substantially from the estimates in the Solicitation. Such factors include, but are not limited to, the following:

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

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

2.3 Qualification of Bidder

The Bidder must meet the following qualifications for each respective Lot bid.

2.3.1 Qualification of Bidder – Lot 1 Serials

The Bidder must be a Subscription Agent or Publisher having \$100,000.00 in minimum verifiable contract sales for Products and services within scope to National Public Entities as defined in Section 1.7, *Definitions* for any consecutive 12 months during the prior eighteen (18) month period preceding the bid opening for this Solicitation.

Required proof of sales shall be in the form of a summary of the total sales reported, which shall include the names of the National Public Entity that made the purchase, the total amount of sales by purchaser, the date of each sale, and description of product/service sold. In lieu of a summary of sales to National Public Entities, Bidder may provide sales reports for an OGS Contract meeting these requirements. Required proof of sales should be submitted at the time of the bid opening. Copies of invoices may be required for verification or clarification if deemed necessary by the Office of General Services. Failure to submit proof of sales as requested will result in rejection of bid.

2.3.2 Qualification of Bidder – Lot 2 Database Access

The Bidder must be a Database Publisher or Aggregator having \$250,000.00 in minimum verifiable contract sales for Products and services within scope to National Public Entities as defined in Section 1.7 *Definitions* for any consecutive 12 months during the prior eighteen (18) month period preceding the bid opening for this Solicitation.

Required proof of sales shall be in the form of a summary of the total sales reported, which shall include the names of the National Public Entity that made the purchase, the total amount of sales by purchaser, the date of each sale, and description of product/service sold. In lieu of a summary of sales to National Public Entities, Bidder may provide sales reports for an OGS Contract meeting these requirements. Required proof of sales should be submitted at the time of the bid opening. Copies of invoices may be required for verification or clarification if deemed necessary by the Office of General Services. Failure to submit proof of sales as requested may result in rejection of bid.

2.4 Other Qualifications

OGS reserves the right to request any additional information regarding a Bidder's abilities, qualifications and procedures as it deems necessary to ensure safe and satisfactory work under a Contract. This includes, but is not limited to the following:

1. Satisfactory evidence that a Bidder has maintained an organization capable of performing the work specified herein in continuous operation for the past (3) years through submission of a Dun & Bradstreet Business Information Report or other equivalent evidence;
2. Evidence of a business establishment with adequate inventories of the Product offered and/or capacity to process and ship the volume of orders required by Authorized Users on a statewide basis. OGS may require a certificate from the Bidder showing the number of years the Bidder has been active in selling the Product offered and the size and location of the inventories regularly maintained;
3. References that demonstrate the ability of the Bidder to perform the work required under a resulting Contract;
4. Documentation to demonstrate a Bidder's ability to meet the delivery requirements set forth in Appendix B, §31, *Product Delivery*; and
5. OGS reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract.

SECTION 3: BID SUBMITTAL

3.1 Notice to Potential Bidders

Receipt of these bid documents does not indicate that OGS has pre-determined a company's qualifications to receive a Contract award. Such determination shall be based on the evaluation of a bid submission compared to the specific requirements and qualifications contained in these bid documents.

3.2 Bid Deviations

Bidders should submit any bid deviations, including assumptions, exceptions, and caveats to the terms, conditions, specifications, or requirements of this Solicitation during the inquiry period of the procurement in accordance with Section 1.6, *Inquiries*. The Bidder shall explain such deviation(s) or qualification(s); and if necessary, provide details as part of the inquiry. Bidder is advised that OGS will not entertain any exceptions to Appendix A (New York State Standard Clauses). OGS will also not entertain exceptions to the Bid Documents and Appendix B (General Specifications) that are of a material and substantive nature. Bid deviations that are not requested or raised during the inquiry period should be submitted with the Bid Submission, but may not be considered by OGS.

Bidders submitting bid deviations with their Bid shall specify the specific clause or terms at issue and the requested change. Submission of preprinted terms and conditions, forms, or other similar documents without such explanation shall not be considered. Please note that if OGS and the Bidder are unable to reconcile any Bid Deviations, all or part of the Bid may be deemed non-responsive. Submission of bid deviations may result in delay of Contract award.

3.3 Responsiveness

To be considered responsive, a Bidder must submit a bid that satisfies and addresses all requirements stated in the Solicitation. A Bid that fails to conform to all requirements may be considered non-responsive and may be rejected.

3.4 Bid Liability

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the production of a proposal or Bid or for any work performed prior to the formal execution of a Contract. Bids must be received at the specified location on or before the date and time listed in Section 1.3, *Key Events/Dates*. Bidder assumes all risks for timely, properly submitted deliveries. A Bidder is strongly encouraged to arrange for delivery of bids to OGS prior to the date/time of the bid opening. Late bids shall be rejected except as provided in Appendix B §5 *Late Bids*. E-mail or faxed Bids are not acceptable and shall not be considered. The received time of Bids will be determined by OGS by the clock at the final receiving location.

3.5 Bid Validity

Bids must remain open and valid for at least 120 calendar days from the bid opening date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 120 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder, who shall thereupon be obligated to execute a formal Contract.

3.6 Bid Submittal Instructions

It is recommended that the Bidder open, review and save/download all electronic files (identified in Section 1.2, *Solicitation Documents*) that make up this Solicitation to the Bidder's hard drive and/or to a secure back-up. Only completed files (in the specified format) should be saved to portable electronic media. Do not return copies of Appendices A and B to OGS.

Bidder shall submit the entire offering on portable electronic media (CD or memory stick) in accordance with the instructions below. Only completed files (in the specified format) should be saved to a portable electronic media. **Only those items listed below in Part 2 are also required in paper hard copy. Submitting a bid by fax or e-mail is not acceptable. A complete Bid consists of one (1) copy of each of the following:**

1. Portable electronic media containing:

1. Completed Attachment 1 - *Pricelist (Revised October 20, 2016)* (Microsoft Excel);
2. Completed Attachment 3 - *Encouraging Use of NYS Businesses* (Microsoft Word);
3. Completed Attachment 5 - *General Questions* (Microsoft Excel);
4. Completed Attachment 6 – *Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance* (Microsoft Word);
5. Completed Attachment 7 – *Reseller Directory* (Microsoft Word) in accordance with Section 5.22, *Use of Resellers/Distributors/Alternate Channel Partners*, if Bidder plans to utilize Resellers;
6. Pricelist from which products are being offered showing List Prices in accordance with Section 4.1, *Method of Award*;
7. Copy of at least one governmental contract to verify price reasonableness in accordance with Section 5.3, *Reasonableness of Price* (PDF); and
8. Summary of sales or sales reports for an OGS Contract (Microsoft Excel).

2. Bound, original hard copy versions of each of the following:

1. Pages 1 and 2 of the Solicitation (*Revised October 20, 2016*) (signed with original ink signatures and notarized);
2. Completed Equal Employment Opportunity Staffing Plan (Form EEO 100) with original ink signatures in accordance with Section 5.36.3, *Equal Employment Opportunity Requirements (EEO)*; Form EEO 100 available at <http://ogs.ny.gov/MWBE/Forms.asp>
3. Completed Attachment 2 - *New York State Required Certifications* with original ink signatures;
4. Proof of all Insurance coverage in accordance with Attachment 4 - *Insurance Requirements* (PDF)
 - a. New York State Workers Compensation Insurance,
 - b. New York State Disability Insurance,
 - c. Commercial General Liability Insurance, and
 - d. Automobile Insurance or the Business Automobile Liability Insurance Attestation, as applicable in the event not providing Automobile Insurance;
5. Completed Form ST-220-CA, Contractor Certification notarized with original ink signatures; and
6. Completed, signed and notarized paper copy of Vendor Responsibility Questionnaire For-Profit Business Entity if online Questionnaire has not been completed.

Also, please note that in the case of discrepancies between paper copies and electronic media submissions of the documents submitted in both formats, the electronic copy shall take precedence over the paper copy. To be considered responsive, a Bidder must submit a bid that satisfies and addresses all requirements stated in the Solicitation. A Bid that fails to conform to all requirements may be considered non-responsive and may be rejected.

3.7 Bid Delivery

Bidders assume all risks for timely, properly submitted deliveries. A Bidder is strongly encouraged to arrange for delivery of bids to OGS prior to the date of the bid opening. Late bids shall be rejected except as provided in Appendix B §5 *Late Bids*. **E-mail or fax bid submissions are NOT acceptable and shall not be considered.**

Bid envelopes and packages

All bids must have a label on the outside of the box or package itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Group Number (Group 20020)
3. Bid number (Solicitation #23044)
4. Bid Opening Date and Time (November 1, 2016 at 11:00 AM ET)
5. The number of boxes or packages (i.e., 1 of 2; 2 of 2)

Failure to complete all information on the bid envelope and/or packages may necessitate the premature opening of the Bid and may compromise confidentiality. Bids shall be delivered to:

**State of New York Executive Department
Office of General Services
Procurement Services
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242**

Hand Deliveries

Bidders must allow extra time to comply with the building access procedures in effect at the Empire State Plaza when hand delivering bids or using deliveries by independent courier services. Bidders assume all risks for timely, properly submitted deliveries.

Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the Information Desk. A Bidder attending bid openings is encouraged to pre-register for building access by contacting the NYS OGS Procurement Services receptionist at 518-474-6262 at least 24 hours prior to the bid opening. Visitors who are registered can check in directly with the Security Desk. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services Receptionist. The Receptionist will register the visitor at that time but delays may occur. Bidders who intend to deliver bids or conduct Procurement Services business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time. **Note:** Bids not received within Procurement Services, or the OGS Mailroom, by the time and date shown on the front page of the bid document will be considered late.

3.8 Electronic Bid Opening Results

NYS OGS Procurement Services posts bid results on the OGS/Procurement Services web page. The web page makes available information about the list of Bidders that responded to this Solicitation. The Bid Opening Results Page is available at: <http://www.ogs.ny.gov/purchase/bidresults/bidresults.asp>.

3.9 Debriefing

Unsuccessful Bidders shall be notified upon Notification of Award to the winning Contractor(s). A Bidder shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Requests for debriefings may be made both prior to and after Contracts are awarded. For debriefings prior to Contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that Bidder's proposal or Bid. The debriefing prior to Contract award should be requested in writing within ten (10) business days of notification that the Bid or proposal was disqualified from further consideration or that the Bidder was a non-awardee.

After Contract award, OGS shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to the Solicitation, regarding the reason that the Bid submitted by such Bidder was not selected for a Contract award. Requests for debriefings by unsuccessful Bidders must be addressed to OGS in writing. The post-award debriefing should be requested in writing within 15calendar days of posting of the Contract award on the OGS website.

3.10 New York State Procurement Rights

In addition to its statutory and common law procurement rights, New York State reserves the rights to:

1. Reject any or all Bids received in response to the Solicitation;
2. Withdraw the Solicitation at any time, at the sole discretion of the Agency;
3. Make an award under the Solicitation in whole or in part;

4. Make an award under the Solicitation by Lot or by Item;
5. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
6. Seek clarifications and revisions of Solicitation;
7. Amend the Solicitation requirements prior to the bid opening to correct errors or oversights, or to supply additional information, as it becomes available;
8. Direct Bidders, prior to the bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
9. Change any of the schedule dates with notification through the Bidder Notification Service and/or NYS Contract Reporter;
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
11. Waive any requirements that are not material;
12. Utilize any and all ideas submitted in the bids received;
13. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
14. Negotiate with the Bidder responding to this Solicitation within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' Bids;
15. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
16. If an incorrect reference/parameter/component/product/etc. is stated by the State or by the Bidder, the evident parameter/component/product shall prevail; the proper alternative or corrected parameter/model/code number(s) shall be considered;
17. Have the flexibility to consider bids with minor deviations or technicalities and to waive minor deviations or technicalities that may be consistent with the intent and scope of the Solicitation. This flexibility may permit a reasonable outcome in cases where the results of a fair, competitive process are clear but the award of a Contract is threatened due to a minor technicality or a minor deviation, and reject an obviously unbalanced bid as determined by the State or offer the Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism and/or reasonableness of its pricing.
18. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

SECTION 4: METHOD OF AWARD

4.1 Method of Award

This Solicitation contains of a total of two (2) Lots which are specified below and in Section 2.1, *Scope*. A Bidder may bid on one or both lots. Bidders shall offer discounts and pricing as described in this section and Attachment 1, *Pricelist*.

LOT	DESCRIPTION OF LOT
1	Serials
2	Database Access

4.1.1 Lot 1 – Serials Award Methodology

Award shall be made Item Category in accordance with the Item Categories listed in Attachment 1 – *Pricelist*. Bidders may bid on one or more Item Categories. Bidders shall offer a percentage of List Prices on Attachment 1 – *Pricelist* for each Item Category bid. This may include a range consisting of a lower limit and an upper limit (e.g., 95.00% to 104.00%). For example, 95.00% would be a 5.00% discount off List Price; 104.00% would be List Price plus a 4.00% Service Charge; 100.00% would be List Price without a discount or Service Charge. This range shall be applied to List Prices. Bidders shall provide a detailed explanation of the methodology used to apply the percentage of List Price ranges for subscriptions in the various formats (i.e. Print, Electronic, Packaged Pricing, etc.).

The List Prices shall be the current List Prices at time of order as published and distributed by the Publishers. The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract. The discounts and Service Charges applied to individual Authorized Users may move up or down within the Contract percentage range from year to year based on the Products a particular Authorized User decides to purchase as it is understood that their final price is typically based on the mix of titles ordered, discounts allowed by the Publishers for the Products ordered and the level of service offered; however, the percentage off List Prices being charged by the Contractor must never exceed the percentage of list range upper limit bid for the respective Item Categories. The Bidder's Service Charge may decrease at any time, but shall not increase during the term of the Contract. In addition, upon mutual agreement, delivery locations may be expanded per the Section 5.50, *Extension of Use*.

Bidders may offer Products and services from any of the following pricelists: 1. Bidder's nationally published pricelist; 2. Publisher's pricelist; 3. Governmental pricelist; or a combination thereof. Bidder is required to submit the pricelist(s) from which the Products are offered at time of bid submission showing List Prices.

If available, and upon request, the Bidder shall provide a comprehensive listing of subscription titles with bid. The listing may include for each title, the Bidder's title number, ISSN where available, frequency, availability of indexes and title page, where title is indexed, volume number and date of current subscription period, and current List Price.

4.1.1.2 Optional Products and Services

Bidders may offer Optional Products and Services if they pertain to the provision of Serials Products identified to be within scope pursuant to Section 2.1.1, *Lot 1 - Serials*. Bidder must bid and be awarded a Contract for at least one Lot 1 Item Category to be awarded a Contract that includes Optional Products and Services,. Bidders may not bid Optional Products and Services alone, nor will Bidders be awarded a Contract only for Optional Products and Services.

All Optional Products and Services proposed will be subject to review and approval by the State as to acceptance. Optional Products and Services may be bid as a monetary charge (dollar amount) and, if awarded, under the resultant Contract may be added to each Authorized User's order. If a range of charges is offered based upon ordering criteria such as volume price breaks, the Bidder must identify where each specific charge is within the range and how the charge is to be applied. If a Bidder is offering an optional service at no additional charge, Bidder shall list the service offered and then list "No Charge" on the corresponding pricing line.

Award shall be made to responsive and responsible Bidders offering reasonable pricing and meeting the minimum bidder qualifications. Due to the nature of the Products involved, and recognizing that no one Bidder will be able to supply all of the Products required by Authorized Users, award may be made to more than one Bidder. Contracts shall be awarded only to Bidders whose schedule of prices indicates that items will be delivered at reasonable price as determined by the Office of General Services, Procurement Services in accordance with Section 5.3, *Reasonableness of Price*.

New York State reserves the right to exclude from award any pricelists or individual Products or services that do not fall within the scope or are not deemed to be offered at prices advantageous to the State. New York State reserves the right to require documentation to support the reasonableness of the prices offered.

4.1.2 Lot 2 - Database Access Award Methodology

Bidders are not required to offer all the pricing options listed below, but are highly encouraged to offer all available pricing options offered by the Bidder. The pricing submitted in Attachment 1 – *Pricelist* should include multiple pricing options, including, but not limited to the following options. All percentage discounts may be increased by the Contractor for the duration of the resulting Contract, but may not be decreased by the Contractor for the duration of the resulting Contract.

4.1.2.1 Fixed Price – Unlimited End Users and Usage

This will provide unlimited access to the Contractor's Database(s) for an annual fixed fee that will be based on Full Time Equivalents (FTEs). Full Time Equivalents are based on one of the following factors: number of End Users at an entity, enrollment, book budget, IP class, per site charges or other standard pricing for unlimited access licensing by the Authorized User utilizing the Contract. If the Authorized User diminishes the specified number of FTEs authorized to access the Licensed Database during the license term, Authorized User would be entitled to a credit for the price difference for the applicable time period (i.e. from the start date of the lower usage to the end of the license term).

4.1.2.2 Unlimited Usage - Limited Concurrent Users

Where Contractor provides a Database(s) based upon "Maximum Simultaneous or Concurrent User Session", Contractor will grant license rights to the specified maximum number of Concurrent Users authorized to access the Database simultaneously without reference to location or named End Users in accordance with the specific terms of the applicable license. If the Authorized User diminishes the specified maximum number of simultaneous End Users authorized to access the Licensed Database during the license term, Authorized User would be entitled to a credit for the price difference for the applicable time period (i.e. from the start date of the lower usage to the end of the license term).

4.1.2.3 Transactional Charges for Occasional End Users

This option is intended to address the needs of an occasional End User of a Database for instances where Authorized User's Database access does not justify the fixed fee for unlimited access based on FTEs or simultaneous End User approaches. The desired approach is a solution that is results oriented (e.g. per citation charge).

4.1.2.4 A La Carte Pricing

A la carte pricing is designed for Authorized Users who may not require all the resources in a Database, but enables Authorized Users to select resources to best fit their needs. If a Bidder elects to include this pricing model, they must provide a complete breakdown of the pricing model.

4.1.2.5 Optional Products and Services

Bidders may offer Optional Products and Services if they pertain to the provision of Database Products identified to be within scope pursuant to Section 2.1.2, *Lot 2 – Database Access*. Bidder must bid and be awarded a Contract for at least one Database Product to be awarded a Contract that includes Optional Products and Services,. Bidders may not bid Optional Products and Services alone, nor will Bidders be awarded a Contract only for Optional Products and Services.

All Optional Products and Services proposed will be subject to review and approval by the State as to acceptance. Optional Products and Services may be bid as a monetary charge (dollar amount) and, if awarded, under the resultant Contract may be added to each Authorized User's order. If a range of charges is offered based upon ordering criteria such as volume price breaks, the Bidder must identify where each specific charge is within the range and how the charge is to be applied. If a Bidder is offering an optional service at no additional charge, Bidder shall list the service offered and then list "No Charge" on the corresponding pricing line.

Bidder is expected to include, where applicable, charges for RSS feeds; pricing methodology and not to exceed pricing for Customization; and any volume pricing offered.

Bidders are to include, the subject categories covered by their Product, including but not limited to, the following subject categories: general, business, social sciences, health, education, science, technology and law, on Attachment 1 – *Pricelist*. State whether the Electronic Databases (or combination of Databases) include Periodicals and how many Periodicals are provided. If Databases include Periodicals, provide a list of titles or other descriptive information covered in each Electronic Database, including information on indexing, full text and imaged. Provide data on the numbers of titles indexed in each Electronic Database.

Awards shall be made to all responsive and responsible Bidders offering reasonable prices as determined by the Office of General Services in accordance with Section 5.3, *Reasonableness of Price*. All responsive and responsible Bidders will be offered a Contract with uniform terms and conditions, as well as Product specific terms and conditions applicable per Contractor.

Bidders may offer Products and services from any of the following pricelists: 1. Bidder's nationally published pricelist; 2. Publisher's pricelist; 3. Governmental pricelist; or a combination thereof. Bidder is required to submit the pricelist(s) from which the Products are offered at time of bid submission showing List Prices.

It is the expectation of the State that Bidders shall offer discounts for all Products and services offered. New York State reserves the right to exclude from award any pricelists or individual Products or services that do not fall within the scope or are not deemed to be offered at prices advantageous to the State. New York State reserves the right to require documentation to support the reasonableness of the prices offered.

New York State anticipates that the State shall be treated as a single entity and that prices reflect volume aggregated discounts commensurate with the statewide volume. Bidders are encouraged to offer their best possible pricing; additionally, Contractors may negotiate better pricing with Authorized Users at any time throughout the Contract period. (See Appendix B §13.g, Cost Proposal Revisions).

Due to the nature of the Products involved, and recognizing that no one Bidder will be able to supply all of the Products and services required by Authorized Users, award may be made to more than one Bidder.

4.2 Notification of Award

The successful Bidder shall be advised by OGS in accordance with Appendix B, §22 *Contract Creation/Execution*. In the case where a Bidder is awarded more than one Lot or Item, one (1) Contract will be issued which includes terms for each awarded Lot.

SECTION 5: TERMS AND CONDITIONS

5.1 Centralized Contract Modification

- A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. “Amendments” are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
- B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete Products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
- C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
- D. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.
- E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §26.

5.2 Price

Price shall include all customs duties and charges and be net, F.O.B. destination to any point in New York State as designated by the Authorized User and shall include all transportation charges and inside delivery for print medium. Inside deliveries are to be delivered to the ordering Authorized User’s stockroom or office location.

The Bidder’s price should include all costs associated with selling the Product. No shipping charges are allowed EXCEPT on printed foreign publications shipped directly to the Authorized User from an address outside the 48 contiguous US states including the District of Columbia. Foreign shipping costs shall be prepaid by the Contractor and added to the invoice and all such orders shall be shipped on F.O.B. destination by the most economical method. There shall be no increase in Contract prices for freight, shipping, fuel or other surcharges, FPT (Freight Pass Through), etc. during the term of the Contract.

FOR LOT 1 ONLY: Authorized Users may be charged additional fees charged by the Publishers which include licensing fees, platform fees etc. in excess of the base subscription fee. However, any additional fess shall only be those charges passed on by the Publishers and shall not include any additional fees charged by the Contractors for such services. The Contractor shall only charge fees based on List Prices charged by Publishers. The Authorized User must be notified of all such fees at the time of purchase. Fees that are not told to the Authorized User at the time of purchase shall be paid by the Contractor.

5.3 Reasonableness of Price

Bidder is required to demonstrate that all the New York proposed prices are reasonable. The Bid must include Attachment 1 - *Pricelist*, and other supporting documentation to demonstrate that the prices offered to New York State are at or below prices offered to other Governmental Entity customers.

Bidder shall submit a copy of at least one governmental contract to verify price reasonableness. Examples of acceptable contracts for comparing pricing are:

- Approved federal contracts such as a GSA Supply Schedule (indicate GSA Schedule #)

- Prices on any awarded NASPO ValuePoint (formerly WSCA-NASPO) contracts or other cooperative contracts
- Prices on any awarded NYS Contract (indicate NYS Contract #)
- Contracts with another state or governmental entity (indicate entity and contract #)

OGS reserves the right to conduct additional research and request additional information to assess the reasonableness of pricing. If reasonableness of pricing is not demonstrated to OGS' satisfaction, the Bid may be deemed non-responsive and ineligible for Contract award. Contractors shall also be required to demonstrate reasonableness of price pursuant to this section under a resultant Contract when submitting Contract pricelist updates pursuant to Section 5.7, *Contract Pricelist Update Procedures*.

5.4 Pricing based on GSA Pricing

Where the price is based upon an approved GSA Supply Schedule then:

5.4.1 Associated Discounts

Authorized Users shall be entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in this NYS Contract or GSA schedule, when calculating the Contract price.

5.4.2 Industrial Funding Fee

GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee (IFF)". Contract prices will be reduced by an amount equivalent to the IFF. The NYS Price will be calculated by reducing the published GSA price, after the discounts, if any, downward by the amount of the Industrial Funding Fee, currently set at .75%.

5.5 Volume Discounts

A Bidder is encouraged to offer volume discounts on Attachment 5 – *General Questions*.

5.6 Prepayment Plan Discounts

A Bidder is encouraged to offer Prepayment Plan Discounts on Attachment 5 – *General Questions*.

5.7 Contract Pricelist Update Procedures

The procedures below outline how Contract pricelist updates will be handled under this Contract. If awarded more than one Lot, Contractor shall submit pricelist updates for each Lot simultaneously pursuant to the requirements of this section. NOTE: THE FOLLOWING PROCEDURES ARE NOT APPLICABLE TO CONTRACTOR PROPOSED CHANGES TO CONTRACT TERMS AND CONDITIONS. Any implied or express request for changes in or additions to existing Contract terms and conditions, including new terms and conditions associated with a specific product line being added to the Contract for the first time, requires a formal Contract amendment and requires the approval of OGS. New or revised Contract terms and conditions are subject to the restrictions set forth in Appendix B, §26, *Modification of Contract Terms*.

5.7.1 Lot 1 - Serials Pricelist Updates

Adding and Deleting Item Categories.

Item Categories (Other than Optional Products and Services)

1. No decrease in discounts: The Bidder's discount may increase at any time, but shall not decrease during the term of the Contract. Service Charges bid may decrease at any time, but shall not increase during the term of the Contract.
2. Adding or Deleting Item Categories: Bidder may add or delete Item Categories to its Price List pursuant to this Section and at the discretion of OGS. Any new Item Categories added to the Contract shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*.
3. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Item Categories.
4. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Item Categories within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

Optional Products and Services

1. Adding or deleting Optional Products and Services: Bidder may add or delete Optional Product and Services offerings pursuant to this section and at the discretion of OGS. Any new Optional Products and Services offered shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*.
2. First Year: In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add or delete Optional Products and Services.
3. Subsequent Years: Commencing with the second year of the Contract, the Contractor may add or delete Optional Products and Services within thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

Price Adjustments for Lot 1 Optional Products and Services

All prices for Optional Products and Services may be adjusted annually following the first year of the Contract on the basis of the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items Less Food, Series ID: CUUR0000SA0L1, published monthly by the US Department of Labor Bureau of Labor Statistics. There shall be no price adjustments during the first year of the Contract. The adjustment shall be established as follows. Following the first year of the Contract and annually thereafter, the Contractor may make a formal request for a price adjustment in the succeeding Contract year. This request must be made in writing to the contract manager identified on the front page of the resultant Contract Award Notification; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract. If the Contractor fails to submit a written request, he/she forfeits its opportunity to receive a price adjustment in the succeeding Contract year.

Price adjustments for monetary amounts for Optional Products and Services shall begin with the second year of the start date of the Contract and annually thereafter. The adjustment shall be based on the percentage of increase or decrease in the above referenced index in the preceding twelve months ending three months prior to the effective date of the adjustments. In no case shall price increases exceed five percent (5%) annually. All adjusted prices will be rounded up or down to the nearest whole cent. The Office of General Services shall notify all parties of the price adjustments through the issuance of written notification by the Procurement Services.

Below is an example calculation. Values used are for illustrative purposes only.

CPI for current period	193.676
Less CPI for previous period	188.326
Equals Index point change	5.350
Divided by previous period CPI	188.326
Equals	0.028
Result multiplied by 100	0.028 x 100
Equals percent change	2.8

Should the referenced CPI become discontinued during the course of the contract, it will be replaced by the Not Seasonally Adjusted Consumer Price Index – All Urban Consumers, U.S. City Average, All Items, Series Id: CUUR0000SA0, and adjustments will be calculated based on the same methodology as outlined above, but with data from the new replacement index.

Submitting Price List Changes

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Item Categories added/deleted; Optional Products and Services added/deleted; and any price increases/decreases.

Contractors shall submit their updated Contract pricelist to the OGS Procurement Services contract manager pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users. All approved pricelist updates shall apply prospectively upon approval by OGS. Any request for a pricelist update not received in accordance with this section shall be deemed denied.

5.7.2 Lot 2 – Database Access Pricelist Updates

Contractor may update their pricelist as follows.

1. **General:** Any new Products or services added to the Contract shall be subject to a reasonableness of price review pursuant to Section 5.3, *Reasonableness of Price*. The Bidder’s discount may increase at any time, but shall not decrease during the term of the Contract.
2. **First Year:** In the first year of the Contract, the Contractor shall be allowed to update the pricelist once to add/delete Products or services as established by the Contractor in their normal course of business. There shall be no price increases allowed for existing Products or services during the first year of the Contract.
3. **Subsequent Years:** Commencing with the second year of the Contract, the Contractor may update the pricelist annually to reflect Contractor price changes and the addition/deletion of Products and services as established by the Contractor in their normal course of business; thirty (30) calendar days after the anniversary date of the Contract. The thirty (30) calendar days includes the anniversary date of the Contract.

In a single year of the Contract the total request for price increases shall not exceed the lesser of:

1. three (3%) percent annually, or
2. the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0,CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 2012. CPI-U data may be obtained at www.bls.gov.

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	2.2

The “CPI for current period” shall be the index in effect at the time the Contract pricelist update request is received; “CPI for previous period” shall be the index in effect when the Contract pricelist was last updated.

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated and the format shall be consistent with the format of the Contractor’s approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) Products and services being added/deleted and any price increases/decreases.

In connection with any Contract pricelist update, OGS reserves the right to request additional information; reject Contract updates; remove Products and services from Contracts; remove Products and services from Contract updates; and request additional discounts for new or existing Products and services.

5.8 Lot 1 Performance Requirements**5.8.1 Orders, Renewals, and Cancellations:**

1. The Authorized User may specify that the subscription begin with current issue, first issue of the current volume, first issue of the current year, or first issue of the next volume. Subscriptions shall begin on the effective date specified on the purchase order.
2. The Contractor shall notify the Authorized User as soon as possible but no later than thirty (30) calendar days if unable to supply a new order. Contractor shall also provide a reasonable explanation in writing for non-fulfillment.
3. The Contractor shall provide address, publication, merger, and title change services, etc.
4. The Contractor shall make arrangements with publishers for all regularly purchased subscription orders and renewals within sufficient time to avoid any interruption in receipt of issues.

5. The Contractor shall cancel subscriptions as requested by the Authorized User and shall issue a credit if allowed by the publisher.
6. The Contractor shall provide pro-rated refunds or substituted titles for titles which cease publication prior to expiration if provided by the publisher. OGS reserves the right to resolve any issues that may arise between an Authorized User and the Contractor with regards to refunds or substituted titles.
7. The Contractor shall provide a common expiration date for subscriptions (if requested by the Authorized User) unless prohibited by the publisher.
8. At the Authorized User's request the Contractor shall renew subscriptions automatically on a date selected by the Authorized User; or at the option of the Authorized User, shall provide a list of titles to be renewed by the Contractor for the Authorized User's approval prior to the issuance of the annual renewal invoice. Authorized User may change automatic renewal status at any time and for no additional charge.
9. The Contractor may provide two, or three-year renewal periods, but must at a minimum offer a one-year renewal period.
10. The Contractor may enter orders for back files, special issues, supplements, extra volumes, and cumulative indexes, if requested to do so by the Authorized User.
11. All orders, renewals, and cancellations between the Contractor and the Authorized User shall be in writing, or shall be electronically transmitted.
12. In lieu of individual order forms, Contractor shall be able to accept a purchase or letter order to which is appended a list of titles.

5.8.2 Invoicing and Payments

1. The Contractor may offer an early prepayment discount. Annually, the Contractor shall specify the percentages of discount offered and the deadlines for early payment. Subscriptions may be prepaid for up to three years for Authorized Users legally empowered to make advance payments.
2. The Contractor shall provide annual renewal invoice(s) and indicate if such invoices are available electronically.
3. The Contractor shall provide supplemental invoices for "bill as" published titles, for "bill later" titles, for new orders, etc., based on agreement with Authorized User.
4. The Contractor shall provide up to three copies of all invoices if requested by an Authorized User.
5. All invoices shall provide the following information or other "identifier," if applicable:
 - a. Name, address and Federal Identification Number of Contractor.
 - b. Authorized User address and account number.
 - c. Invoice date and number.
 - d. Purchase order number.
 - e. Contract number.
 - f. Titles listed in alphabetical order or in an order specified by Authorized User.
 - g. International Standard Serial Numbers (ISSNs).
 - h. Price for each subscription period.
 - i. Subscription period.
 - j. Description, quantity, unit price and extended price of all items.
 - k. Information indicating if charge is an added optional service charge. An explanation is required.
 - l. The discount or Service Charge, as requested by the Authorized User, on a line-by-line basis.
6. Increases in subscription price shall be allowed if correction in cost is required due to publisher's change in price.
7. Decreases in subscription price shall be refunded or credited, as specified, to the Authorized User promptly.
8. The Contractor shall, upon request from the Authorized User, provide proof of Publisher List Prices and increases or decreases in Publisher List Prices for specific titles.
9. Additional fees which are passed on by the publishers, e.g. licensing fees, shall be listed separately on invoices.

5.8.3 Optional

If available and/or possible, Contractor to advise Authorized Users if the following may be provided:

1. Authorized User fund code.
2. Information indicating if charge is for a renewal or new order.
3. Information identifying "bill later" or "bill as" published titles.
4. On supplemental invoices, the original invoice number.
5. Availability of title in electronic format.
6. Customized Invoicing

5.8.4 Claims

1. The Contractor shall be responsible for claiming all issues reported as not received or received damaged or defective by the Authorized User.
2. The Contractor shall promptly process claim notices in a timely manner not to exceed the claim period permitted by the Publisher.
3. The Contractor shall provide claim reports no less frequently than bimonthly.
4. Claim reports shall provide the following information:
 - a. Date of claim report.
 - b. Title(s) being claimed.
 - c. Issue(s) being claimed.
 - d. Date(s) of prior claim(s).
 - e. Publisher's response, if any.
5. The Contractor may accept and respond to claims by U.S. mail, facsimile, electronic mail, courier service, or online.

5.8.5 Conversion to New Contractor by Authorized Users

1. Renewal orders requested by Authorized Users shall be placed at least two months before expiration of current subscriptions.
2. If an interruption in service results from a change in a Contractor, any issues not received shall be obtained by the Contractor who received payment for that period at no additional cost to the Authorized User. Delivery to the Authorized User shall be made by the original Contract delivery and at no extra cost to the Authorized User.
3. If duplicate issues are received as a result of change in Contractors and the Publisher required their return, the Contractor shall be responsible for resolving the problem and shall absorb any associated costs.

5.8.6 Reports

1. The Contractor may send the Authorized User a monthly statement showing the date and amount of each outstanding invoice and credit memorandum.
2. The Contractor shall notify the Authorized User of title changes and discontinued titles and provide information on titles that are slow, delayed, or irregular, either as they occur or on a monthly basis.
3. At the Authorized User's request the Contractor shall provide a printed customized list of titles arranged alphabetically or according to specifications defined by the Authorized User.
4. Upon request, the Contractor may be required to provide the Authorized User with a price analysis report showing a 1-3 year Publisher List Price comparison of titles ordered. This report can be arranged by title, country of publication, or by codes defined by the Authorized User.
5. If available, Contractor may provide an industry-wide summary of statistical data and analyses.
6. Upon request, the Contractor shall provide a report showing changes in Publisher subscription periods, quantities ordered, and publishers' new requirements.
7. All reports between the Contractor and the Authorized User shall be in writing, and may be electronically transmitted.

5.8.7 Licensing Terms and Conditions for Electronic Publications**5.8.7.1 Authorized User Access to Electronic Publications**

1. Access: Access to the Electronic Publications by Authorized Users shall be either via electronic media or the Internet. If access is provided via the Internet, the Contractor shall ensure that the Electronic Publications are highly stable and usable (including average response time of less than 5 seconds, and uptime, except for scheduled maintenance, of 96.9%), and shall ensure that the Web server(s) is (are) fully capable of serving Authorized Users. Access shall be controlled by Internet Protocol (IP) addresses, passwords or other appropriate authentication technology.
2. If the license rights are based on a named user model, an Authorized User will prepare and submit to the Contractor a list of End Users that shall include name, address, and contact information.
3. License Scope: The Contractor and the State agree that the license for the Electronic Publications shall be governed as set forth below:
 - a. Authorized User is granted a non-exclusive, transferable, term license to access and use the electronic publications in accordance with this Contract. The license term for the Electronic Publications license shall commence upon the license effective date.
 - b. It shall be the obligation of the Authorized User to review and comply with the terms and conditions of the License Agreement if one is required by the publisher to use the Electronic Publication or electronic content

to the extent that they do not conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract.

- c. **Permitted License Transfers:** As Authorized User's business operations may be altered, expanded or diminished, Electronic Publication licenses may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Authorized Users and/or their End Users ("permitted license transfers"). Contractor shall have the discretion to issue new login credentials when a license transfer takes place.
- d. **Concurrent Use License:** Where licensing of Electronic Publications is based upon "Concurrent Users," Contractor hereby grants license rights to the specified number of Concurrent Users actually executing the licensed programs, without reference to location or named End Users (hereinafter "Concurrent Users").

5.8.7.2 Contractor's Performance Obligations

1. The Contractor will provide and maintain help files and other appropriate user documentation for the Electronic Publications to be accessible to all Authorized Users free of charge.
2. The Contractor will offer reasonable levels of continuing support to assist Authorized Users and their End Users in their use of the Products. Contractor will make its personnel available by email, phone or fax during regular Business Days.

5.8.7.3 Authorized User Performance Obligations

Authorized Users acknowledge that the copyright and title to the information content and organization of the Electronic Publications are and remain with the publisher. Authorized User shall use reasonable efforts to inform its End Users and walk-in patrons of any restrictions on the use of the Electronic Publications. Authorized User shall use reasonable efforts to protect the Electronic Publications from any use that is not permitted under this agreement. Authorized Users and/or End users may make all use of the Electronic Publications as is consistent with the Fair Use Provisions of United States and international copyright laws and the Bidder's/Contractor's terms and conditions for use of its online services, provided that they do not conflict with the terms of Appendix A, this Solicitation or any resultant Contract, or Appendix B,. In addition, the Electronic Publications may be used as follows:

1. Authorized Users and End Users may display, download, copy and/or print portions of the Electronic Publications for use in research, education, or other non-commercial purposes.
2. Authorized Users and End Users may use a reasonable portion of the Electronic Publications in the preparation of educational materials.
3. Authorized Users may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Authorized Users agrees to maintain records respecting End User's use of materials in such Interlibrary Loan and to provide such records to the Contractor upon request.

5.8.7.4 Specific Restrictions on Use of Electronic Publications

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

5.8.8 Licensing Terms and Conditions

Bidders are advised to review all terms and conditions carefully; particularly the licensing terms and conditions for Electronic Publications. If license agreement, shrink-wrap or click wrap agreements are associated with Electronic Publications, it is the responsibility of the potential Bidder/Contractor to offer only those Serials in electronic format that satisfy the license terms and conditions of the Solicitation. License terms that conflict with the terms of Appendix A, Appendix B, this Solicitation or any resultant Contract shall not be enforceable.

5.9 Lot 2 Performance Requirements

5.9.1 System Availability

Databases shall be functional at least 99% of the time.

5.9.2 Scheduled Maintenance

Contractor must notify Authorized Users at least 48 hours prior to scheduled maintenance that interrupts End User access to Databases. OGS requests that scheduled maintenance **NOT** be performed during normal Business Days.

5.9.3 RSS Feeds

Bidders shall indicate on Attachment 1 – *Pricelist*, if RSS Feeds are allowed, and if so, if they are included in the price of the resource.

5.9.4 Customization

Bidders are to make OGS aware if Customizations are allowed to the Database being offered, by stating the minimum requirements for customization on Attachment 1. Include the pricing methodology for performing such customizations.

5.9.5 Back File Access

If Bidders have Back File Access terms, the terms should be included within Attachment 1 - *Pricelist*.

5.10 Contract Period and Renewal

The Contract(s) shall commence after all necessary approvals by both parties, and shall become effective upon mailing of a fully executed Contract by OGS (see Appendix B, §22, Contract Creation/Execution). The Contract(s) shall be in effect for five (5) years beginning on the date of approval of the first Contract awarded as a result of the Solicitation, and shall end contemporaneously five (5) years from the approval of the first Contract awarded as a result of the Solicitation. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional years. Discount reduction will not be allowed and is specifically excluded from the terms and conditions of the Solicitation and resultant Contract. Price decreases or discount increases are permitted at any time.

5.11 Short Term Extension

In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

5.12 Periodic Recruitment

The State reserves the right to add Contractors beginning in the second year of the Contract and at one year intervals thereafter. The State will formally announce when the bid is reissued, at the discretion of the State. Bidders shall be required to submit such Bid documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the new Bid Solicitation. Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration. In addition, if a Bid is deemed non-responsive or is rejected under periodic recruitment, a Bidder cannot reapply for a future Contract until the next periodic recruitment period. For Contracts that are awarded under periodic recruitment, the Contract term will commence upon OGS approval in accordance with Appendix B §22, Contract Creation/Execution and will terminate on the then current end date of the Contract or at the end of any approved extension or renewal period.

Bidders shall be required to submit this original bid document which may include additional applicable statutory requirements currently in effect at the time of the new bid Solicitation. Bidders are advised to review the "Qualification of Bidders" clause before submitting a bid under periodic recruitment to ensure they can meet all bid requirements.

5.13 Contract Advertising

In addition to the requirements set forth in Appendix B §21, *Contract Publicity*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance.

5.14 Procurement Instructions to Authorized Users

1. The Contracts resulting from this Solicitation will be centralized Contracts issued under a multiple award structure. Products offered under the Contracts, pricing, and other Contract information will be posted to the OGS website or the awarded Contractors' dedicated NYS websites. Authorized Users shall procure Products that best meet their form, function and utility requirements.
2. Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities of Preferred Source suppliers such as Correctional Industries (Corcraft), NYS Preferred Source Program for People Who are Blind (NYSPPSP), and NYS Industries for the Disabled (NYSID), when such commodities meet the form, function and utility of the Authorized User.

3. Where products are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded under this Solicitation. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users are strongly encouraged to obtain quotes from at least three (3) Contractors prior to issuing a purchase order, in order to ensure that the Authorized User is receiving the best possible pricing.
4. When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
 - statement of need and associated requirements;
 - obtaining all necessary prior approvals;
 - a summary of the Contract alternatives considered for the purchase; and
 - the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).
5. Authorized Users will issue purchase orders directly to the Contractor or the Contractor's authorized Reseller (if applicable), as specified by the Contractor, and specifying any shipping/delivery requirements and/or statements of work for services (if applicable).
6. Upon Authorized User acceptance of Products itemized on the purchase order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products.
7. ***Contractor must disclose any forms, "click through", "shrink wrap" or other pass-through or licensing/subscription terms and conditions or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions, such as library maintenance agreements or Licensing Agreements must receive pre-approval by the Authorized User prior to ordering Products and services. Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.***

5.15 Minimum Order

There is no minimum order requirement.

5.16 New York State Purchasing Card

See "Purchasing Card" in Appendix B, § 15, *Purchasing Card*. All Bidders shall indicate if they will accept the NYS Purchasing Card for orders not to exceed \$85,000 see Attachment 5 - *General Questions*. For all purchases executed using a New York State Purchasing Card, Contractor shall provide an itemized receipt with each delivery.

5.17 Contract Orders

Contractor shall be capable of accepting orders manually, via facsimile, and, electronically via email. All orders (manual, fax, electronic) shall reference requisition and/or purchase order number as required. As an option, Contractor may also accept orders electronically via the Internet through a NYS dedicated online ordering system. Contractor shall be required to provide written quotes to Authorized Users who request them prior to placing an order, which details List Price, discount or Service Charge, and Net Price, as applicable.

The online ordering system, if offered, shall allow Authorized Users to enter orders and have full order inquiry capabilities. If offering an online ordering system, the Bidder represents and warrants that it is the sole owner of the software product used for its ordering system, or, if not the owner, has received all proper authorizations from the owner to license the software product, and has the full right and power to grant the rights contained in any Contract resulting from this Solicitation and as described

further in Appendix B. Bidder further warrants and represents that the software product is of original development, and/or that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person/company.

The online ordering system* shall be capable of processing, controlling, documenting, and reporting on the following minimum data elements:

1. Contractor Name and Address
2. Agency/Facility/Political Subdivision, etc.
3. Contract Number
4. Purchase Order/Requisition Numbers
5. Contact (individual placing order)
6. SKU/PN and Product description
7. Net Price
8. Extended and Total Amounts

*Comparable systems meeting the intent of the specifications may be considered.

If offering an online ordering system, the Contractor shall provide any necessary software (excluding communication software) and training guides/manuals or online support in the use of the online ordering system at no additional cost to all Authorized Users capable of placing orders electronically. Samples of software and training guides/manuals may be required. If requested, Bidder must demonstrate its system at an Albany, NY area location designated by the State.

5.18 Internet Websites

The State encourages successful Bidders to provide a designated NYS Contract website for Authorized Users' direct access. This website will be listed under the Contractor information. The purpose of a dedicated website is to provide Authorized Users with access to Contract pricing and Product offerings and the option of online ordering. It is the Contractor's responsibility to ensure that Contract and related information is accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at Contractor's web site. Changes in Products or pricing must be approved by the Office of General Services, Procurement Services in accordance with any terms included in this Solicitation and resultant Contract prior to addition to the website. Hard copy catalog and pricelists, either in paper format or electronic format, must be available to all Authorized Users who either do not have Internet access or prefer the optional format.

5.19 Purchase Orders and Invoicing

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

5.19.1 Purchase Orders

Purchase orders are to include the following information:

1. Contract number
2. Contractor name
3. ISSN and Product/service description
4. Net Price

5.19.2 Invoices

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

1. Contract number
2. Contractor name
3. NYS Vendor Identification Number
4. Purchase Order number

5. ISSN and Product/service description
6. Line item breakdown of all charges to include Net Price of each Product or service.

Note that additional information is required for invoices for Lot 1 Products in accordance with Section 5.8, *Lot 1 Performance Requirements*.

Business units or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system must be flexible enough to meet the needs of varying accounting systems in use by different Authorized Users.

5.20 Software

Software offered either as part of Lot 1 or Lot 2 must be in a format that does not require any conversion by the Authorized User and shall:

1. Be available as part of the Contractor's standard commercial offerings; and
2. be directly related to the operational function of the Products offered under the Contract.

Any Software currently on the NYS Miscellaneous Software Catalog contract Prohibited List is excluded from purchase under this Contract, except when the Software is pre-loaded on the equipment at the time of purchase. The Prohibited List may be accessed on the OGS website: <http://www.ogs.ny.gov/purchase/snt/awardnotes/79518Prohibited.pdf>.

5.21 Related Third Party Products

Third Party Products which meet and comply with all of the following criteria may be authorized for sale under this Contract:

1. The Third Party Product is available as part of the Contractor's standard commercial offerings.
2. The Third Party Product fits the scope of, or is directly related to Products that fit the scope of the Contract.
3. If the Third Party Product is available on another NYS Contract, such item will only be approved for inclusion on this Contract in accordance with Section 5.47, *Overlapping Contract Items*. If the Third Party Product is not available on another NYS Contract, then price reasonableness must be established in order for such item to be added to the Contract.

5.22 Use of Resellers/Distributors/Alternate Channel Partners

Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall ensure that sufficient resources are available directly, or through Resellers/Distributors to ensure maximum service capability throughout the State. The State agrees to permit Contractor to utilize approved, designated value added resellers (VARs), distributors, dealers, and sales agents to participate as alternate channel partners (collectively referred to as "Resellers") for Contractor. Such participation is subject to the following conditions:

1. Designation of Reseller(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 7 - *Reseller Directory*.
2. Conditions of Participation: Reseller(s) must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that: i) such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; ii) all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term; iii) those qualifying criteria met by the Reseller must be identified on the form provided in Attachment 7 - *Reseller Directory* at the time that Reseller approval is requested under this paragraph; and iv) immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.
3. All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower than Contract pricing for procurements under this Contract which meet their qualifying criteria. Except as otherwise set forth in Attachment 7 - *Reseller Directory*, Contractor warrants and represents that it shall not, directly or

indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order. Reseller Directory updates will be allowed no more than twice annually. On the first business day of the month following the sixth and twelfth months of each contract year, Contractors shall be given an opportunity to submit revised Reseller Directories electronically. When submitting Reseller Directory updates, Contractors shall be required to separately specify additions, deletions, and/or any other changes to the directory in an accompanying communication submitted with the request in order to facilitate a more expeditious review; failure to do so may result in the rejection of the request.

4. Responsibility for Reporting/Performance: Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions. Product purchased through Reseller(s) must be reported by Contractor in the required monthly reports to the State as a condition of payment. In addition to inclusion of Reseller(s) volume in the Contractor's monthly reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with quarterly reports of the individual Authorized User's Contract activity with Reseller.
5. Applicability of Contract Terms: Product ordered directly through Reseller(s) shall be limited to Products currently approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

5.23 Cancellation of Purchase Orders

Cancellation of orders in part or whole for unavailable Products shall be made by means of appropriate notations and adjustments on orders returned by Contractor to the Authorized User. Contractors shall make no shipments of canceled Products except on the basis of a new order. Products not supplied by the Contractor may be purchased from any other Contract source.

5.24 Contract Payments

Payments cannot be processed by Authorized Users until the items have been delivered and accepted. Payment will be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section 5.19, *Purchase Orders and Invoicing*.

5.25 Contract Administrator

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Contract Administrator shall be set forth in Attachment 5 - *General Questions*.

5.26 Toll-Free Number/Authorized User Assistance

A Bidder must provide a toll-free telephone number for the Authorized User assistance under any Contract or purchase order resulting from this Solicitation. Bidder must staff this toll-free number at a minimum from 8:00 a.m. to 5:00 p.m. ET Monday through Friday, excluding NYS holidays. If Bidder does not currently maintain a toll-free number, the Bidder must be willing to establish one prior to award of Contract. Bidders may also offer online assistance, such as email or chat assistance.

5.27 Insurance Requirements

Bidder shall comply with Insurance requirements in Attachment 4 – *Insurance Requirements*. Within thirty (30) days after renewal or replacement of any policy required by any Contract resulting from this Solicitation, or within three (3) business days of request, Bidders and Contractors shall supply OGS with updated replacement Certificates of Insurance, and amendatory endorsements. Bidder shall affirm its agreement to obtain all required Contract-specific insurance in Attachment 5 - *General Questions*.

Solely pertaining to matters regarding this section, the individual named below is a designated point of contact pursuant to State Finance Law §139-j (2) (a) for the purpose of communications relative to this Solicitation.

INSURANCE INQUIRIES ONLY
PRIMARY CONTACT
Leighann Brown
Telephone: (518) 457-6595
Email: ogs.sm.insrev@ogs.ny.gov

5.28 Report of Contract Sales

Contractor shall furnish a report semiannually of all Products purchased under the Contract during each semiannual period, no later than the 15th of the month following the close of each six month period. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. If resellers are utilized, the Contractor shall be responsible for consolidating all contract purchases into a single report. A template for such report is included in Attachment 9 - *Report of Contract Sales*. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided in Microsoft Excel 2013, or lower version (or as otherwise directed by OGS), to the attention of the OGS contract manager and shall reference the Group Number, Award Number, Contract Number, and Sales Period. OGS reserves the right to amend the report template during the Contract term.

Contractor shall specify if any resellers are NYS Certified Minority and/or Women-Owned Business Enterprises (MWBEs) within the Report of Contract Sales document. Contractor shall refer to Section 5.36, *Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women* for information on how to verify certified status.

5.29 Authorized User Sales Reports

Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a monthly basis, a report listing the following: name of Products purchased, quantity purchased, unit price and total dollar volume of purchases.

5.30 Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**5.30.1 Policy Statement**

The New York State Office of General Services (“OGS”), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the Statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

5.30.2 General Provisions

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements.

These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.

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

D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract.

5.30.3 Equal Employment Opportunity (EEO)

A. Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy.

B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)

The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January. Separate forms shall be completed by Contractor and any subcontractor.

If Contractor’s EEO Form 100 - Staffing Plan provides that Contractor is unable to separate out the actual workforce utilized in the performance of the Contract from its total workforce, the following clause shall apply: Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor’s and/or subcontractor’s total workforce and that the information provided on the previously submitted Staffing Plan is Contractor’s total workforce during the subject time frame, not limited to work specifically under the Contract.

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

the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

5.30.4 Contract Goals

A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at <https://ny.newycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528> Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

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

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

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

5.31 New York State Statewide Financial Systems (SFS)

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

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

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

5.32 Use of Recycled or Remanufactured Materials

New York State supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the

product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Solicitation. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, §38, *Repaired or Replaced Products, Parts or Components*.

5.33 Bulk Delivery and Alternate Packaging

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

5.34 Surplus/Take-Back/Recycling

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

2. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section 3 below for specific requirements governing electronic equipment recycling.

3. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.

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

5.35 Environmental Attributes and NYS Executive Order Number 4

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

5.36 Preferred Source Products

Section 162 of the State Finance Law requires that agencies, including Executive Agencies, afford first priority to the products/services of preferred source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such products/services meet the form, function and utility of the agency. Some products/services in the resultant Contract(s) may be

available from one or more preferred sources. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law §162(3) or (4)(b), respectively, before engaging the Contractor.

5.37 New York State Vendor File Registration

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder(s) and any authorized Resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, unique New York State ten-digit vendor identification numbers will be assigned to your company and to each of your Authorized Resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the New York State Vendor File, the vendor must enter the vendor's ten-digit Vendor Id number on the first page of this bid document. Authorized Resellers already registered should list the ten-digit Vendor Id number along with the Authorized Reseller information.

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor Id number from OGS. Complete the OSC Substitute W-9 Form http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf and submit the form to OGS **in advance** of bid submittal. Please send this document to the Designated Contact in the Solicitation. In addition, if an Authorized Reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf should be completed by each designated authorized Reseller and submitted to OGS. **OGS will initiate the vendor registration process for all Bidders and their authorized Resellers.** Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the vendor file please visit the following website: http://www.osc.state.ny.us/vendor_management.

5.38 New York State Vendor Responsibility Questionnaire For-Profit Business Entity

OGS conducts a review of prospective Contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A Questionnaire is used for non-construction Contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the "Questionnaire." The Bidder further agrees that if it is found by the State that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

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

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

In order to assist the State in determining the responsibility of the Bidder prior to Contract Award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the bid opening to provide sufficient time to complete the Questionnaire.

NOTE: A New York State Vendor File Registry Number is required to access the VendRep site (see previous clause). Bidders who do not have an assigned NYS Vendor File Registration Number must submit a hard copy paper questionnaire with their bid.

The Bidder agrees that if it is awarded a Contract the following shall apply:

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

The Commissioner of OGS or her designee, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

The 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, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

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

5.39 New York State Tax Law §5-a

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

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

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

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

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

5.40 New York State Required Certifications

A Bidder is required to submit the signed Attachment 2 - *New York State Required Certifications* with its bid. Failure to submit these documents may result in bid being considered non-responsive and may result in a bid being REJECTED.

5.41 Overlapping Contract Items

Products/services available in the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

5.42 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, §25, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have Delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include Delivery to locations adjacent to New York State.

Upon request, all eligible non-State Agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State Contracts. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services; Customer Services at (518) 474-6717.

5.43 Note to All Non-State Agencies and Bidders

All such participating non-State agencies and Bidders understand, acknowledge and agree that the primary responsibility in regard to performance of the Contract, of any obligation, covenant, condition or term thereunder by either such party thereto shall be borne and is expressly assumed by the participating non-State agencies and Contractor and not by the State. In the event of a failure or breach in performance of any such Contract by a non-State Agency or Contractor, the State specifically and expressly disclaims any and all liability for such defective performance or breach, and the eligible participating non-State agencies and Contractor guarantee to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the failure of either party to perform in accordance with its obligations, covenants and the terms and conditions of the State Centralized Contract.

5.44 Extension of Use

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead Contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional Discounts based on any increased volume generated by such extensions.

5.45 Contractor Performance

Authorized Users should notify the Procurement Services Contract administrator promptly if the Contractor fails to meet the requirements of this Contract. Performance which is otherwise unsatisfactory to the Authorized User should also be reported to Procurement Services.

5.46 Mercury Added Consumer Products

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

5.47 Unanticipated Excessive Purchase

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An "unanticipated excessive purchase" is defined as an unexpected order for a Contract product(s) totaling more than \$50,000.00.

5.48 Americans with Disabilities Act (ADA)

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidders are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals.

Although it is not mandatory for Bidders to have this equipment in order to receive an award, it is necessary to identify any such equipment offered they have which falls into the above category.

5.49 Additional Requirements

1. NO DRUGS OR ALCOHOL

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

2. TRAFFIC INFRACTIONS

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

5.50 Website Accessibility

Responsibility for Content: Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Sub-Contractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services f/k/a Office for Technology policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based Intranet and Internet information accessible for persons with disabilities. In accordance with such policy, the following language is incorporated into any Contract resulting from this procurement:

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

5.51 License Agreements

An Authorized User looking to acquire Products and services under a Contract resulting from this Solicitation must review the contractual terms and conditions. The Authorized User must ask the Contractor if "click through", "shrink wrap" or other pass-through or licensing/subscription terms and conditions are present, and if so, the Authorized User is responsible for reviewing and approving such terms and conditions prior to ordering the Products and services. If the terms and conditions are not acceptable to the Authorized User, it is the responsibility of such Authorized User to negotiate any needed amendments. ***Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.***

5.52 Appendix A

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this bid document as fully as if set forth at length herein. **Please retain this document for future reference and do not return to OGS as part of the bid submission.**

5.53 Appendix B

Appendix B, Office of General Services General Specifications, dated April 2016, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this bid document or Appendix A. **Please retain this document for future reference and do not return to OGS as part of the bid submission.**

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

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

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. 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 Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

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

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

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

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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

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

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

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

APPENDIX B

GENERAL SPECIFICATIONS

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GENERAL

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

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

a. AUTHORIZED USER Authorized User shall have the meaning set forth in State Finance Law Section 163(1)(k) and includes, but is not limited to, New York State Agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

b. BID A response to the Solicitation submitted by a Bidder to provide Products.

c. BIDDER Any person or entity who submits a response to the Solicitation. At the time that a Bidder executes a Contract with the State, the Bidder shall become a "Contractor." See also "Contractor."

d. BID SPECIFICATIONS A written description drafted by OGS or an Authorized User setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a Product, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where this Appendix B is incorporated in negotiated Contracts that have not been competitively solicited, the term "Bid Specifications" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

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

f. CONTRACT The writings that 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, and which most typically include the following classifications of public procurements:

- 1. Agency Specific Contracts** Contracts where the written description for a Product or a particular scope of work is described and defined to meet the needs of one or more Authorized Users.
- 2. Centralized Contracts** Single- or multiple-award Contracts where the written description for a Product or general scope of work is described and defined by OGS to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another

jurisdiction's contract or on a sole source, single source, emergency, or competitive basis. Once established, procurements may be made from the selected Contractors without further competition or Mini-Bid unless otherwise required by the Contract.

3. Back-Drop Contracts Multiple-award Centralized Contracts where OGS provides a written description for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Solicitation. Selection of a Contractor from among Back-Drop contract holders for an actual Product, project or particular scope of work may be subsequently made as set forth in the Contract.

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

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

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

h. CONTRACTOR Any successful Bidder to whom a Contract has been awarded by the Commissioner.

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

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

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

l. 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.

m. GROUP A classification of a Product that is designated by OGS.

n. INVITATION FOR BIDS (IFB) A type of Solicitation that is most typically used for procurements where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder or Bidders.

o. LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes Error Corrections, upgrades, or enhancements, and any deliverables due under a technical support/maintenance or service contract (e.g., Patches, programs, code or data conversion, or custom programming).

p. LICENSEE An Authorized User who acquires Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User 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.

q. LICENSE EFFECTIVE DATE The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered master copy of a program, the License Effective Date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

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

s. MINI-BID A document used by an Authorized User containing transaction-specific requirements soliciting responses from Contractors previously qualified under a Centralized Contract for such Products.

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

u. PATCH Software designed to update, fix, or improve the Product or its supporting data. This includes fixing security vulnerabilities and other bugs, including hot fixes, to improve usability or performance.

v. PRODUCTS Items or deliverables under any Solicitation or Contract and may include commodities, services and/or technology.

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

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

y. REQUEST FOR QUOTATION (RFQ) A procurement method that can be used in situations such as discretionary, sole source, single source, or emergency purchases and certain Centralized Contracts.

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

aa. RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by the OGS Commissioner.

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

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

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

ee. SOLICITATION Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. The procurement may be undertaken on a competitive or non-competitive basis. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to Appendix A (Standard Clauses for NYS Contracts), Appendix B (General Specifications), and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term "Solicitation" shall be deemed to refer to all the terms and conditions identified by the State.

ff. 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.

gg. STATE State of New York.

hh. STATE 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.

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

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

kk. THIRD-PARTY SOFTWARE Any software that is developed independently of Contractor and which may be governed by a separate license.

ll. VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer. Virus shall also include any malware, adware, or other computer code, whether or not written or conceived by Contractor, that allows data or metrics to be copied, redirected, or modified without the express consent of the Authorized User.

BID SUBMISSION

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

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

5. LATE BIDS Bids must be received at the location designated in the Solicitation at or before the date and time established in the Solicitation for the Bid opening or receipt of Bids.

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, (ii) in the case of a multiple award, an insufficient number of timely Bids are received to satisfy the multiple award, or (iii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event shall the Commissioner be under any obligation to accept a Late Bid.

The basis for any determination to accept a Late Bid shall be documented in the procurement record.

6. CONFIDENTIAL/TRADE SECRET MATERIALS

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

b. COMMISSIONER OR AUTHORIZED USER Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties without the written consent of the Commissioner or Authorized User. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information

of the Authorized User, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

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

a. PREVAILING WAGE RATE APPLICABLE TO BIDS A copy of the applicable prevailing wage rate schedule is incorporated into the Solicitation and may also be obtained by visiting www.labor.ny.gov and typing in the search box: Prevailing Wage Schedule Request. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (e.g., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rates for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

b. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.

c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS In compliance with Article 8, Section 220 of the New York State Labor Law:

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

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

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and Subcontractors on public works Contracts must submit monthly payroll transcripts to the Authorized User issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.

iv. Day's Labor No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or

contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract Site or for the protection of the life and limb of the persons using the Contract Site.

d. ARTICLE 9 BUILDING SERVICES CONTRACTS In compliance with Article 9, Section 230 of the New York State Labor Law:

i. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work Site while work is being performed.

ii. Overtime Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

8. TAXES

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

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

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

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

10. PRODUCT REFERENCES

a. "Or Equal" In all Solicitations or Bid Specifications, the words "or equal" are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced.

References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner's decision as to acceptance of the Product as equal shall be final.

b. Discrepancies in References In the event of a discrepancy between the model number referenced in the Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

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

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

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

13. PRICING

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

b. Net Pricing Unless otherwise required by the Solicitation, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination indicated in the Solicitation or Purchase Order.

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

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

e. Third Party Financing If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract award to agree to the terms and conditions of a

“Consent & Acknowledgment Agreement” in a form acceptable to the Commissioner.

f. Specific price decreases:

(i) GSA Changes: Where net pricing under the Contract is based on an approved GSA schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA schedule pricing decreases during the Contract term; or

(ii) Commercial Price List Reductions: Where net pricing under the Contract is based on a discount from Contractor’s list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing on its commercial price lists during the Contract term; or

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

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

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

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

14. SITE INSPECTION Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that may affect Bidder’s ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions that such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly provide the required Product.

15. PURCHASING CARD The State’s Purchasing Card program is designed to be an efficient and cost effective way to expedite purchases. The Purchasing Card (also referred to as the Procurement Card) is a credit card that enables Authorized Users to make authorized purchases directly from a Contractor without processing formal Purchase Orders. Purchasing Cards are issued to selected employees who are authorized to make purchases for the Authorized

User. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

BID EVALUATION

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

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

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

19. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within 60 days after the date of the Bid opening or such other period of time as set forth in the Solicitation. The Bids must remain firm until a Contract is awarded, but if a Contract is not awarded within 60 days or other time period set forth in the Solicitation, the Bidder may withdraw its Bid any time thereafter by delivering to the Commissioner written notice of the withdrawal of its Bid.

20. DEBRIEFINGS Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OGS that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

21. CONTRACT PUBLICITY Any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by the Commissioner prior to issuance. In addition, Contractor shall not use, for any purpose, the New York State of Opportunity registered trademark or the New York State coat of arms without prior written approval from the State.

TERMS & CONDITIONS

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

23. CONTRACT TERM - EXTENSION In addition to any stated extension periods in the Contract, any Contract or portion thereof awarded by the Commissioner may be extended by mutual agreement of the Commissioner and the Contractor for an additional period of up to one year. Such extension for up to an additional one-year period may be exercised on a month-to-month basis or in other stated periods of time.

24. OFFICIAL USE ONLY/NO PERSONAL USE The Contract is only for official use by Authorized Users. Use of the Contract for personal or private purposes is strictly prohibited.

25. PARTICIPATION IN CENTRALIZED CONTRACTS

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

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

c. Voluntary Extension Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the 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.

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

e. Contract Migration Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate

any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

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

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

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

27. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, provided that such changes do not materially alter the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a notice from Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

28. ESTIMATED/SPECIFIC QUANTITY CONTRACTS

Estimated quantity contracts, also referred to as indefinite delivery/indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

With respect to any specific quantity stated in the Contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

29. EMERGENCY CONTRACTS In the event that a disaster emergency is declared by Executive Order under Section 28 of Article

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

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

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

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

31. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within 30 calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and the Contractor. The decision of

the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. If compliance with the delivery time schedule is a material term of the Contract, failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

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

33. SHIPPING/RECEIPT OF PRODUCT

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

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

c. Receipt of Product The Contractor shall be solely responsible for assuring that deliveries are made to the locations and/or personnel specified by the Authorized User in the Purchase Order. Any losses or delays resulting from the Contractor's failure to deliver Product to the specified locations or personnel shall be borne exclusively by the Contractor.

34. TITLE AND RISK OF LOSS FOR PRODUCTS OTHER THAN TECHNOLOGY PRODUCTS

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

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

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

37. INSTALLATION Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place 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. Work shall be performed to cause the least inconvenience to the Authorized User 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.

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

39. EMPLOYEES, SUBCONTRACTORS AND AGENTS All employees, Subcontractors, or agents of the Contractor performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical, and training qualifications set forth in the Contract or the Purchase Order, and must comply with all security and administrative requirements of the Authorized User that are communicated to the Contractor. The Commissioner and the Authorized

User reserve the right to conduct a security background check or otherwise approve any employee, Subcontractor, or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract or the Purchase Order. The Commissioner and the Authorized User reserve the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agent of the Contractor.

40. ASSIGNMENT In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. The Commissioner may waive the requirement that such consent be obtained in advance where the Contractor verifies that the assignment, transfer, conveyance, sublease, or other disposition is due to, but not necessarily limited to, a reorganization, merger, or consolidation of the Contractor's business entity or enterprise.

Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the State Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the Contract.

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

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

42. SUSPENSION OF WORK The Commissioner, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues or other circumstances. Upon

issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

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

43. TERMINATION

a. For Cause For a material breach that remains uncured for more than 30 calendar days or other longer period as specified by written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively. Neither the State nor an Authorized User shall be liable for any of Contractor's costs arising from the failure to perform or the termination, including without limitation costs incurred after the date of termination. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience This Contract may be terminated at any time by the Commissioner for convenience upon 60 calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.

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

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

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

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

requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

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

f. Upon Conviction of Certain Crimes The Commissioner reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

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

The affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond 30 days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

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

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

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

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

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

45. CONTRACT INVOICING

a. Invoicing Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer.

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

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

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

of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

46. DEFAULT – AUTHORIZED USER

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

b. Failure to Make Payment In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 30 calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional provision of Products to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. Notice of Breach Notwithstanding the foregoing, the Contractor shall, at least 10 business days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

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

47. PROMPT PAYMENTS

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

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 30 calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of State Agencies. Neither expressly nor by any implication is the statute applicable to non-State agency Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a non-State agency Authorized User.

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

48. REMEDIES FOR BREACH Unless otherwise specified by the Authorized User in a Mini-Bid or Purchase Order, in the event that Contractor fails to observe or perform any term or condition of the Contract and such failure remains uncured after 15 calendar days following written notice by the Commissioner or an Authorized User,

the Commissioner or an Authorized User may exercise all rights and remedies available at law or in equity. Notwithstanding the foregoing, if such failure is of a nature that it cannot be cured completely within 15 calendar days and Contractor shall have commenced its cure of such failure within such period and shall thereafter diligently prosecute all steps necessary to cure such failure, such 15-day period may, in the sole discretion of the Commissioner or the Authorized User, be extended for a reasonable period in no event to exceed 60 calendar days. It is understood and agreed that the rights and remedies available to the Commissioner and Authorized Users in the event of breach shall include but not be limited to the following:

a. Cover/Substitute Performance In the event of Contractor's material, uncured breach, the Commissioner or Authorized User may, with or without issuing a formal Solicitation: (i) purchase from other sources; or (ii) if the Commissioner or Authorized User is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement Product of equal or comparable quality, the Commissioner or Authorized User may acquire acceptable replacement Product of lesser or greater quality. Such purchases may be deducted from the Contract quantity without penalty or liability to the State.

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Authorized User.

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

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

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

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

49. ASSIGNMENT OF CLAIM Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 USC

Section 1, et seq. and the antitrust laws of the State of New York, General Business Law Section 340, et seq.

50. 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 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 Safety Data Sheet must be provided to and approved by the Authorized User.

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

52. SECURITY Contractor warrants, covenants and represents that, in the performance of the Contract, Contractor, its agents, Subcontractors, officers, distributors, resellers and employees will comply fully with all security procedures of the Authorized User set forth in the Contract or Purchase Order or otherwise communicated in advance to the Contractor including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

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

54. WARRANTIES

a. Product Performance Contractor hereby warrants and represents that the Products acquired by the Authorized User under this Contract conform to the manufacturer's specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.

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

c. Product Warranty Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be substantially free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer's standard commercial warranty period, if applicable, or for a minimum of one year from the date of acceptance, whichever is longer (the "Product warranty period").

During the Product warranty period, defects in the materials or workmanship of Products, components, or parts specified and furnished by or through Contractor, whether specified and furnished

individually or as a system, shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Product warranty period for individual Products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual Product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees (“extended warranty”).

Any component or part replaced by the Contractor under the Contract warranties shall be guaranteed for the greater of: (i) the Product warranty period set forth herein; or (ii) the manufacturer’s standard commercial warranty period offered for the component or part, if applicable.

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Where Contractor, the Third-Party Software vendor, or other third-party manufacturer markets any Product delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor’s warranty obligations during the Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with Third-Party Software vendor or other third-party manufacturers for warranty repair or replacement of Third-Party Software vendor or other third-party manufacturer’s Product.

Where Contractor, Third-Party Software vendor, or other third-party manufacturer markets any Product with a standard commercial warranty that goes beyond the Product warranty or extended warranty periods, Contractor shall notify the Authorized User and pass through the standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the standard commercial warranty after expiration of the Product warranty and extended warranty periods.

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

Contractor shall not be responsible for any modification of the Products made by an Authorized User without Contractor’s approval.

d. Virus Warranty The Contractor represents and warrants that any Product acquired under the Contract by the Authorized User does not contain any known Viruses. Contractor is not responsible for Viruses introduced at an Authorized User’s Site.

e. Date/Time Warranty Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the Product Documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an

acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

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

f. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with the applicable industry standards, if any. The Authorized User must notify Contractor of any services warranty deficiencies within 90 calendar days from performance of the services that gave rise to the warranty claim.

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

h. Prompt Notice of Breach The Authorized User shall promptly notify the Contractor and the Commissioner in writing of any claim of breach of any warranty provided herein.

i. Additional Warranties Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to Authorized Users.

j. No Limitation of Rights The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

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

56. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold the Authorized Users harmless from suits, actions, proceedings, claims, losses, damages, and costs (including reasonable attorney fees) of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation;

provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

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

57. INDEMNIFICATION RELATING TO INFRINGEMENT

The Contractor shall also defend, indemnify and hold the Authorized Users harmless from all suits, actions, proceedings, claims, losses, damages, and costs of every name and description (including reasonable attorney fees), relating to a claim of infringement of a patent, copyright, trademark, trade secret or other proprietary right provided such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by the Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval; provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit alleging infringement, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

If usage of a Product shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its

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

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

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

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products forming the basis of the Authorized User's claim or (ii) five hundred thousand dollars (\$500,000), whichever is greater.

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

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

59. DISPUTE RESOLUTION PROCEDURES

It is the policy of OGS to provide interested parties, as defined in the OGS Dispute Resolution Procedures, with an opportunity to

administratively resolve disputes, complaints or inquiries related to Solicitations, contract awards and contract administration. OGS encourages interested parties to seek resolution of disputes through consultation with OGS staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Dispute Resolution Procedures may be obtained by contacting the designated contact for the Solicitation, the Contract manager, or at the OGS website. OGS reserves the right to change the procedures set forth in the Dispute Resolution Procedures without seeking a Contract amendment.

To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of information technology Products such as software, computer components, systems, or networks for the processing, and distribution, or storage, or storage of data, the following clauses shall govern, as applicable.

60. SOFTWARE LICENSE GRANT Where Product is acquired on a licensed basis the following shall constitute the license grant:

a. License Scope Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (e.g., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation, virtual partition). Licensee shall have the right to use those modifications or customizations of the Product that have been purchased by Licensee and to distribute such modifications or customizations for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications or customizations, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

Licensee and Contractor may agree to alternative licensing rights (e.g., subscription, term, virtual) for specific Products used by the Contractor in performing the services, provided such agreement is reached prior to Bid, Mini-Bid, RFQ, or Contract award, as applicable. Such licensing rights will be specified in an applicable Purchase Order or other document approved by Licensee and Contractor.

b. License Term The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the license term shall be extended by the time period for testing, acceptance or trial.

c. Product Documentation Contractor shall provide Product Documentation electronically to Licensee at no charge. If Product Documentation is made available to customers in hard copy, Contractor shall provide at no charge one hard copy.

Contractor hereby grants to Licensee a non-exclusive, fully paid-up, royalty-free perpetual license in the Product Documentation to make, reproduce, and distribute, either electronically or otherwise, copies of the Product Documentation as necessary to enjoy full use of the Product in accordance with the Contract.

d. Product Technical Support & Maintenance Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Contractor shall fully disclose all terms and conditions of maintenance available to Licensee, including the extent to which updates, upgrades, revisions, and new releases are included in maintenance. Maintenance terms and any renewals thereof are independent of the expiration of the Centralized Contract term and shall not automatically renew.

Unless otherwise provided by written agreement between the Contractor and Licensee, maintenance offered shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, Patches, and upgrades to Licensee, and (ii) help desk assistance at no additional cost, either by toll-free telephone

or on-line functionality. Contractor shall maintain the Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Licensee shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Licensee does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount that would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates. Contractor shall submit written notification to Licensees of the upcoming maintenance end date no later than 60 calendar days prior to such maintenance end date.

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

f. Restricted Use By Third Parties Third parties retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) Licensee gives notice to Contractor of such third party, Site of intended use of the Product, and means of access; and (ii) such third party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement, which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and (iii) such third party maintains a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: (i) reproducing a reasonable number of copies of the Product for

archival backup and disaster recovery procedures; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage; (iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. The phrase "cold site storage" means a restorable back-up copy of the Product not to be installed until the need for disaster recovery arises. The phrase "disaster recovery" means the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development. Contractor shall fully disclose all archival back-up and disaster recovery options available to Licensee (e.g., cold, warm, and hot back-up), including all terms and conditions, additional charges, or use authorizations associated with such options.

h. Confidentiality Restrictions If any portion of the Product or Product Documentation contains confidential, proprietary, or trade secret information, the Contractor shall identify such information in writing to the Licensee. The terms of Licensee's use and disclosure of such information shall be governed by a written agreement between the Contractor and the Licensee, which, in the case of Licensees that are State or local governmental entities, recognizes that they are subject to the New York Freedom of Information Law.

i. Restricted Use by Licensee Except as expressly authorized by the Terms of License, Licensee shall not: (i) copy the Product; (ii) cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or (iii) export the Licensed Software in violation of the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR).

61. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, an Authorized User shall have 30 days from the date of delivery to accept hardware Products and 60 days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User as of the expiration of that period. The license term shall be extended by the time periods allowed for trial use, testing and acceptance.

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

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional 30 day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, if the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have 30 days to correct the deficiency, and the Authorized User shall have an additional 60 days to evaluate the Product as provided herein.

If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

62. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any Site where a copy of the Product resides. Contractor may conduct such audits remotely or on Site. If conducted remotely and if Contractor makes a license management program available, the Licensee agrees to install such program and use it within a reasonable period of time, provided such program meets Licensee's security or other requirements. If conducted on Site: (i) Contractor shall give Licensee at least 30 days advance written notice, (ii) such audit shall be conducted during Licensee's normal business hours, (iii) the audit shall be conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three auditing/accounting firms from which the Licensee will select one; and (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit. If the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the net pricing in effect under the Contract at time of audit, or if none, then at the Contractor's U.S. commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

In the event of an on-Site audit, the Software Alliance, Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) may not be used directly or indirectly to conduct such audit, nor may such entities be recommended by Contractor.

63. NO HARDSTOP OR PASSIVE LICENSE MONITORING Unless otherwise expressly agreed to by the Licensee, the Product and all upgrades shall not contain any computer code that would disable the Product or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Any Contractor access to the Product agreed to by Licensee as provided above shall be in accordance with Licensee's security or other requirements. Contractor agrees that in the event of a breach of this provision that Licensee shall not have an adequate remedy at law, including monetary damages, and that Licensee shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Licensee shall be entitled.

64. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

This clause shall apply where Contractor is commissioned by the Authorized User to furnish project deliverables as detailed in the Purchase Order.

a. Definitions

(i) For purposes of this clause, "Products" means deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on electronic media c) Third-Party Software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) 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) For purposes of this clause, "Existing Products" means tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the project.

(iii) For purposes of this clause, "Custom Products" means Products, preliminary, final, or otherwise, that are created or developed by Contractor, its Subcontractors, partners, employees, or agents for Authorized User under the Contract.

b. Title to Project Deliverables Unless otherwise specified in writing in the Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

1. Hardware - Title and ownership of Existing hardware Products shall pass to Authorized User upon acceptance.

2. Software - Title and ownership to Existing software Products delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other Third-Party Software vendor ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the Third-Party Software vendor. Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or Third-Party Software vendor'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 Purchase Order or work order with all license rights necessary to fully effect the general business purposes stated in the Solicitation or Authorized User's Purchase Order or 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 Third-Party Software vendor'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 clause.

(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 Products, 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 Purchase Order, project definition or work order in the course of Contractor's business. 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 purposes 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 purchases 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 its Licensee'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 Products, 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 clause.

e. Contractor's Obligation with Regard to Third-Party Software Where Contractor furnishes Existing Licensed Products as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or the Third-Party Software vendor's standard license agreement, Contractor shall be responsible for obtaining from the Third-Party Software proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

65. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified license confirmation certificates in the name of such Licensee; (ii) a written confirmation from the proprietary owner accepting Product invoice as proof of license; or (iii) other similar proof of license. All proofs of license must be in a form acceptable to the Licensee.

66. CHANGES TO PRODUCT OR SERVICE OFFERINGS

a. Product or Service Discontinuance Where Contractor is the Product manufacturer/developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner and each Licensee then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) at Licensee's option, and in order to enable Licensee to continue the use and maintenance of the Product, provide Licensee with a Product replacement or migration path with at least equivalent functionality at no additional charge, provided that Licensee is under contract for maintenance on the date of notice and Contractor is offering such replacement or migration path to all of its similarly situated, supported customers without additional charge.

In the event that the Contractor is not the Product manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five business days of Contractor receiving notice from the Product manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product manufacturer will continue to provide Product or withdraw support.

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

b. Product or Service Re-Bundling In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or 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: (i) notify the Commissioner and each Licensee in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) 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.

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Appendix C: Contract Modification Procedure

CONTRACT UPDATE FORM	
OGS CONTRACTNO.: _____	DATE OF SUBMISSION: _____
GROUP NO. & DESCRIPTION: 20020 – SERIALS AND DATABASE ACCESS	CONTRACTOR CONTACT: NAME: PHONE NO: FAX NO.: E-MAIL:
NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).	

INSTRUCTIONS:

1. This form is to be used for all contract updates. The form is to be completed and submitted to the OGS Procurement Services for final approval. Contractors shall complete, sign, and notarize where indicated, and attach this form to a cover letter written on standard company letterhead. Any submission that is not complete or signed will be rejected.
2. Contractor may be required to submit the Product and service price information for the update in an Excel spreadsheet format via e-mail to the OGS Contract Manager.
3. The Pricelist must be dated and the format should be consistent with the format of the pricelist(s) included in the the Contract.
4. The Contract update must be accompanied by all required documentation pursuant to the Contract, including a copy of the Revised Contract Pricelist when applicable.

Complete Statements 1 through 6 Below:

<p>1. This request pertains to:</p> <p>_____ Lot 1 - Serials _____ Lot 2 - Database Access _____ Both</p>	<p>2. The intent of this submittal is to:</p> <p>_____ Add new Item Category _____ Add new Products and/or services _____ Delete Products and/or services _____ Increase pricing _____ Decrease pricing _____ Amend Reseller Director</p>
<p>3. All terms and conditions of the Contract shall apply to this request.</p> <p>_____ Agree _____ Disagree</p>	<p>4. All discounts as agreed to in the Contract shall apply.</p> <p>_____ Agree _____ Disagree</p>
<p>5. All pricing and discounts are:</p> <p>_____ GSA _____ Most Favored Nation*</p> <p>*Prices offered are the lowest offered to any similarly situated entity.</p>	<p>6. Attached documentation includes:</p> <p>_____ Approved federal contracts such as a GSA Supply Schedule _____ Prices on any awarded NASPO ValuePoint (formerly WSCA-NASPO) contracts or other cooperative contracts _____ Contracts with another state or governmental entity _____ Revised Contract Pricelist</p>

The following **CORPORATE ACKNOWLEDGEMENT** statement is to be included with each update submitted. The request must be signed by an individual given the authority to perform this action by the corporation’s board of directors and the signature must be notarized.

 Signature of Authorized Contractor Representative:

BIDDER	
Company Name:	NYS Vendor Identification Number:
INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT	
STATE OF _____	} SS.:
COUNTY OF _____	}
On the ____ day of _____ in the year 20____ before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he maintains an office at _____, and further that:	
[Check One] <input type="checkbox"/> If an individual): <u>he</u> executed the foregoing instrument in his/her name and on his/her own behalf. <input type="checkbox"/> If a corporation): <u>he</u> is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, <u>he</u> is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, <u>he</u> executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation. <input type="checkbox"/> If a partnership): <u>he</u> is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership. <input type="checkbox"/> If a limited liability company): <u>he</u> is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.	
_____ Notary Public Registration No.	